

CHAP. (1) – SALIENT FEATURES OF INDIAN CONSTITUTION

Q.1 Discuss what are the salient features of the Indian Constitution.

Introduction :-

Before enacting the present Constitution the framers examined Constitutions of various countries of the world and also the working of the Govt. of India Act, 195. They did not copy an one particular model but liberally borrowed appropriate provisions from Constitution of many countries of the world. The Constitution so adopted has the following main salient features.

Main Salient Features of the Indian Constitution :-

The Indian Constitution has the following main salient features.

1. Detailed Constitution :-

The Indian Constitution is one of biggest Constitutions in the world. It is sometimes criticized that Indian Constitution is a bulky Constitution. This is because of the following reasons –

- a. We do not have separate Constitutions for states as in U.S.A., Australia and some other countries. Provisions regarding structure, powers and functions of state are also included in the Constitution of India.
- b. Many unwritten Constitutional conventions have also reduced to writing.
- c. In addition to basic governmental structure the Constitution also make provisions for state liability for wrongs by its servants, citizenship government services and electoral machinery etc.
- d. Part II provides for Fundamental Rights. By Amendment of 1976 some Fundamental Duties are inserted in the Constitution.

e. Part IV of the Indian Constitution deals with Directive Principles of State Policy.

f. Some express provisions have also been made for protection of minorities and to safeguards Schedule Castes & Schedule Tribes.

2. Written Constitution :-

Indian Constitution is the written Constitution. It is the formal source of all Constitutional laws in the country and is regarded s the supreme or fundamental law of the land. It provides the powers divided among the three organs of the Government i.e. Legislative, Executive and Judiciary. The powers of each organ are defined by the Constitution and each has to carry its activities within its scope. The validity of any law is determined according to the provision of the Constitution. The law enacted by the legislature can't violate any provisions of the Constitution.

3. Single Citizenship :-

In most of the countries people have double citizenship. Citizenship of the union and one of the several states, which form the union. For example - In the United States of America every citizen is citizen of United States of America and also citizen of one of several states. In India the Constitution provides for single citizenship in Article 5 to 11. Every citizen is a citizen of India. There is nothing like citizenship of a state.

4. Adult Franchise :-

In India every person male or female, who has attained the age of 18 years, is entitled to vote in elections to parliament or state legislature. Originally this age limit was 21 years but a Bill to reduce it to 18 years was introduced on Dec. 13, 1988 which was passed as the Constitution sixty first Amendment Act, 1988 during the Prime Minister ship of late Rajiv Gandhi.

5. It provides a sovereign, socialist, secular and democratic and republic government : -

The Indian Constitution provides for a sovereign, socialist, secular and democratic and republic government. Article 25 of the Indian Constitution provided that every person has equal freedom of his religion. Article 26 provides that every religious community or any section thereof shall have the right to establish and maintain institutions for religious purposes, to manage its own affairs in matter of religion, to own and acquire movable and immovable property & to administer such property in accordance with law. 42nd Amendment inserted the word 'secular' in the preamble also. Discrimination on grounds of religion is also prohibited by Article 15 & 16.

6. Fundamental Rights : -

The Constitution provides certain fundamental rights to the citizen of India. These rights are mainly a restrictions on the powers of the state. The law made in contravention of these Fundamental Rights by the state shall be void.

7. Fundamental Duties : -

By 42nd Constitutional Amendment, 1976, part IV-A has been added to the Constitution which provide certain fundamental duties of the citizens. The object is to remind that while the Constitution specifically confers on them, certain fundamental rights, it also requires the citizens to observe certain basic norms of democratic conduct and behavior as Fundamental Rights are necessary for individuals to develop their personality it is also necessary that they should discharge their obligations towards their fellow citizen. Though fundamental duties have been incorporated in the Indian Constitution, there is provision for their enforcement but recently Govt. of India provided punishment for breach of some fundamental duties like contempt of national flag and national anthem.

8. Directive Principle of State Policy :-

Part IV of the Constitution which contain Article 36 to 51 provides Directive Principle of State Policy. These are positive obligation upon the state. It provides the aims and objective to be taken by the state in the governance of the country. The object behind these objectives is to set up in India a social welfare state. It shall be the duty of the state to follow these principles both in the matter of administration as well as in the making of laws.

Part IV of the Constitution is not enforceable in the courts of law and create any right in favour of the individuals.

9. Parliamentary form of Government :-

The Indian Constitution establishes a parliamentary form of Government, both at the centre and the state levels. The essentials characteristics of a parliamentary form of Govt. are that under such a system, the Head of the state is merely a Constitutional head, and secondly, the Executive vested with real powers is made answerable to the legislature, under the Indian Constitution, the President of India is a Constitutional Head of the State and the real powers are vested with canal of ministers.

10. Federal Constitution with Unitary basis :-

The Indian Constitution includes in it all the essential characteristics of a federal government but at the same time it incorporates certain provision which ensure dominant authority to the centre even in normal times.

11. Partly rigid and Partly flexible :-

The Indian Constitution is flexible as well as rigid. Some provisions of the Constitution can be amended by the simple majority procedure while some of the provisions are amended by special, more difficult and technical procedure which requires special majority of both the houses of the Indian parliament. There are some special provisions concerning both the union

and the states which requires amendment by special majority, in each House of the Indian Parliament as well as ratification by at least half of the state legislatures.

12. Independent Judiciary :-

The Constitution of India sets up a federal form of Govt. providing for the distribution of powers. The Constitution of India provides for the setting up of independent judiciary. The judges of the Supreme Court & High Courts are appointed by the Central Executives but not controlled by them. The Constitution secures the tenure of service and they can't be removed before the expiry of their tenure except by impeachment under the Constitution. Their salaries & allowances, once determined by the union parliament can't be diminished to their disadvantage during the tenure of their service. The courts are vested with the power of judicial review and they can examine the Constitutional validity of a law made by the parliament as well as by the state legislative. Power of Judicial review vested in High Courts under Article 226 & in the Supreme Court under Article 32 of the Indian Constitution.

13. Rule of Law :-

Rule of law means equality before law and equal protection of law. It implies that no man is above the law and no man is below the law. The Indian Constitution in Article 14 provides equality before law.

CHAP. (2) - INDIAN CONSTITUTION AS FEDERAL CONSTITUTION

**Q.1 Whether the Indian Constitution is federal or unitary?
Discuss.**

Introduction :-

The political thinkers classifies the Constitutions either Unitary or Federal. In a Unitary Constitution the powers are centralized in one Government i.e. Central Govt.; and the States are subordinate to the Central Govt. On the other hand, in the federal Constitution, the powers are distributed between the Centre and State and both are independent in their jurisdiction.

There is a difference of opinion among the Constitutional jurists or readers that some of they say that Indian Constitution is unitary and other say, that the Indian Constitution is federal.

The framers of the Constitution, their view is that the Indian Constitution is a Federal Constitution. Dr. Ambedkar the chairman of the Drafting Committee has observed thus - "I think it is agreed that our Constitution notwithstanding the many provision which are contained in it whereby the Centre has been given to over side the provinces (state) nonetheless is a Federal Constitution."

But the foreign Constitutional Law Jurists are not totally ready to accept the Indian Constitution as federal.

INDIAN CONSTITUTION AS FEDERAL CONSTITUTION :-

Federal Principle means the method of dividing powers, so that the general and regional Governments are each within a sphere co-ordinate and independent. Both the federal and regional Government are co-ordinate and independent in their spheres and not subordinate to one another."

The universal Example of the federal Constitution is the American Constitution. In America the powers of both the Central and State Government are divided and both are

independent in their own field. In simple words, we can say that in any Constitution if the federal principle is predominant, that Constitution is called as a "federal Constitution". America, Australia, Switzerland are the Examples of Federal Constitution. Following are the different essential characteristics of Federal Constitution.

ESSENTIAL CHARACTERISTIC OF FEDERAL CONSTITUTION

1. Distribution of Power :-

Federalism means the distribution of powers of the state among number of co-ordinate bodies. There is a clear cut distribution of powers between Central Government and State Government. The Central Government is empowered to frame the laws in national importance matters and the matters of local importance are left with the State Government, in this way distribution of powers between Central Government and State Government is the first feature of Federal Constitution.

2. Supremacy of the Constitution :-

The Federal State Concept is derived from the American Constitution. Every Executive, Legislative, Judicial Power whether it belonged to the nation or to the individual, State is subordinate to and controlled by the Constitution. In a Federal State, the Constitution is the supreme law of the land. As Prof. Wheare K.C. say. "That the two institution, the Supreme Constitution and Written Constitution are then, essential institutions to a federal Government is to work well. "In this way supremacy of the Constitution is the other meaningful feature of federal Constitution.

3. Rigidity :-

In a Federal Constitution, a Constitution which is called the supreme law of the land must be rigid also. And in any rigid Constitution the procedure of amendment is very complicated and difficult. In rigid Constitution the power of amending the Constitution is nor purely with the Central Government nor purely with the state government.

A Constitution of country is considered as a permanent document. It is called as a supreme document of the land. Hence the supremacy of the Constitution can only be maintained if the method of the amendment is hard and fast or rigid.

4. Authority of Courts :-

Supremacy of the Constitution and distribution of powers between Central and State Government are the essential features of federal Constitution. It is therefore essential to maintain the division of powers between the Centre and State Government and this must be done by some independent and impartial authority and the judiciary is the authority to interpret the Constitution and protect the Constitution. In this way, in a Federal Constitution. Judiciary impartially interprets the provisions of the Constitution and safeguards the different provisions of the Constitution.

5. Written Constitution :-

The last but very important feature of the federal Constitution is that generally in every federal Constitution, Constitution in written.

In this way, the Indian Constitution suits all the essential characteristics of a federal Constitution mentioned and discussed above. There is double Government, one is at Centre and other is at State. There is a division of powers between Centre and State Government each level of Government is supreme in its sphere. The Constitution establishes the Supreme Court to decide disputes between the Union and the States and also the interpret the Constitutional provisions. In this way, if we study all above features of the Indian Constitution, we can say that our Constitution is federal.

INDIAN CONSTITUTION AS A UNITARY CONSTITUTION : -

Prof. Jenning has characterized Indian Constitution "Federation with a strong centralizing tendency". In this way, our Indian Constitution is not only Federal Constitution but Unitary also. Therefore following are the main features of the Unitary Constitution.

1. Appointment of Governors : -

The different Governors of States are appointed by the President of India according to Art. 155 and 156 of the Indian Constitution Governor is only the Constitutional head of the State who acts only on the advice of the Cabinet of Minister. The Governor is nothing but he is an agent of the President. He has to give all the reports reading State Govt. to the President of India. In this way, appointing the Governors, the Central Govt. keep control over the State Governments, that's why our Constitution is more Unitary.

2. Parliament's Power to Legislate in the National Interest: -

According to Art. 249 of the Indian Constitution Parliament is empowered to make laws with respect to every matter given in the State – List if it is in the national interest, for Example, defence, foreign policy, etc.

Even there are certain laws passed by the State Government shall be consented by the President of India to make them valid. If President wants he can use the veto also. But there are very few cases where President of India has used his veto. Only in the Kerala Education Bill, the Central Govt. has obtained the opinion of the Supreme Court before sending it back to the State Legislature. In this way, the Center has its domination in passing the laws for national interest and the consent of the President for certain laws passed by the State Govt. indicated that our Constitution is Unitary.

3. Parliament Power to form New States : -

The Parliament of India may form new states. It may increase or diminish the area of any State and it may alter the

boundaries or name of any State, Art. (3). Even the very existence of the Stated depends upon the sweet will of the Union Government. This power of Parliament takes away to think us that our Constitution is Unitary.

4. Emergency Provisions :-

The Constitution of India envisages three types of emergencies (1) National Emergency - Due to war, external aggression or armed rebellion - (Art. 352) (2) State Emergency - Due to the failure of Constitutional machiner in States - (Art. 356) (3) Financial Emergency - Art. (36). In this way, President is the only one person who can declare emergency, who is called as head of the Central - Executive.

In this way, when the President declares emergency under Art. 352, the Parliament is empowered to make laws with respect to any mater enumerated in the State List.

By the same way, if Government of any State is not carrying its administration according to the provisions of the Constitution, according to Art. 356 President can dismiss the State Ministry and dissolve the Legislature. These all emergency powers of the President of India shows us that our Constitution is Unitary only.

Even, wherever there is conflict between Central Laws and State Laws, the Central Laws will prevail over State Laws. Even the concept of single citizenship also makes us to think that our Constitution is more Unitary. Even all the important posts just like Governors, Judges of the Supreme Court and High Courts and Ambassadors are appointed by the President of India which gives rise to concept that our Constitution is Unitary.

Conclusion :-

After discussing the different features of our Constitution we will find that our Constitution is partly Federal and partly Unitary. Prof. Wheare appears to feel that American Constitution is truly of federal types. He says, the Constitution of United State, Switzerland and Australia are the Examples of

Federal Constitutions. But Prof. Wheare points out that India's federalism is unique and good for itself. America's federalism is not so perfect as it is stated to be. It has got its own draw back. In this way, we come to conclusion that our Constitution is neither purely federal nor purely Unitary, but it is a Constitution of both. It is a union of composite State of the novel type. It enshrines the principle that inspite of federalism, the national interest ought to be paramount.

CHAP. (3) - CITIZENSHIP

Article 5 to 11

Q.1 What are the different provisions regarding the acquisition of Indian Citizenship and termination of Citizenship according to the provisions of The Citizenship Act of 1955? Discuss.

Q. 2 Explain the provisions relating to Indian Citizenship under the Indian Constitution.

Q. 3 What is meant by Citizenship? States modes of acquisition & termination of Citizenship. (Nov.-2011).

Introduction :-

In every country there are two types of persons, one is Citizens of that country and others are aliens or foreigners. Citizens of the country enjoy more rights than aliens. For example, Fundamental Rights are available only to Citizens and not to the foreigners. That's why to know the difference between Citizens and foreigners there is a necessity to study the citizenship chapter. Another important reason is that certain big offices (posts) in India just like the office of the President, Vice President, Governors, Judges of the Supreme Court and High Courts are given to only Indian citizens, that's why we should study the chapter of citizenship. By the same way right to become a member of Parliament or State Legislature, right to vote in election is reserved only to Indian citizens that's why one has to study the chapter of Citizenship.

Part II Art. 5 to 11 of Indian Constitution deals with Citizenship. But these Constitutional provisions deals only with who were the citizens of India on or before 26th January 1950. Our Constitution came into existence on 26th January 1950 and if anybody wants to become Indian Citizen after 26th January 1950 these Constitutional provisions are salient over this problem. That's why at present these Constitutional provisions do not play much importance in the Indian Constitution. So Art. 11 expressly empowered Parliament to enact laws. That's why our Parliament has passed the Citizenship Act of 1955.

The Citizenship Act of 1955 :-

Our Parliament has taken the benefit of Art. 11 and it has enacted the Citizenship Act of 1955. The Citizenship Act of 1955 came into operation on 30th December 1995. The main object of this Act is to provide the acquisition and termination of Indian Citizenship after 26th January 1950.

Acquisition of Indian Citizenship :-

The Citizenship Act of 1955 provides five modes of acquisition the Indian Citizenship. They are as follows –

1. By Birth :-

Every person born in India on or after 26th January 1950 shall be a citizen of India by birth. But there is one Exception to this provision that any person who is a foreign alien enemy and if his son took birth in India, he can not acquire Indian Citizenship by birth.

2. By Descent :-

A person born outside India on or after 26th January 1950 shall be a citizen of India by descent if his father was citizen of India at the time of his birth. For example, A was born in England after 26th January 1950. At that time, if A's father had a Indian Citizenship, automatically A can become citizen of India by way of descent.

3. By Registration :-

Any person who is not at all an Indian Citizen by virtue of the Constitutional provisions or according to the provisions of the Citizenship Act of 1955, he can become Citizen by way of registration. For example, women who are or have been married to citizens of India can acquired Indian Citizenship by way o registration. By the same way persons of Indian origin who are ordinary resident in India who have been so resident for atleast six months immediately before making an application for registration can acquire Indian Citizenship by way of registration.

4. By Naturalisation :-

Any person who does not come under any of the categories mentioned above can acquire Indian Citizenship by naturalisation. But such person has to make an application to the Government of India and Government of India shall certify it. Before the certificate is issued, Government verified whether the applicant fulfills following conditions or not?

1) He should have a good character. 2) He must have adequate knowledge of language specified in the Constitution. 3) Such applicant should not be a citizen of other countries. 4) He must take an oath of allegiance. A person or applicant who fulfills the above conditions, the Government of India issues a certificate of Citizenship to such applicant.

5. By Incorporation of Territory :-

If any new territory becomes a part of India, the Government of India shall specify the person of that territory to be citizens of India.

TERMINATION OF CITIZENSHIP :-

The Citizenship Act of 1955 also lays down how the Indian Citizenship may be lost (terminated) whether it may be acquired under the Citizenship Act of 1955, or prior to it according to the provisions of the Constitution. Any person may loose Indian Citizenship by following three ways.

1. By Renunciation :-

When any Citizen of India acquired by the Citizenship of another country, automatically his Indian Citizenship is renounced. But in such cases there must be declaration in the prescribed manner and it must be registered.

2. By Termination :-

The person who acquired the Indian Citizenship by way of naturalization, by way of registration or by any other way and if such person voluntarily acquired the Citizenship of the another

country at any time between 26th January 1950 to 30th December 1955, they are ceased to be the citizens of India from the date of such acquisition of citizenship of other country.

3. By Deprivation :-

Deprivation is a compulsory termination of Citizenship of India. According to Sec. 10 of the Citizenship Act of 1955, Central Government has got power to deprive a person from citizenship by issuing an order on following grounds. 1) If any person acquires the Citizenship certificate by way of fraud or by way of illegal practice, 2) False representation. 3) Concealment of any material facts 4) Disloyalty or disaffection shown toward the Constitution by act or by way of speech 5) Assisting to the enemy countries.

A COMPANY OR CORPORATION WHETHER CITIZEN UNDER ARTICLE 19?

Statutory Corporation and Companies registered under the Companies Act of 1956, whether they are citizens or not? If they are citizens, whether they can claims the fundamental rights or not? Till 1960 Supreme Court has not given it's firm opinion on this issue. But now the Supreme Court has given its definite opinion in **State Trading Corporation Vs. Commercial Tax Office, (AIR 1963, SCP No. 1811)**. In this case Commercial Tax Office imposed certain taxes on State Trading Corporations. The Corporation moved to the Supreme Court under Article 32 to quash the Sale Tax proceedings as illegal and infringed their fundamental right.

The basic question (point) before the Supreme Court was that, whether a Corporation is a citizen or not? The majority judges in this case they were of the opinion that the term citizenship is not defined in the Citizenship Chapter, that's why corporations can not be called as a citizen. Secondly, they said that, the Citizenship Act of 1955 completely excludes Companies, Association, Corporations from the concept of Indian Citizenship that's why only natural persons are citizens. In this way, the Supreme Court decided that Corporation is not

a citizen, and once it is not a Citizen, it can not claim the fundamental rights.

By the same way in Tata Engineering and Locomotive Co. Vs. State of Bihar (AIR 1965 S.S. 40) The Court rejected the argument and held that Corporation and Companies are not citizens.

But in the Bank Nationalisation Case(AIR 1970 SC, 564) 71, it was held that if the action of the State impairs (damage) the right of the company there by affecting the rights of an individual, the protection of Art. 19 will be available to him. This ruling of the Supreme Court has thus naturalized much of the adverse effect of the State Trading Corporation case.

Bennet Coleman and Coy. Vs. Union of India (AIR 1973 SC 32)- In this case, the question was whether the share holder, the editor, the printer have right to freedom under Art. 19 of the Constitution. Relying on the Bank Nationalize case the Court held that the protection of Art. was available to a shareholder, editor, printer and publisher of a Newspaper. The Court says that the rights of shareholders with regard to Art. 19 Cl.(1) (a) were protected and manifested by the newspapers owned and controlled by the shareholders through the medium of the corporation. The individual rights of speech and expression of editors, directors, and shareholders are all exercised through their newspapers through which they speak. The press reaches the public though the newspapers. The shareholders speak through their editor. The locus standi of the share holders is beyond challenge after ruling of this court in the Bank Nationalization case.

In Godhra Electric Co. Ltd. Vs. State of Gujrat (AIR 1975 SC 937) the court held that though a Company was not a citizen under Art. 19 but a shareholder, a Managing Director of a Company had right to carry on business through agencies of Company and if that right was taken away, he was not disabled from challenging the validity of the provisions of any Act, which affected his right.

CHAP. (5) - RIGHT TO EQUALITY (ART. 14 TO 18)

- Q. 1 "Equality before Law and Equal Protection of Law". Explain the nature and scope of Article 14 of the Indian Constitution.**
- Q. 2 Explain the nature and scope of "Equality before Law and Equal Protection by Law" as guaranteed by Article 14 of the Constitution of India.**
- Q. 3 "The State shall not deny to any person equality before Law or equal protection of laws within the territory of India". Comment.**

Introduction :-

Part III of the Indian Constitution from Articles 14 to 35 deals with Fundamental Rights. The Fundamental Rights are basic human rights. They are guaranteed rights because they are given by the Constitution. These are protected rights. No person, Union or State Government can violate it. It is enforceable rights because Supreme Court is the protector and guardian of the Fundamental Rights under Article 32 of the Indian Constitution.

Need for Fundamental Rights :-

Fundamental Rights were deemed essential to protect the rights and liberties of the people against the encroachment of power delegated by them to their Govt. Fundamental Rights are limitations upon all the powers of the Govt. legislative as well as executive and they are essential for the preservation of public & private rights.

Some Fundamental Rights are also available to non-citizen. Fundamental Rights are not absolute rights. The Government on it can impose reasonable restriction during emergency some fundamental rights are suspended.

Classification of Fundamental Rights :-

The Fundamental Rights guaranteed by the Indian Constitution can be classified under the following six groups.

1. Right to Equality (Article 14 to 18)
2. Right to Freedom (Article 19 to 22)
3. Right against Exploitation (Articles 23 to 24)
4. Right to Freedom of Religion (Article 25 to 28)
5. Cultural and Educational Rights (Articles 29 to 30)
6. Right to Constitutional Remedies (Article 32 to 35)

Fundamental Rights available against state and not against private individual.

Individual needs Constitutional protection against the State. The rights which are given to the citizens by way of Fundamental Rights as included in Part III of the Constitution are a guarantee against the state action as distinguished from violation of such rights from private parties. Private action is sufficiently protected by the ordinary law of India.

Definition of State (Article 12) :-

Article 12 defines the term 'state' as used in different Articles of Part III of the Constitution. It says that unless the content otherwise requires the term state includes the following-

1. The Government and the parliament of India i.e. Executive and Legislature of the Union.
2. The Government and the Legislatures of each state i.e. Executive and Legislatures of States.
3. All local or other authorities within the territory of India.
4. All local and other authorities under the control of the Govt. of India.

The term 'state' thus includes executive as well as the legislative organs of the Union and States. It is therefore, the actions of these bodies that can be challenged before the courts as violating Fundamental Rights.

Is Judiciary included in the word 'State'?

Case Law – A.R. Antulay Vs. R.S. Nayak AIR 1988

In the above case it has been held that the court can't pass an order or issue a direction which would be violative of Fundamental Rights of citizens, it can be said that the expression 'state' as defined in Article 12 of the Constitution includes judiciary also.

Law inconsistent with Fundamental Rights (Article 13) :-

Article 13(1) declares that all laws in force in the territory of India before the commencement of this Constitution shall be void to the extent to which they are inconsistent with the provisions of Part III of the Constitution.

Article 13(2) provides that the state shall make any law which takes away or violates the Fundamental Rights provided by Part III of the Constitution and any law made, in contravention of Fundamental Rights shall, to the extent of contravention, be void.

Article 13(3) gives the term 'Law' a very broad meaning which includes any ordinance, order, byelaws, rule, regulation, notification, custom having the force of law.

Thus not only the Legislative enactment, but anything mentioned here can be challenged as infringing a Fundamental Rights.

Power of Judicial Review :-

Article 13 provides for the Judicial Review of all legislations in India, past as well as future. This power has been given to the High Courts & the Supreme Court of India under Article 32 & 226 of the Indian Constitution which can declare a law unconstitutional if it is inconsistent with any of the provision of Part III of the Constitution.

Meaning of Judicial Review :-

Judicial Review means re-examination of the law passed by the legislative as well as executives.

Right to Equality (Article 14 to 18) :-

Introduction :-

Article 14 to 18 of the Indian Constitution guarantees or provides the right to equality to every citizen of India. Article 14 provides the general principle of equality before law and prohibits unreasonable discrimination between persons. The succeeding Articles 15, 16, 17 & 18 lay down specific application of the general rules laid down in Article 14.

Article 15 relates to prohibition of discrimination on the grounds of religion, race, caste, sex or place of birth.

Article 16 provides equality of opportunity in matters of public employment.

Article 17 abolishes 'Untouchability'.

Article 18 abolishes title.

Equality Before Law (Article 14) :-

Article 14 of the Indian Constitution provides that "the state shall not deny to any person equality before law or the equal protection of the law within the territory of India. In this way Article 14 includes two things -

- Equality before Law
- Equal Protection of Law

a. Equality Before Law :-

The concept of equality does not mean absolute equality among human beings which is physically not possible to achieve. Equality before the law means that among equals the law should be equal and should be equally administered, that like should be treated alike.

b. Equal Protection of Law :-

Equal Protection of Law means the State should provide equal protection among equals by enacting laws. The protection given by the state to the citizens must not be unequal among equals.

Rule of Law :-

The guarantee of equality before Law is an aspect of what Dicey Caius the rule of Law in England. It means that no man is above the law and that every person whatever be his rank or condition, is subject to the jurisdiction of ordinary courts. Thus, according to Dicey rule of law means no one is above the law or below the law, all are equal before law whatever may be his rank, position or conditions.

Exceptions to the Rule of Law :-

The above rule of law is however, not an absolute rule and there are number of exceptions to it. For example, equality before law does not mean that the powers of the citizens are the same as the powers of the public officers. Thus a police officer has the power to arrest while no private person has this power. This is not the violation of rule of law.

The word 'any person' in Article 14 of the Constitution denotes that the guarantee of the equal protection of laws is available to any person which includes any company or association or body of individual. The protection of Article 14 extends to both citizens and non-citizens and to natural persons as well as legal persons. The equality before the law is available to all without regard to race, colour or nationality.

Article 14 permits classification but prohibits class legislation :-

The equal protection of laws guaranteed by Article 14 does not mean that all laws must be general in character. It does not mean that the same law should apply to all persons. Thus, what Article 14 forbids is class-legislation but it does not forbid reasonable classification. The classification, however, must not be arbitrary, artificial but must be based on a just & reasonable relation to the object sought to be achieved by the legislation. Article 14 applies where equals are treated differently without any reasonable basis. But where equals & unequal's are treated differently, Article 14 does not apply.

CASE LAW - Jajdit Singh Vs. State, AIR 1988

In the above case it was held that a reasonable classification is necessary if society is to progress.

The classification to be reasonable should fulfill the following conditions.

1. The classification should not be arbitrary & artificial :-

2. There must be nexus (relation) between the basis of classification and the object of the statute.

Thus, the classification must be just, fair & reasonable.

CASE LAW - Suncel Jatly Vs. State of Haryana, 1984

In the above case the reservation of 25 seats for admission of M.B.B.S. and B.D.S. course for students who were educated from classes I to VIII in the common rural schools was held to be violative of Article 14 and invalid as the classification between the rural educated and urban educated students for this purpose was wholly arbitrary and having no nexus or relation to the object sought to be achieved of providing extra facilities to students coming from rural schools to enter medical college. Thus, all the students of classes IX to XII, those coming from rural school and those from urban are similarly placed yet they are artificially divided by a reference to a part even wholly unrelated to the object sought to be achieved and hence the reservation based on such classification was held to be constitutionally invalid.

CASE LAW - Madhu Limaye Vs. Tihar Jail, 1975

In the above case the Supreme Court held that difference between Indians & European prisoners in the matter of treatment and diet is violative of Article 14 of the Indian Constitution.

No Discrimination on Grounds of Religion, Race, Caste etc.
(Article 15) :-

Article 15(1) of the Indian Constitution provides that the State can't discriminate the citizens on the ground of religion, race, caste, sex and place of birth.

Article 15(2) provides that no citizen shall be subjected to any disability, restriction or condition on grounds only of religion, race, caste, place of birth or any of them with regard to access to public shops, public restaurants, hotels and place of public entertainment or the use of wells, tanks, bath, roads & place of public resort maintained out of state funds. A place of public resort means places which are open to public for use such as public park, a public road, a public bus, public urinal or railway, a hospital etc.

It is to be noted that while Article 15(1) prohibits discrimination by the state, Article 15(2) prohibits both the state and private individuals from making any discrimination. The object of Article 15(2) is to eradicate the abuse of the Hindu Social System.

The Madram Removal of Civil Disabilities Act punishes social disabilities. No law, custom or usage could authorize any person to prevent any Harijans, depressed classes or the like from having access to public places mentioned in the Act.

Social provision for Women & Children (Article 15(3)) :-

Article 15(3) is exception to general rule provided in Article 15(1) & 15(2) of the Constitution. Article 15(3) empowers the state to make special provision for women & children. Women & children require special treatment on account of their very nature.

CASE LAW - Yusuf Abdul Aziz Vs. State of Bombay

In the above case section 497 of the IPC which only punishes man for adultery and exempts the woman from punishment even though she may be equally guilty as an abettor was held to be valid since the classification was not

based on the ground of sec alone. Similar provision apply to children. The provision of free education for children for prevention of their exploitation is also not violative of Article 15(1).

Special provision for advancement of Backward Classes (Article 15(4)) :-

Article 15(4) is another exception to the rule laid down under Article 15(1) & 15(2) of the Constitution. Article 15(4) of the Indian Constitution provides that the state can make special provisions for advancement of Backward Classes.

CASE LAW - Dr. Neelima Vs. Dean of P.G. Studies Agricultural University, Hyderabad, AIR 1993

In the above case it has been held that a high caste girl marrying a boy belonging to Schedule Tribe is not entitled to the benefit of reservation available to Schedule Tribe. The appellant was born in a Reddy caste which is a forward class and married to an Erukala Tribe boy one of the Schedule Tribe in the state of Andhra Pradesh. After marriage she sought admission to M.Sc. course in the Agricultural University, Hyderabad under reservation quota for Schedule Tribes. The court held that she was not entitled to get the benefit of reservation available to Schedule Tribes.

Equality of Opportunity in Public Employment (Art.16):-

Article 16 of the Indian Constitution guarantees equality of opportunity for all citizens in the matters of employment or appointment to any post under the state.

Abolition of Untouchability :-

Article 17 abolishes untouchability and its any form of practice or custom from the society.

Abolition of titles :-

Article 18 abolishes the titles except military and academic purpose.

SIX
CHAP. (6) - GOLDEN FREEDOM

Article 19 to 22

Q. 1 "Freedom of Press also includes Freedom of Speech & Expression". Discuss in detail with reasonable restrictions & case laws. (March-09).

Q. 2 Discuss the Six Golden Freedoms with reasonable restrictions enshrined in Article 19 of the Constitution of India. (March-2010).

Q. 3 Explain the meaning of freedom of Speech and Expression. What are the restrictions on it.

Introduction :-

Personal liberty is the most important of all Fundamental Rights. Article 19 to 22 deal with the different aspect of these basic rights. Article 19 gives six fundamental freedoms to Indian citizens previously there were total seven fundamental freedoms given by Article 19. But the 44th Constitutional Amendment Act, 1978 deleted one fundamental freedom known as "Freedom to hold, acquired and dispose of property".

In this way Article 19 gives various freedoms to the citizens of India. These freedoms are available to citizen natural person and not to legal person like company.

The Six Golden Freedoms.

1. Freedom of speech and expression
2. Freedom of Assembly
3. Freedom to form associations
4. Freedom of movement
5. Freedom to reside and settle
6. Freedom of profession, occupation trade or business.

1. Freedom of speech and expression :-

Article 19(1) of the Indian Constitution says that "all the citizens shall have the right to freedom of speech & expression".

Freedom of Speech & Expression means the right to express one's own opinions freely by words of mouth, writing, printing or any other mode.

Freedom of press is also included in freedom of speech & expression.

CASE LAW - Ramesh Thapper Vs. State of Madras, AIR 1950

Facts : - In this case, the petitioner was a printer, publisher and an editor of a weekly journal of English called "Cross Road" printed & published in Bombay. When this journal was circulated in the state of Madras it was banned by the Madras Government under Madras Maintenance of Public Order Act, 1949. The petitioner filed the case for the violating of Fundamental Right provided in Article 19(1) of the Indian Constitution.

Judgment : - The Supreme Court held that the above said Act passed by the Madras Govt. was serious encroachment on the Fundamental Right of Freedom of Speech & expression, hence, it is unconstitutional.

The right given by Article 19(1) of the Constitution is not a fundamental right it means state can impose reasonable restrictions on it.

Grounds of restrictions on freedom of speech & expression: -

Article 19(2) of the Indian Constitution provides that under the following grounds the restrictions on freedom of speech & expression can be imposed.

1. Security of the state.
2. Friendly relations with foreign country.
3. Defamation
4. Contempt of Court
5. Professional & Technical qualification
6. Interest of general public
7. Interest of any Scheduled Tribe
8. Integrity of India.

1. Restrictions can be imposed on by or under authority of law, and no restriction can be imposed by executive action alone.
2. Each restriction must be reasonable.
3. The restriction must be related to purpose.

Whether the restriction is reasonable or not is the job of the court to determine. It is thus subject to judicial review. There is no definite test to decide the reasonableness of the restriction. Therefore, each case is to be judge on its merits. Limitation imposed upon freedom should not be arbitrary. It must be fair & reasonable. The burden to show that the restriction is reasonable, lies on the state.

2. Right to Freedom of Assembly :-

Article 19(1)(b) of the Indian Constitution guarantees to all citizens of India the right to assemble peaceably & without arm. The right of assembly includes to hold meetings & take decisions.

Restrictions :-

Article 19(3) provided that the right to freedom of assembly is however subject to following restrictions.

1. The assembly must be peaceable.
2. The assembly must be unarmed.
3. The assembly must not be unlawful.

CASE LAW – Jogindar Singh Vs. State of Punjab

In the above it was held that right to hold assembly does not includes the right to hold meeting on private property belonging to others.

3. Freedom to form associations :-

Article 19(1)(c) of the Constitution of India guarantees to all its citizens the right to form association & union.

Association means an organization or permanent relationship between its members in matter of common concern. It thus includes the right to form companies, societies, partnership, trade union and political parties. The right guaranteed is not merely the right to form association but also to continue with association as such. The freedom to form association implied also the freedom to form or not to form, to join or not to join, an association or union.

Reasonable restriction :-

Article 19(4) of the Indian Constitution empowers the state to impose reasonable restriction on the right of freedom of form association & union.

1. To maintain integrity of India.
2. In the interest of public & morality Govt. can pass different law in order to impose reasonable restrictions.

CAWE LAW – Balakotiah Vs. Union of India, AIR 1958

In the above case the service of the appellant were terminated under Railway Service Rule for his being a member of communist party & a trade unionist. The appellant contended that the termination from service amounted to a denial to him the right to form association. The appellant had not doubt a fundamental right to form association but he had no fundamental right to be continued in the Government Service. It was, therefore, held that the order terminating his services was not in contravention of Article 19(1)(c) because the order did not prevent the appellant from continuing to be in communist party or trade unionist.

4. Freedom of Movement :-

Article 19(1)(d) of the Indian Constitution guarantees to all citizens of India the right to move freely through the territory of India.

Article 19(1)(d) of the Constitution guarantees to its citizens a right to go wherever they like in Indian territory

without any kind of restriction whatsoever. They can move not merely from one state to another but from one place to another within the same state. This freedom can't be curtailed by the law except within the limits prescribed under Article 19(5). What the Constitution lays stress upon is that the entire territory is one unit so far the citizens are concerned. Thus the object was to make Indian citizens national minded.

CASE LAW – Ajay Canu Vs. Union of India, 1988

In the above case the petitioner challenged the validity of Rule 498-A of Andhra Pradesh Motor Vehicles Rules, 1964 and the notification issued there under by which wearing of helmets by the drivers of two wheelers was made compulsory, on the ground that the same was violative his fundamental rights guaranteed under Article 19(1)(d) of the Constitution. The Supreme Court held that the rule was valid as it was made for the good of the people and imposed reasonable restriction on freedom of movement. Rule 498-A ensures protection and safety to the head of the driver of two wheeler in case of an accident. The compulsion for putting on a helmet by the driver does not restrict or curtail the freedom of movement.

Reasonable restrictions :-

The state may under Article 19(5) impose reasonable restrictions on the freedom of movement.

1. In the interest of general public.
2. For the protection of interest of Schedule Tribes.

5. Freedom of residence :-

According to Article 19(6) of the Indian Constitution has given the right to reside and settle in any part of the territory of India. However under Article 19(5) reasonable restriction may be imposed on this right by law in the interest of general public.

It is to be noted that the right to reside & right to move freely through the country are often go together. This right is

subject to reasonable restriction imposed by law in the interest of general public.

The word "the territory of India" as used in this Article indicate freedom to reside anywhere and in any part of the state of India.

6. Freedom of profession, occupation trade or business :-

Article 19(1)(g) of the Indian Constitution guarantees that all citizens shall have the right to practice any profession or a business, occupation, trade. However, the right to carry on a profession, trade or business is not an absolute right. It can restricted & regulated by authority of law. Thus the state can under article 19(6) make any law -

- a. imposing reasonable restriction on this right in the interest of public.
- b. prescribing professional or technical qualifications necessary for practicing any profession or carrying on any occupation, trade or business.
- c. enabling the state to carry on any trade or business to the exclusion of citizens wholly or partially.

The right to carry on business includes a right to close it at anytime the owner likes. So, the state can't compel a citizen to carry on business against his will. But, as a no right is absolute, the right to close a business is also not an absolute right. It can be restricted, regulated or controlled by law in the interest of public.

CASE LAW – Hashirwar Vs. State of M.P., AIR 1975

In the above case the Supreme Court held that there was no fundamental right to carry on trade in liquor because of the reasons public morality, public interest and harmful and dangerous character of liquor.

CASE LAW – Mohd. Hanif Quareshi Vs. State of Bihar

In the above the Supreme Court declares Prevention of Cow Slaughter Act constitutional in the interest of general public and for the preservation of useful animals and it was held it is not violating of Article 19(1)(g) of the Indian Constitution.

Grounds of restriction :-

Under Article 19(6) the state is authorized to impose reasonable restriction on the right to carry on a trade, profession or business. The condition is that the restriction must be –

1. reasonable &
2. in the interest of general public.

CASE LAW – Goadawat Pan Masal Products Pvt. Ltd. Vs. Union of India, AIR 2004

Above case the Supreme Court held that the ban impose on sale of Pan Masal & Gutkha is not violative of Article 19(1) (g) of the Indian Constitution in the interest of general public.

CASE LAW – Khoday Distilleries Ltd. Vs. State of Karnataka

In the above the Supreme Court held that the citizen has no fundamental right to trade or business which is injurious to health, safety and welfare of general public.

CHAP.(7) – PROTECTION OF LIFE AND PERSONAL LIBERTY (Article 21)

Q.1 "No person shall be deprived his personal liberty except established procedure of Law". Illustrate with landmark judgment.

Q. 2 "No person shall be deprived of his life and personal liberty except to procedure established by Law". Discuss.

Q. 3 Explain the nature & scope of right to life and personal liberty under the Indian Constitution.

Introduction :-

Article 21 of the Indian Constitution says that "No person shall be deprived of his life or liberty except according to procedure established by law".

Prior to Maneka Gandhi's decision, Article 21 guaranteed the right to life and personal liberty to citizens only against the arbitrary action of the executive and not from the legislative action. The state could interfere with the liberty of citizens if it could support its action by a valid law. But after the Maneka Gandhi's decision Article 21 now protects the right of life and personal liberty of citizen not only from the executive action but from the legislative action also. A person can be deprived of his life and personal liberty if two conditions are complied with first there must be law and there must be procedure prescribed by that law, & that procedure must be just, fair & reasonable.

The right guaranteed in Article 21 is available to "citizens as well as non citizens".

Protection of Life & Personal Liberty (Article 21) :-

Article 21 of the Indian Constitution says that "No person shall be deprived of his life & personal liberty except according to procedure established by Law".

The main object of Article 21 of the Indian Constitution is that the Government should not take any voluntary action against the personal liberty of citizens. The second object of this Article is that the state can't interfere with the liberty of the citizens.

CASE LAW – A.K. Gopalan Vs. Union of India, AIR 1950

In the above case the meaning of the word 'personal liberty' came up for consideration before the Supreme Court for the first time.

In the above case the petitioner, A.K. Gopalan, a communist leader was detained under the Prevention of Detention Act, 1950. The petitioner challenged the validity of his detention under the Act on the ground that it was violative of his right to freedom of movement under Article 19(1)(d) which is the very essence of personal liberty guaranteed by Article 21 of the Constitution. It was argued on behalf of A.K. Gopalan that –

1. The word 'Law' in Article 21 includes not only enacted law but also includes principle of natural justice.
2. The law depriving the life and personal liberty must be reasonable.
3. The procedure must be reasonable.

Judgment : - The Supreme Court rejected all these arguments on the ground that word law in Article 21 does not include principle of natural justice and held that personal liberty in Article 21 means freedom from arrest and detention without the authority of Law. The court held that the law affecting life and personal liberty could not be declared unconstitutional merely on the grounds that it does not contain the principle of natural justice or reasonable procedure.

CASE LAW – Satwat Singh Vs. Assistant Passport Officer, New Delhi, 1967

In the above case the petitioner who was a citizen of India had to travel abroad for business purpose. The Government