

Liberty - Preamble. [19(1)(f) right to property removed]

↓
19 - 7 freedoms. (Now 6)

Part III — 19-22 - Right to Freedom.

(21) - Life & Liberty.

except procedure established

21(a) - Right to Education by law.

6-14 yrs has been added.

[Unnikrishnan's case was

Liberty - Freedom. only by restrictions can be possessed by everyone. [responsible]

i) absolute / unrestricted freedom.

ii) Possessive as individuals.

human is a - desire

rational being. - in modern Society

1951 - AK Gopalan's Case (Kerala) - has to restricted

Patanjali Shastri's Case.

communist) iii) there are reasonable restrictions

for all the rights

(courts decide whether

it's reasonable rights/not)

Preventive detention

before violating, gets arrested.

A person can only

be arrested violating the law.

(19) - Right to freedom

Class 1 19(1)(a) - freedom of speech & expression

- Right to Information.

- Press Freedom.

- 1949 - Pre-censorship is invalid

- ~~Weeks~~

English Papers - 12 Pages weekdays
16 Pages Sundays.

- New York times Case (1970's)

Class 2 19(1)(a) - In India, we have (10-11)
reasonable restrictions

- i) like security of the State.
- ii) our good nearby relations
- iii) contempt of court.
(civil & criminal contempt)
- iv) Public order. (no one can
destroy the peace
provided in the society)
- v) Decency & morality
- vi) Sovereignty & integrity of
India.

5/9/19 19(1)(b) Assembly :

People. to hold meetings
come together to get into possession.

Part VIII

An assembly should be peaceful & unarmed.

A peaceful assembly takes a ~~violet colour~~ violentam resisting, the implementation of law.

Possession of property - unlawful.

Right to assemble

- Should not disturb public orders

Before holding

meeting / possession we will have to get a permission.

19(1)(c) Association :

partnerships, society, trade unions, forming a political party. also includes to form / not to form. } No form of to join / not to join } forcing.

Civilians serving in armed forces
are they allowed to form associations.

OK Nair's case.

"If the purpose of an association is totally changed it is violation.
founder should be present.

Boader def of Armed forces/ def System, so not allowed to form association }
People in uniform do not form association.
not allowed.

19 (1)(d) Movement:

within the country

travel - to go out of the country

in the int' of gen public; to protect the
Kaushalya int of ST
vs
UP case.

in the int' of public morals/public health,

She was restricted (prostitute)

6/9/19.

19-22 - Arbitrary arrest & detention

- 1) ground the await
- 2) 1970 - Part IV - legal aid.
- 3) 24 hrs later can be legal custody
not in judicial custody
(more than 24 hrs)

Article 22

5-7 - preventive detention

(not written in the constitution)

1971 - MISA (1975-77, misused)

1981 - TADA

2000 - POTO

2002 - POTA

⇒ Before 44th amendment of the constitution (1978)

- * For 90 days, nothing can happen.
- * after 90 days, an advisory board will be constituted (will go in)
- * If they are satisfied ⇒ preventive detention
not satisfied ⇒ released.

* detention laws - black laws.

Article 20

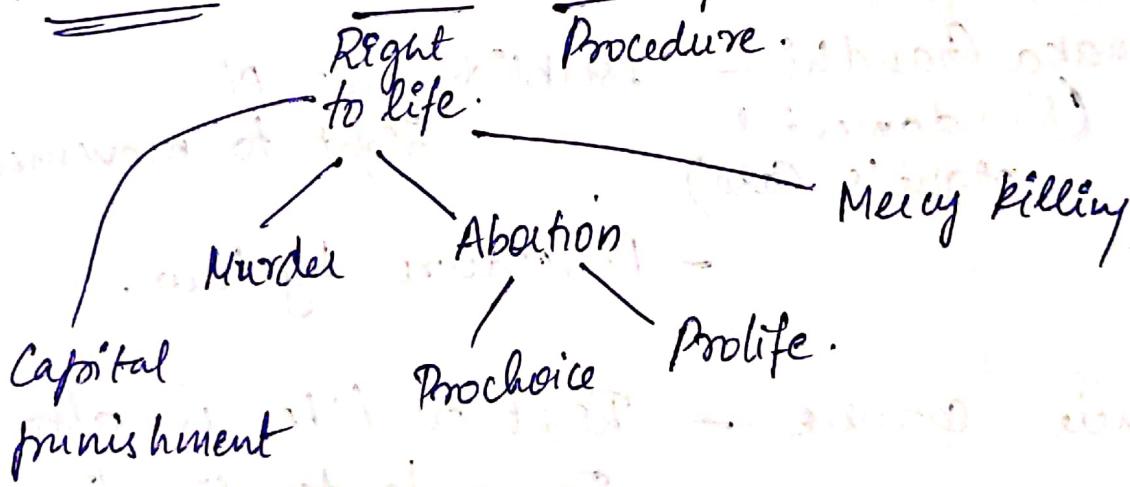
* period of detention ~~from~~ reduced from 3 to 2 months.

* changed the composition of advisory board
[1 main judge & 2 other judges.
(either sitting
(or) retired)]

Article 22

1-4 - not applicable to aliens / enemies
- arrested under preventive detention

Article 21 - Life & Liberty



i) optional protocol to convention on the political & civil rights (CPCR)

(1986) (No death penalty) 87/193.

ii) not inacted, 80-90 countries (India) (rare death punishment)

12/9/19

* Article 23-24 :

→ begar (forcing someone to do work and not paying them)

pavement

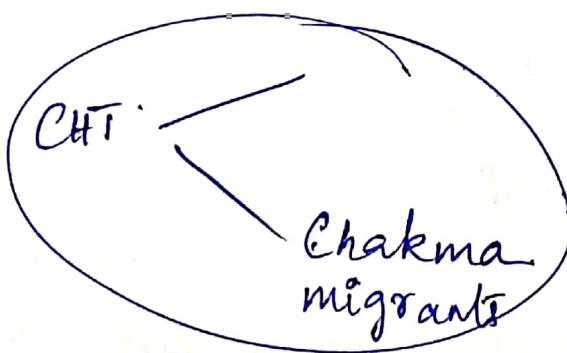
dwellers case : life — right to livelihood.

Right to privacy — R. Rajagopal v State of TN
(right to be let alone) [Auto Shankar's Case]

Right to die X — "death with life".

Green Bench — fundamental rights.

* 21(a) — Right to Education (2002.)



1951 - Swatelena
Non-Refoulement
Voluntary Repatriation 1947.

13/9/19

Liberty → absolute Freedom.

imposition on some limitations

UDHR - declaration of human Rights.

Article 25 - conscience (to believe or not
to believe) (to believe or not to believe)

Individual

liberty

- Private
- Political
- Economic

Giving everything for the
needed individual } Welfare State

Americans - Labour History

* Right to reputation

* 73-74 - Ter II - created a ministry for
panjayat. Raj

19|9|19

Rights - inhere - natural.

+ve human rights - state to take active steps
towards their realisation

-ve human rights - freedom where the state
should not encroach.

Three Generation Rights

i) 1st generation Rights

1945 - 1965.

Political & Civil rights

Bill of rights - 1689

Kings cannot ask taxes.

Stuart period - 1608 - 1689

1688 - glorious

revolution

Eleanor Roosevelt & wife

1929 depression - american economy.

no taxes for standing army.

Bill of rights 1791 USA :

= 10 amendments of the constitution

- FDR (made New deal).

(1932, he was elected

1936, 2nd time

1940, 3rd time

1944, 4th time)

1945 - died.

International tribunal at war

1954 - 1964 - Civil crimes.

ii) 2nd generation Rights

1965 Russia & China were successful

UDHR - 1948

Social, Economic

& Cultural Rights.

Natural rights:

1966 adopted 2 covenants

political & civil.

considering higher than the law

critique: rights are not defined

properly.

Social, Eco, cultural

Legal Theory Of rights

a historical theory of rights

1939 - 1945 HOLOCAST

of rights

1958 - Rosa Parks

iii) 3rd generation Rights - identity.

- Women, dalits, migrants, refugee, children rights

- 8 core convention (198 countries has signed)
on children, torture, disability pple,
migrants -

CEDAW - 1979

CRC - 1991

- dignity of the individual, helps to grow
to fullest extent

Human rights treatise:

Need for HR: In SA apathy - racial discrimination

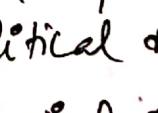
- Modern state concept — Jack Donnelly's

1/10/19 FDR's wife Eleanor Roosevelt:

Chairman of human rights - 1948

22 rights - Political & civil rights

After 1965 China & Russia exercised 3rd gen of rights.

1966 - ON gen covenants  Political & civil  Social & Economic.

8 core convention women,

In any particular Children 1979 (All)

parliamentary demo against.

- majority is an issue migrants

(Russia, China)

Modern state - Very powerful with standing army.

constitutions President & Federal

Right to ppl & states.

International
War tribunal

} Crimes against
humanity

UNHCHR - Head of
human rights
council.

USSR - union socialist sovereign Republic.
d China.

Marx - withering
away of
rights.

duties & not rights

UDHR - Standard of
behaviour of
countries.

3/10/19 Comparative Gov : UPR - All ppl to submit
the reports

* Herodotus - father of history

his students - Xenophon & Plato.

Offered 3-fold } - Monarchy, Aristocracy &
classification democracy.

Oligarchy - recognised only wealth.

* Plato - wrote Republic, laws & politics.

// - compromising for an ideal monarchy

national } Interest. governed by laws
Science }

- monarchy, tyranny, aristocracy, ~~or~~
oligarchy & democracy.

Aristotle \Rightarrow national }
Ant Interest.

* Monarchy - Granular Constitution
without conveying monarchy.

* Enacted constitution - elected body - constituent assembly
(26 Nov 1949) - write a constituent
body adopted a constitution

26 Jan 1950 - constitution came into force.

* Evolved constitution:

- UK. - 1689

1707.

⇒ ~~flexible & rigid~~ →
~~1) Codified & uncodified.~~ →
~~Nature of the constitution (1)~~ →
India. has ^{spcl.} amendment procedure

3) monarchical & Republican.
↓
one where
monarch is
made as
constitutional head

(Q8)
restricted
monarchy.

→ One
head of the state is
elected by voted.

A) Presidential & Parliamentary Nature (3):

↳ constitutional course. of the executive.

* Nature of the

Nature of the Constitution (Federal & State)
of the state (2)

5) Federal & Unitary — by law making body.

6) Political & legal

↳ written

* Definitions of constitution — to establish.

— which effect the sovereignty of the state.

— aggregates of laws & system under where.

* Features:

(India)

Preamble — internal

— basic principle / values

where countries
stands for.

US — not part
of the
constitution

Bombay
case

— Preamble is not part
of the constitution.

— Philosophical postulates.

— not amendable.

In 42nd amendment,
1976

— includes secular, Socialist,
Integrity & Unity.

Book
Select
constitution
of
the
World
C.F. Strong

K.C. Wheare.
Federation

- Fundamental Rights / duties.
 - Union / federal govt. - Powers
 - Power of the states.
 - SC / Judiciary / Judiciary power.
- } Features
Constitution

* A good constitution

- 1) Definiteness
- 2) comprehensiveness
- 3) Stability or flexibility
- 4) Suitability
- 5) Provision of rights & duties.

(2) Nature of the legislature :

- 1) unicameral / bicameral.
 ↓
 have two
 houses e.g. India.
- 2) constituencies — Single member / multi-member.

3) Franchise / Suffrage. — Adult 21/18.

c) Nature of the Judiciary:

↳ Rules of law

↳ Administrative Law
e.g.: France.

11/10/19

Modern Classification of the constitution :

1) The nature of the state — uniform.
confederation — Federal.

Co-operative federation

Monoculture — Parliament — legislature.

Multiculture — other nationality
— dictatorship

(If unitary — easy for govt to
e.g.: UK change it)

* Confederation — League of Nations

14 pts. — Wilson ← 1914 - 1918

(Self determination, 1919 — 1st world war came to
(~~int~~ International
organisations) an end by
versailles treaty.

Confederation - membership is voluntary

2) US - war of independence

↓
and continental congress
brought together } 11 states - coming together
articles of confederations } - defence } commonly.
} - currency }

3) India

1935 - federation introduced

→ Indian Constitution

565 States - given option to join

Sign instrument → federal instrument

instrument

of association with - relinquished autonomy

accuson.

- can create new state

- units are sovereign

15/10/19

Confederation



Successfull
Federal
State

} - US

Articles of confederation - 13 colonies.

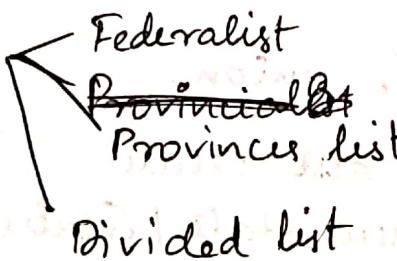
1919 - League of nations (confederation)

German confederation

Features of Federation:

1) Distribution of Powers:

1935 Act - 75% of the constitution.



US constitution represent provinces list

In India, union list - 97.

State list - 66.

~~Constitutional~~ concurrent list - 47.

} Subjects

2) Federation - Dual Government - State

Central (Unions / States / units / Province) \ Federal .

Powers are divided into

\ Sovereign .

they are sovereign
in their own spheres.

3) If it's a dual gov, there will be fight
bet those b.

no clarity

function is to.

A Supreme court - primary settlements of the
'disputes by union gov/
state gov.

Conditions of federation federalism:

1) The desire for union.

Imp for } can also create
successful } new state / states
federation

After British gov, felt need for
union federal gov.

2) desire for local independence

3) Geographical contiguity

Indian constitution - Federation Principles :

i) union-state relations :

- * distribution of Powers is central in union-state relations
- * Max collaboration, co-operation bet union & states - will make successful.

Co-operative India } federation

- * union-state - sharing Powers

legislative Administrative Financial

UL 97

SL ~~66~~

CL ~~47~~

distributions
of
Powers.

* 249, 250, 252, 253 & 256

Important article .

If Rajya Sabha passing a

resolution in the national interest,

better for union to can legislate on SL.

i) External Emergency due to war. } 44 amendment
1978

ii) Internal Emergency. } 1935 - 1977.
armed rebellion.

iii) Financial Emergency.

250 \Rightarrow 250 union - State.

union can
legislate on both SL, CL.

252 \Rightarrow If 2/more state in the state legislature
- in the national interest, ~~if~~
~~union~~ then parliament can
legislate on SL.

356 \Rightarrow President's Rule - imposed on the
States.

(Failure
of
constitutional
missionary) \Rightarrow Governor. - This state cannot be run
on constitutional lines
- cannot run on ~~con~~ failure
constituency.

\Rightarrow Union legislature: comes under
president's rule.

[e.g.: Now Maharashtra came
under President's rule]

Unfederal features:

1935.

in constitution

not being acted

Administration Relation:

i) 256 \Rightarrow directions by the centre to state

256A \Rightarrow India ~~Gandhi~~

Gandhi period

law & Order. - state responsibility

~~to maintain~~

e.g.: Police, forces, - -

- union can send paramilitary forces without asking permission from states.

- states cannot maintain

ii) 258 \Rightarrow delegation of union func to states.

Union-State Relations:

Legislative, Administrative, Financial.

18/10/19

* Residual Rights accrues with the state

* UL } taxes
SL }

CL — X

States - Financial resources are legal.

* 1 types of taxes

Tax — ~~state~~ state

Tax — union — states

Income taxes shared

Finance tax.

Sarkaria commission:

June 1983

Revised the existing constitutional

MM Punchhi Commission :

23/10/19

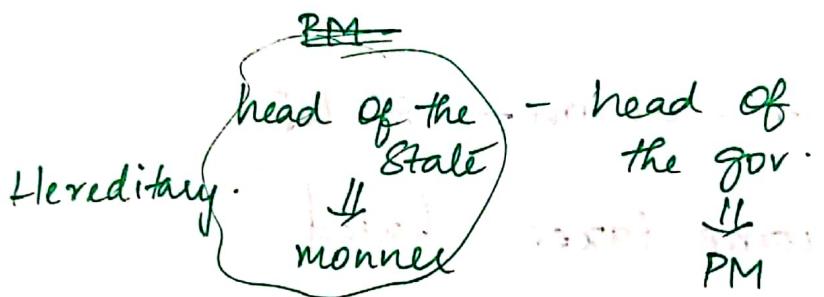
The nature of the executive.

Parliamentary

Federation

* ~~Presidential~~
Parliamentary form of gov } West-minister

- ① Monarch. - constitution
(restricted)



- ② Like India

→ head of the state is elected
not hereditary

→ Elected

⇒ have PM

- ③ South African ⇒ 1994, 1995 - got free

Nelson Mandela - first president

* Parliament Gov: directly responsible to the parliament. — responsible for lower house (people directly elected)

ii) If they lose the confidence with the people.

whoever catches the max seats.

Policies & programmes.

* Democracy — 11 features

i) Assembly becomes the Parliament / Executive is within the ~~leg~~ legislature.
e.g. US, it is separate.

ii) Executive is divided into 2 parts.

President /
monarch.

not responsible
to ~~the~~ the parliament.

PM / Cabinet

responsible
to the
parliament.

iii) Queen appoints the PM.

(or)
President

→ Leader of the
majority party

Head of ^{the} State appoints the head of the govt.

4/5 Collectively responsible for all the actions in the Parliament.

24/10

Britain — Queen → PM

USA, Australia — Queen, gov } cabinet for
General } all actions in
Parliamentary meets → Exec & Legis & absent in President.
1) Legislative + Executive.

* Demerits * i) Weak sep of Powers:
Legis + Executive together

US — Sep ~~of~~^{between} Powers = features.

ii) Failure to take prompt decision:

till 2014 in India,
a minister will implement
a work & meanwhile it starts
happening another person will come.

PM is responsible for dismiss / to ~~have~~ have a minister.

* Control of Bureaucracy:

25/10/19 France - semi Presidential - 5th Republic
after the 2nd WW.

Switzerland - Plural executive - confederation
<only>

I fed council
(I becomes president for a yr)

Presidential form : - Presidents head of the State & head of govt.

→ Sep of powers - executive doesn't come from legislature
4 yr term : check & balance.

- Minister are accountable to the president.
They don't belong to the legislature
president's men.

Merits : More democratic - no conc of all the powers on a single body.

- stability & continuity - fixed tenure & cont of policy
long term policy feasible.

- People's president - ppl's confidence more than PM

- More efficient - president has his own team (grp of ppl)

- Prompt & Bold decision - advise him, but implement

- Best suited to deal with emergencies his decision

- Most suitable for multi party system

- Symbol for unity & diversity - unity in nation
consisting of diverse regions, communities.

Demerits : - easily slip into dictatorship *

- conflict b/w executive & legislature

- Absence of accountability - Rigidity - Weak foreign policy

20/10/19

* Monarchy - The gov model.

Branches — The executive.

— The judiciary & (Sc)

* English monarchy.

Succession to the throne.

1649-1659 — continuity interrupted

House of Windsor — George I

George VI — died 1936 - 1952

daughter
Elizabeth II — 1952.

Edward VIII. Jan 12 1936.
by dec 1936.

Mrs Simpson.

* all the appointments } - Queen.
of PM

Leader of the majority party - ask him
to form the govt.

Queen.

takes advise from outgoing gov.

Queen uses Pow'ee of Pardon. (highest Power)

Queen has ~~the~~ power to reduce the ~~pain~~ punishment.

Head of judiciary, legislature.
(Queen in Parliament)

Summons of Parliament

dissolves the Parliament.

Speech ~~from~~^{to} the Throne - Queen with traditional dress
(Cabinet Secretary prepares the speech.) Bill Assett

President / Queen cannot act independently or laws or ~~sets~~ taxes.

Head of the commonwealth (nearly 54 countries are there)

- * Privy Council — small grp. of royal advisers at court.
350 Privy councils.
— final court of appeal.

- * British Parliament:

— House of Lords. — Hereditary Peers.

i) (house of revision)
ii) (house of expertise)

~~House of Commons~~

iii) money bill can only originate on from lower house.

~~iv)~~ Any bill can originate from any house.

now (100-200)
Life Peers (12)
(Queen creates)

Spiritual Peers.
(Baptism, who decides

Law Lords (9) marriage
(SC was created by 2009 - England).

— House of Commons (like Lok Sabha)
650 members.

i) Rotten ~~Boroughs~~ · borough.

(6-8 MLA = 1 MP)

ii) West minister model / Palace.