Constitutional Law Notes

Q 1. Discuss the various characteristics of the Indian constitution

Answer:

Single Constitution for both Union and States: India has a single Constitution for Union and all the States. The Constitution promotes the unity and convergence of the ideals of nationalism. Single Constitution empowers only the Parliament of India to make changes in the Constitution. It empowers the Parliament even to create a new state or abolish an existing state or alter its boundaries.

Sources of the Constitution: The Indian Constitution has borrowed provisions from various countries and modified them according to the suitability and requirements of the country. The structural part of the Constitution of India has been derived from the Government of India Act, 1935. The provisions such as Parliamentary System of Government and Rule of Law have been adopted from the United Kingdom.

Rigidity and Flexibility: The Constitution of India is neither rigid nor flexible. A Rigid Constitution means that the special procedures are required for its amendments whereas a Flexible Constitution is one in which the constitution can be amended easily.

Secular State: The term secular state means that all the religions present in India get equal protection and support from the state. In addition; it provides equal treatment to all religions by the government and equal opportunities for all religions.

Federalism in India: The Constitution of India provides for division of power between the Union and the State governments. It also fulfils some other features of the federalism such as the rigidity of the constitution, written constitution, bicameral legislature, independent judiciary and supremacy of the constitution. Thus, India has a Federal System with unitary bias.

Parliamentary Form of Government: India has a Parliamentary Form of Government. India has a Bicameral Legislature with two houses named Lok Sabha and Rajya Sabha. In Parliamentary Form of Government; there is no clear cut

separation of powers of Legislative and Executive organs. In India; the head of the government is Prime Minister.

Single Citizenship: Constitution of India provides for single citizenship to every individual in the country. No state in India can discriminate against an individual of another state. Moreover, in India, an individual has the right to move to any part of the country or live anywhere in the territory of India except certain places.

Integrated and Independent Judiciary: The Constitution of India provides for an integrated and independent judicial system. The Supreme Court is the highest court of India with authority over all the other courts in India followed by high courts, district courts, and lower courts. To protect the Judiciary from any influence, the Constitution has laid down certain provisions such as Security of Tenure and Fixed Service Conditions for judges etc.

Directive Principles of State Policy: Part IV (Articles 36 to 50) of the Constitution mentions the Directive Principles of State Policy. These are non-justifiable in nature and are broadly classified into Socialistic, Gandhian, and Liberal-intellectual.

Fundamental Duties: These were added to the Constitution by 42nd Constitutional Amendment Act (1976). A new Part IV-A was created for the purpose and 10 duties were incorporated under Article 51-A. The provision reminds the citizens that while enjoying rights, they should also perform their duties

Universal Adult Franchise: In India, every citizen who is above the age of 18 years has right to vote without any discrimination on the ground of caste, race, religion, sex, literacy etc. Universal adult franchise removes social inequalities and maintains the principle of political equality to all the citizens.

Emergency Provisions: The President is empowered to take certain steps to tackle any extraordinary situation to maintain the sovereignty, security, unity, and integrity of the nation. The states become totally subordinate to the Central Government when emergency is imposed. According to the need; emergency can be imposed in parts or whole of the country.The Constitution of India thus stands as an embodiment of democracy, fundamental rights, and decentralization of power to the lowest or to the grass-root level. In order to protect against any possible dilution of these powers and rights, it has set up the Supreme Court to function as the guardian of the Constitution with the power to invalidate any legislation or executive act if it violates the Constitution and thus affirm and enforce the supremacy of the Constitution.

Q 2. The Preamble secures to all the citizens of India-justice – liberty-equality "Discuss in detail the noble vision of preamble

Answer:

The Preamble serves as an introduction to the Constitution. It was amended by the 42nd Constitutional Amendment Act in 1976, which determined to constitute India into a Sovereign, Socialist, Secular, and Democratic republic. It secures justice, liberty, equality to all the citizens of India and promotes fraternity among the people.

The Preamble states:

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity;

and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this ***twenty-sixth day of November, 1949,*** *do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.*

The Four Components of the Preamble are:

1. The Preamble indicates that the source of authority of the Constitution lies with the people of India.

2. It declares India to be a socialist, secular, secular, democratic and a republic nation.

3. It states its objectives to secure justice, liberty, equality to all citizens and promote fraternity to maintain unity and integrity of the nation.

4. It mentions the date (November 26, 1949) on which the constitution was adopted.

The key words in the Preamble are explained below:

Sovereign

The Preamble proclaims that **India is a Sovereign State.** 'Sovereign' means that India has its own independent authority and it is not a dominion or dependent state of any other external power. The Legislature of India has the powers to enact laws in the country subject to certain limitations imposed by the Constitution.

Socialist

The word 'Socialist' was added to the Preamble by the 42nd Constitutional Amendment in 1976. Socialism means the achievement of socialist ends through democratic means. India has adopted 'Democratic Socialism'. Democratic Socialism holds faith in a mixed economy where both private and public sectors co-exist side by side. It aims to end poverty, ignorance, disease and inequality of opportunity.

Secular

The word 'Secular' was incorporated in the Preamble by the 42nd Constitutional Amendment in 1976. The term secular in the Constitution of India means that **all the religions in India get equal respect, protection and support from the state**. Articles 25 to 28 in Part III of the Constitution guarantee Freedom of Religion as a Fundamental Right.

Democratic

The term Democratic indicates that the **Constitution has established a form of government which gets its authority from the will of the people expressed in an election.** The Preamble resolves India to be a democratic country. That means, the supreme power lies with the people. In the Preamble, the term democracy is used for political, economic and social democracy. The responsible representative government, universal adult franchise, one vote one value, independent judiciary etc. are the features of Indian democracy.

Republic

In a Republic, the **head of the state is elected by the people directly or indirectly**. In India, the President is the head of the state. The President of India is elected indirectly by the people; that means, through their representatives in the Parliament and the State Assemblies. Moreover, in a republic, the political sovereignty is vested in the people rather than a monarch.

Justice

The term Justice in the Preamble embraces three distinct forms: Social, economic and political, secured through various provisions of the Fundamental and Directive Principles.

Social justice in the Preamble means that the Constitution wants to create a more equitable society based on equal social status. Economic justice means equitable distribution of wealth among the individual members of the society so that wealth is not concentrated in few hands. Political Justice means that all the citizens have equal right in political participation. Indian Constitution provides for universal adult suffrage and equal value for each vote.

Liberty

Liberty implies absence of restraints or domination on the activities of an individual such as freedom from slavery, serfdom, imprisonment, despotism etc. The Preamble provides for liberty of thought, expression, belief, faith and worship.

Equality

Equality means absence of privileges or discrimination against any section of the society. The Preamble provides for equality of status and opportunity to all the people of the country. The Constitution strives to provide social, economic and political equality in the country.

Fraternity

Fraternity means feeling of brotherhood. The Preamble seeks to promote fraternity among the people assuring the dignity of the individual and the unity and integrity of the nation.

Amendment in the Preamble

In 1976, the Preamble was amended (only once till date) by the 42nd Constitutional Amendment Act. Three new terms, Socialist, Secular, and Integrity were added to the Preamble. The Supreme Court held this amendment valid.

Interpretation by the Supreme Court

The Preamble was added to the Constitution after the rest of the Constitution was already enacted. The Supreme Court in the Berubari Union case (1960) held that the Preamble is not a part of the Constitution. However, it recognised that the Preamble could be used as

a guiding principle if a term in any article of the Constitution is ambiguous or has more than one meaning.

In Kesavanand Bharti case (1973), the Supreme Court overturned its earlier decision and held that the Preamble is a part of the Constitution and can be amended under Article 368 of the Constitution. Again, in LIC of India case, the Supreme Court held that the Preamble is a part of the Constitution.

Thus the Preamble to the Constitution of free India remains a beautifully worded prologue. It contains the basic ideals, objectives, and philosophical postulates the Constitution of India stands for. They provide justifications for constitutional provisions.

Q 3. Article 14" Permits Reasonable classification but prohibits class legislation". Explain

Answer:

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 laws should apply to all persons. It does not attainment or circumstances in the same position. The varying needs of different classes of persons often requires separate treatment. From the vary nature of society there should be different laws in different places and the legitimate controls the policy and enacts laws in the best interest of the safety and security of the state. In fact identical treatment in unequal circumstances would amount to inequality. So a reasonable classification is only not permitted but is necessary if society is to progress.

Thus what Article 14 forbids is class-legislation but it does not forbid reasonable classification. The classification however must not be "arbitrary ,artificial or evasive" but must be based on some real and substantial bearing a just and 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 and unequals are treated differently, Article 14 does not apply. Class legislation is that which makes an improper discrimination by conferring particular privileges upon a class of persons arbitrarily selected from a large number of persons all of whom stand in the same relation to the privilege granted that between whom and the persons not so favored no reasonable distinction or substantial difference can be found justifying the inclusion of one and the exclusion of the other from such privilege.

Test Of Reasonable Classification

While Article 14 frobids class legislation it does not forbid reasonable classification of persons, objects, and transactions by the legislature for the purpose of achieving specific ends. But classification must not be "arbitrary ,artificial or evasive". It must always rest upon some real upon some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the legislation. Classification to be reasonable must fulfil the following two conditions

Firstly the classification must be founded on the intelligible differentia which distinguishes persons or thing that are grouped together from others left out of the group

Secondly the differentia must have a rational relation to the object sought to be achieved by the act.

The differentia which is the basis of the classification and the object of the act are two distinct things. What is necessary is that there must be nexus between the basis of classification and the object of the act which makes the classification. It is only when there is no reasonable basis for a classification that legislation making such classification may be declared discriminatory. Thus the legislature may fix the age at which persons shall be deemed competent to contract between themselves but no one will claim that competency. No contract can be made to depend upon the stature or colour of the hair. Such a classification will be arbitrary.

The true meaning and scope of Article 14 have been explained in a number of cases by the supreme court. In view of this the propositions laid down in Damia case still hold good governing a valid classification and are as follows.

1.A law may be constitutional even though it relates to a single individual if on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by itself

2. There is always presumption in favour of the constitutionality of a statute and the burden is upon him who attacks it to show that there has been a clear transgression of constitutional principles.

3.The presumption may be rebutted in certain cases by showing that on the fact of the statue, there is no classification and no difference peculiar to any individual or class and not applicable to any other individual or class, and yet the law hits only a particular individual or class

4. It must be assumed that Legislature correctly understand and appreciates the need of its own people that its law are directed to problem made manifest by experience and that its discrimination are based on adequate grounds

5. In order to sustain the presumption of constitutionality the court may take into consideration maters of common knowledge, matters of report, the history of the times and may assume every state of facts which can be conceived existing at the time of the legislation.

6. Thus the legislation is free to recognize degrees of harm and may confine its restriction to those cases where the need is deemed to be the clearest.

7. While good faith and knowledge of the existing conditions on the part of a legislature are to be presumed, if there is nothing on the face of the law or the surrounding

circumstances brought to the notice of the court on which the classification may reasonable be regarded as based, the presumption of constitutionality cannot be carried to extent always that there must be some undisclosed and unknown reason for subjecting certain individuals or corporation to be hostile or discriminating legislation

8.The classification may be made on different bases e.g. geographical or according to object or occupation or the like

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9. The classification made by the legislature need not be scientifically perfect or logically complete. Mathematical nicety and perfect equality are not required.

Equality before the law does not require mathematical equality of all persons in all circumstances. Equal treatment does not mean identical treatment. Similarly not identity of treatment is enough.

10. There can be discrimination both in the substantive as well as the procedural law. Article 14 applies to both.

If the classification satisfies the test laid down in the above propositions, the law will be declared constitutional. The question whether a classification is reasonable and proper and not must however, be judged more on commonsense than on legal subtitles.

Q 4. Analyze the six fundamental freedoms enumerated U/A10 of the Indian Constitution

Answer:

Fundamental rights, the basic and civil liberties of the people, are protected under the charter of rights contained in Part III (Article 12 to 35) of the Constitution of India. .

Fundamental rights apply universally to all citizens, irrespective of race, place of birth, religion, caste or gender. The Indian Penal Code and other laws prescribe punishments for the violation of these rights, subject to discretion of the judiciary. Though the rights conferred by the constitution other than fundamental rights are also valid rights protected by the judiciary, in case of fundamental rights violations, the Supreme Court of India can be approached directly for ultimate justice per Article 32.

The six fundamental rights recognised by the Indian constitution are the:

1. Right to equality
2. Right to freedom
3. Right against exploitation
4. Right to freedom of religion
5. Cultural and Educational Right, and
6. Right to constitutional remedies

1. The right to equality includes equality before law, prohibition of discrimination on grounds of religion, race, caste, gender or place of birth, and equality of opportunity in matters of employment, abolition of untouchability and abolition of titles.

2. Cultural and Educational Rights are given to the Citizens of India to conserve their cultural practices and that they must have access to education.

3. The right to freedom includes freedom of speech and expression, assembly, association or union or cooperatives, movement, residence, and right to practice any profession or occupation.

4. The right against exploitation prohibits all forms of forced labour, child labour and trafficking of human beings.

5. The right to freedom of religion includes freedom of conscience and free profession, practice, and propagation of religion, freedom to manage religious affairs, freedom from certain taxes and freedom from religious instructions in certain educational institutes.

Cultural and educational rights preserve the right of any section of citizens to conserve their culture, language or script, and right of minorities to establish and administer educational institutions of their choice.

6. The right to constitutional remedies is present for enforcement of Fundamental Rights. The right to privacy is an intrinsic part of Article 21 (the Right to Freedom) that protects life and liberty of the citizens.

Fundamental rights for Indians have also been aimed at overturning the inequalities of pre-independence social practices. Specifically, they have also been used to abolish untouchability and thus prohibit discrimination on the grounds of religion, race, caste, sex, or place of birth. They also forbid trafficking of human beings and forced labour (a crime). They also protect cultural and educational rights of religious and linguistic minorities by allowing them to preserve their languages and also establish and administer their own education institutions. They are covered in Part III (Articles 12 to 35) of Indian constitution.

Some features of Indian Constitution :

1. It provides safeguard if any political leader misuses his power.

2. It also provides safeguard against discrimination.

3. It says "all persons are equal before law."

4. It provides fundamental rights.

Q 5. Discuss various provisions of Indian constitution concerning to Directive principles of the state policy

Answer:

The **Directive Principles of State Policy** (DPSP) are the guidelines or principles given to the federal institutes governing the state of **India**, to be kept in citation while framing laws and policies. These provisions, contained in Part IV (Article 36-51) of the Constitution of India, are not enforceable by any court, but the principles laid down therein are considered irrefutable in the governance of the country, making it the duty of the State[1] to apply these principles in making laws to establish a just society in the country. The principles have been inspired by the Directive Principles given in the Constitution of Ireland relate to social justice, economic welfare, foreign policy, and legal and administrative matters. Directive Principles are classified under the following categories economic and socialistic, political and administrative, justice and legal, environmental, protection of monuments and peace and security.

Characteristics

While debating on DPSP in the Constituent Assembly, Dr. Ambedkar stated on 19 November 1948 as given below high lighting that the DPSP shall be the basis of future governance of the country:[6]

It is the intention of this Assembly that in future both the legislature and the executive should not merely pay lip service to these principles enacted in this part, but that they should be made the basis of all executive and legislative action that may be taken hereafter in the matter of the governance of the country.

Directive Principles of State Policy aim to create social and economic conditions under which the citizens can lead a good life. They also aim to establish social and economic democracy through a welfare state. Though the Directive Principles are non-justiciable rights of the people but fundamental in the governance of the country, it shall be the duty of the State to apply these principles in making laws per Article 37. Besides, all executive agencies of union and states should also be guided by these principles.[1] Even the judiciary has to keep them in mind in deciding cases.[7][8]

Per Article 37, state and union governments, as duty, shall make further detailed policies and laws for implementation considering DPSPs as fundamental policy. In contrary to Article 37, many policies have been implemented by state and union governments which go against the DPSPs such as using intoxicating drinks as source of major tax revenue instead of implementing prohibition for better health of people, separation of judiciary from executive, uniform civil code for the citizen, etc. When the union government feels

that a DPSP is no longer useful to the nation, it shall be deleted from Constitution by bringing a constitutional amendment to remove ambiguity in policy making / direction. Judiciary can repeal any policy/law devised by the government which is diametrically opposite to any DPSP. An existing policy in line with DPSP can not be reversed, however it can be expanded further in line with DPSP. The policy changes applicable under DPSP shall not be reversible unless the applicable DPSP is deleted by constitutional amendment (ex. prohibition implemented once in a state can not be repealed later as long as it is part of DPSP)

List of DPSPs under Indian Constitution

Article Number	**What it says**
Article 36	Defines State as same as Article 12 unless the context otherwise defines.
Article 37	Application of the Principles contained in this part.
Article 38	It authorizes the state to secure a social order for the promotion of the welfare of people.
Article 39	Certain principles of policies to be followed by the state.
Article 39A	Equal justice and free legal aid.
Article 40	Organization of village panchayats.
Article 41	Right to work, to education and to public assistance in certain cases.
Article 42	Provision for just and humane conditions of work and maternity leaves.
Article 43	Living wage etc. for workers.
Article 43-A	Participation of workers in management of industries.
Article 43-B	Promotion of cooperative societies.
Article 44	Uniform civil code for the citizens.
Article 45	Provision for early childhood care and education to children below the age of six years.
Article 46	Promotion of education and economic interests of SC, ST, and other weaker sections.
Article 47	Duty of the state to raise the level of nutrition and the standard of living and to improve public health.
Article 48	Organization of agriculture and animal husbandry.
Article 48-A	Protection and improvement of environment and safeguarding of forests and wildlife.
Article 49	Protection of monuments and places and objects of national importance.
Article 50	Separation of judiciary from the executive.
Article 51	Promotion of international peace and security.

Q 6. Examine the Right of Minorities provided under Articles 29 and 30 of the Indian Constitution to establish and administer educational institutions

Answer:

Both Article 29 and Articles 30 guarantee certain right to the minorities. Article 29 protects the interests of the minorities by making a provision t that any citizen / section of citizens having a distinct language, script or culture have the right to conserve the same. Article 29 mandates that no discrimination would be done on the ground of religion, race, caste, language or any of them.

Article 30 mandates that all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. Article 30 is called a Charter of Education Rights.

Madarsas are administrated by the Article 30. Article 30 provides an absolute right to the minorities that they can establish their own linguistic and religious institutions and at the same time can also claim for grant-in-aid without any discrimination.

Issues Related to Minority Institutions Can a Madarsa Can be acquired by the Government? Yes, The article 30(1A) was inserted by the 44th Amendment Act 1978. This article provides that if while making any law which provides for the compulsory acquisition of any property of any educational institution established and administered by a minority, the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause. This clause makes it clear that such acquisition requires conformable compensation.

Can a Madarsa teach Computers? In context with the Kerala Education Bill 1957, The supreme court of India said that: Article 30 does not say that minorities based on religion should establish the educational institutions for teaching their language / religion only. The minorities would desire that their children be eligible for higher university education, the education institutions of minorities would also include the general secular education. Article 31: Repealed Article 19(1)(f) Right to acquire, hold and dispose of property and Article 31 were repealed by the Constitution 44th Amendment Act 1978. A new part was inserted in Part XII of the Constitution and right to property has been transferred Article 300 A. This will be detailed when we study part XII. The main points are: Right to Property is not a fundamental right but a legal One can not approach supreme court for

remedy under article 32 on violation of his / her right to property because it is not a fundamental right

In the case of **TMA PAI v. State of Karnataka**, the judgment stated was, "…it was suggested that the State does have the right to intervene or make policies or rules or regulations related to the administration of the minority institutions. Particularly the protest was taken to the selection or nomination by the state on the administration of private institutions as well as to provide rights regarding the issue of admission of students, setting up of fee structure and short listing, selecting and appointing faculties by channels of the State."

Q 7. Discuss in detail the secularism under Indian constitution

Answer:

The core ethos of India has been a fundamental unity, tolerance and even synthesis of religion. It is an indubitable fact that hundreds of millions of Indians belonging to diverse religions lived in comity through the ages, marred through at times by religion revolts, economic exploitation and social suppression being often at the bottom of it all.

India is the birth place of four major world religions: Hinduism, Jainism, Buddhism and Sikhism. Yet, India is one of the most diverse nation in terms of religion. Many scholars and intellectuals believe that India's predominant religion, Hinduism has long been a most tolerant religion. India is a country built on the foundations of a civilization that is fundamentally non-religious.

The Preamble of Indian Constitution aims to constitute India a Sovereign, Socialist, Democratic Republic. The terms socialist and secular were added to it by the 42nd amendment.The whole constitution is summarized in the preamble. It is the mirror to the spirit of the constitution. The arrangement of the words in the preamble is also very significant. Indian society iws a multi-religious society,it is having different csste,religion along with several religion diversification. So, all these are the divisive factor in some way or the other and if not handled carefully then can cause a threat to the unity and integrity of the nation.

The constituent assembly has visualized the peculiar situations of the country and a very arranging the preamble it aims to secure to citizens justice, equality and liberty. The basic aim is to promote fraternity while assuring unity and integrity of the nation along with individual dignity. Fraternity is a very significant tool to combat the divisive factor. Religious harmony is a must to promote fraternity particularly in Indian context. So it's a constitutional mandate upon the state to combat the factors which curtails religious fraternity. It is also incumbent upon the state to take positive as well as negative actions to promote fraternity. Art. 25(1) guarantee to every person the freedom of conscience and the right to profess, practice and propagate religion.

Religion in India:

To understand the concept of secularism in respect of constitutional philosophy first we have to understand the term "RELIGION". In general sense, Religion is a system of faith and worship of supernatural force which ordains regulates and control the destiny of human kinds.

According to Merriam Webster dictionary, "Religion as an organized system of faith and worship, a personal set of religious belief and practice, a cause, principle or belief held to with faith and order.
Swami Vivekananda,' It is based on faith and belief and in most cases consist only of different sect of theories that is the reason why we find all religion quarreling with each other.

Dr.RadhaKrishan, "The main aim of the Hindu faith is to permit image worship as the means to the development of the religious spirit to the development of the supreme who has his temples in all beings.

From these definitions we can conclude that no universally acceptable definition as to what exactly religion is.There appears to be near unanimity that religion, generally,is a belief or faith in the existence of a supernatural being and the precepts which people follow for attaining salvation.

The term religion has not been defined in the constitution but the meaning given by the Supreme court of India to the religion can be referred here, the Supreme court in **Commissioner H.R.E v. L.T. Swammiar** 1954 AIR 282,1954SCR 1005 held, Religion is a matter of faith with individuals or communities and it is not necessarily theistic. A religion has its basis in a system of beliefs or doctrines, which are regarded by those who prefers that religion as conducive to their lay down a code ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship, which are regarded as integral parts of religion and these forms and observance might extend even to matters of food and dress.

The freedom of religion guaranteed under Indian Constitution is not confined to its citizen but extends to all persons including alien. This point, was underlined by the supreme court in **Ratilal Panchand V. State of Bombay** 1954 AIR 388,1954 SCR 1035,as it is very important because substantial number of foreign christian missionaries in India were engaged at that time in propagating their faith among the adherents of other religious

Secularism:

India is a secular country but what is secularism? According to Donald Eugene Smith,' The secular state is a state which guarantees individual and corporate freedom of religion deals with the individual as a citizen irrespective of his religion is not constitutionally connected to a particular, nor does it seek either to promote or interfere with religion upon closer examination it will be seen that the conception of a secular state involves

three distinct but inter-related sets of relationships concerning the state, religion and the individual **Indra V. Rajnarayan** 1975 AIR, S.C 2299,the basic feature of the secularism was explained by the hon'ble supreme court which held that, secularism means' that state shall have no religion of its own and all persons of the country shall be equally entitled to the freedom of their conscience and have the right freely to profess, practice and have the right freely to profess, practice and propagate any religion". **S.R.Bommai V. Union of India** 1994 AIR, SC 1981 The Hon'ble Supreme court while upholding the dismissal of four state governments ruled by BJP, on the ground of religious conduct, held that "secular not only meant that the state should have no religion of its own and should be neutral as between different religious, but that political party which sought to capture the power, the religious would come to capture the power, the religions would come to acquire a secondary or less favourable position.

Secularism and Constitution of India:

Secularism as contemplated by the Constitution of India has the following distinguishing features:

(1) The state will not identify itself with aor be controlled by any religion;

(2) While the state guarantees to everyone the right to profess whatever religion one chooses to follow, it will not accord any preferential treatment to any of them.

(3) No discrimination will be shown by the state against any person on account of his religion or faith.

(4) The right of every citizen, subject to any general condition, to enter any offices under the state and religious tolerance form the heart and soul of secularism as envisaged by the constitution. It secures the conditions of creating a fraternity of the Indian people which assures both the dignity of the individual and the unity of the nation.

The Supreme Court has ruled in (**Bal Patil and Anr. v. union of India**) that the State has no religion and State has to treat all religions and religious people equally and with equal respect without in any manner interfering with their Individual rights of religion, faith and worship.

The objectives and parameters of a secular, socialist, democratic republic had to be expressed in such flexible, yet firm, fashion that a creative and realistic jurisprudence and complex of constitutional strategies could be put into operation which would harmonies not antagonize, religious minorities, integrate not acerbate, hostile strata, abolish not accentuate, the socio-religious discrimination endured by the weaker human sector and generate a system and society where secular unity would comport with cultural diversity.

In **Venkataramana Devaru V. Stae of Mysore** 1958 AIR 255,1958 SCR 895 Venkataramana temple was belonging to the Gowda Saraswath Brahaman community. The trustees of this denominational temple refused admission to Harijans on the ground that the caste of the prospective worshipper was a relevant matter of religion according to scriptural authority and that under Art.26(b) of the constitution they had the right to manage their

Indian Model of Secularism:

- It has a place not only for the right of individuals to profess their religious beliefs but also for the right of religious communities to establish and maintain educational institution.
- The acceptance of community specific rights brings us to the third feature of Indian secularism because it was born in a deeply multi-religious society, it is concerned as much with inter-religious domination as it is with intra-religious domination
- It does not erect a wall of separation between the state and religion. This allows the state to intervene in religions, to help or hinder them without the impulse to control or destroy them
- It is not entirely averse the public character of religion. Although the state is not identified with a particular religion, there is official and therefore public recognition granted to religious communities.
- Multiple values and principled distance means that the state tries to balance different, ambiguous but equally important values.
- This type of model makes its secular ideal more like a contextual, ethically sensitive ,politically negotiated arrangement, rather than a scientific doctrine as conjured up by ideologies and merely implemented by political agents
- Secularism undoubtedly helps and aspires to enable every citizen to enjoy fully the blessing of life, liberty and happiness, but in the pursuit of this ideal, those who believes in secularism must be inspired by a sense of ethical purpose in dealing with their fellow citizens.

Q 8. What is Citizenship? What are the modes of acquisition and termination of citizenship under Citizenship Act 1955.

Answer:

1. INTRODUCTION:

"Citizenship is the chance to make a difference to the place where you belong"

-Charles Handy.

Citizenship is a legal status acquired by a person in a state, wherein he is entitled to enjoy all the legal rights and privileges granted by the State and is obliged to obey the laws and fulfill the duties imposed by the State. A person who is not a citizen of any country is said to be stateless. India doesn't permit multiple or dual citizenship.

2. MODES OF ACQUISITION AND TERMINATION UNDER THE CONSTITUTION:

Part- II of the Constitution from **Art.5 to Art.11** deal with the modes of Acquiring and Termination of Citizenship[1].

I. MODES OF ACQUISITION UNDER THE CONSTITUTION:

A person can acquire the citizenship of India by three modes:

- By domicile.
- By Migration.
- By Registration.

a) By Domicile:

The word 'domicile' means a place where a person is said to have a permanent home. Thus, according to Art.5 of the Constitution of India a person who has a domicile in India at the time of commencement of the Constitution is said to be a citizen of India. In addition to the prior mentioned condition the person has to fulfill any one of the following mentioned conditions to acquire citizenship by domicile.

- By being born in India or
- If either of the parents are born in India or
- If a person was ordinarily residing in India preceding 5 years immediately after the commencement of the Constitution of India.

commencement of the Constitution of India.

b) By Migration:

At the time of independence, huge masses of people migrated from Pakistan to India. Under Art. 6 an immigrant from Pakistan can acquire citizenship by fulfilling the following criterions.

- If his/ her parents or grandparents are born in India and
- If such person has migrated before 19.07.1948 and is an ordinary resident since the date of migration. or
- A person who migrates on or after the 19.07.1948 has to register with the officer appointed by the Government before the commencement of the Constitution in a form prescribed by the government. He should be an ordinary resident for a period of 6 months in the territory of India before such application is made.
- Even if a person migrated to Pakistan and returns back to India and resettles can acquire citizenship via registration.

c) By Registration:

According to Art.8, a person who is residing out of the territory of India can acquire citizenship by registering himself with the diplomatic or consular representative of India in the country of Residence. By fulfilling the following conditions:

- He is born in India or
- His parents or grandparents are born in India.

II. PROVISIONS RELATING TO TERMINATION OF CITIZENSHIP UNDER THE CONSTITUTION:

Art.7: If a person migrates to Pakistan after 01.03.1947 shall not be deemed to be a citizen of India.

Art.9: If a person voluntarily acquires citizenship of another country then his Indian citizenship ceases to exist.

According to **Art.10**,

A person shall continue to be a citizen until the parliament makes a law which seizes a person's citizenship. The power of the parliament to regulate the citizenship rights by law is elaborated in Art.11 of the Constitution.

3. CITIZENSHIP UNDER THE CITIZENSHIP ACT, 1955:

The parliament in the exercise of its power granted in Art.11 of the Indian Constitution has passed the Indian Citizenship Act, 1955, making provisions for acquisition and termination of citizenship after the commencement of the Constitution.

I. MODES OF ACQUISITION UNDER THE ACT:

According to the Act, citizenship can be acquired in 5 ways[2]:

- Birth
- Descent
- Registration
- Naturalization And
- Incorporation of Territory.

a) By Birth:

A person can acquire citizenship by birth if:

- he is born in India or
- Either or both of his parents are born in India and neither of them are illegal immigrants of India.

A person cannot acquire citizenship by birth if:

- His parents have diplomatic immunity or not citizens of India
- His parents are an enemy alien or the birth occurs at the place under the occupation of such enemy.

b) By Descent:

A person born outside India can be a citizen of India by descent.

- A person born outside India on after 26 January 1951 is citizen of India by descent, if at the time of his birth his father is an Indian citizen- but
  a) When his birth is registered at an Indian consulate or
  b) His father is at the time of his birth on service under Government of India.

Similarly, any person born outside the Territory of undivided India who was or deemed to be a citizen of India at the commencement of the Constitution is also considered to be a citizen of India by Descent only.

c) By Registration:

A person can acquire citizenship by registering.

- Person of Indian origin or parents who were born in undivided India and who are ordinarily resident in India for seven years.
- Persons of Indian origin who are ordinarily residents in any country or place outside undivided India.
- Persons who are or have been married to a citizen of India and who are ordinarily resident in India for five years.
- Minor children both whose parents are Indian citizens.
- A citizen of Singapore and Canada who is resident in India for five years and eight years respectively.

d) By Naturalization:

Citizenship of India can be acquired by a foreigner who is ordinarily residing India for a period of 12 years (continuously for the twelve months preceding the date of application and for eleven years in the aggregate in the fourteen years preceding the twelve months).

e) By Incorporation of Territory:

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

II. TERMINATION OF CITIZENSHIP UNDER THE ACT:

The citizenship of a person can be terminated by 3 modes:

- By renunciation of the citizenship
- By operation of law
- By deprivation

a) By Renunciation:

A person of full age and capacity in a prescribed manner can renounce the citizenship of India. But such application will be withheld during the time of emergency or war. If a married couple renounces their citizenship, their child also ceases to be an Indian citizen unless one year after attaining majority the child applies via registration for citizenship shall continue to be a citizen of India.

b) By Operation of Law:

If a person gets the citizenship of another country then the Indian citizenship ceases to exist as multiple or dual citizenships is not permitted in India.

c) By Deprivation:

If a person has acquired citizenship by fraudulent means then the government of India has the power to deprive the person of his citizenship.

4. OVERSEAS CITIZENSHIP OF INDIA:

If a person has migrated from India to other countries, then he is said to be an OCI, unless the country permits OCI citizenship.

Overseas citizenship can't be considered as Dual citizenship as the person won't get the following privileges:

- They do not have the right to vote.
- They cannot hold an Indian passport.
- They are not eligible for Constitutional posts.
- They cannot be a member of the legislature of any house.

Thus, a person who wants to acquire Indian citizenship can make use of the provisions under either the Constitution of India or the Citizenship Act of 1955.

[1] Art. 5 & 11, The Constitution of India

[2] The Indian Citizenship Act, 1955

Q 9. Describe the six golden freedoms given to the citizen under Indian Constitution with landmark judgment.

Answer:

We all know the underlying fact that our Constitution is the longest written Constitution of any sovereign country in the world. A nation is governed by its Constitution. It is the Supreme Law of our Country. Constitution declares India a sovereign, socialistic, secular, democratic, republic, assuring its citizens of justice, equality and liberty, and endeavors to promote fraternity among them.[1] While looking at the fundamental rights enumerated in the Constitution, it will be well clear that the framers of the Constitution had done it in such a way that it acts a pillar to the national security and integrity of the country. The fundamental rights, embodied in part III of the Constitution provide civil rights to all the citizens of India and prevent them from the encroachment of society and also ensure their protection. There are seven rights which are enumerated as fundamental rights which include:

- Right to equality
- Right to freedom
- Right against exploitation
- Right to freedom of religion, education and cultural rights
- Right to property
- Right to constitutional remedies

Later on, Right to property was removed from the part III by the 44th Amendment in 1978.[2] Such fundamental rights are to be enforced for each and every citizen living in India irrespective of race, caste, religion, gender or place of birth. They are enforceable by courts, subject to specific restrictions. Now looking into the topic in detail, Article 14, 19 and 21 are popularly known as the 'golden triangle' of the Indian Constitution.

The Golden Triangle

- Article 14 – Equality before the law, the state shall not deny any person equality before the law or equal protection of law within the territorial limits of India or prohibition on the grounds of race, caste, religion, sex or place of birth.[3]
- Article 19 – Protection of certain rights regarding freedom of speech and expression. All citizen shall have the right
    - To freedom of speech and expression
    - To assemble peacefully and without arms
    - To form associations or unions
    - To move freely throughout the territory of India

- To reside and settle in any part of the territory of India, and
- To practice any profession or to carry on any occupation, trade or business[4]

Article 21 – Protection of life and personal liberty, no person shall be deprived of his personal liberty except according to the procedures established by law.[5]

Now it is clear why these provisions under the Constitution regarded as the 'golden triangle'. These rights are regarded as the basic principles for the smooth running of life for the citizens of our country. The golden triangle provides full protection to individuals from any encroachment upon their rights from the society and others as well. Article 14, it provides for equality before law and equal protection of the law. It means that no person is deprived of his equality among other citizens of our country. The provision also gains importance because the enactment of such a provision leads to the abolishing of certain inhuman customary practices of our country. The provisions of this article also envisage certain legal rights like protection of law which purely means that the law should be the same for every person with some necessary exceptions.

Article 19 provides certain absolute rights such as freedom of speech and expression, freedom of movement, freedom of forming associations and unions, etc. This Article brings about important changes in the society as it provides various rights to the people so that there is harmony among the people of our country. Even though this Article covers a vast area of operation, it does not provide a person the freedom to do anything and everything as per his whims and fancies. Various other provisions of the Article provide restrictions to various issues affecting public tranquillity and security. Such restrictions include:

1. Security of the State
2. Friendly relation with foreign states
3. Public order
4. Decency and morality
5. Contempt of court
6. Defamation
7. Incitement of offenses
8. Sovereignty and integrity of India.[6]

On the other hand Article, 21 provides for protection of life and personal liberty. This provision of the Constitution is one of the most implemented as well as widely interpreted areas in the field of law enforcement. The Article covers the most sensitive area, i.e. protection and securing the life and liberty of a person. Perhaps this may be the most violated provision of our Constitution as well. Various courts in our country have interpreted the constitutional validity of Article 21 in a common man's life. Important among them is the case of *Maneka Gandhi v. The Union of India*[7] wherein the court

looked into matters not only affecting Article 21 but also Articles 14 and 19 as well. The court stated that the act on the part of the respondents was violating Article 14 in the sense that the act leads to arbitrariness on the part of the respondent which violated the right to equality of the petitioner. Article 21 was being violated in the sense that petitioner was restrained from going abroad. The judgment was one of the landmarks among the cases relating to the violation of certain fundamental rights mainly, Articles 14, 19 and 21.

Q 10. Explain in detail Art.21 with landmark Judgment

Answer:

Indian democracy wedded to rule of law aims not only to protect fundamental rights of its citizens but also to establish an egalitarian order. Law being an instrument of social engineering obliges the judiciary to carry out the process established by it.

Lord Chancellor Sankey once said amidst the cross currents and shifting sands of public life the law is like a great ark upon which a man may set his foot and be safe. In this remark, he has emphasized on the importance of law. It is needless to say that life of an individual in a society would become a continuing disaster if not regulated. The first decision given to interpret the scope and meaning of life and personal liberty under article 21 of the Indian constitution was:

A.K.Gopalan VS. State of Madras (air 1950 sc 27)

The apex court interpreted that the words "procedure established by law" in article 21 are to be given a wide and fluid meaning of the expression "due process of law" as given under the u.s. constitution but it refers to only state made statues laws. if any statutory law prescribed procedure for deprieving a person of his rights or personal liberty it should meet the requirements of article 21

However, after 2 decades this was over ruled in the case of **R.C.Cooper VS. Union Of India** (AIR 1970 SC 564) after this there where a series of decisions by the apex court including that of maneka gandhi vs. Union of India in this case it was held that any law that deprives the life and liberty must be just and fair krishna iyer j. rightly said that "procedure" in article 21 means fair , not formal procedure law is reasonable law not any enacted pieces"

That article 21 confers positive rights to life and liberty The word life in article 21 means a life of dignity and not just mere animal survival (this was also upheld in the case of Francis caralie{(1993)1 scc 645} The procedure of depriving a person of his life and liberty must be reasonable, air and just

In the 1978, the 44th amendment of the constitution took place, article 359 was amended, and it provided that article 20 and 21 could not be suspended even during declaration of an emergency. In the case of P.Rathinam case held that right to live includes right not to live. Physical as well as mental health both are treated as integral part of right to live upholding that without good health , neither civil nor political

rights which constitution confers cant be enjoyed. Judiciary has played a vital role in the interpretation and correct use of article 21.

The following are some cases on "right to life" through judicial activism **C Masilamani Mudaliar Vs. Idol Of Sri Swami Nathaswami Thrukoll** {(1996) 8scc525/Pr22}

Article 21 of the Indian constitution reinforces. Equity, dignity of a person and the right to development are the inherent rights of every human being. Life in its expanded horizon includes everything that gives meaning to a person's life including culture, heritage and tradition with dignity of a person.

Noise Pollution (V), In Re, {(2005) 5 Scc 733/Pr 10}

Article 21 guarantees right to life and includes all those aspects which make a persons life meaningful, complete and worth living. In the above case, it was held that any one who wishes to live in peace, no one can claim a right to create noise even though he does so in his own premises. Any noise, which materially interferes with the ordinary comforts of the life of the other, judged by an ordinary prudent man is nuisance.

Kartar Singh vs. State of Punjab {(1994) 3 scc 569}

Speedy trail is an essential part of the fundamental rights guaranteed by article 21 of the Indian constitution.

Unni krishnan vs. State of Andhra Pradesh

the apex court has widened the scope of article 21 and has provided with the rights article 21 embraces within itself. They are

- Right to go abroad
- Right to privacy
- Right against solitary confinement
- Right against delayed execution
- Right to shelter
- Right against custodial death
- Right against public hearing

Doctor's assistance Along with all these above-mentioned rights, it was also observed that the right to education would also be included as apart of right to life

Q 11. Directive Principles of State policy are aimed to secure social, political and economical justice. Explain.

Answer:

The Constitution lays down certain Directive Principles of State Policy which though not justiceable, are 'fundamental in governance of the country' and it is the duty of the State to apply these principles in making laws. These lay down that the State shall strive to promote welfare of people by securing and protecting as effectively as it may a social order in which justice - social, economic and political, shall inform all institutions of national life.

The Directive Principles of State Policy (DPSP) is a guideline in the Constitution of India to the State. They are enumerated in Part IV of the Constitution from Article 36 to Article 51.

Dr. B R Ambedkar *described these principles as 'novel features' of the Constitution.*

These principles lay down that the State shall strive to promote welfare of people by securing and protecting as effectively as it may a social order in which justice - social, economic and political, shall inform all institutions of national life.

Unlike Fundamental Rights, the Directive Principles of State Policy (DPSP) are non-justiciable in nature which means they are not enforceable by the courts for their violation. However, the Constitution itself declares that '*these principles are fundamental in the governance of the country and it shall be the duly of the state to apply these principles in making laws'*. Hence, they impose a moral obligation on the state authorities for their application.

Features of Directive Principles of State Policy (DPSP)

1. It denotes the ideals that the State should keep in mind while formulating policies and enacting laws.

2. It resembles the 'Instrument of Instructions' enumerated in the Government of India Act of 1935. In the words of Dr B R Ambedkar, 'the Directive Principles are like the instrument of instructions, which were issued to the Governor-General and to the Governors of the colonies of India by the British Government under the Government of India Act of 1935. What is called Directive Principles is merely another name for the instrument of instructions. The only difference is that they are instructions to the legislature and the executive'.

3. It constitutes a very comprehensive economic, social and political programme for a modern democratic State which *aimed at realising the high ideals of justice, liberty, equality and fraternity as outlined in the Preamble to the Constitution.* They embody the concept of a 'welfare state' which was absent during the colonial era.

Features of the Indian Constitution

Classification of Directive Principles of State Policy (DPSP)

The Constitution of India does not formally classify the Directive Principles of State Policy but for better understanding and on the basis of content and direction- they can be classified into three categories: Socialistic Principles, Gandhian Principles, and Liberal-Intellectual Principles.

Socialistic Principles

These principles contemplate the ideology of socialism and lay down the framework of a democratic socialist state. The concept envisages providing social and economic justice, so that state should achieve the optimum norms of welfare state. They direct the state through- **Article 38, Article 39, Article 39 A, Article 41, Article 42, Article 43, Article 43** A and **Article 47.**

Gandhian Principles

These principles reflect the programme of reconstruction enunciated by Gandhi during the national movement. In order to fulfil the dreams of Gandhi, some of his ideas were included in DPSP and they direct the state through- **Article 40, Article 43, Article 43 B, Article 46, Article 47** and **Article 48.**

Liberal-Intellectual Principles

These principles inclined towards the ideology of liberalism and they direct the state through- **Article 44, Article 45, Article 48, Article 48 A, Article 49, Article 50** and **Article 51.**

New Provisions of Directive Principles after Amendment

Four new Directive Principles were added in the **42nd Amendment Act of 1976** to the original list. They are requiring the state:

1. **Added clause in Article 39:** To secure opportunities for healthy development of children

2. **Added clause in Article 39 as Article 39A**: To promote equal justice and to provide free legal aid to the poor

3. **Added clause in Article 43 as Article 43 A:** To take steps to secure the participation of workers in the management of industries

4. **Added clause in Article 48 as Article 48A:** To protect and improve the environment and to safeguard forests and wildlife

Important facts about Police FIR

The **44th Amendment Act of 1978** added one more Directive Principles which requires the state to minimise inequalities in income, status, facilities and opportunities in article 38.

The **86th Amendment Act of 2002** changed the subject-matter of Article 45 and made elementary education a fundamental right under Article 21 A. The amended directive requires the State to provide early childhood care and education for all children until they complete the age of six years.

The **97th Amendment Act of 2011** added a new Directive Principle relating to co-operative societies. It envisages that the state to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies (Article 43B).

Article Related to DPSP	
36: Definition of State	**43B:** Promotion of co-operative societies
37: Application of the principles contained in this part	**44:** Uniform civil code for the citizens
38: State to secure a social order for the promotion of welfare of the people	**45:** Provision for early childhood care and education to children below the age of six years
39: Certain principles of policy to be followed by the State	**46:** Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections
39A: Equal justice and free legal aid	**47:** Duty of the State to raise the level of nutrition and the standard of living and to improve public health
40: Organisation of village panchayats	**48:** Organisation of agriculture and animal husbandry
41: Right to work, to education and to public assistance in certain cases	**48A:** Protection and improvement of environment and safeguarding of forests and wildlife
42: Provision for just and humane conditions of work and maternity relief	**49:** Protection of monuments and places and objects of national importance
43: Living wage, etc., for workers	**50:** Separation of judiciary from executive
43A: Participation of workers in management of industries	**51:**Promotion of international peace and security

Q 12. "**The constitution of India has been successfully guiding the path and progress of India with its unique features" Discuss the unique feature of Indian constitution.**

Answer:

The Constitution of India has many distinctive features of its own. The main features of the Constitution of India includes: voluminous, federal nature, parliamentary form of government, written constitution, has a preamble, guarantees fundamental rights, provides directive principles, and uniform citizenship.

Dr. B.R. Ambedkar, was the then Chairman of the Drafting Committee of the Constituent Assembly of India. He was the key person behind the Constitution of India. He was a learned person had good vision of future India.

> One of repeated criticism of the Indian constitution is that it is very little original and mostly borrowed from other constitutions. Even Dr. Ambedkar admitted in the Constituent Assembly that many elements were borrowed from foreign constitutions but they were not "slavish imitations" but adoption of time-tested constitutional principles like the "Rule of Law" or "Equality before Law" to serve the interests of the people.

First feature: Voluminous

The Indian constitution is ***the most voluminous constitution*** ever created in human history. In its original shape the constitution had 395 articles and several schedules. Our constitution have been amended from time to time. The 101 odd Amendment Acts (as on Jan, 2018) since 1950 only add to the bulk of the constitution. When contrasted with the six effective articles and 27 ratified amendments of the U. S. constitution, one appreciates how bulky our constitution is.

Again drafting of the constitution has not been in a very easy and lucid language. The Constituent Assembly was pre-dominated by lawyers. The constitution is drafted in legalistic terms making it a 'lawyer's paradise'. This stands in sharp contrast with the U. S. constitution which is acclaimed as specimen of lucid constitutional drafting. However, the fact that our constitution has endured for over sixty years and during periods of acute crisis, shows its inherent strength and resilience. When constitutions of neighboring countries like Pakistan, Burma or Bangladesh were crumbling like houses of cards, our constitution stood steady like a rock.

The great bulk of the Indian constitution is due to several factors.

- The framers of our constitution have borrowed some of the great constitutional principles from the foreign constitutions. The loopholes of these foreign constitutions were properly avoided to ensure healthy political life to the citizens. Thus, the Parliamentary form of government were adopted from the British, the fundamental rights from the U. S. constitution, the Directive principles from the Irish constitution and the idea of emergency from the German Constitution and the Government of India Act of 1935.
- Unlike other constitutions, the Indian constitution provides not only the basic law. It also provides very detailed and minute administrative provisions. This was to prevent subversion of the constitution through legislative process. These details saves a lot of time.
- The vastness of the country and its population size and diversity, compelled the framers of the constitution to make provisions for the protection and promotion of the interests of different regions and groups in the country. Thus, the constitution has elaborate provisions for the minorities, scheduled castes and tribes, etc.
- Finally, the Indian constitution is an omnibus constitution. It is at the same time a constitution for the whole nation as well as for the component states of the Union.

Second feature: Federal Constitution

The Indian constitution is a ***federal constitution***. The term federal has not been used in the constitution. Instead India has been described as a "Union of States." However all the characteristics of a federation viz. two sets of government—national government and a number of governments of the component units, and the division of powers between the national government and the governments of the units. The constitution is the supreme and both the centre and the state government derive its power from it. There is a federal judiciary to act as the guardian of the constitution and to settle disputes between the centre and the units—are all present in the Indian constitution. However, the nature of the Indian federation is different from the nature of older federations like the U.S.A.

Third feature: Parliamentary form of Government

The Indian constitution provides for ***parliamentary form of government*** both at the centre and in the states. This is borrowed from the Westminster model. The adoption of this model is partly due to India's long familiarity with it during the British rule. In such form of government, the head of the Government and the head of the state are two different individuals. For example, the head of the council of ministers in India is the Prime Minister, whilst the President is the head of the state of India.

Fourth feature: Written Constitution

India has a ***written constitution*** which is a federal necessity, India's constitution is far less rigid than a normal federal constitution. Truly, it is more flexible than rigid. Because of this flexibility, it has been possible to amend the constitution 101 times in less than seventy-five years. By contrast the U. S. constitution could be amended only 27 times in about 200 years.

The constitutional amendments made to implement the GST Laws in India further reflects the flexibility of the written Constitution of India.

Fifth feature: Preamble

Like any modern written constitution ***has a preamble*** before it. The preamble is very lucid exposition of the philosophy of the constitution. The original preamble declared India to be a Sovereign Democratic Republic. The 42nd amendment makes India "a Sovereign, Secular Socialist Democratic Republic".

Justice, liberty, equality and fraternity are set as the ideas to be achieved by India as a nation. The preamble to the Indian constitution is praised by all critics for its lucid exposition of lofty political ideals. (Also read: Importance of Preamble In Indian Constitution.)

Sixth feature: Guarantees Fundamental Rights

The Constitution of India ***guarantees fundamental rights*** of the citizens. Rights to equality, freedom, religion and constitutional remedies are the enumerated fundamental rights of Indian citizens. Originally right to property was also a fundamental right. Subsequently right to property was removed from the list of fundamental rights. Hence right to property is now a legal rather than constitutional right. The status property has been altered to give substance to India's socialist aspirations.

Seventh feature: Directive Principles

Taking cue from the Irish constitution, the Indian constitution also ***provides a number of Directive Principles***. Such principles do not constitute any constitutional obligation for the government to fulfill; rather they are guide-lines to the government.

Upholding secularism is another lofty aspect of our constitution. India is a secular nation and does not have any state religion. In a country inhabited by people of all faiths, it is essential that the state remains neutral between religions. Acceptance of secularism as a political ideal was an act of wisdom and boldness particularly after the traumatic experience of India's partition on religious lines.

Finally: Uniform Indian citizenship

Finally, Indian constitution *does not sanction double citizenship* as in federations like the U.S.A. There is only one **uniform Indian citizenship**.

Our constitution was carefully tailored to suit the needs of the Indian people. It is a tribute to the founding fathers that their work has endured in spite of strains and stresses.

Q 13. Discuss the constitutional remedies provided to enforce the fundamental right under the Indian constitution.

Answer:

Article 32 provides the right to Constitutional remedies which means that a person has right to move to Supreme Court (and high courts also) for getting his fundamental rights protected. While Supreme Court has power to issue writs under article 32, High Courts have been given same powers under

article 226. Further, the power to issue writs can also be extended to any other courts (including local courts) by Parliament via making a law for law for local limits of jurisdiction of such courts. Kindly note that Court Martial i.e. the tribunals established under the military law have been exempted from the writ jurisdiction of the Supreme Court and the high courts via article 33.

importance of Article 32 Article 32 was called the "soul of the constitution and very heart of it" by Dr. Ambedkar. Supreme Court has included it in basic structure doctrine. Further, it is made clear that right to move to Supreme Court cannot be suspended except otherwise provided by the Constitution. This implies that this right suspended during a national emergency under article 359.

Article 32 makes the Supreme Court the defender and guarantor of the fundamental rights. Further, power to issue writs comes under original jurisdiction of the Supreme Court. This means that a person may approach SC directly for remedy rather than by way of appeal

Article 32 can be invoked only to get a remedy related to fundamental rights. It is not there for any other constitutional or legal right for which different laws are available. Comparison of Supreme Court and High Court in Issuing writs

Similarities

Power of issuing writs comes under original jurisdiction (to hear the matter at first instance) of both Supreme Court and High Courts. An aggrieved pe
Differences While Supreme Court has power to issue writs via article 32, High Courts have this power via article 226.
While Supreme Court has power to issue writs for enforcement of ONLY Fundamental rights, High Courts can issue writs for enforcement of fundamental rights as well as any other matter also. Thus, High Court has a wider jurisdiction from Supreme Court in matter of issuing writs.

Supreme Court can issue a writ against any person or authority within the territory of India while high court can issue such writ under its own territorial jurisdiction. Thus, High court's writ jurisdiction is narrower in terms of territorial extent.

upreme Court cannot refuse to exercise its writ jurisdiction mainly because article 32 itself is a fundamental right and supreme court is guarantor or defender of fundamental rights. However, for high courts, exercising the power to issue writs is discretionary.

Q 14. "Freedom of Speech and expression is indispensible in a democratic country."State the importance of freedom of speech and expression.

Answer:

The freedom of speech and expression is regarded as first condition of liberty. It occupies a preferred and important position in the hierarchy of the liberty, it is truly said about the freedom of speech that it is the mother of all the other liberties. In modern time it is widely accepted that the right to freedom of speech is the essence in the society and it must be safeguarded all the time. The first principle of a free society is an untrammeled flow of words in a open forum. Liberty to express opinions and ideas without hindrance, and especially without fear of punishment plays significant role in the development of the particular society and ultimately for the state. It is one of the most important fundamental liberties guaranteed against state suppression or regulation.

The freedom of speech and expression is a very important fundamental right under the Constitution. It is indispensible for the development of one's own individuality and for the success of parliamentary to democracy. It is said that in a democracy the right to free expression is not only the right of an individual but rather a right of the community to hear and be informed.

The freedom of speech and expression is not only guaranteed by the Constitution or statutes of various states but also by various international conventions like Universal Declaration of Human Rights, European Convention on Human Rights and fundamental freedoms, International Covenant on Civil and Political Rights etc. These declarations expressly talks about freedom of speech and expression.

Origin of Freedom of Speech And Expression

The concept of freedom of speech originated long back. England's Bill of Rights 1689 adopted freedom of speech as a constitutional right and still in effect. The French Revolution in 1789 adopted the Declaration of Rights of Man and of Citizen. This further affirmed the Freedom of Speech as an undeniable right. The Declaration of Freedom of Speech in Article 11 states

"The free communication of ideas and opinions is one of the most precious of the right of man. Every citizen may, accordingly, speak, write and print with freedom, but shall be responsible for such abuses of this freedom as shall be defined by law".

The Universal Declaration of Human Rights that was adopted in the year 1948 also states that everyone should have the freedom to express their ideas and opinions. The freedom of speech and expression is recognized as a human right under Article 19 and has now formed a part of the international and regional human rights law. In International human rights the freedom of speech and expression is recognized in International Covenant on Civil and Political Rights (ICCPR). Article 19 of the ICCPR states that- "Everyone shall have the right to hold opinions without interference and everyone shall have the right to freedom of speech and expression ; the right shall include freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers either orally or the form of writing or print, in the form of art, or through any other media of their choice"

Meaning of Freedom of Speech And Expression

The Constitution of India guarantees various fundamental rights to its citizens. One such important right is right to freedom under Article 19. This includes right to freedom of speech and expression, right to assemble peacefully and without arms, freedom to form associations and unions, right to move freely throughout the territory of India, right to reside and settle in any part of the territory of India and right to practice and profession or to carry on any occupation, trade or business.

Under this research work, it closely concerns with the Article 19(1)(a) of the Constitution of India. Article 19(1)(a)guarantees that all the citizens have the right to freedom of speech and expression . This right is available only to the citizens of India and not available to any person who is not a citizen of India i.e. foreign nationals.

Freedom of speech and expression means the right to express one's own conviction and opinions freely by means of words of mouth, writing, printing, picture or any other mode. It thus includes the expression of one's idea through any communicable medium or visible representations such as gesture, signs and the like. The expression connotes also publication and thus the freedom of press is included in this category .The Freedom of press is regarded as a species of which the freedom of expression is a genus. Free propagation of ideas is the necessary objective and this may be done on the platform or through the press.

In the Preamble to the Constitution of India, the people of India declared their solemn resolve to secure to all its citizen liberty of thought and expression. The Constitution affirms the right to freedom of expression, which includes the right to voice one's

opinion, the right to seek information and ideas, the right to receive information and the right to impart information. The Indian state is under an obligation to create conditions in which all the citizens can effectively and efficiently enjoy aforesaid rights. In Romesh Thappar v State of Madras, the Supreme Court of India held that the freedom of speech and expression includes freedom to propagate ideas which is ensured by the freedom of circulation of a publication is of little value without circulation.

Importance of Freedom of Speech Amd Expression

"Give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties". – John Milton.

John argued that without human freedom there can be no progress in science, law or politics, which according to him required free discussion of opinion. Mill's on Liberty, published in 1859 became a classic defense of the right to freedom of expression.

John argued that truth drives out falsity, therefore, the free expression of ideas, true or false should not be feared. The truth is not stable or fixed but evolves with time. John also argued that free discussion is necessary to prevent the "deep slumber of a decided opinion". The discussion would drive the onwards March of truth and by considering false views the basis of true views could be re-affirmed.

An opinion only carries intrinsic value to the owner of that opinion, thus silencing the expression of that opinion is an injustice to a basic human right. For Mill, the only instance in which sped can justifiable suppressed is in order to prevent harm from a clear and direct threat. Neither economic or moral implications, nor the speakers own well-being would justify suppression of speech.

"Democracy is based essentially on free debate and open discussion, for that is the only corrective of government action in a democratic setup. If democracy means government of the people by the people and for the people, it is obvious that every citizen must be entitled to participate in the democratic process and in order to enable him to intelligently exercise his right of making a choice, free and general discussion of public matters is absolutely essential"

Q 15. Write a note on Right to Life and personal Liberty

Answer:

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 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 persona 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 declare 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 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.

Q 16. Explain the constitutional provision of Right to Religion under Indian Constitution

Answer

Concept of Religion

One is tempted to agree with Pannam that religion as a word conveys an air of elusive certainty; and as he stresses this very suggestion of form camouflages a complete inner vagueness. yet no one can deny the importance of attempting a workable definition, for such definition would determine the question of the application of Article 25(1).

As far back as 1889, Field J. said;

The term "Religion" has reference to one's view of his relation to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will.

This theistic approach was later approved by Hughes J. in a slight different way;

The essence of religion is belief in a relation to God involving duties superior to those arising from any human relation….. One cannot speak of religious liberty with proper appreciation of its essential and historic significance, without assuming the existance of a belief in a supreme allegiance to the will of God

Karl Marx says;

Man makes religion, religion does not make man. In other distinction, that no one religion should be accorded special privileges in national life or international relations for that would be a violation of the basic principles of democracy and contrary to the best interests of religion and government.

No person should suffer any form of disability or discrimination because of his religion but all alike should be free to share to the fullest degree in the common life.

Definitions by various authors:

1. George Bernard Shaw:"There is only one religion, though there are hundreds of versions of it."

2.Sigmund Freud : "Religion is comparable to childhood neurosis."

3. Rudolph Otto : Religion is that which grows out of, and gives expression to, experience of the holy in its various aspects."

Q 17. What is Religion?

The Constitution uses but does not define the term/expression religion and religious denomination and therefore the Court have found it necessary to explain the meaning and connotation of their word's, the Supreme Court has observed that;
In the background of the provisions of the constitution and the light shed by judicial precedent we may say that religion is a matter of faith. It is a matter of belief and doctrine. It concerns the conscience, i.e., the spirit of man. It must be capable of expression in world and dead, such as worship or ritual.

Religion Under Indian Constitution

The Constitution of India contains in its Chapter on Fundamental Rights several provisions that emphasize complete legal equality of its citizens irrespective of their religion and creed and prohibit and kind of religion-based discrimination between them. Among these provisions are as follows;

1. The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

2. The State shall not discriminate against any citizen on grounds only of religion, race, cast, sex, place of birth, or any of them, either in general or in the matter of access to or use of general and public place and conveniences.

3. There shall be equality of opportunity for all the citizens in the matter of employment or appointments under the State and no citizens shall, on grounds only of religion be ineligible for, or discriminated against, in respect of any employment or office under the State.

4. The traditional religious concept of 'untouchability' stands abolished and its practice in any form is strictly forbidden.

5. If the State imposes compulsory service on citizens for public purposes no discrimination shall be made in this regard on the ground of religion only

.To meet the demands of Article 17 noted above, soon after the commencement of the Constitution Parliament had enacted an Untouchability (Offences) Act, which was later amended and renamed as the Protection of Civil Right Act, 1955. The Act prescribes penalties for the practice of untouchability in various specified forms. A second law enacted in this respect is the Scheduled Cast and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

A. Freedom of Religion

a) Individual's Right;

Religious freedom as an individual's right is guaranteed by the Constitution to 'all persons' within the following parameters

1. All persons are equally entitled to freedom of conscience and the right freely to profess, practice and propogatereligion.
2. There shall be freedom as to payment of taxes for promoting of any particular religion by virtue of which no person shall be compelled to pay any taxes the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion denomination,
3. . No religious instruction is to be provided in the schools wholly maintained by State funding; and those attending any State-recognized or state-aided school cannot be required to take part in any religious instruction or services without their (or if they are minor their guardian's) consent

b) Group Rights

Freedom of religion is guaranteed by the Constitution of India as a group right in the following ways;

1. Every religious denomination or any section thereof has the right to manage its religious affairs; establish and maintain institutions for religious and charitable purposes; and own, acquire and administer properties of all kinds.
2. Any section of the citizens having a distinct language, script or culture of its own shall have the right to conserve the same
3. Religious and linguistic minorities are free to establish and administer educational institutions of their choice, which shall not be discriminated against by the State in the matter of giving aid or compensation in the event of acquisition

B. Fundamental Duties

The Chapter on Fundamental Duties, inserted into the Constitution by the Constitution (Forty-Second Amendment) Act, 1976, includes the following among the basic national obligations of all the citizens:

1. To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities

Q 18. State cannot deny to any person equality before the law or equal protection of laws"

Answer:

QUALITY RIGHTS (ARTICLES14–18)

Article 14 of the Constitution of India reads as under:

"The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

ThesaidArticle is clearly in two parts –while it commands the State not to deny to any person 'equality before law', it also commands the State not to deny the 'equal protection of the laws'.Equality before law prohibits discrimination. It is a negative concept. The concept of 'equal protection of the laws' requires the State to give special treatment to persons in different situations in order to establish equality amongst all. It is positive in character. Therefore, the necessary corollary to this would be that equals would be treated equally, whilst un-equals would have to be treated unequally

Article 15 secures the citizens from every sort of discrimination by the State, on the grounds of religion, race, caste, sex or place of birth or any of them. However, this Article does not prevent the State from making any special provisions for women or children. Further, it also allows the State to extend special provisions for socially and economically backward classes for their advancement. It applies to the Scheduled Castes (SC) and Scheduled Tribes (ST) as well.

Article 16 assures equality of opportunity in matters of public employment and prevents the State from any sort of discrimination on the grounds of religion, race, caste, sex, descent, place of birth, residence or any of them. This Article also provides the autonomy to the State to grant special provisions for the backward classes, under-represented States, SC & ST for posts under the State. Local candidates may also be given preference is certain posts. Reservation of posts for people of a certain religion or denomination in a religious or denominational institution will not be deemed illegal

Q 19. The preamble contains a noble and grand vision kept before them by the framers of the constitution "Discuss in details.

Answer:

The Preamble refers to the introduction or preface to the constitution. It contains the essence of the entire constitution. The Constituent Assembly first met on Dec. 9th, 1946 and the preamble to the Indian constitution based on the 'Objective Resolution' drafted and moved by Pandit Nehru on Dec. 13th, 1947.

Text of the Preamble

We, The People of India, having solemnly resolved to constitute India into a **SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC** and to secure to all its citizens:-

- **JUSTICE -** Social, Economic and Political;
- **LIBERTY -** of thought, expression, belief, faith and worship;
- **EQUALITY -** of status and of opportunity; and to promote among them all
- **FRATERNITY -** assuring the dignity of the nation;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November 1949, do **HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.**

Components of the Preamble

Some of the important components of the preamble are as follows:
(a) Firstly, It indicates the source of authority of the constitution i.e. it states that the constitution has to derive its authority from the people of India.
(b) Secondly, it defines declares India as a Sovereign, Socialist, Secular, Democratic and Republican State.
(c) And, it defines the objects which the constitution seeks to promote, such as - justice, liberty, equality & fraternity etc.

Preamble as a Part of the Constitution

The Supreme Court of India in the Berubari Case (1960) specially opined that Preamble is not of part of the constitution. (Verdict by Justice Gajendragadkar)
(*) Reference by the President of India under article 143 of the constitution on the implementation of the Indo-Pakistan agreement relating to Berubari Union and exchange of enclave - 1960.

Later on in the Kesavahanda Bharati case (1973) Justice Sikri of the Supreme court rejected the earlier opinion and stated the Preamble is a past of the constitution. However is not enforceable.The Supreme court observed that the Preamble is of extreme importance and the constitution should be read and interpreted in the light of the grand noble vision expressed in the preamble.

Amendment of the Preamble

The question as whether the preamble can be amended under Article 368, arose for the first time in Kesavananda Bharati case (1873). It was urged that the preamble cannot be amended as it is not a part of the constitution. The petitioner contended that the amending power in Article 368 cannot be used to destroy or damage the basic elements of the constitution.

The Supreme Court, however held that the preamble is a part of the constitution, and hence it can be amended, subject to the condition that the basic or the fundamental features of the constitution as contained in the preamble cannot be altered by an amendment sender Article 368. So far, the preamble has been amended only once, i.e. in 1976, by the 42nd constitutional Amendment Act, which inducted three new words - Socialist, Secular & Integrity to it.

Conclusion / Importance

Like, any other part of the constitution, the Preamble was also enacted by the constituent Assembly, but it was inducted in the end. The main reason this was to ensure that the preamble has to be in conformity with the constitution as adopted by the Constituent Assembly. While forwarding the Preamble for voting, the President of the Constituent Assembly said. **“ The question is that Preamble stands part of the constitution”**

Hence the opinion held by the supreme court that the Preamble is a part of the constitution, is totally in consonance with the opinion of the framers of the constitution. Furthermore, the recognition if the Preamble as the part of the constitution has enhanced its value as an aid to interpretation of the constitution.

However, it is important to keep several in notice:

(i) The Preamble is not a source of power, Power must be founded on a specific provision.
(ii) Preamble cannot be regarded as a source of probation or limitation upon the powers of a legislature.
(iii) It is non-justiciable, i.e. its provisions are not enforceable in courts of law.

Q 20 . Secularism is a basic structure of the constitution". Explain secularism in relation with right to religion

Answer:

Secularism:

India is a secular country but what is secularism? According to Donald Eugene Smith,' The secular state is a state which guarantees individual and corporate freedom of religion deals with the individual as a citizen irrespective of his religion is not constitutionally connected to a particular, nor does it seek either to promote or interfere with religion upon closer examination it will be seen that the conception of a secular state involves three distinct but inter-related sets of relationships concerning the state, religion and the individual **Indra V. Rajnarayan** 1975 AIR, S.C 2299,the basic feature of the secularism was explained by the hon'ble supreme court which held that, secularism means' that state shall have no religion of its own and all persons of the country shall be equally entitled to the freedom of their conscience and have the right freely to profess, practice and have the right freely to profess, practice and propagate any religion". **S.R.Bommai V. Union of India** 1994 AIR, SC 1981 The Hon'ble Supreme court while upholding the dismissal of four state governments ruled by BJP, on the ground of religious conduct, held that "secular not only meant that the state should have no religion of its own and should be neutral as between different religious, but that political party which sought to capture the power, the religious would come to capture the power, the religions would come to acquire a secondary or less favourable position

Secularism and Constitution of India:

Secularism as contemplated by the Constitution of India has the following distinguishing features:

1. The state will not identify itself with aor be controlled by any religion;
2. While the state guarantees to everyone the right to profess whatever religion one chooses to follow, it will not accord any preferential treatment to any of them
3. No discrimination will be shown by the state against any person on account of his religion or faith
4. The right of every citizen, subject to any general condition, to enter any offices under the state and religious tolerance form the heart and soul of secularism as envisaged by the constitution. It secures the conditions of creating a fraternity of the Indian people which assures both the dignity of the individual and the unity of the nation

The Supreme Court has ruled in (**Bal Patil and Anr. v. union of India**) that the State has no religion and State has to treat all religions and religious people equally and with equal respect without in any manner interfering with their Individual rights of religion, faith and worship.

The objectives and parameters of a secular, socialist, democratic republic had to be expressed in such flexible, yet firm, fashion that a creative and realistic jurisprudence and complex of constitutional strategies could be put into operation which would harmonies not antagonize, religious minorities, integrate not acerbate, hostile strata, abolish not accentuate, the socio-religious discrimination endured by the weaker human sector and generate a system and society where secular unity would comport with cultural diversity

In **Venkataramana Devaru V. Stae of Mysore** 1958 AIR 255,1958 SCR 895 Venkataramana temple was belonging to the Gowda Saraswath Brahaman community. The trustees of this denominational temple refused admission to Harijans on the ground that the caste of the prospective worshipper was a relevant matter of religion according to scriptural authority and that under Art.26(b) of the constitution they had the right to manage their

Indian Model of Secularism:

(2) It has a place not only for the right of individuals to profess their religious beliefs but also for the right of religious communities to establish and maintain educational institution

(3) The acceptance of community specific rights brings us to the third feature of Indian secularism because it was born in a deeply multi-religious society, it is concerned as much with inter-religious domination as it is with intra-religious domination

.

(4) It does not erect a wall of separation between the state and religion. This allows the state to intervene in religions, to help or hinder them without the impulse to control or destroy them.

(5) It is not entirely averse the public character of religion. Although the state is not identified with a particular religion, there is official and therefore public recognition granted to religious communities

(6) Multiple values and principled distance means that the state tries to balance different, ambiguous but equally important values.

This type of model makes its secular ideal more like a contextual, ethically sensitive ,politically negotiated arrangement, rather than a scientific doctrine as conjured up by ideologies and merely implemented by political agents.

Secularism undoubtedly helps and aspires to enable every citizen to enjoy fully the blessing of life, liberty and happiness, but in the pursuit of this ideal, those who believes in secularism must be inspired by a sense of ethical purpose in dealing with their fellow citizens

Q 21. Explain the development stages of Constitution

Answer:

Constitutional Development in India

The British came to India in 1600 as traders, in the form of East India Company, which had the exclusive right of trading in India under a charter granted by Queen Elizabeth I. In 1765, the Company obtained the 'diwani' (rights over revenue and civil justice) of Bengal, Bihar and Orissa. This started its career as a territorial power. In 1858, in the wake of the 'sepoy mutiny', the British Crown assumed direct responsibility for the governance of India. This rule continued until India was granted independence on 15 August, 1947.

With Independence came the need of a Constitution. A Constituent Assembly was formed for this purpose in 1946 and on 26 January, 1950, the Constitution came into being. However, various features of the Indian Constitution and polity have their roots in the British rule. There are certain events in the British rule that laid down the legal framework for the organisation and functioning of government and administration in British India. These events have greatly influenced our constitution and polity.

Regulating Act, 1773

The act designated the Governor of Bengal as the Governor-General of Bengal. The First Governor-General of Bengal was Lord Warren Hastings. The act subordinated the Governors of Bombay and Madras to the Governor-General of Bengal.

The Supreme Court was established at Fort William (Calcutta) as the Apex Court in 1774.

Pitt's India Act of 1784

The act established Board of Control over the Court of directors to guide and supervise the affairs of the company in India. It was introduced to remove the drawbacks of the Regulating Act. It was named after the then British Prime Minister.

The act placed the Indian affairs under the direct control of the British Government.

Charter Act of 1833

Company's monopoly of trade with India was completely abolished. The act created the post of Governor General of India. It made the Governor General of Bengal as

the Governor General of India. First Governor General of India was Lord William Bentick.

Governments of Bombay and Madras were deprived of their legislative powers. This was the final step towards centralization in the British India. The act ended the activities of the East India Company as the commercial body.

Charter Act of 1853

In 1853, the charter act of 1833 was to time out and had to be renewed. It was renewed but no substantial changes were made. Legislative and Executive Councils were separated.

The charter act of 1833 provided the Haileybury college of London should make quota to admit the future civil servants. However, this system of an open competition was never effectively operated. A The Committee under the chairmanship of Lord Macaulay had prepared the regulations in this context.

Government of India Act of 1858

British Crown assumed sovereignty over India from the East India Company. It provided absolute imperial control without any popular participation in the administration of the country. This Act transferred the Government, territories and revenues of India from the East India Company to the British Crown. The rule of company was replaced by the rule of Crown in India.

The powers of the British Crown were to be exercised by the Secretary of State for India. The secretary of state was a member of the British Cabinet. He was assisted by the Council of India, having 15 members. He was vested with complete authority and control over the Indian administration through the Governor-General as his agent. He was responsible ultimately to the British Parliament. The Governor General was made the Viceroy of India. Lord Canning was the first Viceroy of India 1858.

Indian Councils Act of 1861

It introduced, for the first time, the representative institutions in India. It provided that the Governor General's Executive Council should have some Indians as the non-official members while transacting the legislative businesses.

The act initiated the process of decentralization by restoring the legislative powers to the Bombay and the Madras Presidencies. It accorded the statutory recognition to the portfolio system.

Indian Councils Act of 1892

The act introduced the principle of elections but in an indirect manner. It enlarged the functions of the Legislative Councils and gave them the power of discussing the Budget and addressing questions to the Executive.

Indian Councils Act of 1909

This act is also known as the Morley-Minto Reforms after the Secretary of State for India (Lord Morley and the Viceroy Lord Minto). It changed the name of the Central Legislative Council to the Imperial Legislative Council.

The act introduced a system of Communal representation for Muslims by accepting the concept of 'separate electorate'. It was the first attempt to introduce a representative and popular element in Indian Administration. Lord Minto came to be known as the 'Father of communal electorate'.

Government of India Act of 1919

This act is also called Montegue-Chelmsford Reform after the Secretary of State for India (Montegue) and the Viceroy (Chelmsford). It introduced Dyarchy in the Provinces that is division of subjects of administration into transferred and reserved. Transferred subjects to be the responsibility of Ministers responsible to the Legislative Council. Indian Legislature to become Bi-Cameral (Council of State composed of 60 members and Legislature Assembly composed of 144 members).

Simon Commission, 1927

In November 1927 (2 years before the schedule), the British Government announced the appointment a seven-member statutory commission under the chairmanship of Sir John Simon to report on the condition of India under its new Constitution. All the members of the commission were British and hence, all the parties boycotted the commission.

The commission submitted its report in 1930 and recommended the abolition of diarchy, extension of responsible government in the provinces, establishment of a federation of British India and princely states, continuation of communal electorate and so on. To consider the proposals of the commission, the British Government convened three round table conferences of the representatives of the British Government, British India and Indian princely states.

On the basis of these discussions, a 'White Paper on Constitutional Reforms' was prepared and submitted for the consideration of the Joint Select Committee of the British

Parliament. The recommendations of this committee were incorporated (with certain changes) in the next Government of India Act of 1935.

Communal Award, 1932

In August 1932, Ramsay MacDonald, the British Prime Minister, announced a scheme of representation of the minorities, which came to be known as the Communal Award. The award not only continued separate electorates for the Muslims, Sikhs, Indian Christians, Anglo-Indians and Europeans but also extended it to the depressed classes (scheduled castes).

Gandhiji was distressed over this extension of the principle of communal representation to the depressed classes and undertook fast unto death in Yeravada Jail (Poona) to get the award modified. At last, these was an agreement between the leaders of the Congress and the depressed classes. The agreement, known as Poona Pact, retained the Hindu joint electorate and gave reserved seats to the depressed classes.

Government of India Act 1935

The act provided for federation taking the Provinces and the Indian princely states as units. A federal court was to be established. Burma was separated from India.

The act divided the powers between the centre and the units in terms of three lists, namely the Federal List, the Provincial List and the Concurrent List. It provided for the establishment of a Reserve Bank of India to control the currency and credit of the country.

The act introduced bicameralism in 6 out of 11 Provinces. These six Provinces were Assam, Bengal, Bombay, Bihar, Madras and the United Province.

Indian independence Act of 1947

It was based on the famous Mountbetton Plan (3rd June, 1947). Parliament on July 5, 1947. The Act relieved the assent of the crown on 18 July, 1947 and be became effective on 15 August, 1947. The main provisions were:

- Two Dominion States, India and Pakistan, came into existence on 15 August, 1947.
- The boundaries between the two Dominion States were to be determined by a boundary Commission headed by Sir Cyril Radcliff.
- Both the states had the right to frame their Constitutions by their respective Constituent Assemblies. They also had the right to leave the British Common wealth.

- Till the new Constitutions were not effective, the governments in the two states would be run on the basis of Provisions of the Government of India Act, 1935.
- The British Crown ceased to be ruler of India.
- The members of the civil services appointed before 15 August, 1947 continued to remain in service and to enjoy all benefits, which they were entitled to avail so far.

Composition of Constituent Assembly

The Constituent Assembly was constituted in November 1946 under the scheme formulated by the Cabinet Mission Plan.

Each province and princely state (or group of states in case of small states) were to be allotted seats in proportion to their respective population. Roughly, one seat was to be allotted for every million population. Seats allocated to each British province were to be decided among the three principal communities - Muslims, Sikhs and general (all except Muslims and Sikhs), in proportion to their population.

The representatives of each community were to be elected by members of that community in the provincial legislative assembly and voting was to be by the method of proportional representation by means of single transferable vote. The representatives of princely states were to be nominated by the heads of the princely seats. It is thus clear that the Constituent Assembly was to be a partly elected and partly nominated body.

The elections to the Constituent Assembly (for 296 seats allotted to the British Indian Provinces) were held in July-August 1946. The Indian National Congress won 208 seats, the Muslim 73 seats, and the small groups and independents got the remaining 15 seats. However, the 93 seats allotted to the princely states were not filled as they decided to stay away from the Constituent Assembly.

The constituent Assembly was set up in November 1946 as per the Cabinet Mission Plan of 1946. The Drafting Committee was appointed on 29 August 1947, with Dr. B.R. Ambedkar as the Chairman. Originally, the constitution had 22 parts, 395 articles and 8 schedules. The only state having constitution of its own is Jammu and Kashmir.

The Mountbetton plan of 3 June, 1947 announced the partition of the country and a separate constituent assembly for the proposed state of Pakistan.

Working of the Constituent Assembly

The Constituent Assembly held its first meeting on 9 December, 1946. The Muslim League boycotted the meeting and insisted on a separate state of Pakistan. The meeting was thus attended by only 211 members. Dr. Sachchidanand Sinha, the oldest member, was elected as the temporary President of the Assembly, following the French practice.

Later on 11 December, 1946, Dr. Rajendra Prasad and HC Mukherjee were elected as the president and vice-president of the Assembly respectively. Sir B N Rau was appointed as the Constitutional advisor to the Assembly.

The Constituent Assembly worked in three phases:

- I Phase - 6 December 1946 to 14 August 1947
- II Phase - 15 August 1947 to 26 November 1949
- III Phase - 27 November 1949 to March 1952

Q 22. Discuss in details the nature and enforceability of directive principle of state policy

Answer:

The Constitution lays down certain Directive Principles of State Policy which though not justiceable, are 'fundamental in governance of the country' and it is the duty of the State to apply these principles in making laws. These lay down that the State shall strive to promote welfare of people by securing and protecting as effectively as it may a social order in which justice - social, economic and political, shall inform all institutions of national life.

The Directive Principles of State Policy (DPSP) is a guideline in the Constitution of India to the State. They are enumerated in Part IV of the Constitution from Article 36 to Article 51.

Dr. B R Ambedkar *described these principles as 'novel features' of the Constitution.*

These principles lay down that the State shall strive to promote welfare of people by securing and protecting as effectively as it may a social order in which justice - social, economic and political, shall inform all institutions of national life.

Unlike Fundamental Rights, the Directive Principles of State Policy (DPSP) are non-justiciable in nature which means they are not enforceable by the courts for their violation. However, the Constitution itself declares that '*these principles are fundamental in the governance of the country and it shall be the duly of the state to apply these principles in making laws'*. Hence, they impose a moral obligation on the state authorities for their application.

Features of Directive Principles of State Policy (DPSP)

1. It denotes the ideals that the State should keep in mind while formulating policies and enacting laws.

2. It resembles the 'Instrument of Instructions' enumerated in the Government of India Act of 1935. In the words of Dr B R Ambedkar, 'the Directive Principles are like the instrument of instructions, which were issued to the Governor-General and to the Governors of the colonies of India by the British Government under the Government of India Act of 1935. What is called Directive Principles is merely another name for the instrument of instructions. The only difference is that they are instructions to the legislature and the executive'.

3. It constitutes a very comprehensive economic, social and political programme for a modern democratic State which *aimed at realising the high ideals of justice, liberty, equality and fraternity as outlined in the Preamble to the Constitution.* They embody the concept of a 'welfare state' which was absent during the colonial era.

Nature of DPSPs

Article 37 explains in whole the nature of the DPSPs,

"The provisions contained in this Part shall ***not be enforceable by any court****, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the* ***duty of the State to apply these principles in making laws****"*

Thus, DPSPs are not enforceable by any Court, that is, no Court can force the government to enforce these Principles or make laws regarding them. But mere non-enforceability does not make them useless. For the following reasons, this Part has become an important part of the Constitution:

1. Sir B.N. Rau believed that these Principles had an "educative value". [iv] This educative value was for reminding those in power what the aim of the Indian polity is. All the provisions in the Part encompass the goal of the Welfare State that is India.
2. Though these Principles are not legally enforceable, they do have political justifiability. As put by Dr. B.R. Ambedkar, "the government has to answer for them before the electorate at election time."
3. They help the Courts in interpretation of various statutes. The interpretation shall be such that the statutes are not in conflict with them. They also help the courts to determine the scope of Fundamental Rights.

Thus, in *Air India Statutory Corporation v. United Labour Union[v]*, the Supreme Court has rightly observed that DPSPs are forerunners of the U.N. Convention on Right to Development. They are imbedded as an integral part of the Constitution and that they now stand elevated to inalienable fundamental human rights. Though non-justiciable, they are justiciable by themselves.[vi]

Relationship with Fundamental Rights

A major concern regarding the validity of the DPSPs is their compatibility with the Fundamental Rights contained in Part III of the Constitution, enforceable even in the High Courts and the Supreme Court through the manner of writs. The following are the points of difference between the two:

1. The Fundamental Rights are a limitation on the powers of the government operating on an individual, whereas, the DPSPs are instructions to the government for achieving certain ends through their actions.
2. Anything contained in the DPSPs cannot be violated either by the individuals or the State, as long as there is no law made to that effect, while there are strict remedies against violation of an individual's Fundamental Right.[vii]
3. A law against the DPSPs cannot be declared as void by the courts, but this is not the case with Fundamental Rights.[viii]

There often arises a conflict when a question regarding the priority is raised. The views have differed with every judicial decision. In a view taken in 1951, in the case of *State of Madras v. Champakan*[ix] the Supreme Court held that since any law contravening the Fundamental Rights is void, this is not the case if an otherwise valid law contravenes the DPSPs. Thus, the Fundamental Rights should have precedence over DPSPs. This view was, however, altered by the Constitution (42nd Amendment) Act, 1971. It widened Article 31C to basically state that if any law is made to implement the DPSPs it would be immune from unconstitutionality on the grounds that it violates Articles 14 and 19. The *Keshavnanda Bharti v. State of Kerala*[x] judgment also reiterated a similar view that subordinated Fundamental Rights to the DPSPs. But this view has been foiled in *Minerva Mills v. Union of India*[xi] in which, the widening of Article 31C was struck down and it was observed that both these facets were to be delicately balanced and that they were complementary to each other.

Views of the framers of the Constitution

The applicability and usefulness of the non-justiciable DPSPs has been widely debated. In fact, H.M. Seervai went as far as saying that if the Court struck down the DPSPs, there will be no effect; but if the Fundamental Rights were struck down, the effect will be disastrous.[xii] Does their unenforceable nature render them altogether useless? Do they have to be made enforceable in order for them to remain relevant? To answer these questions, it is important to study the views held by the framers of the Constitution regarding these Directives.

The provision to incorporate these DPSPs found wide support in the Constituent Assembly. Even if their effectiveness was questioned, the members supported the sentiments they expressed.[xiii] Several members, namely Rau, Ambedkar, Ayyar and Shah, of the Assembly actively defended their inclusion.

Sir B.N. Rau emphasized on precepts rather than on justiciable rights, and also thus distinguished between justiciable and non-justiciable rights (an inspiration from the Irish Constitution) in his work, *Constitutional Precedents* because of the difficulty in

describing and limiting negative rights. The Precedents, during the Drafting of the DPSPs, supplied the members with at least five of the original twelve provisions of the Principles.[xiv]Rau also emphasized that these rights had an educative value. He also believed that these Principles could occasionally invade the individual rights for greater goods. Therefore, it can be said that he was a strong proponent of the DPSPs.

Dr. B.R. Ambedkar and K.T. Shah were other strong proponents of the Directive Principles. They did not agree with Rau's concept of 'moral precepts' and believed that they must also be justiciable. They propagated the idea of a particular time limit within which these Directives must become justiciable. Ambedkar also submitted to the Assembly a list of Fundamental Rights that included special provisions regarding minorities, nationalization of land and the key industries (especially agriculture), state monopoly over Insurance that was to be made compulsory for every adult, etc. To summarize, he strongly supported the ideology of Socialism. Perhaps this shared ideology prompted Shah to also subscribe to viewpoints similar to Ambedkar's. However, the Assembly rejected this list on the ground that these provisions could be dealt with through further legislation, and there was no need to include them in the Constitution itself. When the inclusion of this list in the part concerning the Fundamental Rights was rejected, Ambedkar put his weight behind the provisions of the DPSPs. Half a loaf of bread was better than none.[xv]

Should DPSPs be made enforceable?

The DPSPs were not made enforceable by the Constituent Assembly due to the reasons mentioned above. Despite the fact that they have not been made justiciable, they are not without use. But will the motives they wanted to achieve become more achievable if they were made enforceable? Do their provisions even resonate with the present ideals held by the society?

A foremost argument in favour of making the Directives enforceable is that their justifiability will keep the autocratic tendencies of the ruling governments in check. Also, most of the provisions contained in the DPSPs are promises made by the contesting parties during the time of elections. These promises, as is common knowledge, are seldom kept. But if these DPSPs are justiciable in a court of law, the government becomes answerable to the people. Their actions will also be controlled by through these Directives. An example would be the provision contained in Article 44, relating to the implementation of a Uniform Civil Code. This provision aims for a uniform civil law (much like the criminal law in force) for all citizens regardless of their religion, and other beliefs. If implemented, it could play a critical role in uniting India, and making divisive policies a thing of the past.

But it is also argued that making the Directives enforceable is futile, since a large number of laws and policies are already in place for the implementation of these DPSPs. For

example, the provision of Panchayati Raj (Article 40) was introduced through an Amendment to the Constitution in 1992. Today, there are 2,27,698 Gram Panchayats, 5906 Intermediate Tiers, and 474 Zila Panchayats in the country.[xviii] For raising the standard of living (Article 47), a number of programs are in place, namely Integrated Rural Development Program (IRDP)[xix], Integrated Tribal Development Program (ITDP), and Pradhan Mantri Gram Sadak Yojna. For implementing Article 39(a) (provision of adequate means of livelihood) the Mahatma Gandhi National Rural Employment Guarantee Act (MNREGA) is in place. For preventing exploitation of children (Article 39(g)) legislations such as the Child Labour (Prohibition and Regulation) Act 1986 have been enforced. Since the governments have been working towards the creation of a welfare state and have implemented most of the Directives by the way of legislations that are enforceable, the need to make the DPSPs justiciable themselves is not crucial.

Another argument against enforcing the DPSPs is that their provisions are not very secular. Though it calls for the implementation of a Uniform Civil Code, it also directs the state to ban the slaughter of cows, a cause that is primarily Hindu. Regarding this provision contained in Article 48, Austin Granville says, “Article 48 shows that Hindu sentiment predominated the Constituent Assembly.”[xx] This sentiment predominated the Constituent Assembly, but it does not predominate the national sentiment today. Recently, Maharashtra and Haryana have banned beef (cow’s meat). This Act has drawn the ire of the country, as it has been considered a move aimed to establish India as a Hindu nation. Similar reactions will follow if ban on cow slaughter is enforced nationwide according to DPSPs.

The Directive Principles also try to impose morals on the citizens, something that is inarguably outside the scope of law. The Directives contain a provision that calls for the ban on alcohol. Though it has never been enforced on a national level, this provision certainly tries to impose certain morals on the people. This can become disastrous for the nation, as the American Prohibition has proven. Thus, Allen was right when he said that, “A little too much law, and you turn a moderate drinker into a dipsomaniac, an agnostic into a blaspheme, the enlightened employer into a gradgrind, and a flirt into a dipsomaniac.”

Conclusion

Keeping in mind the arguments put forth above and the aim of the Constituent Assembly while creating the non-justiciable rights, **it can be concluded that making the DPSPs enforceable is unnecessary**. The Assembly did not want to enforce the Directives because they feared that they would become out of date over time. Secondly, most of their provisions have been enforced through various legislations; those that are not enforceable have debatable relevance in today’s world.

But merely because they are not justiciable in a court of law, does not render them useless. Their importance has increased manifold over the years. They serve not only as guidelines today, but also keep a check on the governments, even though that check is not the Court's but the citizens'. The parties that form governments today are not concerned with the well-being of the nation. They play divisive politics for their personal betterment. They are concerned with the furtherance of their ideologies that the nation may not even share. In this environment, the DPSPs are a yardstick for the government's performance and also a check on arbitrary legislation.

We should be not blinded by the glorious provisions contained in these Directives. They are useful and define us as a welfare state, but enforcing them will serve no purpose. They have mostly been made justiciable through other laws, and amending them will give rise to gross misuse by fanatics. The current position of the Directives is balanced and desirable. **But it is also recommended that they must be made secular and free of morals that they impose on citizens**. They must incorporate the sentiments held by the nation as a whole and not those held by only a particular class.

Q 23. Describe the provisions of Right to equality under the Indian constitution

Answer:

Right to equality given under article 14 of Indian law. it is one of the fundamental right. It ensure the guarantees to every person the right to equality before law & equal protection of the laws .it is not only right of Indian citizens but also right of non-citizens .article 14 says "The state shall of India." article 14 define no one is above the law. All are equal in eye of law.

1.1 Equality before law

"The state shall not deny to any person equality before the law.

1.2 Meaning of right to equality

This means that every person, who lives within territory of India, has the equal right before the law. the meaning of this all are equal in same line. No discrimination based on religion ,race, caste, sex,and place of birth. its mean that all will be treated as equality among equal .and there will be no discrimination based on lower or higher class.

Article-14 Of Constitution Of India

The state not deny to any person equality before the law or the equal protection of the laws within The territory of India. protection prohibition of discrimination on grounds of religion, race, Caste, sex, or place of birth. Prof. Dicey, explaining the concept of legal equality as it operated in England, said: "with us every official, from the prime minister down to a constable or a collector of taxes, is under the same responsibility for every act done without any legal justification as any other citizen."

The phase " equality to the law " find a place in all written constitutions that guarantees fundamental rights. "All citizens irrespective of birth, religion, sex, or race are equal before law ; that is to say, there Shall not be any arbitrary discrimination between one citizen or class of citizens and another." "All citizens shall, as human persons he held equal before law." "All inhabitants of the republic are assured equality before the laws."

Pantanjali Sastri, c.j., has expressed that the second expression is corollary of the first and it is difficult to imaging a situation in which the violation of laws will not be the violation

of equality before laws thus, in substance the two expression mean one and same thing.

According to Dr. Jennings said that: "Equality before the law means that equality among equals the law should be equal for all. And should be equally administered, that like should treated alike. The right to sue and be sued, to prosecute and prosecuted for the same kind of action should be same for all citizens of full age and understanding without distinctions of race, religion, wealth, social status or political influence.

Equal Protection Of Law

"Equal protection of law" has been given in article 14 of our Indian constitution which has been taken from section 1 of the 14th amendment act of the constitution of the united state.

Meaning of equal protection of law: here, it means that each person within the territory of India will get equal Protection of laws.

In Stephen's college v. university of Delhiunder The court held that the expression "Equal protection of the laws is now being read as a positive Obligation on the state to ensure equal protection of laws by bringing in necessary social and economic changes so that everyone may enjoy equal protection of the laws and nobody is denied such protection. If the state leaves the existing inequalities untouched laws d by its laws, it fails in its duty of providing equal protection of its laws to all persons. State will provide equal protection to all the people of India who are citizen of India and as well as non citizen of India.

Exceptions To Rule Of Law

In the case of **Indra Sawhney** the right to equality is also recognized as one of basic features of Indian constitution. Article 14 applies to all person and is not limited to citizens. A corporation, which is a juristic person, is also entailed to the benefit of this article. This concept implied equality for equals and aims at striking down hostile discrimination or oppression of inequality. In the case of Ramesh Prasad v. State of Bihar, AIR 1978 SC 327 It is to be noted that aim of both the concept, ' Equality before law' and ' Equal protection of the law' is the equal Justice.

Underlying priniciple:-

The Principle of equality is not the uniformity of treatment to all in all respects. it only means that all persons similarly circumstanced shall be treated alike both in the privileges conferred and liabilities imposed by the laws. Equal law should be applied to all in the same situation, and there should be no discrimination between one person and another.

Rule Of Law

The rule of law embodied in Article 14 is the " Basic feature" of the Indian constitution. Hence it cannot be destroyed even by an amendment of the constitution under article 368 of the constitution.

Meaning of rule of Law

The Rule of law has been given by prof. Dicey the expression the guarantee of equality before the law. It means that no man is above the law, all are equal in eye of law. The concept of rule of law come from magnacarta.its means that law is equal for all in same line. Because state have no religion all are equal in same line. And uniformity will be applied for all. Every organ of the state under the constitution of India is regulated and controlled by the rule of law.Absence of arbitrary power has been held to be the first essential of rule of law. The rule of law requires that the discretion conferred upon executive authorities must be contained within clearly define limits. The rule of law permeates the entire fabrics of the constitution of India and it forms one of its basic features

New Concept Of Equality For The Protection Of India

In the case of the **Air India v. Nargesh Meerza Regulation** 46 of Indian Airlines regulations provides an air Hostess will be retire from the service upon attaining the age of 35 years or on marriage within 4 years of Service or on first pregnancy, whoever found earlier but regulation 47 of the regulation act the managing director had the discretion extend the age of retirement one year at a time beyond the age of retirement up to the age of 45 years at his option if an air hostess was found medically fit .it was held by the court that an air hostess on the ground of pregency was unreasonable and arbitrary, it was the violation of article 14 under constitution law of India. The regulation did not restrict marriage after four years and if an air hostess after having fulfilled the condition became pregnant, there was no ground why first pregnancy should stand in the way of her running service. of the court said that the termination of service on pregnancy was manifestly unreasonable and arbitrary on the basis of this it was violation of article 14 of Indian constitution.

In **John Vallamattom v. union of India**, section 118 of the Indian succession Act, 1925 court invalidated which prohibited the right of a Christian to make valid will for a religious or charitable purpose only if he made it at least 12 months before his death. The court occurred the prescription of time and the application of the provision only to

Christian artificial having no nexus with the object of law. In P. Rajendan v. state of Madras, court said that there was district wise distribution of seats in state medical colleges on the ground of proportion of population of a district to the total population of the state. classification will be valid under article 14, there must be a relation between the classification and the object sought to be achieved. Any one scheme of admission rules should be devised so as to select the best available talent for admission to medical college in the state. in reality discriminatory as a high qualified candidate from one district may be rejected while a less qualified candidate from another district may be admitted

.In **D.S Nakara v. union of India**, in this case supreme court said that Rule 34 of the central services(pension) rules, 1972 as unconstitutional on the ground that the classification made by it between pensioners retiring before a certain date and retiring after that date was not depend upon the any rational principal it was arbitrary and the infringement of article of article 14 of Indian constitution law.

Q 24. Article 32 is the very soul of the constitution and the very heart of it" Discuss

Answer:

Article 32 provides the right to Constitutional remedies which means that a person has right to move to Supreme Court (and high courts also) for getting his fundamental rights protected. While Supreme Court has power to issue writs under article 32, High Courts have been given same powers under article 226. Further, the power to issue writs can also be extended to any other courts (including local courts) by Parliament via making a law for local limits of jurisdiction of such courts. Kindly note that Court Martial i.e. the tribunals established under the military law have been exempted from the writ jurisdiction of the Supreme Court and the high courts via article 33.

Importance of Article 32 Article 32 was called the "soul of the constitution and very heart of it" by Dr. Ambedkar. Supreme Court has included it in basic structure doctrine. Further, it is made clear that right to move to Supreme Court cannot be suspended except otherwise provided by the Constitution. This implies that this right suspended during a national emergency under article 359.

Article 32 makes the Supreme Court the defender and guarantor of the fundamental rights. Further, power to issue writs comes under original jurisdiction of the Supreme Court. This means that a person may approach SC directly for remedy rather than by way of appeal.

Article 32 can be invoked only to get a remedy related to fundamental rights. It is not there for any other constitutional or legal right for which different laws are available.

Comparison of Supreme Court and High Court in Issuing writs Similarities Power of issuing writs comes under original jurisdiction (to hear the matter at first instance) of both Supreme Court and High Courts. An aggrieved person has option to move any of them

Differences While Supreme Court has power to issue writs via article 32, High Courts have this power via article 226.

While Supreme Court has power to issue writs for enforcement of ONLY Fundamental rights, High Courts can issue writs for enforcement of fundamental rights as well as any other matter also. Thus, High Court has a wider jurisdiction from Supreme Court in matter of issuing writs.

Supreme Court can issue a writ against any person or authority within the territory of India while high court can issue such writ under its own territorial jurisdiction. Thus, High court's writ jurisdiction is narrower in terms of territorial extent.

Supreme Court cannot refuse to exercise its writ jurisdiction mainly because article 32 itself is a fundamental right and supreme court is guarantor or defender of fundamental rights. However, for high courts, exercising the power to issue writs is discretionary.

Write short Note

Q 1. Judicial Review

Answer:

The place of 'judicial review 'in Indian Constitution

In post-independence India, the inclusion of explicit provisions for' judicial review' were necessary in order to give effect to the individual and group rights guaranteed in the text of the Constitution. Dr. B.R. Ambedkar, who chaired the drafting committee of our Constituent Assembly, had described the provision related to the same as the 'heart of the Constitution'.1 Article 13(2) of the Constitution of India prescribes that the Union or the States shall not make any law that takes away or abridges any of the fundamental rights, and any law made in contravention of the aforementioned mandate shall, to the extent of the contravention, be void.

While judicial review over administrative action has evolved on the lines of common law doctrines such as 'proportionality', 'legitimate expectation', 'reasonableness' and principles of natural justice, the Supreme Court of India and the various High Courts were given the power to rule on the constitutionality of legislative as well as administrative actions to protect and enforce the fundamental rights guaranteed in Part III of the Constitution. The higher courts are also approached to rule on questions of legislative competence, mostly in the context of Centre-State relations since Article 246 of the Constitution read with the 7th schedule, contemplates a clear demarcation as well as a zone of intersection between the law-making powers of the Union Parliament and the various State Legislatures

Hence the scope of judicial review before Indian courts has evolved in three dimensions – firstly, to ensure fairness in administrative action, secondly to protect the constitutionally guaranteed fundamental rights of citizens and thirdly to rule on questions of legislative competence between the centre and the states. The power of the Supreme Court of India to enforce these fundamental rights is derived from Article 32 of the Constitution. It gives citizens the right to directly approach the Supreme Court for seeking remedies against the violation of these fundamental rights.

This entitlement to constitutional remedies is itself a fundamental right and can be enforced in the form of writs evolved in common law – such as habeas corpus (to direct the release of a person detained unlawfully), mandamus (to direct a public authority to do

its duty), quo warranto (to direct a person to vacate an office assumed wrongfully), prohibition (to prohibit a lower court from proceeding on a case) and certiorari (power of the higher court to remove a proceeding from a lower court and bring it before itself). Besides the Supreme Court, the High Courts located in the various States are also designated as constitutional courts and Article 226 permits citizens to file similar writs before the High Courts. With the advent of Public Interest Litigation (PIL) and dilution of concept of locus standi in recent decades, Article 32 has been creatively interpreted to shape innovative remedies such as a 'continuing mandamus' for ensuring that executive agencies comply with judicial directions

Judicial review in India comprises of three aspects:

(1) Judicial review of legislative action,

(2) Judicial review of administrative action,

(3) Judicial review of judicial decisions.

Thus, judicial review is a highly complex and developing subject. It has its roots long back and its scope and extent varies from case to case. It is considered to be the basic feature of the Constitution. The court in its exercise of its power of judicial review would zealously guard the human rights, fundamental rights and the citizens' rights of life and liberty as also many non-statutory powers of governmental bodies as regards their control over property and assets of various kinds, which could be expended on building, hospitals, roads and the like, or overseas aid, or compensating victims of crime.

its on the power of judicial review is a recurring theme in the evolution of our Constitution. In some of its distinguished judgments, the Supreme Court has defined the outline of sovereign power as distributed amongst the three branches of Government namely, the legislature, the executive and the judiciary.

There is a compelling case that the power of judicial review delegated to our superior courts in various provisions of the Constitution itself is as much by the command of the people. But people who are in favor of this view argues that judicial inquiry of the validity of legislation is a necessary protection against the oppression of majorities, that the judges do not check the people, the Constitution does and since the Constitution itself is popularly ratified, there is nothing undemocratic in the power of judicial review

The decision of the Honorable Supreme Court of India in Kesavananda Bharti's case marked and explained the term which is called 'basic structure' to measure whether the Parliament is seeking to destroy the Constitution, by using its powers under art. 368, which was so far, understood to be a power, the exercise of which was not subject to Judicial scrutiny. Basic Structure is not contained in one or more provisions of the Constitution of India, but it is supposed to be the sum total of the core of our Constitution.

Also in the same case the honorable court has interpreted the scope and meaning of judicial review. ...The power of judicial review is, however, confined not merely to deciding whether in making the impugned laws the Central or state legislatures have acted within the four corners of the legislative lists earmarked for them; the courts also deal with the question as to whether the laws are made in conformity with and not in violation of the other provisions of the Constitution

Q 2. Mountbatten plan and Indian Independence Act 1947

Answer:

Provisions of the Mountbatten Plan

- British India was to be partitioned into two dominions – India and Pakistan.
- The constitution framed by the Constituent Assembly would not be applicable to the Muslim-majority areas (as these would become Pakistan). The question of a separate constituent assembly for the Muslim-majority areas would be decided by these provinces.
- As per the plan, the legislative assemblies of Bengal and Punjab met and voted for the partition. Accordingly, it was decided to partition these two provinces along religious lines.
- The legislative assembly of Sind would decide whether to join the Indian constituent assembly or not. It decided to go with Pakistan.
- A referendum was to be held on NWFP and Sylhet district (in the province of Assam) to decide which dominion to join. NWFP decided to join Pakistan while Khan Abdul Gaffar Khan boycotted and rejected the referendum.
- The date for the transfer of power was to be August 15, 1947.
- To fix the international boundaries between the two countries, the Boundary Commission was established chaired by Sir Cyril Radcliffe. The commission was to demarcate Bengal and Punjab into the two new countries.
- The princely states were given the choice to either remain independent or accede to India or Pakistan. The British suzerainty over these kingdoms was terminated.
- The British monarch would no longer use the title 'Emperor of India'.
- After the dominions were created, the British Parliament could not enact any law in the territories of the new dominions.
- Until the time the new constitutions came into existence, the Governor-General would assent any law passed by the constituent assemblies of the dominions in His Majesty's name. The Governor-General was made a constitutional head.

Q 3. Certiorary (WRIT)

Answer:

The supreme court, and High courts have power to issue writs in the nature of habeas corpus , quo warranto , mandamus , certiorari ,prohibition etc., under Arts. 32 and 226 respectively. These writs have been borrowed in India from England where they had a long chequered history of development and consequently have gathered a number of technicalities. Power to issue writs is primarily a provision made to make available the Right to Constitutional Remedies to every citizen . The right to constitutional remedies as we know is a guarantor of all other fundamental rights available to the people of India. In addition to the above , the constitution also provides for the parliament to confer on the supreme court power to issue writs , for the purpose other than those mentioned above. Similarly High courts in India are also empowered to issue writs for the enforcement of any of the rights conferred by Part III and for any other purpose

Types of Writs:

There are five types of writs –Habeas corpus , Quo warraranto , Mandamus , Certiorari and Prohibition

The latin term habeas corpus means ‘you must have the body ‘ and a writ for securing the liberty was called habeas corpus ad subjiciendum. By this writ the court directs the person or authority who has detained another person to bring the body of the prisoner before the court so as to enable the court to decide the validity , jurisdiction or justification for such detention. The principal aim of the writ is to ensure swift judicial review of alleged unlawful detention on liberty or freedom of the prisoner or detention . The great value of the writ is that it enables immediate determination of the right of a person as to his freedom. Under Art. 22 , a person arrested is required to be produced before a magistrate within 24 hours of his arrest , and failure to do so would entitle the arrested person to be released .Habeas corpus cannot be granted where a person has been committed to custody under an order from a competent court when prima facie the order does not appear to be without jurisidiction or wholly illegal . Writ of habeas corpus can be invoked not only against the state but also against any individual who is holding any person in unlawful custody or detention . In such circumstances it is the duty of the police to make necessary efforts to see tht the detention is got released but , if despite such efforts , if a person is not found , the police cannot be put under undue pressure to do impossible.

In **Gopalan v.Government of India**, the Supreme court ruled that the earliest date with reference to which the legality of detention may be examined is the date on which the application for the same is made to the court.

2. Quo Warranto:

The term quowarrantomeans what is your authority . The writ of quo warranto is used to judicially control executive action in the matter of making appointments to public offices under relevant statutory provisions . The writ is also used to protect a citizen from the holder of a public office to which he has no right . The writ calls upon the holder of a public office to show to the court under what authority he is holding the office in question . If he is not entitled to the office , the court may restrain him from acting in the office and may also declare the office to be vacant . The writ proceedings not only give a weapon to control the executive from making appointments to public office against law but also tend to protect the public from being deprived of public office to which it has a right.

Quo warranto prevents illegal usurpation of public office by an individual . the necessary ingredients to be satisfied by the court before issuing a writ is that the office in question must be public , created by the constitution or a law and the person holding the office is not legally qualified to hold the office in clear infringements of provisions of the constitution or the law . It is the person against whom writ of quo warranto is directed , who is required to show by what authority the person is entitled to hold the office . While issuing such a writ , the High court merely makes a public declaration of the illegality of the appointment and will not consider other factors , which may be relevant for issuance of a writ of certiorari.

Mandamus

Mandamusis a command issued by a court to an authority directing it to perform a public duty imposed upon it by law . For example , when a body omits to decide a matter which it is bound to decide , it can be commanded to decide the same.

Mandamus can be issued when the Government denies to itself a jurisdiction which it undoubtedly has under the law , or where an authority vested with a power improperly refuses to exercise it . The function of mandamus is to keep the public authorities within the limits of their jurisdiction while exercising public functions .Mandamus can be issued to any kind of authority in respect of any type of function – administrative , legislative , quasi-judicial , judicial Mandamus is used to enforce the performance of public duties by public authorities .Mandamus is not issued when Government is under no duty under the

law . When an authority fails in its legal duty to implement an order of a tribunal, mandamus can be issued directing the authority to do so . Thus , when the appellate transport tribunal accepted the applications of the petitioner for grant of permits, mandamus was issued to the concerned authority to issue the permits to the petitioner in terms or the tribunal order .Mandamus is issued to enforce a mandatory duty which may not necessarily be a statutory duty.

In **Bombay municipality v. Advance Builders**, the court directed the municipality to implement a planning scheme which was prepared by it and approved by the Government under the relevant statute but on which no action was taken for a considerable time.

1. **Certiorari and Prohibition**

These writs are designed to prevent the excess of power by public authorities . Formerly these writs were issued only to judicial and quasi-judicial bodies. Certiorari and Prohibition are regarded as general remedies for the judicial control of both quasi judicial and administrative decisions affecting rights.

'Certiorari'is a latin word being passive form of word "certiorari" meaning inform . A writ of certiorari or a writ in the nature of certiorari can only be issued by the Supreme court under Art. 32 and a High court under Art. 226 to direct , inferior courts , tribunals or authorities to transmit to the court the record of proceedings disposed of or pending therein for scrutiny , and , if necessary , for quashing the same . But a writ of certiorari can never be issued to call for the record or papers and proceedings of an Act or Ordinance and for quashing such an Act or Ordinance.

Certiorari under Art. 226 is issued for correcting gross error of jurisdiction i.e. when a subordinate court is found to have acted (1) without jurisdiction or by assuming jurisdiction where there exists none , or (2) in excess of its jurisdiction by over stepping or crossing the limits of jurisdiction or (3) acting in flagrant disregard of law or rules of procedure or acting in violation of principles of natural justice where there is no procedure specified and thereby occasioning failure of justice.

A writ of prohibition is normally issued when inferior court or tribunal (a) proceeds to act without jurisdiction or in excess of jurisdiction (b) proceeds to act in violation of rules of natural justice or (c) proceeds to act under a law which is itself ultra vires or unconstitutional or (d) proceeds to act in contravention of fundamental rights.

There is a fundamental distinction between writs of prohibition and certiorari. They

are issued at different stages of proceedings . When an inferior court takes up a hearing for a matter over which it has no jurisdiction , the person against whom hearing is taken can move the superior court for writ of prohibition on which order would be issued forbidding the inferior court from continuing the proceedings . on the other hand if the court hears the matter and gives the decision , the party would need to move to superior court to quash the decision / order on the ground of want of jurisdiction.

These writs are issued on the following grounds : when the authority is acting or has acted under an invalid law; jurisdictional error; error apparent on the face of record ; findings of fact not supported by the evidence ; failure of natural justice.

Conclusion:

These are the five types of writs which were issued by the Supreme court and High court under Arts. 32 and 226 of the constitution .Habeas corpus and Quo warranto being confined to specific situations, Certiorari and Mandamus are the two most commonly sought writs to control the actions of administrative bodies.

Q 4. Morle Minto Reforms

Answer:

Major provisions of the Morley-Minto reforms

- The legislative councils at the Centre and the provinces increased in size.
    - Central Legislative Council – from 16 to 60 members
    - Legislative Councils of Bengal, Madras, Bombay and United Provinces – 50 members each
    - Legislative Councils of Punjab, Burma and Assam – 30 members each
- The legislative councils at the centre and the provinces were to have four categories of members as follows:
    - Ex officio members: Governor General and members of the executive council.
    - Nominated official members: Government officials who were nominated by the Governor-General.
    - Nominated non-official members: nominated by the Governor-General but were not government officials.
    - Elected members: elected by different categories of Indians.
- The elected members were elected indirectly. The local bodies elected an electoral college who would elect members of the provincial legislative councils. These members would, in turn, elect the members of the Central legislative council.
- The elected members were from the local bodies, the chambers of commerce, landlords, universities, traders' communities and Muslims.
- In the provincial councils, non-official members were in a majority. However, since some of the non-official members were nominated, in total, a non-elected majority was there.
- Indians were given membership to the Imperial Legislative Council for the first time.
- It introduced separate electorates for the Muslims. Some constituencies were earmarked for Muslims and only Muslims could vote their representatives.
- The members could discuss the budget and move resolutions. They could also discuss matters of public interest.
- They could also ask supplementary questions.
- No discussions on foreign policy or on relations with the princely states were permitted.
- Lord Minto appointed (on much persuasion by Morley) Satyendra P Sinha as the first Indian member of the Viceroy's Executive Council.
- Two Indians were nominated to the Council of the Secretary of State for Indian affairs.

Q 5. Doctrine of Eclipse

Answer:

Doctrine Of Eclipse Meaning -

The Doctrine of Eclipse is based on the Principle that a law which violates Fundamental Rights is not nullity or void ab initio but becomes only unenforceable. It is Overshadowed by the Fundamental Rights and remains dormant, but it is not dead.

According to Article 13(1) of the Indian Constitution, all laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void. Such laws are not dead they come alive if the restrictions posed by the fundamental rights of the constitution are removed. Also, such eclipsed laws are operative for cases that arose before the commencement of the Constitution. Hence, the Current Fundamental Rights eclipse the Contravening part of those laws, rendering that part of the law as dormant.

Relevant Case Law -

1) Bhikaji Narain Vs State of Madhya Pradesh (AIR 1955 SC 781)

In this case provision of C.P. and Berar Motor vehicles Amendment Act, 1947 authorized the State Government to make up the entire motor transport business in the province to the exclusion of motor transport operators. This provision, though valid when enacted, became void on the be coming into force of the Constitution in 1950 as they violated Article 19 (1) (G) of the Constitution. However, 1951, clause (6) of Article 19 was amended by the constitution first Amendment Act, as so to authorize the Government to monopolies any business. The Supreme Court held that "the effect of the amendment was to remove the shadow and to make the impugned Act free from all blemish or infirmity".

It became enforceable against citizens as well as non-citizens after the constitutional impediment was removed. This law was merely Eclipsed for the time being by the fundamental rights. As soon as the eclipse is removed the law begins to operate from the date of such removal.

2) Deep Chand Vs State of Uttar Pradesh

In this case, the supreme court held that a post-constitutional law made under article 13 (2) which contravenes a fundamental right is nullity from its Inception and a stillborn law. It is void ab initio. The doctrine of eclipse does not apply to post-constitutional laws and therefore, a subsequent Constitutional Amendment cannot revive it. The Doctrine of eclipse applies only to pre-constitutional law and not post-constitutional law.

Q 6. Right to life and liberty

Answer:

According to article 21 of the constitution of India, "No person shall be deprived of his life or personal liberty, except according to procedure established by law". Although unlike USA constitution 'Due process of law'[2]has not been mentioned in our constitution even though, after the decision of **Maneka Gandhi vs UOI** we follow the principle of natural justice. This article is very important article because it is a magna karta for human rights. This article cannot be suspended even during emergency.[3]

According to Bhagwati, J., Article 21 "embodies a constitutional value of supreme importance in a democratic society." Iyer, J., has characterized Article 21 as "the procedural magna carta protective of life and liberty.

This right has been held to be the heart of the Constitution, the most organic and progressive provision in our living constitution, the foundation of our laws.

Right to life is fundamental to our very existence without which we cannot live as human being and includes all those aspects of life, which go to make a man's life meaningful, complete, and worth living. It is the only article in the Constitution that has received the widest possible interpretation. Under the canopy of Article 21 so many rights have found shelter, growth and nourishment. Thus, the bare necessities, minimum and basic requirements that is essential and unavoidable for a person is the core concept of right to life.

1. **Meaning Of Right To Life:**

Right to life is not easy to be defined. But with the help of some important cases, I am trying to define it-

Munn Vs. Illinois.[4]Justice Field"By the term life as here used something more is meant than mere animal existence .The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by the amputation of an arm or leg..."

Maneka Gandhi vs. UOI[5]-Right to life is not confined to physical existence but it includes right to life with human dignity.

Francis Coraliee Vs. Delhi,[6]-Justice Bhagwati," We think that right to life includes right live with human dignity and all that goes along with it , namely , the bare

necessaries of life such as adequate nutrition , clothing and shelter over the head and facilities for reading , writing and expressing oneself in diverse forms , freely moving about and mixing and com-mingling with fellow human being

Olga Tellis vs Bombay Municiple Corporation,[7]The Supreme Court said that life is not restricted to the mere animal existence of a person. It means something more..

Shantisar Builders vs. Narayanan Khimalal Totame,[8]Life for the animal is the bare protection of the body, for a human being , it has to be suitable accommodation which allows him to grow in all aspects- physical , mental and intellectual.

2. Meaning Of Personal Liberty:

Dicey[9]saysPersonal libertymeans a personal right not to be subjected to imprisonment, arrest or other physical coercion in any manner that does not admit of legal justification.
A.K. Gopalan vs. State of Madras[10]Personal Liberty' in Article 21 means nothing more than the liberty of physical body that is freedom from arrest and detention without authority of law.

Kharak Singh Vs. State of Uttar Pradesh[11]Personal liberty is used as compendious term to include itself all verities of rights which go to make up personal liberties.

Maneka Gandhi vs. UOI[12]Personal liberty makes for the worth of the human being and travels makes liberty worthwhile. Right to go abroad cannot be curtailed except according to procedure established by law.

Q 7. State

Answer:

State Under Indian Constitution

Part III of the Constitution deals with Fundamental Rights which are the restriction on the power of the legislature, executive and judiciary, that, no one can encroach upon this part. In order to define the scope of these rights and the scope of remedy under Article 32 constitution makers have defined "State" in the beginning as under:

"the Government and the Parliament of India and the Government and the Legislature of each of the State and all local or other authority within the territory of India or under the control of the Government of India"

Therefore to understand the expanded meaning of the term "other authorities" in Article 12, it is necessary to trace the origin and scope of Article 12 in the Indian Constitution. Present Article 12 was introduced in the Draft Constitution as Article 7. While initiating a debate on this Article in the Draft Constitution in the Constituent Assembly, Dr. Ambedkar described the scope of this Article and the reasons why this Article was placed in the Chapter on fundamental rights as followed:

"The object of fundamental rights is twofold. First, that every citizen must be in a position to claim those rights. Secondly, they must be binding upon every authority – I shall presently explain what the word 'authority' means – upon every authority which has got either the power to make laws or the power to have discretion vested in it. Therefore, it is quite clear that if the fundamental rights are to be clear, then they must be binding not only upon the Central Government they must not only be binding upon the Provincial Government, they must not only be binding upon the Governments established in the Indian States, they must also be binding upon District Local Boards, Municipalities, even village Panchayats and taluk boards, in fact every authority which has been created by law and which has got certain power to make laws, to make rules, or make bye-laws.

If that proposition is accepted – and I do not see anyone who cares for Fundamental Rights can object to such a universal obligation being imposed upon every authority created by laws then, what are we to do to make our intention clear? There are two ways of doing it one way is to use a composite phrase such as 'the State', its we have done in Article 7; or, to keep on repeating every time, the Central Government the Provincial Government the State Government the Municipality, the Local Board, the Port Trust or

any other authority'. It seems to me not only most cumbersome but stupid to keep on repeating this phraseology every time we have to make a reference to some authority. The wisest course is to have this comprehensive phrase and to economies in words."

From the above, it is seen that the intention of the Constitution framers in incorporating this Article was to treat such authority which has been created by law and which has got certain powers to make laws to make rules and regulations to be included in the term "other authority" as found presently in Article 12. This definition has given birth to series of judgments and cases primarily due to inclusion of words "authority" in the last part of the definition.

Attempts have been made to determine the scope this word initially the definition of State was treated as exhaustive and confined to the authorities or those which could be read ejusdegeneris with the authorities mentioned in the definition of Article 12 itsel

The next stage was reached when the definition of 'State' came to be understood with reference to the remedies available against it. For example, historically, a writ of mandamus was available for enforcement of statutory duties or duties of a public nature. Thus a statutory corporation, with regulations farmed by such Corporation pursuant to statutory powers was considered a State, and the public duty was limited to those which were created by statute.

The decision of the Constitution Bench of this Court in Rajasthan Electricity Board v. Mohan Lal and Ors, is illustrative of this. The question there was whether the Electricity Board – which was a corporation constituted under a statute primarily for the purpose of carrying on commercial activities could come within the definition of 'State' in article 12.

Meaning of the State

According to Article 12 of the Constitution of India, the term 'State' can be used to denote the union and state governments, the Parliament and state legislatures and all local or other authorities within the territory of India or under the control of the Indian government

Over the period of time, the Supreme Court has explained the ambit of 'State' to include Corporation such as LIC and ONGC since they perform tasks "very close to governmental or sovereign functions." In fact, the term 'State' also accommodates any authority that's created by the Constitution of India and has the power to make laws. It need not perform governmental or sovereign functions

Understanding the Meaning of 'State' Under Article 12

Executive and legislature of Union and states include union and state governments along with Parliament and State legislatures. The President of India and Governors of states can also be referred as 'State' as they are a part of the executive. The term 'government' also includes any department of government or any institution under its control. The Income Tax Department and the International Institute for Population Sciences could be cited as examples

Local authorities', as used in the definition, refers to municipalities, Panchayats or similar authorities that have the power to make laws & regulations and also enforce them. The expression 'Other authorities' could refer to any entity that exercises governmental or sovereign functions.

Definition of State U/A 12

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

- The Government and Parliament of India, i.e., Executive and Legislature of the Union.
- The Government and Legislature of each State, i.e., Executive and Legislature of State..
- All local and other authorities within the territory of India.
- All local and other authorities under the control of the Government of India

Q 8. Right against exploitation

Answer:

Right against exploitation

he right against exploitation, given in Articles 23 and 24, provides for two provisions, namely the abolition of trafficking in human beings and Begar (forced labour), and the abolition of employment of children below the age of 14 years in dangerous jobs like factories, mines, etc. Child labour is considered a gross violation of the spirit and provisions of the constitution. Begar practised in the past by landlords, has been declared a crime and is punishable by law. Trafficking in humans for the purpose of the slave trade or prostitution is also prohibited by law. An exception is made in employment without payment for compulsory services for public purposes. Compulsory military conscription is covered by this provision.

Right Against Exploitation (Article 23-24)

Article - 23

Prohibition of traffic in human beings and forced labour.-

(1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purpose, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

Article - 24

Prohibition of employment of children in factories, etc.-

No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment. Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7)

Q 9. Doctrine of severability

Answer:

The doctrine of severability means that a law is void only "to the extent of the inconsistency or contravention" with the relevant Fundamental Right aaccording to Article 13 of the Indian Constitution. The above provision means that an Act may not be void as a whole, only a part of it may be void and if that part is severable from the rest which is valid, and then the rest may continue to stand and remain operative. The Act will then be read as if the invalid portion was not there. If, however, it is not possible to separate the valid from the invalid portion, then the whole of the statute will have to go.

It is not the whole Act which would be held invalid by being inconsistent with Part III of the Constitution but only such provisions of it which are violative of the fundamental rights

It is not the whole Act which would be held invalid by being inconsistent with Part III of the Constitution but only such provisions of it which are violative of the fundamental rights, provided that the part which violates the fundamental rights is separable from that which does not isolate them. But if the valid portion is so closely mixed up with invalid portion that it cannot be separated without leaving an incomplete or more or less mingled remainder the court will declare the entire Act void. This process is known as doctrine of severability or reparability.

The Supreme Court considered this doctrine in **A.K. Gopalan v. State of Madras**, A.I.R. 1950 S.c. 27 and held that the preventive detention minus section 14 was valid as the omission of the Section 14 from the Act will not change the nature and object of the Act and therefore the rest of the Act will remain valid and effective. The doctrine was applied in **D.S. Nakara v. Union of India**, AIR 1983 S.C. 130 where the Act remained valid while the invalid portion of it was declared invalid because it was severable from the rest of the Act. In **State of Bombay v. F.N. Balsara**,A.I.R.l.951 S.C. 318 it was held that the provisions of the Bombay Prohibition Act, 1949 which were declared as void did not effect the validity of the entire Act and therefore there was no necessity for declaring the entire statute as invalid

The doctrine of severability has been elaborately considered by the Supreme Court in **R.M.D.C. v.Union of India**, AIR 1957 S.c. 628, and the following rules regarding the question of severability has been laid down :

1. The intention of the legislature is the determining factor in determining whether the valid paIt of a statute are severable from the invalid parts.

2. If the valid and invalid provisions are so inextricably mixed up that they cannot be separated from the another, then the invalidity ofa portion must result in the invalidity of the Act in its entirety. On the other hand, if they are so distinct and separate that after striking out what is invalid what remains is itself a complete code independent of the rest, then it will be upheld notwithstanding that the rest had become unenforceable.

3. Even when the provisions which are valid, are distinct and separate from those which are invalid if they form part of a single scheme which is intended to be operative as a whole, then also the invalidity ofa part will result in the failure of the whole.

4. Likewise when the valid and invalid parts of a Statute are independent and do not form part of a Scheme but what is left after omitting the invalid portion is so thin and truncated as to be in substance different from what it was when it emerged out of legislature, then also it will be rejected in its entirety.

5. The severability of the valid and invalid provisions of a Statute does not depend on whether provisions are enacted in same section or different section, it is not the form but the substance of the matter that is material and that has to be ascertained on an examination of the Act as a whole and of the setting of the relevant provisions therein.

6. If after the inval id portion is expunged from the Statute what remains cannot be enforced without making alterations and modifications therein, then the whole of it must be struck down as void as otherwise it will amount to judicial legislation.

7. In determining the legislative intent on the question of severability, it will be legitimate to take into account the history of legislation, its object, the title and preamble of it

Q 10. Rowaltt Act

Answer:

The **Anarchical and Revolutionary Crimes Act of 1919** , popularly known as the **Rowlatt Act** or **Black Act**, was a legislative act passed by the Imperial Legislative Council in Delhi on 10 March 1919, indefinitely extending the emergency measures of preventive indefinite detention, incarceration without trial and judicial review enacted in the Defence of India Act 1915 during the First World War. It was enacted in light of a perceived threat from revolutionary nationalists to organisations of re-engaging in similar conspiracies as during the war which the Government felt the lapse of the DIRA regulations would enable.[1][2][3][4][5]

Passed on the recommendations of the Rowlatt Committee and named after its president, British judge Sir Sidney Rowlatt, this act effectively authorized the government to imprison any person suspected of terrorism living in British India for up to two years without a trial, and gave the imperial authorities power to deal with all revolutionary activities.

The unpopular legislation provided for stricter control of the press, arrests without warrant, indefinite detention without trial, and juryless *in camera* trials for proscribed political acts. The accused were denied the right to know the accusers and the evidence used in the trial.[6] Those convicted were required to deposit securities upon release, and were prohibited from taking part in any political, educational, or religious activities.[6] On the report of the committee, headed by Justice Rowlatt, two bills were introduced in the central legislature in February 1919. These bills came to be known as "black bills". They gave enormous powers to the police to search a place and arrest any person they disapproved of without warrant. Despite much opposition, the Rowlatt Act was passed in March 1919. The purpose of the act was to curb the growing nationalist upsurge in the country.

Mahatma Gandhi, among other Indian leaders, was extremely critical of the Act and argued that not everyone should be punished in response to isolated political crimes. The Act angered many Indian leaders and the public, which caused the government to implement repressive measures. Gandhi and others thought that constitutional opposition to the measure was fruitless, so on 6 April, a hartal was organised where Indians would suspend all business and would fast, pray and hold public meetings against the 'Black Act' as a sign of their opposition and civil disobedience would be offered against the law. This event was known as the Non-cooperation movement.

However, the success of the hartal in Delhi, on 30 March, was overshadowed by tensions running high, which resulted in rioting in the Punjab and other provinces. Deciding that

Indians were not ready to make a stand consistent with the principle of nonviolence, an integral part of satyagraha, Gandhi suspended the resistance.

The Rowlatt Act came into effect in March 1919. In the Punjab the protest movement was very strong, and on 10 April two leaders of the congress, Dr. Satya Pal and Dr. Saifuddin Kitchlew, were arrested and taken secretly to Dharamsala.

The army was called into Punjab, and on 13 April people from neighbouring villages gathered for Baisakhi Day celebrations and to protest against deportation of two important Indian leaders in Amritsar, which led to the infamous Jallianwala Bagh massacre of 1919.[7][8]

Accepting the report of the Repressive Laws Committee, the Government of India repealed the Rowlatt Act, the Press Act, and twenty-two other laws in March 1922.[9]

Q 11 . Fundamental Duties

Answer:

The 42nd Amendment Act, 1976 added a Chapter IV-A which consist of only one Article 51-A which dealt with a Code of Ten Fundamental Duties for citizens. Fundamental duties are intended to serve as a constant reminder to every citizen that while the constitution specifically conferred on them certain Fundamental Rights, it also requires citizens to observe certain basic norms of democratic conduct and democratic behaviour because rights and duties are co-relative.

Fundamental Duties

Article 51-A Says that it shall be the duty of every citizen of India-

1. to abide by the constitution and respect its ideal and institutions;
2. to cherish and follow the noble ideals which inspired our national struggle for freedom;
3. to uphold and protect the sovereignty, unity and integrity of India;
4. to defend the country and render national service when called upon to do so;
5. to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional diversities, to renounce practices derogatory to the dignity of women;
6. to value and preserve the rich heritage of our composite culture;
7. to protect and improve the natural environment including forests, lakes, rivers, and wild-life and to have compassion for living creatures;
8. to develop the scientific temper, humanism and the spirit of inquiry and reform;
9. to safeguard public property and to abjure violence;
10. to strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of endeavor and achievement. Further, one more Fundamental duty has been added to the Indian Constitution by 86th Amendment of the constitution in 2002. who is a parent or guardian , to provide opportunities for education to his child, or as the case may be, ward between the age of six and fourteen years.

Need For Fundamental Duties

India is a country where people belonging to different castes, creed, religion, sects etc. live together and in order to maintain harmony and peace and to encourage the feeling of brotherhood and oneness among them following the Fundamental Duties on their part plays a vital role in upholding and protecting the sovereignty, unity and integrity of our country which is of inevitable importance. It reminds the citizens that rights and duties go hand in hand.

Sources of Fundamental Duties

It is significant to note that none of the Constitutions of Western Countries specifically provide for the duties and obligations of citizens . Among the Democratic Constitutions of the world we find mention of certain duties of the citizens in the Japanese Constitution. In Britain, Canada & Australia the rights and duties of citizens are governed largely by Common Law and Judicial Decisions. The French Constitution Makes only a passing reference to duties of citizens. The American Constitution provides only for fundamental rights and not duties of citizen.

But the Constitution of Socialist Countries, however, lay great emphasis on the citizen's duties like Article 32 of the Yugoslavian Constitution and Chapter VII of the Soviet Constitution lays down Fundamental Rights & Duties and also Chapter II of the Constitution of Republic Of China. All the aforesaid Constitutions specifically lay down duties of the people, they also guarantee the "Right to Work" to every citizen which the Indian Constitution does not provide still today. The "right to work" should, therefore, be guaranteed to every citizen who are expected to do certain to the nation.

Enforcement of duties

The fundamental duties are statutory duties and shall be enforceable by Law. Parliament , y law , will provide penalties to be imposed for failure to fulfil those duties and 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 and for its proper enforcement it is necessary that it should be known to all. In AIIMS Students Union v. AIIMS AIR (1983) 1 SCC 471 it has been held that Fundamental Duties though not enforceable by writ of the court, yet provide a valuable guide and aid to interpretation of constitutional and legal issues.

Criticism

Some of the duties are vague and terms used therein are complex which even a highly educated man would find difficult to grasp like it is difficult to identify the noble ideas that inspired our national struggle for freedom.
Some of the duties clash with religious principles of some religious sects in the country. In a Judgement the Supreme Court held that no person can be forced to join the singing of the National Anthem, if he has genuine religious obligations which place religious belief above the patriotism

.There is no specific provision nor any sanction as to implementation and enforcement of Fundamental Duties.

Conclusion

The Fundamental Duties inherit some of the ideals, thoughts, beliefs of great saints philosophers, social reformers and political leaders thus in spite of its vagueness the fundamental Duties fulfils a long standing need. It acts as a constant reminder that rights and duties go hand in hand. The Fundamental Duties are laid down to draw the attention of the citizens towards the duties they owe towards their Motherland. It clearly elaborates the thoughts of John .F. Kennedy ", Do not ask what the country can do for you, but ask what you can do for the country".

Q 12. Right to Equality

Answer:

Right to equality is an important right provided in Articles 14, 15, 16, 17 and 18 of the constitution. It is the principal foundation of all other rights and liberties and guarantees the following:...

- Equality before law: Article 14 of the constitution guarantees that all people shall be equally protected by the laws of the country. It means that the State[4] will treat people in the same circumstances alike. This article also means that individuals, whether citizens of India or otherwise shall be treated differently if the circumstances are different.

- Social equality and equal access to public areas: Article 15 of the constitution states that no person shall be discriminated on the basis of religion, race, caste, sex or place of birth. Every person shall have equal access to public places like public parks, museums, wells, bathing ghats, etc. However, the State may make any special provision for women and children. Special provisions may be made for the advancements of any socially or educationally backward class or scheduled castes or scheduled tribes.

- Equality in matters of public employment: Article 16 of the constitution lays down that the State cannot discriminate against anyone in the matters of employment. All citizens can apply for government jobs. There are some exceptions. The Parliament may enact a law stating that certain jobs can be filled only by applicants who are domiciled in the area. This may be meant for posts that require knowledge of the locality and language of the area. The State may also reserve posts for members of backward classes, scheduled castes or scheduled tribes which are not adequately represented in the services under the State to bring up the weaker sections of the society. Also, there a law may be passed that requires that the holder of an office of any religious institution shall also be a person professing that particular religion. According to the *Citizenship (Amendment) Bill*, 2003, this right shall not be conferred to Overseas citizens of India.[8]

- Abolition of untouchability: Article 17 of the constitution abolishes the practice of untouchability. The practice of untouchability is an offense and anyone doing so is punishable by law. The *Untouchability Offences Act* of 1955 (renamed to *Protection of Civil Rights Act* in 1976) provided penalties for preventing a person from entering a place of worship or from taking water from a tank or well.

- Abolition of Titles: Article 18 of the constitution prohibits the State from conferring any titles. "Citizens of India cannot accept titles from a foreign State. The British government had created an aristocratic class known as *Rai Bahadurs* and *Khan Bahadurs* in India – these titles were also abolished. However, Military and academic distinctions can be conferred on the citizens of India. The awards of *Bharat Ratna* and *Padma Vibhushan* cannot be used by the recipient as a title and do not, accordingly, come within the constitutional prohibition".[12] The Supreme Court, on 15 December 1995, upheld the validity of such awards.

Q 13. Double Jeopardy

Answer:

Double jeopardy is a procedural defence that prevents an accused person from being tried again on the same (or similar) charges and on the same facts, following a valid acquittal or conviction.

If this issue is raised, evidence will be placed before the court, which will normally rule as a preliminary matter whether the plea is substantiated; if it is, the projected trial will be prevented from proceeding. In some countries, including Canada, Mexico and the United States, the guarantee against being "twice put in jeopardy" is a constitutional right. In other countries, the protection is afforded by statute

In common law countries, a defendant may enter a per emptory plea of autrefo is acquit (formerly acquitted) orautrefo is convict[1], with the same effect.

The doctrine appears to have originated in Roman law, in the principle non bis in idem ("an issue once decided must not be raised again").

Double Jeopardy In India

A partial protection against double jeopardy is a Fundamental Right guaranteed under Article 20 (2) of the Constitution of India, which states "No person shall be prosecuted and punished for the same offence more than once"[2]. This provision enshrines the concept of autrefois convict, that no one convicted of an offence can be tried or punished a second time. However, it does not extend to autrefo is acquit, and so if a person is acquitted of a crime he can be retried. In India, protection against autrefois acquitis a statutory right, not a fundamental one. Such protection is provided by provisions of the Code of Criminal Procedure rather than by the Constitution.

There are several reasons for double jeopardy protection:

- To prevent the government from using its superior resources to wear down and erroneously convict innocent persons.
- To protect individuals from the financial, emotional, and social consequences of successive prosecutions
- .To preserve the finality and integrity of criminal proceedings, which would be compromised if the government were allowed to ignore verdicts it did not like.
- To restrict prosecutorial discretion over the charging process and

- To eliminate judicial discretion to impose cumulative punishments otherwise not clearly prohibited by law.

Eligibility For Double Jeopardy Protection:

Only certain types of criminal cases qualify for double jeopardy protection. If a particular proceeding does not place an individual in jeopardy, then subsequent proceedings against that individual for the same conduct are not prohibited. Although the text of the Fifth Amendment suggests that double jeopardy protection extends only to proceedings threatening "life or limb," the Supreme Court has established that the right is not limited to capital crimes or corporeal punishment. Instead, protection extends to all felonies, misdemeanors, and juvenile delinquency adjudications, regardless of the punishments they prescribe

.

It is not just a question of which proceedings are subject to double jeopardy, but also when jeopardy begins, or attaches. This question is crucial because actions taken by the government before jeopardy attaches, such as dismissing the indictment, will not prevent later proceedings against the same person for the same offense. Once jeopardy has attached, the full array of Fifth Amendment protections against multiple prosecutions and multiple punishments takes hold

.

For jury trials, jeopardy attaches when the jury is sworn. In criminal cases tried by a judge without a jury, jeopardy attaches when the first witness is sworn in. If a defendant enters a plea agreement with the prosecution, jeopardy does not attach until the court accepts the plea.

It is just as important to determine when double jeopardy protection ends as when it begins, but it can be little more complicated. Once jeopardy has ended, the government cannot detain someone for additional court proceedings on the same issue.

Jeopardy can terminate in four instances:

1. After a jury’s verdict of acquittal

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2. After a trial court’s dismissal

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3. After a trial court grants a mistrial and

4. On appeal after conviction

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In **Jitendra Panchal vs Intelligence Officer, Ncb & Anr** on 3 February, 2009[3] proceedings against the appellant in India would amount to double jeopardy, the learned

Special Judge, Mumbai, rejected the appellant ... also praying for interim bail on the ground of double jeopardy

.

Also in **C.J. Palu vs The Assistant Collector Of** .. on 4 April, 1990[4] Constitution of India. The principle of double jeopardy would apply and the prosecution in the criminal court is incompetent ... Shri Roy Chacko contends that while considering cases of double jeopardy what the court has to see is the substance.

Conclusion

Recently, in a case o **Institute of Chartered Accountants of India v. Vimal kumar Surana** [5]the court held that if a person is convicted under a different law, it cannot be said to be a double jeopardy. The defendant was charged under provisions of Chartered accountant act 1949. The court held that merely because he is charged by the provision of said act, it does not give him immunity from prosecution as the element of the offence differs and he can be accused for number of different offences and in different laws including Indian Penal Code

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On the contrary, it is also important to know that if the elements of an offence are different from which the accused is being charged, then he will not be able to please defence under section 300 of Cr.PC as it clearly lays down the condition that a person can be prosecuted based on same facts, if an offence involve different elements that satisfies different charge under a penal law

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Having said that, it is also important that the matter should be tried by a competent jurisdiction for an offence. And that authority itself should decide about the conviction or acquittal of an accused. As it has been discussed inAssistant Collector of Customs v L. R. Malwanithat the proceeding before the Sea Customs authorities was not a “prosecution” and the order for confiscation was not a “punishment” inflicted by a Court or judicial tribunal within the meaning of Art. 20(2) of the Constitution and hence his subsequent prosecution was not barred.

Q 14. Indian Independence Act 1947

Answer:

Provisions of the Indian Independence Act, 1947

There were six primary provisions in the 'Indian Independence Act' 1947.

1. The first provision stated that British India will be divided into two fully sovereign dominions of Pakistan and India and that the newly formed dominions can form their own government with effect from August 15, 1947.
2. The second provision stated that the provinces of Bengal and Punjab will be divided between the two newly created countries. It also indicated that Western Punjab, Eastern Bengal, North-West Frontier Province, and Sindh would be given to Pakistan.
3. The third provision made sure the Crown continues its authority in some form or the other; it stated that the office of the Governor-General will be established in the newly formed countries. It also stated that it was not mandatory for India or Pakistan to become a member of the 'British Commonwealth of Nations,' but the Governor-General will be assigned the responsibility of being the representative of the Crown in both the nations.
4. According to the fourth provision, complete legislative authority will be conferred upon the respective Constituent Assemblies of both the newly created countries.
5. The fifth provision was the most important provision for the Princely States of India and Pakistan as it decided the fate of the Princely States. According to the provision, British suzerainty would be terminated over the princely states on August 15, 1947. It further added that the British government recognizes the rights and free will of the princely states to either join one of the two new dominions or remain independent if they wish to run their own government.
6. The next provision stated that the British monarch can no longer use the title the 'Emperor of India.' On June 22, 1948, King George VI announced his royal proclamation, which said that no British monarch can be conferred with the title 'Emperor of India' with effect from June 22, 1948.