ordered him to surrender his passport. He challenged the action of the Government on the ground that it was violative of his fundamental right under Article 21. His contention was that right leave India or travel abroad and return to India was part of his personal liberty which could be restricted only by authority of Law. The Government can't deny him a passport in the exercise of its executive power.

The contention of the union Govt. was that the right to travel abroad was not included in the expression 'Personal Liberty' and that a passport was a political document to which one a legal, much less Constitutional right.

Judgment : - The Supreme Court accepted the contention of the petitioner and held that the right to travel abroad was part of persons 'Personal Liberty' within the meaning of Article 21, and therefore no person could be deprived of his right to travel abroad except according to procedure established by law. In fact there was no such law on which the Govt. could justify its action.

CASE LAW – Maneka Gandhi Vs. Union of India, AIR 1978

In the above case Maneka Gandhi was journalist and, therefore decided to go to abroad. Her passport was impounded by the of the Passport Act, 1967 passport of the Authority U/Sec. 10(3)(C) on the ground of 'General interest of Public' without giving her a show cause notice i.e. opportunity of being heard. She challenged the Act on the ground that is violative of Article 19, 21 and 14 of the Constitution. Her argument was that the law and procedure depriving personal liberty must be reasonable & if restrictions are to be imposed then it must also be reasonable. The Passport Act, 1947 does not include procedure of giving show cause notice and hence the procedure is not just, fair and reasonable.

Judgment : - Finally, the contention of the petitioner were accepted by the court and held that –

1. Law depriving life & personal liberty must be just, fair & reasonable.

2. Procedure taking away life & personal liberty must be just, fair & reasonable.

3. The Law & procedure must not be arbitrary.

Impact of Maneka Gandi's case on Criminal Justice : -

1. Speedy Trial : -

No procedure can be just, fair & reasonable unless that procedure ensures speedy trial of criminal offences. Speedy trial is an integral and essential part of fundamental right to life and liberty under Article 21.

2. Bail : -

Those prisoners who could not give financial security & sureties because of bail procedure and many under trials being poor & unable to provide financial security, court directed to change legal provisions of bail.

CASE LAW – Rudal Shah Vs. State of Bihar, AIR 1983

In the above case in a Writ Petition for habeas corpus, the court awarded damages to the petitioners against the state for breach of his right of personal liberty guaranteed by Article 21 as he was kept in jail for 14 years even his acquittal by a criminal court.

The following rights are held to be covered under Article 21 of the Indian Constitution.

A. Right to live with human dignity : -

CASE LAW – Peoples Union for Democratic Rights Vs. Union of India

In the above case it was held that non-payment of minimum wages to the workers employed in various Asid Projects in Delhi was a denial to them of their right to live with basic human dignity & violative of Article 21 of the Indian Constitution.

B. Right to Livelihood : -

CASE LAW – Olga Tellis Vs. Bombay Municipal Corporation

In the above case it was held that the right to livelihood is a fundamental right within the meaning of Article 21 of the Indian Constitution.

C. Right to Privacy : -

CASE LAW – R. Rajagopal Vs. State of T.N.

In the above case it was held that the right to privacy is a fundamental right within the meaning of Article 21 of the Constitution. A citizen has right to safeguard the privacy of his own, his family, marriage, motherhood, child bearing & education among other matters. Non can publish anything concerning the above matters without his consent truthful or otherwise. If he does so, he would be violating the right of the persons concerned & would be liable in an action for damages.

D. Right to Medical Care : -

CASE LAW – Parmanand Katara Vs. Union of India

In the above case it has been held that it is the professional obligation of all doctors, whether Government or private, to extend medical aid to the injured immediately to preserve life without waiting legal formalities to be completed by the police under Cr.P.C. Article 21 casts the obligation on the state of preserve life.

E. Right to die not a fundamental right : -

CASE LAW – Chenna Jagadeeswar Vs. State of A.P.

In the above case it was held that the right to die is not a fundamental right within the meaning of Article 21 and hence section 309 of I.P.C. is not unconstitutional.

F. Right to education a Fundamental Right (Article 21-A) : -

The Constitution 86th Amendment Act, 2002 has added a new Article 21-A after Article 21 and has made education for all

children of the age of 6 to 14 a Fundamental Right. It provides that "The state shall provide Free & Compulsory education to all children of the age of 6 to 14 years in such manner as the state may, by law determine".

The Supreme Court through its judgment from time to time held the following rights are fundamental right are fundamental right within the meaning of Article 21 of the Indian Constitution.

1. Right to get pollution free water & air.
2. Right to protection of Environment Pollution.
3. Right to get free legal aid.
4. Right to speedy trial.
5. Right against inhuman treatment.

CHAP. (8) – WRITS (RIGHT TO CONSTITUTIONAL REMEDIES) Article 226 & 32

Q.1 What are the different remedies available to persons through writs in the Indian Constitution and in the Administrative Law? Explain the scope of Writ Jurisdiction.

Q. 2 Explain various Writs available for enforcement of Fundamental Rights.

Q. 3 Write a short note on : -

A. Habeas Corpus.
B. Writ of Mandamus.
C. Writ of Certiorari.
D. Writ of Prohibition.
E. Writ of Quo-Warranto.

Introduction : -

In India the system of issuing prerogative writs was borrowed from England. But in the beginning there were great anomalies in the jurisdiction of the Courts to issue Writs, throughout the territory of India. At the result, remedies available for violation of the rights and liberties of individuals were discriminatory and uncertain. The old Supreme Court and there after created High Court in India did not enjoy equal authority to issue writs. The Constitution of India has removed those anomalies by laying down, that the Supreme Court of India, has also the High Courts shall have full power to issue these Writs or orders.

The object of our Constitution in conferring the power on the Supreme Court under Art. 32 and on the High Courts under Art. 226 to issue writs for the fundamental rights is clearly explained that "the makes of our Constitution having decided to provide for certain basis, safeguards for the people in the new setup, which they called the fundamental rights, evidentially thought it necessary to provide also a quick and inexpensive remedy for the enforcement of such rights". In this way, these

writs rendered adequate safeguards of the fundamental rights and give quick inexpensive remedies to the citizens.

The scope of writ jurisdiction under the Constitution of India is wider than the jurisdiction of the British Courts under the English law. Out Indian Courts not only issue these prerogative writs only but also directions and orders. Our Indian Courts at the time of issuing these writs do not follow or bother the technicalities that have gathered around these writs. According to Art. 32, the Supreme Court shall have power to issue directions, orders or writs whichever may be appropriate for the enforcement of any of the right conferred by the Part III of the Constitution. According to Art. 226 of the Constitution, it confers jurisdiction on the High Courts to issue writs. The power of High Courts can issue the writs not only for the enforcement of fundamental rights but also for any other purposes.

The following are the remedies available to the persons or the Supreme Court and High Courts can issue the following five types of writs in case of violation of fundamental rights of any person or for the violation of any other rights or Legal Rights.

1. Habeas Corpus : -

Habeas Corpus is a prerogative writ which was granted to subject of his Majesty, who was detained illegally in jail. It is an order of release. Habeas Corpus literally means. "Have the body". The main intention of this writ was that the King may know whether his citizens, subjects were lawfully imprisoned or not? The writ provides remedy for a person wrongfully detained or restrained. By this a command is issued to a person or to the Jailor who detains another person in the custody to the effect that the person imprisoned or the detenue should be produced before the Court and submit the "day and cause" of his imprisonment or detention. It is the duty of detaining authority to justify the cause of detention. If there is no valid reason for detention the Court will immediately order the release of the detained person. The writ of Habeas Corpus however secures two essential purposes. (1) Either to secure release of the person

or (2) to expedite the trial of a person who has deprived of a liberty.

Habeas Corpus is a writ of right, but not of course- Lord Goddard, C.J. as sais that "that means, that before the writ can be issued or leave to be given to apply for a writ, and affidavit must be submitted before the Court showing some grounds on which the court can see that the applicant may not be unlawfully detained".

An application for writ of Habeas Corpus may be sent to the Court by post, when the applicant is unable, because of restraint to file an application. The application should always be accompanied by an affidavit of the person detained to the effect that application is made at his instance. The affidavit can also be made by any other person on behalf of the applicant stating reasons of applicant's disablement to do so.

2. Writ of Mandamus : -

A writ of Mandamus is in the form of command directed to the inferior court, tribunal, a board, a corporation or any administrative authority or a person requiring the performance of specific duty fixed by the law or associated with the Office occupied by the person. Prof. A.T. Markose writes in his book "Judicial Control of Administrative Action" that "Mandamus is a judicial remedy, which is in form an order from superior Court (In Indian the Supreme Court and High Courts, in each state) to any Government, Court, Corporation or Public Authority to do or to forbear from doing some specific act which that body is obliged under law to do or refrain from doing as the case may be, and which is in the nature of public duty and in certain cases of a statutory duty".

Mandamus literally means "Command". The writ of Mandamus is high prerogative writ. Mandamus can be granted only when the petitioner has a right to compel the performance of the duty cast on the authority. The duty being imperative, lawfully. A private right or obligation arising out of a contract can not be enforced through it. Writ of Mandamus can be issued

when the public authority has acted not in accordance with law or has exceeded the limits of its powers. This writ is not issue where there is a mere irregularity in the exercise of its powers on a mere technical error.

An applicant who seeks this remedy by way of writ of Mandamus, must have a specific legal right which he wants to enforce and he has to show that he has no other legal remedy to him. Even any remedy is available is not equally beneficial, convenient and effective.

3. Writ of Certiorari : -

Certiorari is a command or order to an inferior court or tribunal to transmit (transfer) the records of case or matter pending before them to the superior Court to be dealt with there and if the order or inferior Court is found to be without jurisdiction or against the principles of natural justice, it is quashed.

Certiorari means "to Certify". This prerogative writ is issued by the King's Bench to see whether any proceedings commenced against a person has been conducted in accordance with the law. Certiorari is issued to remove a suit from an inferior Court into the High Court. This is an order issued to an inferior Court or body exercising what High Court regards as judicial or quasi-judicial functions, to have the record of the proceedings removed in to the High Court for review, and if found bad, to be quashed.

The writ of Certiorari is issued when 1) there is want or excess of jurisdiction. 2) There is violation of principles of natural justice and 3) when there is error of law apparent on the face of the record. Error must not be of law only but should be prima facie. Mere technical or former error of law will not entitle the party to claim this writ.

CASE LAW – Champalal Binani Vs. The Commissioner of Income Tax (AIR 1970)

The Supreme Court has stated that "the writ of Certiorari is discretionary, it is not issued merely because it is lawful to do

so. A petition for a writ of certiorari may lie to High Court, where the order is on the face of it is erroneous or raise question of jurisdiction."

4. Writ of Prohibition : -

The writ of Prohibition is a command by the superior Court (in India by the Supreme Court and High Court) to inferior Courts and tribunals to refrain fro doing what it is about to do. It prevents authorities from assuming or threatening to assume jurisdiction which it does not possess. The authorities against whom the writ of prohibition is issued must be performing judicial or quasi-judicial functions.

The object of writ of Prohibition is to oblige the inferior tribunals to function within the limits of their respective jurisdictions. In simple words, this writ is issued by superior Court to an interior Court or tribunal from acting without jurisdiction or in excess of jurisdiction. It is preventing rather then cure.

The writ of prohibition is issued when the proceeding is still pending, where as writ of Certiorari is issue when the case is finally disposed off.

The grounds on which a writ of Prohibition can be issued are of practically the same as in case of Certiorari.

5. Writ of Quo Warranto : -

By the term Quo Warranto we mean "by what authority?" Whenever any private person wrongfully usurps an office, he is prevented by the writ of Quo Warranto from continuing in that office. This writ removes from office, those person who have improperly assumed to exercise an office. The following are the essential condition to issue the writ of Quo-Warrant. 1) The office must have been created by statute or law. 2) The duties of that office must be of a public or quasi public nature. 3) The office must be a permanent one, so that incumbent is not removable at the pleasure of another 4) The person proceeded

against must be in actual occupation of office. 5) The applicant must have interest in the office.

Thus, this writ is issued by the superior Court under what authority he holds that office. By this writ, High Court may restrain a person from acting in an office to which he is not entitled or qualified and may also declare the Court, the office to be vacant. But this writ can not be issued to private bodies like a Managing Committee of a school as is observed by Calcultta High Court, in A. Narendra Vs. Narendra (AIR 1953)

The object of this writ is to determine the right of a person holding a particular public office. A member of Legislative Assembly of a State can ask for writ of Quo Warranto against the speaker. The member has the right to know what authority the Speaker holds that office.

CHAP.(8) – DIRECTIVE PRINCIPLES OF STATE POLICY

Article 36 to 51

Q.1 State various Directive Principles of State Policy incorporated under the Indian Constitution. (Nov.-2011)

Q. 2 What are the Directive Principles of State Policy? How are they different from the Fundamental Rights? (April-2011)

Q. 3 What are the different Directive Principles of State Policy? What is the value of these Directive Principles in the Indian Constitution? Explain with reference to recent amendments in the Constitution.

Introduction : -

Part IV, Articles 36 to 51 (1) deals with Directive Principles of State Policy. The framers of our Indian Constitution have been well influenced with the Constitution of Ireland and they have borrowed these Directive Principles from the Constitution. The main aim of these Directive Principles is to achieve social, political and economical equality in the country. These Directive Principles are based on moral philosophy. In other words, some of the writers they say that these Directive Principles are "Moral Homilies".

In good old days, the main function of the State was to maintain the law and order in the State. But in this 20th Century the functions of the State widened. It does not maintain only law and order in the State but it protects life, liberty and property of the individuals. By the same way, the object of the today's State is to promote prosperity and welfare of the people. In other words, the object of the today's State is to erect a welfare State. That's why these Directive Principles plays an important role in establishing a welfare State.

Dr. Ambedkar said when he was describing the Directive Principles as **Directive Principles they are instrument of instructions**. He says that these Directive Principles are instruments of instructions; means of instructions to the

legislature and executive and a political party which is in power in the State. These Directive Principles impose certain obligations in a State to promote the welfare of the people and achieve economic democracy.

But these Directive Principles, they are only directions given by the Constitution to the different State Government and Union Territories, but whenever they are passing the laws they should try to follow or consider these Directive Principles to achieve the dream of the Welfare State.

Salient Features of Directive Principles : -

Following are the main features of Directive Principles of State Policy.

1. These Directive Principles can be amended by way of formal amendment. If anybody likes to amend any one of these Directive Principles, the simple majority in the Parliament can ratify or amend any of Directive Principles and the ratification of States is not necessary.

2. These Directive Principles plays an important role in law making. All the members of State Legislative Assemblies; Members of Parliament they should try to follow these Directive Principles they should try to follow these Directive Principles whenever they are making the different laws for the State or country respectively.

3. These Directive Principles help the courts for statutory interpretation also.

4. The main object of these Directive Principles is to establish social, political and economical equality in the country.

5. These Directive Principles they are non justifiable in the Courts of Law (Art. 37). In case of the violation of Fundamental Right a person can knock the doors of competent courts of law by way of writs. But this can not be done with the Directive Principles.

Constitutional provisions regarding Directive Principles: -

Following are the different directive principles which are laid down in the Indian Constitution.

1. State to secure social order for the promotion of welfare of the people (Article 38) : -

This Directive Principle says that in every State social order should be maintained and it should be based on justice. This Directive Principle only reaffirms what has already been said in the preamble according to which the function of the Republic is to secure to all it's citizens, social, economic and political justice.

The Constitution 44th Amendment Act, 1978 has inserted a new Directive Principle in Art. 38 of the Constitution. The new Cl. (2) provides that State shall in particular, strive to minimize inequalities in income and endeavor to eliminate inequalities in status, facilities and opportunities not only amongst the individuals but also amongst groups of the people residing in different area or engaged in different vocations.

2. Certain principles of policy to be followed by the State (Article 39) : -

This Directive Principles says that, a State should follow the following principles. a) Equal right of men and women to adequate means of livelihood b) Distribution of ownership and the control of the material resources of the community to the common good. c) To ensure that the economic system should not result in concentration of wealth and means or production to the common detriment. d) Equal pay for equal work for both men and women. e) To protect health and strength of workers and tender age of children and to ensure that they are not forced by economic necessity to enter avocations unsuited to their age and strength. f) That children are given opportunities and facilities to develop in the healthy manner and in conditions of abandonment. This Directive Principle has been added by 42nd Constitutional Amendment Act of 1976.

3. Equal Justice and Free Legal Aid (Article 39(A)) : -

This Directive Principle has been substituted by 42nd Amendment Act 1978. This Directive Principle says that India is a country of poor people and they can not approach the doors of the court due to their bad financial condition. That's why this Directive Principle suggests that State should provide free legal aid centers so that the poor people would take the help o courts. In this way this Directive Principle helps to bring equal justice in the State.

4. Organization of Village Panchayat (Article 40) : -

This Directive Principle says that in every State, State shall try to organize the Village Panchayats in the States, because the villages are basic units of the States. Mahatma Gandhi said that the real picture of India you will find in villages that's why he has given the importance to the villages and laid down a doctrine of "Gramswarajaya". In this way, this Directive Principle says that every State should have Village Panchayats and basic powers must be given tot hem to solve their own problems. In this 20th Century, in India, round about majority villages they are having their own Gram Panchayats. The aim of this Directive Principle is to introduce democracy at the lowest lung of the ladder i.e. the principles of the democracy shall be rooted in villages also. In order to revitalize the Panchayat Raj institutions and Urban Local Bodies, Parliament enacted the Constitution 73rd and 74th Amendment Acts 1992.

5. Right to work, to Education and Public Assistances in certain cases (Article 41) : -

This Directive Principle directs that the State shall help to those persons who are incapable to do the work due to their old age, blindness and sickness and who are unemployed. The best Example of the Directive Principle is the Sanjay Gandhi Niradhar Yojana implemented by the Maharashtra State.

6. Provision for Just and Human Conditions of Work and Maternity Relief (Article 42) : -

This Directive Principle directs that the State shall make provision for securing jut and humane conditions of work and for maternity relief. For Example, all the labour legislations in India says that the children below the age of 14 years shall not be employed in the factories. By the same way, all the Labour Laws, they say that every worker in factories shall not work more that eight hours in a day. Even the Maternity Benefit Act, 1961, provides the facilities of leave, nursing break, medical bonus, financial aid whenever any women worker in pregnant or in case of miscarriage.

7. Living Wages etc. for Workers (Article 43) : -

The State shall try to bring a suitable legislations or economic organization to all workers, agriculturist or otherwise to raise standard of these workers. By the same way, State shall provide the social and cultural opportunities for these workers. The Sate Government shall try to promote cottage industries on an individual or-operative basis in rural areas and also try to establish small scale industries in cities and in rural areas.

8. Participation of Workers in Management of Industries (Article 43): -

This Directive Principle has been added by the 42nd Constitution Amendment Act, 1976. This Directive Principle directs that the State shall take steps by different legislations to have a participation of workers in the management of undertakings, establishment or other organization engaged in any industries. This Directive Principal helps the workers or labourers to solve their difficulties with the management or occupiers of the factories against all exploitation. In short, workers must get chance in the management or administration of any industry or factory.

9. Uniform Civil Code for the Citizens (Article 44) : -

In Indian different communities are governed by different personnel laws. For Example, Muslims are governed by Muslim

Law and Hindus are governed by Hindu Law. But this Directive Principle suggest that there should be only one Civil Law (family Law) i.e. Uniform Civil Code to all the persons belonging to different castes and creeds in India.

In a historic judgment in **Sarla Mudgal Vs. Union of India (1995) 2 Sec. 635)**. The Supreme Court has directed the Prime Minister Narsimha Rado to take fresh look at Art. 44 of the Constitution which enjoins to State to secure a Uniform Civil Code. The Court directed to Central Govt. (Minister of Law and Justice) to file an affidavit by August 1995, indicating the steps taken by the Govt. towards securing a Uniform Civil Code for the citizen of India.

10. Provisions of Free and Compulsory Education for Children (Article 45) : -

This Directive Principle says that all the children below the age of 14 years must be compulsory educated in the school. Because in every religion children have got special status and their life should not be spoiled at their early age. That's whey compulsory education is essential to the children fro tomorrows bright nation. To implement this Directive Principle many State have passed law for compulsory education. In Maharashtra Literacy Campaign and District Primary Education Programme (DPEP) launched by the Govt. of Maharashtra are the best Examples of Art. 45. In Cylon, till graduation State provides free and compulsory education to the children.

11. Promotion of Educational and Economic Interest of Schedule Caste, Scheduled Tribe and other Weaker Sections (Article 46) : -

This Directive Principle provides that special laws shall be passed or special care should be taken to protect the educations and economic interest of the weaker sections in the State i.e. of the Schedule Caste and Schedule Tribes. This Directive Principle further protected the weaker sections in the society from social injustice and all forms of exploitation. The best Example of this Directive Principle is the Protection of Civil Rights Act, 1955. By

the same way, all the weaker sections in the society they are getting the surplus land from the big agriculturists with the help of Government. Reservation of seats in Educations Institutions for S.C. and S.T. students is also one of the Example of this Article 46.

12. Duty of the State to raise the Level of Nutrition and Standard of Living and to Improve Public Health, (Art. 47) :-

The State shall try to raise the living standard of the people and improvement of public health. So this Directive Principle suggests that, by different legislation there should be prohibition of consumption of liquor except medical purposes. The best Example of this Directive Principle is the Bombay Prohibition Act 1949, which brings certain restrictions on consumption of liquor and intoxication of drinks and drugs which are injurious to health.

13. Organisation of Agriculture and Animal Husbandry (Article 48) : -

Every State shall take steps for preserving and improving the breeds and prohibit the slaughter of cows and calves and other milch cattle. This Directive Principle says, that the animals which are useful for agricultural purposes should not be slaughtered. To implement this Directive Principle many states have banned the cow slaughtering.

14. Protection and Improvement of Environment and Safeguarding of Forest and Wild Life (Article 48-A) : -

This has been added by 42nd Constitution Amendment Act, 1976. This Directive Principle directs hat, State should try to protect the forest and the wild lives in the country.

15. Protection of Monuments, Places and objects of National Importance (Article 49) : -

This Directive Principle says that every State shall protect historical monuments, historical places, zoos etc. Because these places they are not only important in good old days but their

importance lies in present century also. That's why, Art. 49 provides that they shall not be spoiled, disfigured, distructed, removed, disposed of, exported as the case may be. There are many historical places in India just like Tajmahal of Agra, Salarjag Musian at Huderabad, Cutubminar at Delhi, Ellora and Ajanta Caves near Aurangabad.

16. Separation of Judiciary for Executive (Article 50) : -

The State shall take steps to separate the judiciary from the executive in the public services of the State. The Directive Principles is based upon Montesqu's theory of "Separation of Power" i.e. there should be clear cut distinction between the powers of executive, legislature and judiciary. The main theme of this Directive Principle is to protect the judiciary from the influence of executive.

17. Promotion of International Peace and Security (Art.51): -

This Directive Principle says that every State should endeavor a) To promote international peace and security b) Maintain just and honorable relation between nations c) To give respect to international law and various pacts and treaties.

18) Fundamental Duties (Part IV A) (Article 51-A) : -

The Congress Party had appointed a committee to consider amendments to the Constitution. The Committee was knows as the "Sawran Sing Committee". The said committee submitted its report which formed the basis of the 42nd Constitutional Amendment. These fundamental duties were added in the Constitution because Rights and are corelative. Before this, out Constitution was having only Fundamental Rights without duties. That's way these Fundamental Duties are added in the Indian Constitution. By the same way the Constitution of many countries incorporate a set of duties just like the Constitution of Yogoslavia; the Constitution of Germany and Japan. The main aim of these Fundamental Duties is that the citizens should observe certain basic norms of democratic conduct and democratic behavior. In this way, the 42nd Constitutional Amendment Act, 1976 incorporated the ten Fundamental

Duties. These duties in Constitution are statutory duties and shall be enforceable by Law. Parliament by Law will provide penalties to be imposed for failure to fulfill these duties an obligations. The success of this provision would however depend much upon the manner in which and the person against whom these duties would be enforced.

Value of Directive Principles in the Indian Constitution:-

When we want to assess the importance of Directive Principle in the Constitution. We have to compare them with Fundamental Rights. In simple words, we can say that whenever there is a conflict between Directive Principles and Fundamental Rights whether the provisions of Directive Principle will prevail over Fundamental Rights or Fundamental Rights will prevail over Directive Principles. Following are the different states have to be considered to discuss this point.

1) When out Constitution was enforced on 26th January 1950; the Directive Principles were having very less importance. Through many cased the Supreme Court has pointed out that whenever there was a conflict between Directive Principles and Fundamental Rights, the positions was that Fundamental Rights were prevailing over Directive Principles.

2) The Constitution 25th Amendment Act, 1971; has considerably enhanced the utility of the Directive Principles. This amendment has given a little importance to the Directive Principles and Art. 31 was amended and clause (c) was added to Art. 31. The New Art. 31 Cl. (c) says that, if State Government wants to implement the provisions contained in Articles 39 Cl. (b) and (c), If such laws (passed by the State or Central Government) violaters or conflicts with Articles 14, 19, 31 in such situation such laws (passed by the Government) to implement Articles 39 Cl. (b) and Cl. (c) will prevail over Fundamental Rights i.e. Article 14, 19 and 31. In this way, the 25th Constitutional Amendment Act, 1971 has given some importance to Directive Principles comparatively with Fundamental Rights.

3) The 42nd Constitution Amendment Act, 1976, has again amended Art. 31 Cl. (c) and widened its scope so as to cover all Directive Principles. In this way, if any State or Central Government passes any law to implement any of the provisions of Part IVth of the Constitution and if such law violated, or conflicts with Articles 14, 19 and 31; in such situation, such laws passed by the State Government will prevail over Fundamental Rights i.e. Article 14, 19 and 31. In this way, all the Directive Principles shall prevail over Art. 14, 19 and 31.

4) According to Constitution 44th Amendment Act, 1978, If State or Central Government passes any laws to implement Art. 39 Cl. (b) and (c) and if such laws conflicts with the Art. 14, 19, in such circumstance the law passed by the Govt. shall prevail over Art. 14 and 19. In this way, the 44th Constitutional Amendment Act 1978 retained the previous position of 25th Constitutional Amendment Act, 1971.

Relations between Directive Principles and Fundamental Rights : -

The Directive Principles differ from fundamental rights in this respect that while Fundamental Right are justifiable, Directive Principles are non-justifiable. On the other hand, Fundamental Rights are enforceable by court whereas the Directive Principles are not enforceable by court.

Conclusion : -

Thus we may finally conclude that, according to Dr. Ambedkar "Directive Principles they are instrument of instructions" which are non-justifiable and enforceable by court of law. However in recent judgments the court has declared many directives as Fundamental Rights and enforced them. Such as equal pay for equal work, protection of children from exploitation, environmental pollution etc.

CHAP.(10) – FUNDAMENTAL DUTIES

Article 51-A

Q.1 What are the Fundamental Duties of the Indian Citizens provided under the Indian Constitution?

Introduction : -

Part IV-A which consist of only one Article 51-A was added to the Constitution by the 42nd Amendment, 1976. This Article for the time provides ten duties for citizens. As fundamental rights are necessary for individuals to develop their personality, it is also necessary that they should discharge their obligation towards their fellow citizens and the motherland. Here Fundamental Rights would make them goods citizens. Normally fundamental rights imply also fundamental duties. They are two sides of the same coin. But every people realize this & therefore it has become necessary to make people aware of the same. It is such a situation that must have promoted to make special provision laying down fundamental duties for citizen of India.

Important Fundamental Duties : -

The following are the important fundamental duties of the Indian Citizen they are as under : -

1. Duty to abide by the constitution and respect its ideal, and the national flag, national anthem.

2. Duty to cherish and follow the noble ideals which inspired out national struggle for freedom.

3. Duty to protect the sovereignty, unity and integrity of India.

4. Duty to defend the country and render the national service when called to do so.

5. Duty to promote harmony and the spirit of common brotherhood amongst all the people of India.

6. Duty to value and preserve the rich heritage of our culture.

7. Duty to protect and improve the national environment including the forests, lakes, rivers, and wild life.

8. Duty to develop the scientific level, humanism.

9. Duty to safeguard the public property and to prevent the violence.

10. Duty to try towards excellence in all the spheres of individual and collectively active. So tat the nation rises to higher level of achievement.

1. Duty to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem: -

It shall be the duty of every citizen of India to abide by the Constitution and respect is ideals and institutions. It is the most important duties of each and every citizen o India that they should respect the National Flag and National anthem if they make breach of these duties then they can be punished.

2. Duty to follow the noble ideals which inspired our national struggle for freedom : -

It shall be the duty of each and every citizen of India that they should follow the noble ideals which inspired our national struggle for freedom.

3. Duty to uphold and protect the sovereignty, unity and integrity of India : -

India is very big country. In India the people of various religions resides. In our country there is an unity into diversity and therefore it shall be the duty of every citizen of India to uphold and protect the sovereignty, unity and integrity of India.

4. Duty to defend the country and render national service when called upon to do so : -

India is the first mother of all the citizen of India & therefore it is the duty of all the citizens to defend it from the

war of other countries. Whenever country need our help then it is our duty to help the country in its critical situation.

5. Duty to promote harmony and the spirit of common brotherhood amongst all the people of India : -

In order to maintain peace in the country it is not only the duty of administrative authority to work for the same but also it shall be the duty of every citizen of India to promote harmony and spirit of common brotherhood amongst all the people of India. It is also our duty to protect the dignity of women.

6. Duty to value and preserve the Indian culture : -

It is said that the Indian culture is one of the greatest culture in the world. India is known by its great culture in the entire world. So it is matter of great proud for us to be citizen of a such a great country and similarly it is our duty to value and preserve our great culture.

7. Duty to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creature : -

Environment pollution is the big problem of our country now and if it is not controlled, then it not only affect our economy but also it badly affect on the health of citizens of our country. Thus it shall be the duty of every citizen to protect and improve the natural environment. In order to protect the natural environment, it is necessary to protect and improve the forests, lakes, rivers and wild life and therefore it shall be the duty of all citizens of India to protect and improve the same. The Indian citizen should have compassion for living creature in our country like tigers, peacock, lion etc.

8. Duty to develop humanism and the spirit of reform : -

It shall be the duty of Indian citizen to develop humanism and the spirit of reforms in India.

9. Duty to safeguard public property and adjure violence : -

It shall be the duty of citizen of India that they should safeguard the public property in India like Road, Railway, Buses, and the historical places like Taj Mahal, Forts ion the country, Kutubminar etc. It is the duty of citizen that they should make violence in the country.

10. Duty to strive towards excellence in all spheres of individual and collective activity so that the nation rises the highest level of achievement : -

It shall be the duty of every citizen to strive towards excellence in all spheres of individual and collective activity. So that the nation rises the highest level of achievements.

CHAP.(11) – THE PROTECTION OF CIVIL RIGHTS ACT, 1955

Q.1 Explain the duty of State Govt. to ensure that the right, accruing from the abolition of "Untouchability" may be availed of by the concerned persons under the Protection of Civil Rights Act, 1955.

Introduction : -

'Untouchability', an evil & bad practice which has been common in Indian society since centuries. It's origin can be stressed to the Hindus Caste System. In this structure the Brahmins were occupy they highest place in the Hindu society and on the other hand Shudras who commonly called untouchable & was vulnerable. History was recorded & still present days number of inhumanity and atrocities being committed on those who are born in the lowest caste. Since centuries Shudras were compelled by force to do unclean jobs or work. They were denied the adminssion to public place like, wells, rivers, ghats, temple etc.

There were several great Indian Leaders namely Mahatma Gandhi, Dr. Babasaheb Ambedkar, Mahatma Fule, Rajashri Shaul Maharaj etc. they made efforts to remove or abolish this evil practice from the Indian society.

Meaning & Nature & Scope of the Act : -

An Act to prescribe the punishment for the preaching and practice of "Untouchability" for the enforcement of any disability arising there from and for matters connected therewith.

The Act is enacted by parliament in the sixth year of the republic of India as follows –

"The Protection of Civil Rights Act, 1955 is an Act to prescribe punishment for the preaching and practice of untouchabiity for the enforcement of any disability connected therewith."

Under this Act any discrimination on the ground of untouchability will be considered as a serious & cognizable offence.

And the court is bound to pass a sentence of imprisonment and also fine whenever a person commits an offence under this Act.

Short title, extend and commencement : -

1. This Act may be called, "The Protection of Civil Rights Act, 1955."

2. It extends to the whole of India including the State & J. & K.

3. It came into force on the date of 1st June, 1955, by notification in the official Gazette by the Central Govt.

Article 17 of the Constitution of India : -

Article 17 of the Constitution of India deals with the "Abolition of Untouchability".

Article 17 specifies that – the practice of untouchability is abolished and its practice in any form is forbidden.

The enforcement of any disability on the ground of untouchability is to be an offence punishable in accordance with the law.

The expression "Untouchability" is neither defined in the Constitution nor in the Act.

It is the product of the Hindu Caste System, according to which particular section amongst the Hindus had been treated as untouchables by the other sections of the society.

Article 15(2) of the Indian Constitution : -

It should be noted that – "Article 15(2) of the Constitution also helps in the eradication of untouchability".

Thus, on the grounds of untouchability no person can be denied access to shops, public restaurants, hotels and places of

entertainment or the use of wells, tanks, bathing ghats, road and places of public resort maintained wholly or partly out of state funds.

Article 46 of the Indian Constitution : -

Duty of States to protect weaker and backward sections from social injustice all forms of exploitation –

It is one of the most important Directive Principles of State policy, provided under Article 46 of the Constitution.

Article 46 of the Constitution provides that –

"It is the duty of the State, by making different laws, to protect the weaker sections and in particular the Scheduled Castes & Scheduled Tribes from the social injustice and all forms of exploitation."

Object of the Act : -

1. to remove untouchability from the society.
2. to prescribe the punishment.
3. to promote the educational & economic interest.
4. to improve position & living standard of the backward people.
5. forbids the practice of untouchability.
6. to give equal treatment to all people.

The following are the main object of the Act. They are as follows –

1. To remove or abolish untouchability from the society : -

This Act is enacted in order to remove or abolish untouchability from the society.

2. To prescribe the punishment : -

The Protection of Civil Rights Acts aim is to prescribe punishment which may extend to imprisonment upto 6 months and also with a fine for whoever enforcing any disability on the ground of untouchability.

3. To promote the educational & economic interest : -

This Act's object is to promote the education & economic interest of the backwards people/persons in the society.

4. To improve position & living standard of the backward people : -

The another important object of this Act is to improve position & living standard of the backward people in the society.

5. Forbids the practice of untouchability : -

The practice of untouchability in any form is forbidden under the Protection of Civil Rights Act.

6. To establish casteless society : -

The important object of the Act is to establish casteless society.

7. To give equal treatment to all people : -

It is also one of the object of this Act, to give equal treatment to all people in the society. It means that all people are equal and there is no any discrimination between them.

8. Punishment for enforcing any social & religious disabilities :-

The Act provides punishment for enforcing any social & religious disabilities on the ground of untouchabilities.

9. Speedy & summarily trial of cases : -

The important object of this Act is to provide that – Every offence punishable under this Act shall be cognizable & should be tried speedily & summarily by a Judicial Magistrate of the First Class.

Definition (Section 2(a) : -

1. Civil Rights : -

"Civil Rights" means any right accruing to a person by reason of the abolition of "untouchability" by Article 17 of the Constitution.

Provisions or Offences under this Act : -

1. Section 3 – Punishment for enforcing religious disabilities.
2. Section 4 – Punishment for enforcing social disabilities.
3. Section 5 – Punishment for refusing to admit persons to hospitals, etc.
4. Section 6 – Punishment for refusing to sell goods or render services.
5. Section 7 – Punishment for other offences arising out of "untouchability".
6. Section 7(A) – Unlawful compulsory labour when to be deemed to be a practice of "untouchability".
7. Section 8 – Cancellation or suspension of licenses in certain cases.
8. Section 9 – Suspension of grants made by Govt.
9. Section 10 – Abetment of offence.
10. Section 10(A) – Power of State Govt. to impose collective fine.
11. Section 11 – Enhanced penalty on subsequent conviction.
12. Section 12 – Presumption by courts in certain cases.
13. Section 13 – Limitation of jurisdiction of Civil Courts.
14. Section 14 – Offences by companies.
15. Section 14(A) – Protection of action taken in good faith.

16. Section 15 – Offences to be cognizable and triable summarily.

17. Section 15(A) – Duty of State Govt. to ensure that the rights accruing from the abolition of "untoucability" may be availed of by the concerned person.

18. Section 16 – Act to override other laws.

19. Section 16(A) – Probation of Offenders Act, 1958, not to apply to persons above the age of fourteen years.

20. Section 16(B) – Power to make rules.

(1) Punishment for enforcing religious disabilities (Section 3)-

(a) Prevents from entering any place of public worship.

(b) Prevents from worshipping or offering prayers.

(c) Prevents from performing any religious service.

(d) Prevents from bathing in any sacred tank, well, etc.

(e) Punishment.

(a) Prevents from entering any place of public worship : -

According to section 3 of this Act provides for the punishment for enforcing any religious disabilities.

"Whoever on the ground of "untouchability" prevents any person from entering any place of public worship which is open to other persons professing the same religion, then such act of the person will be treated as an offence under section 3 of the Act.

(b) Prevents from worshipping or offering prayers : -

According to this section, provides that –

"Whoever on the ground of "untouchability" prevents any person from worshipping or offering prayers in any place o public worship, it would be an offence under this Act.

(c) Prevents from performing any religious service : -

According to section, if any person, on the ground of "untouchability" prevents another person from performing any religious service in any place of public worship, thenafter such act of that person will be considered as an offence under this Act.

(d) Prevents from bathing in any sacred tank, well, etc. : -

The Protection of Civil Rights Act provides for that –

"Whoever on the ground of "untouchability" prevents any person from bathing in or using the water of, any sacred tank, well, spring or water-course, lake or bathing at any ghat of such tank, in the same manner which is (permissible) open to the other person professing the same religion, at that time it is considered to be an offence under this section.

(e) Punishment : -

According to section 3 of this Act, provides for punishment for enforcing religious disabilities, such as –

"Whoever commits an offence under section 3 of this Act shall be punishable with imprisonment for not less than one month and not more than 6 months and also with fine maximum Rs.500 and minimum Rs. 100/-."

(2) Punishment for enforcing social disabilities (Section 4):-

According to section 4 of the Act provides for punishment for enforcing any social disabilities on the ground of "untouchability".

(i) access to any shop, public restaurant, etc.
(ii) the use of any utensils, & other Articles : -
(iii) The practice of any profession or occupation
(iv) the use of any river, stream, well, etc.
(v) the use of any place used for a charitable purpose
(vi) The enjoyment of the benefit
(vii) the use of any public conveyance
(viii) the construction of any residential premises in any locality

(ix) the use of any dharmasal, sarai, etc.
(x) The observance of any social, religious custom or ceremony
(xi) the use of jewelry & finery
(xii) punishment

(i) Access to any shop, public restaurant, etc. : -

Whoever on the ground of "untouchability" prevents or (makes discrimination) from entering or access to any shop, public restaurant, hotel or place of public entertainment.

(ii) The use of any utensils, & other Articles : -

If any person, on the ground of "untouchability", prevent another person from the use of any utensils, & other Articles kept in any public restaurants, hotel, dharmsala, sarai or musafirkhana but, which are for the use of the general public.

or

If any person compels to another person on the ground of "untouchability", to use particular utensils or particulars articles which are (kept) reserved for such type of persons, then such Act of that person comes under this section.

(iii) The practice of any profession or occupation : -

Whoever on the ground of "untouchability" makes any discrimination regarding to the practice of any profession or the carrying on of any occupation, trade or business or employment in any job, then after it is an offence under this section.

(iv) The use of any river, stream, well, etc. : -

If any person, on the ground of "untouchability", prevents any person from the use of or access to any river, stream, well, tank, water-tap or other watering place or any bathing ghat, but which is open to other members of the pubic, thenafter it is an offence.

(v) The use of burial, cremation ground any road or passage etc.: -

Whoever on the ground of "untouchability" prevents another person from the use of or access to any burial or cremation ground, any sanitary convenience, any road, or passage or any place of public resort, hence which is open to other members of society, thenafter, such act of the person would be considered to be an offence.

(vi) The use of any place used for a charitable purpose : -

Whoever on the ground of "untouchability", makes any discrimination regarding the use of or access to any place used for a charitable or a public purpose maintained wholly or partly out of state funds or dedicated to the use of the general public. thenafter it would be deemed as an offence under this section.

(vii) The enjoyment of the benefit : -

Whoever on the ground of "untouchability" makes any discrimination regarding to the enjoyment of the benefit under a charitable trust created for the benefit of the general public; such act of the person would be considered to be an offence.

(viii) the use of any public conveyance : -

Whoever on the ground of "untouchability" prevents to any person from using or access to any public conveyance, thenafter it will be an offence under this section.

(ix) The construction of any residential premises in any locality: -

Whoever on the ground of "untouchability", prevents any person from construction, acquisition or occupation of any residential premised in any locality, shall be punishable under this Act.

(x) The use of any dharmasal, sarai, etc. : -

Whoever on the ground of "untouchability" makes any type of discrimination against a person regarding to the use of any

dharmasala, sarai or musafirkhana, which is open to the general public, shall be deemed as an offence.

(xi) The observance of any social, religious custom or ceremony:-

Whoever on the ground of "untouchability", prevents any person from the observance of any social or religious custom, usage or ceremony or prevents from taking part in any religious, social or cultural procession, such act of that person would be considered as an offence under this section.

(xii) the use of jewelry & finery : -

Whoever on the ground of "untouchability", prevents any person (makes discrimination) from using jewellary and finery, such act of that person will be considered as an offence under this section.

(xiii) punishment : -

The section 4 of this Act provides for punishment for enforcing social disabilities on the ground of untouchability, such as –

"Whoever enforces any social disability against any person shall be punishable –

(a) With imprisonment not less than 1 month and not more than 6 months, and
(b) and also with fine which shall be not less than Rs. 100 and not more than Rs. 500.

(3) Punishment for refusing to admit persons to hospitals, etc. (Section 5) : -

According to the section 5 whoever on the ground of "untouchability".

- refused to admit any person to hospital, dispensary, educational institution, hostel which is established or maintained for the benefit of general public.

Punishment : -

Shall be punishable under this Act –

(a) with imprisonment, not less than 1 month and not more than 6 months;

(b) and also with fine, which shall be not less than Rs. 100 and not more than Rs. 500/-.

(4) Punishment for refusing to sell goods or render services :-