Subject :

Constitutional Law - I

Paper : 1.2

10 YEARS CELEBRATION

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LEARNING OBJECTIVE

1. PREAMBLE TO THE CONSTITUTION OF INDIA
2. RULE OF LAW
3. STATE
4. RIGHT TO EQUALITY
5. RIGHT TO FREEDOM
6. PROTECTION OF LIFE AND PERSONAL LIBERTY
7. RIGHT AGAINST EXPLOITATION IN INDIAN CONSTITUTION
8. FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES
9. FUNDAMENTAL DUTIES
10. WRIT

PREAMBLE TO THE CONSTITUTION OF INDIA

- The preamble to the Constitution of India is a brief introductory statement that sets out the guiding purpose and principles of the document. The preamble-page, along with other pages of the original Constitution of India, was designed and decorated solely by renowned painter Beohar Rammanohar Sinha of Jabalpur who was at Shantiniketan with acharya Nandalal Bose at that time. Nandalal Bose endorsed Beohar Rammanohar Sinha's artwork without any alteration whatsoever. As such, the page bears Beohar Rammanohar Sinha's short signature Ram in Devanagari lower-right corner.
- That the preamble is not an integral part of the Indian constitution was declared by the Supreme Court of India in Beru Bari case therefore it is not enforceable in a court of law. However, Supreme Court of India has, in the Kesavananda case, overruled earlier decisions and recognised that the preamble may be used to interpret ambiguous areas of the constitution where differing interpretations present themselves. In the 1995 case of Union Government Vs LIC of India also, the Supreme Court has once again held that Preamble is the integral part of the Constitution.
- As originally enacted the preamble described the state as a "sovereign democratic republic". In 1976 the Forty-second Amendment changed this to read "sovereign socialist secular democratic republic".

Introduction :

- These are the opening words of the preamble to the Indian Constitution :— 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 enacting words, "We, the people of India .....in our constituent assembly do here by adopt, enact and give to ourselves this constitution", signify the democratic principle that power is ultimately rested in the hands of the people. It also emphasises that the constitution is made by and for the Indian people and not given to them by any outside power (such as the British Parliament). The phrase "we the people" emphasises the concept of popular sovereignty as laid down by J. J. Rousseau : All the power emanates from the people and the political system will be accountable and responsible to the people.
- The preamble to the Constitution of India is an introductory statement that sets out the guiding purpose and principles of document. The Constitution of India opens with the preamble which contains the essence of entire constitution. But whether the preamble is an integral part of the Constitution of India or not was dealt with in two cases — Berubari Case and Keshavananda Case.
- **Berubari Case (1960) :** In the Berubari case the Supreme Court of India declared that the preamble is not an integral part of the Constitution of India Therefore it is not enforceable in a court of law.
- **Keshavananda Case (1973) :** In the Keshavananda Case the Supreme Court of India rejected the above verdict and declared preamble to be an integral part of the Constitution of India and that where differing interpretations present themselves the preamble may be used to interpret ambiguous areas of the constitution.

  In the Union Government Vs LIC of India (1995) also, the Supreme Court has once again held that Preamble is an integral part of the Constitution of India

Preamble :— A Part of The Constitution or Not

The vexed question whether the Preamble is a part of the Constitution or not was dealt with in two leading cases on the subject :

1. **Berubari case [Berubari Union & Exchange of Enclaves [(1960) 3 SCR 250, 281-2] A.SC 845]]**
2. **Kesavananda Bharati case [Kesavananda Bharati vs State of Kerala And Anr (1973) 4 SCC 225]**

On the answer to the primary question — whether the Preamble is a part of the Constitution, would depend the resolution of the next question, which follows as a corollary- whether the Preamble can be amended, if at all.

Berubari case was the Presidential Reference Under Art. 143(1) of the Constitution of India on the implementation of the Indo-Pak agreement relating to Berubari union and exchange of enclaves which come up for consideration by a bench consisting of eight judges headed by B.P.Sinha, C.J. Justice Gajendragadkar delivered the unanimous opinion of the court. Quoting story, the eminent Constitutional jurist, the court held that the Preamble to the Constitution containing the declaration made by the people of India in exercise of their sovereign will, no doubt is "a key to open the minds of framers of the Constitution" which may show the general purposes for which they made the several provisions in the Constitution but nevertheless the Preamble is not a part of the Constitution.

v The holdings in Berubari Case has been succinctly summed up later by Shelat and Grover, JJ. In Kesavananda Bharti case as under :

1. A Preamble to the Constitution serves as a key to open the minds of the framers, and shows the general purpose for which they made the several provisions in the Constitution;

2. The Preamble is not a part of our Constitution;

3. It is not a source of the several powers conferred on government under the provisions of the Constitution;

4. Such powers embrace those expressly granted in the body of the Constitution and such as may be implied from those granted;

5. What is true about the powers is equally true about the prohibitions and limitations;

6. The Preamble did not indicate the assumptions that the first part of the Preamble postulates a very serious limitation on one of the very important attributes of sovereignty.

Berubari case was relied on in Golaknath [1967 AIR 1643, 1967 SCR (2) 7623] case, Wanchoo, J. said — On a parity of reasoning we are of the opinion that the Preamble cannot prohibit or control in any way or impose any implied prohibitions or limitations on the bar to amend the Constitution contained in Article 368.

Bachawat, J. observed — Moreover the Preamble cannot control the unambiguous language of the Articles of the Constitution.

It is a matter of regret, yet the eminent Judges constituting the bench answering the presidential reference in Berubari Case overlooked a matter of record, that constitutional history. The motion adopted by the Constituent Assembly stated in so many words that the Preamble stands as a part of the Constitution. The error came to be corrected in Kesavananda Bharati case where the majority specifically ruled that the Preamble was as much a part of the constitution as any other provision therein. It would be interesting to note what some out of the thirteen Judges constituting the bench which decided Kesavananda Bharati case had to say about the preamble.

Kesavananda Bharati Case has created a history. For the first time, a bench of 13 Judges assembled and sat in its original jurisdiction hearing the writ petition. 13 Judges placed on record 11 separate opinions. It is not an easy task to find out the ratio of the holding of the court in the same case. It was held in this case:

a. that the Preamble to the Constitution of India is a part of Constitution

b. that the Preamble is not a source of power nor a source of limitations

c. the Preamble has a significant role to play in the interpretation of statues, also in the interpretation of provisions of the Constitution.

Moreover in Bommai case the majority of nine Judges laid down a new application of the Preamble under the Constitution, which is as follows :

1. The Preamble indicates the basic Structure of the Constitution

2. A Proclamation under Article 356(1) is open to judicial review on the ground of violating the basic structure of the Constitution.

3. It follows that a proclamation under Article 356(1), which violates any of the basic features, as summarized in the Preamble of the Constitution is liable to be struck down as unconstitutional.

4. A further extension of this innovation is that a political party, which appeals to religion in its election manifesto, acts in violation of the basic structure, and the President may impose President's Rule on a report

of the Governor that a party has issued such a manifesto.

In the same case three of the nine Judges have opined that the word "secularism" in the Preamble of our Constitution.

A discussion on Preamble cannot be complete without making a reference of Mandal Commission case, which was decided by a larger bench of nine Judges. A rainbow of judicial thoughts reflecting the significance, value and message of the Preamble. B.P. Jeevan, J. held that the four folding objective of securing to its citizens justice, liberty, equality and fraternity displays statesmanship of the highest order Constitution of India.. The framers of the Constitution did not rest content with evolving the framework of the state; they also pointed out the goal as spelled out in the Preamble and the methodology for reaching that goal is elaborated in parts of the Constitution of India. In the opinion of R. M. Sahai, J. the preamble to the constitution is a turning point in history. The Preamble of the constitution has the sentiments and it is the key to the minds of the framers of the Constitution.

SOVEREIGN

- The Sovereignty is understood in jurisprudence as the full right and power of a governing body to govern itself without any interference from outside sources or bodies. In political theory, sovereignty is a substantive term designating supreme authority over some polity.
- There are two part internal and external. From the internal standpoint it means that it has the power to legislate on any subject, to promote the health, morals, education and good order of the people, subject only to the federal division of legislative powers and other limitations imposed by the Constitution, e.g., the fundamental rights. The external sovereignty of India means that it is not subject to the control of any other State or external power; secondly, that it can acquire foreign territory and also cede any part of the Indian territory, subject to limitations(if any) imposed by the Constitution.

SOCIALIST

- The word socialist was added to the Preamble by the Forty-second Amendment.[1] It implies social and economic equality.

  Social equality in this context means the absence of discrimination on the grounds only of caste, colour, creed, sex, religion, or language. Under social equality, everyone has equal status and opportunities.

  Economic equality in this context means that the government will endeavor to make the distribution of wealth more equal and provide a decent standard of living for all. This is in effect emphasized a commitment towards the formation of a welfare state. India has adopted a socialistic and mixed economy and the government has framed many laws to achieve the aim.

SECULAR

- Secular means the relationship between the government and the people which is determined according to constitution and law. By the 42nd Amendment, the term "Secular" was also incorporated in the Preamble. Secularism is the basic structure of the Indian constitution. The Government respects all religions. It does not uplift or degrade any particular religion. There is no such thing as a state religion for India. In S. R. Bommai vs UOI (1994) The SC of India held "A state which does not recognise any religion as the state religion, it treats all religions equally". Positively, Indian secularism guarantees equal freedom to all religion

DEMOCRATIC

- The first part of the preamble : "We, the people of India" and, its last part "give to ourselves this Constitution" clearly indicate the democratic spirit involved even in the Constitution. India is a democracy. The people of India elect their governments at all levels (Union, State and local) by a system of universal adult franchise; popularly known as "one man one vote". Every citizen of India, who is 18 years of age and above and not otherwise debarred by law, is entitled to vote. Every citizen enjoys this right without any discrimination on the basis of caste, creed, colour, sex, Religious intolerance or education.

REPUBLIC

- As opposed to a monarchy, in which the head of state is appointed on hereditary basis for a lifetime or until he abdicates from the throne, a democratic republic is an entity in which the head of state is elected, directly or indirectly, for a fixed tenure. The President of India is elected by an electoral college for a term of five years. The post of the President of India is not hereditary. Every citizen of India is eligible to become the President of the country. The leader of the state is elected by the people.

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RULE OF LAW

ABSTRACT

v In India, the Constitution is regarded as Supreme law of the land. No one is above the Constitution. It provides for three organs of the Government, viz., the Legislature, Executive and the Judiciary, each to function independently so that the rule of law in the state could be upheld in the State. But, due to ineffective legislature and also because of the powers of the executive being in the hands of one person, there has been a series of inaction by the legislature. Henceforth, the Judiciary has involved itself to bridge the gap in the law which the state is lacking by means of establishing new doctrines, expanding the horizons of the law by giving wide interpretations and also by declaring new principles.

Thus, the question arouse is that whether in doing so, is Judiciary encroaching the powers of the Legislature?

INTODUCTION

v The concept of Rule of Law is the supremacy of law and the doctrine of Separation of Powers establishes that there should be different heads or organs of the Government; each acting independently of each other so that the law of the State could be enforced properly; and the true spirit of the Law gets reflected in its enforcement.

RULE OF LAW

v The concept of Rule of law is of old origin and is an ancient ideal. It was discussed by ancient Greek philosophers such as Plato and Aristotle around 350 BC. Plato wrote : "Where the law is subject to some other authority and has none of its own, the collapse of the state, in my view, is not far off; but if law is the master of the government and the government is its slave, then the situation is full of promise and men enjoy all the blessings that the gods shower on a state." Likewise, Aristotle also endorsed the concept of Rule of law by writing that "law should govern and those in power should be servants of the laws".

The phrase 'Rule of Law' is derived from the French phrase 'la principe de legalite' (the principle of legality) which refers to a government based on principles of law and not of men. Rule of law is one of the basic principles of the English Constitution and the doctrine is accepted in the Constitution of U.S.A and India as well. The entire basis of Administrative Law is the doctrine of the rule of law.

Sir Edward Coke is said to be the originator of this concept, when he said that "the King must be under God and Law" and thus vindicated the supremacy of law over the pretentions of the executives. The concept of Rule of Law has been developed by Dicey in the course of his lectures at the Oxford University in his book "The Law of the Constitution" published in 1885. According to him, whenever there is discretion there is room for arbitrariness.

Albert Venn Dicey (a British jurist and constitutional theorist) developed the concept in his book 'The Law of the Constitution' (1885). His writing on the British Constitution (which is unwritten) included three distinct though kindered ideas on Rule of law :

i) **Absence of discretionary powers and supremacy of Law :** viz. no man is above law. No man is punishable except for a distinct breach of law established in an ordinary legal manner before ordinary courts. The government cannot punish any one merely by its own fiat. Persons in authority do not enjoy wide, arbitrary or discretionary powers. Dicey asserted that wherever there is discretion there is room for arbitrariness.

ii) **Equality before law :** Every man, whatever his rank or condition, is subject to the ordinary law and jurisdiction of the ordinary courts. No person should be made to suffer in body or deprived of his property except for a breach of law established in the ordinary legal manner before the ordinary courts of the land.

iii) **Predominance of legal spirit :** The general principles of the British Constitution, especially the liberties and the rights of the people must come from traditions and customs of the people and be recognized by the courts in administration of justice from time to time.

The expression 'rule of law' is one which, over the years, has been used to convey a wide variety of ideas and has a number of meanings and corollaries including their criticisms. In common parlance it is often used simply to describe the state of affairs in a country where, in the main, the law is observed and order is kept - i.e., as an expression synonymous with 'law and order'. To public lawyers, however, the phrase conveys something a little more precise. For them, the phrase is inextricably linked with the writings of Dicey.

However, Dicey's 'Rule of Law' was not accepted in full and John Finnis' doctrine was accepted in the

Indian Constitution. According to Finnis, by "Rule of Law" is meant a system in which :—

i) Its rules are prospective;

ii) Possible to comply with;

iii) Promulgated;

iv) Clear;

v) Coherent with each other;

vi) Sufficiently stable;

vii) The making of decrees and orders as guided by rules that are themselves promulgated, clear, stable, and relatively general;

viii) Those who administer rules are accountable for their own compliance with rules relating to their activities and who perform these consistently and in accordance with law.

RULE OF LAW UNDER THE INDIAN CONSTITUTION

v In India, the concept of Rule of law can be traced back to the Upanishads. In modern day as well, the scheme of the Indian Constitution is based upon the concept of rule of law. The framers of the Constitution were well familiar with the postulates of rule of law as propounded by Dicey and as modified in its application to British India. It was therefore, in the fitness of things that the founding fathers of the Constitution gave due recognition to the concept of rule of law.

The doctrine of Rule of Law as enunciated by Dicey has been adopted and very succinctly incorporated in the Indian Constitution. The ideals of the Constitution viz; justice, liberty and equality are enshrined in the Preamble itself (which is part of the Constitution).

The Constitution of India has been made the supreme law of the country and other laws are required to be in conformity with it. Any law which is found in violation of any provision of the Constitution, particularly, the fundamental rights, is declared void. The Indian Constitution also incorporates the principle of equality before law and equal protection of laws enumerated by Dicey under Article 14 .

The very basic human right to life and personal liberty has also been enshrined under Article 21. Article 19(1) (a) of the Indian Constitution guarantees the third principle of the Rule of law (freedom of speech and Expression). No person can be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence is also very well recognized in the Indian Constitution. The principles of double jeopardy and self-incrimination also found its rightful place in the Constitution. Articles 14, 19 and 21 are so basic that they are also called the golden triangle Articles of the Indian Constitution.

The Constitution also ensures an independent an impartial Judiciary to settle disputes and grievances for violation of fundamental rights by virtue of Articles 32 and 226. In Union of India v. President, Madras Bar Association, the Supreme Court held that "Rule of Law has several facets, one of which is that disputes of citizens will be decided by Judges who are independent and impartial; and that disputes as to legality of acts of the Government will be decided by Judges who are independent of the Executive."

RULE OF LAW - PART OF THE BASIC STRUCTURE

v The Constitution (First Amendment) Act, 1951, shocked the status of Rule of law in India. The question which came up for consideration in Shankari Prasad v. Union of India was whether the fundamental rights can be amended under Article 368. The Supreme Court held that Parliament has the power to amend Part III of the Constitution under Article 368 as under Article 13 'law' means any legislative action and not a constitutional amendment. Therefore, a constitutional amendment would be valid if abridges any of the fundamental rights.

The question again came up for consideration in Sajjan Singh v. State of Rajasthan in which the Supreme Court approved the majority judgment in Shankari Prasad case and held that amendment of the Constitution means amendment of all provisions of the Constitution. Hon'ble Chief Justice Gajendragadkar held that if the framers of the constitution intended to exclude fundamental rights from the scope of the amending power they would have made a clear provision in that behalf.

However, both these cases were overruled by the Apex Court in Golaknath v. State of Punjab and it held that Parliament has no power to amend the Part III of the Constitution so as to take away or abridges the fundamental rights and thus, at the end the Rule of law was sub-served by the Judiciary from abridging away. However, the Rule of law was crumpled down with the Constitution (Twenty-Fourth Amendment) Act,

1971. Parliament by the way of this Amendment inserted a new clause (4) in Article 13 which provided that 'nothing in this Article shall apply to any amendment of this constitution made under Art 368'. It substituted the heading of Article 368 from 'Procedure for amendment of Constitution' to 'Power of Parliament to amend Constitution and Procedure thereof'. The Amendment not only restored the amending power of the Parliament but also extended its scope by adding the words "to amend by way of the addition or variation or repeal any provision of this constitution in accordance with the procedure laid down in the Article".

This was challenged in the case of Keshavananda Bharti v. State of Kerala. The Supreme Court by majority overruled the decision given in Golaknath's case and held that Parliament has wide powers of amending the Constitution and it extends to all the Articles, but the amending power is not unlimited and does not include the power to destroy or abrogate the basic feature or framework of the Constitution. There are implied limitations on the power of amendment under Article 368. Within these limits Parliament can amend every Article of the Constitution. Thus, Rule of law prevailed.

In Keshavananda Bharti v. State of Kerala, the Supreme Court states that "Our Constitution postulates Rule of Law in the sense of supremacy of the Constitution and the laws as opposed to arbitrariness". The 13 judge Bench also laid down that the Rule of law is an "aspect of the basic structure of the Constitution, which even the plenary power of Parliament cannot reach to amend".

Since Keshavananda case, Rule of law has been much expanded and applied differently in different cases. In Indira Nehru Gandhi v. Raj Narain, the Supreme Court invalidated Clause (4) of Article 329-A inserted by the Constitution (Thirty-ninth Amendment) Act, 1975 to immunise the election dispute to the office of the Prime Minister from any kind of judicial review. The Court said that this violated the concept of Rule of law which cannot be abrogated or destroyed even by the Parliament.

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STATE

INTRODUCTION :

v The Constitution of India had followed the U.S. precedent and enacted Fundamental Rights in the Constitution itself. The United States Constitution has defined their legislative and executive powers in two Articles, which makes it easier to define their correlation. However, Indian Constitution being an elaborative one, it is difficult to correlate the legislative and executive powers because those powers are to be found in widely separated parts of our Constitution.

Meaning of State under Article 12 of the Constitution of India.

The term "State" is defined under Article 12 of Part III (Fundamental Rights) of the Constitution of India.

It states that : In this Part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each States and all local or other authorities within the territory of India or under the control of the Government of India. The definition in Article 12 is only for the purpose of application of the provisions contained in Part III. Hence, even though a body of persons may not constitute 'State' within the instant definition, a writ under Article 226 may lie against it on non-constitutional grounds or on grounds of contravention of some provision of the Constitution outside Part III, e.g., where such body has a public duty to perform or where its acts are supported by the State or public officials.

In Ujjain Bai v. State of U.P.[AIR 1962 SC 1621], the Supreme Court observed that Article 12 winds up the list of authorities falling within the definition by referring to "other authorities" within the territory of India which cannot, obviously, be read as ejusdem generis with either the Government or the Legislature or Local authorities. The word "State" is of wide amplitude and capable of comprehending every authority created under the statute and functioning within the territory of India. There is no characterization of the nature of authority set up under a statute for the purpose of administering laws enacted by the Parliament or by the State including those vested with the duty to make decisions in order to implement those laws.

The preponderant considerations for pronouncing an entity as State agency or instrumentality are : (1) financial resources of the state being the Chief finding source; (2) functional character being governmental in essence; (3) plenary control residing in government; (4) prior history of the same activity having been carried on by government and made over to the new body; (5) some element of authority or command.

Art.12- State

v Article 12 defines the "state". The state includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India. Please note that this definition of a state is not exhaustive but is inclusive. This means that apart from those organs or bodies which have been enumerated, others may also be covered by the expression state. Thus, Article 12 is an interpretative article and has been interpreted by the Supreme Court at various times in various ways. According to various interpretations of the term state as given by Supreme Court, the State includes the following:

Executive and legislature of union and states: It would obviously include; union and state government and parliament and state legislatures. The acting president of India and governors of states, which form part of the executive. The term government includes a department of government or any institution under the control of a government department e.g. the I.T. or excise department; the forest research institute, Dehradun etc. **Authorities :** Authority means the power to make laws, orders, regulations, bye-laws, etc. Which have the force of law and power to enforce those laws? For example the bye-laws made by a municipal committees.

Local authorities : The expression as defined in sec. 3 of the general clauses act refers to authorities like municipalities, district boards, Panchayats etc.

Other authorities : The expression other authorities in art. 12 is used after mentioning the executive and legislature of union and states, and all local authorities.

Thus, it was held that it could only indicate authorities exercising governmental or sovereign functions. It cannot include persons, natural or juristic e.g. university unless it is maintained by the state. But, later it was held that ejusdem generis rule could not be resorted to in interpreting this expression, as there is no common genus running through these named bodies (in art. 12), nor can these bodies so placed in one single category on any rational basis. This leads us to dig into various cases in which some bodies were declared other

authorities. Here is a summary of what has been judged as authority and what has been not judged as other authority by the court :

It has been observed in Pradeep Kumar Biswas v. Union of India, (2002) 5 SCC 111, when the body is financially, functionally and administratively dominated by or under the control of the government and such control is particular to the body and is pervasive, then it will be "State" within Article 12. If the control is merely regulatory, it will not be a State.

This word indicates that the definition is not exhaustive. Hence, even though the definition expressly mentions only the Government and the Legislature, there might be other instrumentalities of State Action within the sweep of the definition. The non-mention of the Judiciary does not, therefore, necessarily indicate that the courts are intended to be excluded from the definition.

It has been observed in K. Morappan v. Dy. Registrar of Co-operative Society; (2006) 4 MLJ 641, that 'authority' means a person or body exercising power or having a legal right to command and be obeyed. An 'Authority' is a group of persons with official responsibility for a particular area of activity and having a moral or legal right or ability to control others. If a particular cooperative society can be characterized as a "State" under Article 12, it would also be "an authority" within the meaning of Article 226 of the Constitution.

"Authority" means a public administrative agency or corporation having quasi-governmental powers and authorized to administer a revenue producing public enterprise. It is wide enough to include all bodies created by a statute on which powers are conferred to carry out governmental or quasi- governmental functions.

"Authority" in law belongs to the province of power. The word "State" and "Authority" used in Article 12 remain among "the great generalities of the Constitution" the content of which has been and continues to be applied by Courts from time to time.

Local Authorities within territory of India :

v Local authorities are under the exclusive control of the States, by virtue of entry 5 of List II of the 7th Schedule. That entry contains a list of some local authorities. This expression will, therefore, include a Municipal Committee; a Panchayat; a Port Trust; Municipality is a "State" within the meaning of Article 12. But that does not mean that the authorities are State Government or Central Government and there is distinction between State and Government.

A "local authority", is an authority must fulfill the following tests —

1) Separate legal existence.

2) Function in a defined area.

3) Has power to raise funds.

4) Enjoys autonomy.

5) Entrusted by a statute with functions which are usually entrusted to municipalities?

Other Authorities :

v It refers to authorities other than those of local self- government, who have power to make rules, regulations, etc. having the force of law. "Instrumentality" and "agency" are the two terms, which to some extent overlap in their meaning. The basic and essential distinction between an "instrumentality or agency" of the State and "other authorities" has to be borne in mind. An 'Authority' must be authority sui juris within meaning of expression "other authorities" under Article 12. A juridical entity, though an authority may also ratify the list of being an instrumentality or agency of the state in which event such authority may be held to be an instrumentality or agency of State, but not vice versa.

In the case of R.D.Shetty v/s International Airport Authority[1979 SCR (3)1014.], the Court laid down five tests to be considered "other authority" :

1) Entire share capital is owned or managed by State.

2) Enjoys monopoly status.

3) Department of Government is transferred to Corporation.

4) Functional character governmental in essence.

5) Deep and pervasive State control.

6) Object of Authority

- In the case of Ajay Hasia v. Khalid Mujib Sehravardi [(1981) 1 SCC 722.], It has been held that whether a statutory body falling within the purview of the expression "other authorities" is to be considered differenctly. In the opinion of minority, the tests laid down in this case are relevant only for the purpose of determining whether an entity is an "instrumentaliry or agency of the State".
- In Electricity Board, Rajasthan v. Mohan Lal [AIR 1967 SC 1857 20 (1980) 3 SCC 459.], The Supreme Court held that the expression "other authorities" is wide enough to include all authorities created by the Constitution or statute on whom the powers are conferred by Law. It is not necessary that the statutory authority should be engaged in performing governmental or sovereign function.
- In U.P. Warehousing Corporation v. Vijai Narain[(1987) 3 SCC 395.], It was held that the U.P. Warehousing Corporation which was constituted under a statute and owned and controlled by the Government was an agency or instrumentality of the Government and therefore "the State" within the meaning of Article 12.
- In Som Prakash v. Union of India[AIR 1981 SC 212 11.], the Supreme Court held that a Government company (Bharat Petroleum Corporation) fell within the meaning of the expression 'the State' used in Article 12.

  However, the important question that was raised before the Court was whether a private corporation fell within the ambit of Article 12. Unfortunately, the answer is yet to be decided.

Whether 'State' includes the Judiciary :

- The definition of State under Article 12 of the Constitution does not explicitly mention the Judiciary. Hence, a significant amount of controversy surrounds its status vis-a-vis Part III of the Constitution. Bringing the Judiciary within the scope of Article 12 would mean that it is deemed capable of acting in contravention of Fundamental Rights. It is well established that in its non-judicial functions, the Judiciary does come within the meaning of State. However, challenging a judicial decision which has achieved finality, under the writ jurisdiction of superior courts on the basis of violation of fundamental rights, remains open to debate.

  On the one hand, the Judiciary is the organ of the State that decides the contours of the Fundamental Rights. Their determination, of whether an act violates the same, can be right or wrong. If it is wrong, the judicial decision cannot ordinarily be said to be a violation of fundamental rights. If this were allowed, it would involve protracted and perhaps unnecessarylitigation, for in every case, there is necessarily an unsatisfied party. On the other hand, notallowing a decision to be challenged could mean a grave miscarriage of justice, and go unheeded, merely because the fallibility of the Judiciary is not recognized.

  The erroneous judgment of subordinate Court is subjected to judicial review by the superior courts and to that effect, unreasonable decisions of the Courts are subjected to the tests of Article 14 of the Constitution.

  In the case of Naresh v. State of Maharashtra[2 1966 (3) SCR 744], the issue posed before the Supreme Court for consideration whether judiciary is covered by the expression 'State' in Article 12 of the Constitution. The Court held that the fundamental right is not infringed by the order of the Court and no writ can be issued to High Court. However in yet another case, it was held that High Court Judge is as much a part of the State as the executive.

  In Rati Lal v. State of Bombay, it was held that Judiciary is not State for the purpose of Article 12. But Supreme Court in cases of A.R. Antulay v. R.S. Nayak and N. S. Mirajkar v/s State of Maharashtra, it has been observed that when rule making power of Judiciary is concerned it is State but when exercise of judicial power is concerned it is not State.

Conclusion :

- The preponderant considerations for pronouncing an entity as State agency or instrumentality are : (1) financial resources of the state being the Chief finding source; (2) functional character being governmental in essence; (3) plenary control residing in government; (4) prior history of the same activity having been carried on by government and made over to the new body; (5) some element of authority or command. Whether the legal person is a corporation created by a statute, as distinguished from under a statute, is not an important criterion although it may be an indicium. The definition of State under Article 12 of the Constitution does not explicitly mention the Judiciary. Hence, a significant amount of controversy surrounds its status vis-a-vis Part III of the Constitution. Bringing the Judiciary within the scope of Article 12 would mean that it is deemed capable of acting in contravention of Fundamental Rights. It is well established that in its non-judicial functions, the Judiciary does come within the meaning of State. However, challenging a judicial decision which has achieved finality, under the writ jurisdiction of superior courts on the basis of violation of fundamental rights, remains open to debate.

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RIGHT TO EQUALITY

v The Right to Equality is one of the chief guarantees of the Constitution. It is embodied in Articles 14-16, which collectively encompass the general principles of equality before law and non-discrimination, and Articles 17-18 which collectively further the philosophy of social equality. Article 14 guarantees equality before law as well as equal protection of the law to all persons within the territory of India. This includes the equal subjection of all persons to the authority of law, as well as equal treatment of persons in similar circumstances. The latter permits the State to classify persons for legitimate purposes, provided there is a reasonable basis for the same, meaning that the classification is required to be non-arbitrary, based on a method of intelligible differentiation among those sought to be classified, as well as have a rational relation to the object sought to be achieved by the classification.

Article 15 prohibits discrimination on the grounds only of religion, race, caste, sex, place of birth, or any of them. This right can be enforced against the State as well as private individuals, with regard to free access to places of public entertainment or places of public resort maintained partly or wholly out of State funds. However, the State is not precluded from making special provisions for women and children or any socially and educationally backward classes of citizens, including the Scheduled Castes and Scheduled Tribes. This exception has been provided since the classes of people mentioned therein are considered deprived and in need of special protection. Article 16 guarantees equality of opportunity in matters of public employment and prevents the State from discriminating against anyone in matters of employment on the grounds only of religion, race, caste, sex, descent, place of birth, place of residence or any of them. It creates exceptions for the implementation of measures of affirmative action for the benefit of any backward class of citizens in order to ensure adequate representation in public service, as well as reservation of an office of any religious institution for a person professing that particular religion.

The practice of untouchability has been declared an offence punishable by law under Article 17, and the Protection of Civil Rights Act, 1955 has been enacted by the Parliament to further this objective. Article 18 prohibits the State from conferring any titles other than military or academic distinctions, and the citizens of India cannot accept titles from a foreign state. Thus, Indian aristocratic titles and titles of nobility conferred by the British have been abolished. However, awards such as the Bharat Ratna have been held to be valid by the Supreme Court on the ground that they are merely decorations and cannot be used by the recipient as a title.

Equality before law :

v 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.

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 the laws :

v The phrase "equal protection of the laws" is borrowed from the 14th amendment of the U. S. Constitution. It means that like should be treated alike, that none should be favored and none should be discriminated,

against. This allows the Parliament to classify persons for the purpose of taxation. The classification should be reasonable. The state may also make some exceptions. Thus the state may exempt charities and trusts from taxation, may impose different rules of tax on different trades or professions and may tax real and personal property in different ways. Equal protection thus ensures equal treatment in equal circumstances and differing treatment in differing circumstances.

Art. 15 states that "the state shall not discriminate against any citizen on grounds only of religion, race, caste sex, place of birth or any of them". This article ordains that no citizen shall be denied "access to shops, public restaurants, hotels or places of public entertainment or the use of wells, tanks, bathing ghats, roads and places of public resorts maintained wholly or partly out of state funds".

This article however does not forbid the state from making special provisions for women and children. The state is equally free to make special provisions for socially and educationally backward classes and for the scheduled castes and tribes

Art. 16 guarantees equality of opportunity in matters of public employment. The article states that :

There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state. The article also forbids discrimination on grounds only of religion, race, caste, sex, descent, and place of birth or any of them in matters of public employment. There are five exceptions to prohibition of discrimination under Art. 16. (I) The Parliament may lay down residence qualification for some appointments in states.

The state may reserve some appointments for backward classes if they are not adequately represented in the state services.

Offices in the religious institutions may be kept reserved for the followers of the religion concerned.

Posts in the state services may be kept reserved for the scheduled castes and tribes.

Finally **Art. 16** forbid discrimination in matters of state employment only on the grounds stated in the article itself. It does not forbid preferential treatment on other grounds such as efficiency or mercy.

Art. 17 of the constitution says, "Untouchability is abolished and its practice in any form is forbidden". The position is further fortified by the Abolition of the Untouchability Act of 1955. Though the term untouchabil- ity has not been defined in either the constitution or the Act of 1955, practice of untouchability in any form is strictly forbidden. Refusing admission to public institutions like schools and hospitals on grounds of untouchability is a punishable crime.

Art. 18 forbid titles except military or academic distinctions. Title from foreign governments such as knight-hood is forbidden. However honors conferred by the government of India such as Bharat Ratna or Podmashri etc. are not titles but are only recognition of meritorious services. Right to equality in all its forms are available to Indian constitutional remedies against the violation of fundamental right to equality.

However the President is empowered to suspend the right during the pendency of a National Emergency under Art 352 of the constitution.

Article 14 Permits Classification but Prohibits Class Legislation :

v 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 legiti-mate 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 classifi-cation 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 discrimi-nation 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 :

v While Article 14 forbids 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 distinc- tion bearing a just and reasonable relation to the object sought to be achieved by the legislation. Classifica- tion to be reasonable must fulfill 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 Dalmia case [Ram Krishna Dalmia vs Mr. Justice S.R. Tendolkar on 29 April, 1957 Equivalent citations: (1957) 59 BOMLR 769] still hold good governing a valid classifica- tion 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.

9. The classification made by the legislature need not be scientifically perfect or logically complete. Mathemati- cal 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 constitu- tional. The question whether a classification is reasonable and proper and not must however, be judged more on commonsense than on legal subtitles.

Cases

- **Madhu Limaye vs The Superintendent, 1975 AIR 1505, 1975 SCR (3) 582.**

  There were Indian and Europian Prisoners. Both were treated differently. Europian gets better diet. Court held that difference between Indian and Europian prisoners in the matter of treatment and diet violates right to equality under Article 14 of Indian prisoners. They all are prisoners they must treat equally.

- **Sanaboina Satyanarayan v. Govt. of A.P 2003 Supp(1) SCR 874**

  In Andra Pradesh. They formulate a scheme for prevention of crime against women. In prisons also prison- ers were classify in to two category first

  Prisoners guilty of crime against women and second prisoners who are not guilty of crime against women. Prisoners who are guilty of crime against women challenge the court saying that there right to equality is deprived. Court held that there is resoanble classification to achieve some objective.

- **Conclusion :**

  What article 14 forbids is discrimination by law that is treating persons similarly circumstanced differently and treating those not similarly circumstanced in the same way or as has been pithily put treating equals as unequals and unequals as equals. Article 14 prohibits hostile classification by law and is directed against discriminatory class legislation.

  A legislature for the purpose of dealing with the complex problem that arise out of an infinite variety of human relations cannot but proceed on some sort of selection or classification of persons upon whom the legislation is to operate.

  Its is well settled that Article 14 forbid classification for the purpose of legislation. Its is equally well settled that in order to meet the test of Article 14

  (i) classification must be based on intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of group and **(ii)** the differentia must have a rational nexus to the objects sought to be achieved by the executive or legislative action under challenge.

  Article 14 contains a guarantee of equality before law to all persons and protection to them against discrimi- nation by law. It forbids class legislation.

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RIGHT TO FREEDOM

v **Article 19-22 :** Right to Freedom Article 19, 20, 21 & 22 deal with the different aspects of Personal Liberty, the basic right of a citizen in a democracy.

These articles are as follows :

v **Article 19 :** Protection of certain rights regarding freedom of speech, etc.

v **Article 20 :** Protection in respect of conviction for offences.

v **Article 21 :** Protection of life and personal liberty.

v **Article 22 :** Protection against arrest and detention in certain cases.

v **Article 19 :** Protection of certain rights regarding freedom of speech, etc Article 19 is the most important and key article which embodies the "basic freedoms". Article 19(1) provides that all citizens shall have the right- (originally 7, now 6)

a) to freedom of speech and expression;

b) to assemble peaceably and without arms;

c) to form associations or unions;

d) to move freely throughout the territory of India;

e) to reside and settle in any part of the territory of India;

f) omitted by 44th amendment act. (it was right to acquire, hold and dispose of property)

g) to practice any profession, or to carry on any occupation, trade or business.

However, Freedom of speech and expression is not absolute. As of now, there are 8 restrictions on the freedom of speech and expression. These are in respect of the sovereignty and integrity of the country. These 8 restrictions were: Security of the state Friendly relations with foreign states Public Order Decency or morality Contempt of Court Defamation Incitement to offence Sovereignty and integrity of India. These 8 restrictions were embodied in their current form in the constitution First Amendment Bill 1951, this was necessitated by Romesh Thapar v. State of Madras (1950). In this case the entry and circulation of the English journal "Cross Road", printed and published in Bombay, was banned by the Government of Madras. The Supreme Court held in this case that, unless a law restricting the freedom of speech and expression were directed solely against the undermining of the security of the state or its overthrow, the law could not be held a reasonable restriction though it sought to impose a restraint for the maintenance of public order.

Freedom of Speech and Expression Article 19 of the constitution provides freedom of speech which is the right to express one's opinion freely without any fear through oral / written / electronic/ broadcasting / press. The Constitution does not make any special / specific reference to the Freedom of Press. The protagonists of the "free Press" called it a serious lapse of the Drafting committee. However, the freedom of expression includes freedom of press. Dr. Ambedkar in this context had said on speaking behalf of the Drafting Committee that the press had no special rights which are not to be given to an individual or a citizen. Dr. Ambedkar further said that the "editors or managers of press are all citizens of the country and when they chose to write in newspapers they are merely expressing their right of expression". So, the word expression covers the Press. In modern times it covers the blogs and websites too. Some landmark Supreme Court Judgments regarding the Freedom of Expression Romesh Thapar v. State of Madras, (1950): Freedom of speech and of the press laid at the foundation of all democratic organizations, for without free political discussion no public education, so essential for the proper functioning of the process of popular government, is possible." Maneka Gandhi v. Union of India, (1978): Freedom of speech and expression has no geographical limitation and it carries with it the right of a citizen to gather information and to exchange thought with others not only in India but abroad also. Prabha Dutt v. Union of India ((1982) : Supreme Court directed the Superintendent of Tihar Jail to allow representatives of a few newspapers to interview Ranga and Billa, the death sentence convicts, as they wanted to be interviewed. Indian Express v. Union of India (1985): Press plays a very significant role in the democratic machinery. The courts have duty to uphold the freedom of press and invalidate all laws and administrative actions that abridge that freedom. Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal ("Cricket Association") (1995): Every citizen has a fundamental right to impart as well as receive information through the electronic media. It ruled that frequencies or airwaves are public property, and that the government enjoys no monopoly over broadcast- ing. Court ordered the government to take immediate steps to set up an independent and autonomous

public authority to regulate frequencies. Freedom of speech and expression (Article 19 .1 & 19.2) played an important role in this decision. Union of India v. Assn. for Democratic Reforms (2002): One-sided information, disinformation, misinformation and non information, all equally create an uninformed citizenry which makes democracy a farce. Freedom of speech and expression includes right to impart and receive informa- tion which includes freedom to hold opinions.

Freedom of Assembly The constitution guarantees right to hold meetings and take out processions. The processions and meetings should be unarmed and peaceful. This right may be restricted in the interest of the public order or sovereignty and integrity of the country. This article has also been reviewed an interpreted by the Supreme Court many times. It's worth note that section 144 of the Sub-section (6), of the Code of Criminal Procedure can be imposed by the government in certain areas which makes the assembly of 5 or more people an unlawful assembly. This section was challenged in the supreme court via Kamla Kant Mishra And ors. vs State Of Bihar And ors. Case (1962), on the basis that it violates article 19(1) of the constitution and thus is invalid. The Supreme Court in its judgment held that power conferred upon the State Government under Section 144, Sub-section (6), of the Code of Criminal Procedure, is constitutionally valid. Section 129 of the Code of Criminal Procedure authorizes the police to disperse any unlawful assembly which may cause disturbance to public peace. Freedom of Association The constitution declares that all citizens will have the right to form associations and unions. Freedom of Movement The freedom of movement is guaranteed by the constitution and citizens can move from one state to another and anywhere within a state. A person free to move from any point to any point within the country's territories. There are certain exceptions such as Scheduled Tribes areas and army areas. Freedom of Residence: An Indian Citizen is free to reside in any state except Jammu & Kashmir. Again this is subject to certain restrictions. Freedom of Trade & occupation: The constitution of India guarantees each of its citizen to do trade, occupation or business anywhere in the country.

Restrictions :

- Under Indian law, the freedom of speech and of the press does not confer an absolute right to express one's thoughts freely. Clause (2) of Article 19 of the Indian constitution enables the legislature to impose certain restrictions on free speech under following heads:
  - I. security of the State,
  - II. friendly relations with foreign States,
  - III. public order,
  - IV. decency and morality,
  - V. contempt of court,
  - VI. defamation,
  - VII. incitement to an offence, and
  - VIII. sovereignty and integrity of India.

  Reasonable restrictions on these grounds can be imposed only by a duly enacted law and not by executive action.
- **Security of the State:** Reasonable restrictions can be imposed on the freedom of speech and expression, in the interest of the security of the State. All the utterances intended to endanger the security of the State by crimes of violence intended to overthrow the government, waging of war and rebellion against the government, external aggression or war, etc., may be restrained in the interest of the security of the State.[12] It does not refer to the ordinary breaches of public order which do not involve any danger to the State.
- **Friendly relations with foreign States:** This ground was added by the Constitution (First Amendment) Act of 1951. The State can impose reasonable restrictions on the freedom of speech and expression, if it tends to jeopardise the friendly relations of India with other State.
- **Public order :** This ground was added by the Constitution (First Amendment) Act, 1951 in order to meet the situation arising from the Supreme Court's decision in Romesh Thapar, s case (AIR 1950 SC 124). The expression 'public order' connotes the sense of public peace, safety and tranquillity.

  In Kishori Mohan v. State of West Bengal, the Supreme Court explained the differences between three concepts: law and order, public order, security of State. Anything that disturbs public peace or public tranquillity disturbs public order. But mere criticism of the government does not necessarily disturb public order. A law punishing the utterances deliberately tending to hurt the religious feelings of any class has been held to be valid as it is a reasonable restriction aimed to maintaining the public order.

It is also necessary that there must be a reasonable nexus between the restriction imposed and the achievement of public order. In Superintendent, Central Prison v. Ram Manohar Lohiya (AIR 1960 SC 633), the Court held the Section 3 of U.P. Special Powers Act, 1932, which punished a person if he incited a single person not to pay or defer the payment of Government dues, as there was no reasonable nexus between the speech and public order. Similarly, the court upheld the validity of the provision empowering a Magistrate to issue directions to protect the public order or tranquillity.

- **Decency and morality :** The word 'obscenity' is identical with the word 'indecency' of the Indian Constitution. In an English case of R. v. Hicklin, the test was laid down according to which it is seen 'whether the tendency of the matter charged as obscene tend to deprave and corrupt the minds which are open to such immoral influences'. This test was upheld by the Supreme Court in Ranjit D. Udeshi v. State of Maharashtra (AIR 1965 SC 881). In this case the Court upheld the conviction of a book seller who was prosecuted under Section 292, I.P.C., for selling and keeping the book Lady Chatterley's Lover. The standard of morality varies from time to time and from place to place.
- **Contempt of court :** The constitutional right to freedom of speech would not allow a person to contempt the courts. The expression Contempt of Court has been defined Section 2 of the Contempt of Courts Act, 1971. 2. Definitions. In this Act, unless the context otherwise requires, (a)contempt of court means civil contempt or criminal contempt; (b) civil contempt means disobedience to any judgment, decree, direction, order, writ or other process of a court or willful breach of an undertaking given to a court; (c) criminal contempt means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which (i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or (ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or (iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner; (d) High Court means the High Court for a State or a Union territory, and includes the court of the Judicial Commissioner in any Union territory. The term contempt of court refers to civil contempt or criminal contempt under the Act. But judges do not have any general immunity from criticism of their judicial conduct, provided that it is made in good faith and is genuine criticism, and not any attempt to impair the administration of justice. In In re Arundhati Roy ((2002) 3 SCC 343), the Supreme Court of India followed the view taken in the American Supreme Court (Frankfurter, J.) in Pennekamp v. Florida (328 US 331 : 90 L Ed 1295 (1946)) in which the United States Supreme Court observed: "If men, including judges and journalists, were angels, there would be no problem of contempt of court. Angelic judges would be undisturbed by extraneous influences and angelic journalists would not seek to influence them. The power to punish for contempt, as a means of safeguarding judges in deciding on behalf of the community as impartially as is given to the lot of men to decide, is not a privilege accorded to judges. The power to punish for contempt of court is a safeguard not for judges as persons but for the function which they exercise". In E.M.S. Namboodripad v. T.N. Nambiar ((1970) 2 SCC 325; AIR 1970 SC 2015), the Supreme Court confirmed the decision of the High Court, holding Mr. Namboodripad guilty of contempt of court. In M.R. Parashar v. Farooq Abdullah ((1984) 2 SCC 343; AIR 1984 SC 615.), contempt proceedings were initiated against the Chief Minister of Jammu and Kashmir. But the Court dismissed the petition for want of proof.
- **Defamation :** The clause (2) of Article 19 prevents any person from making any statement that injures the reputation of another. With the same view, defamation has been criminalised in India by inserting it into Section 499 of the I.P.C.
- **Incitement to an offense :** This ground was also added by the Constitution (First Amendment) Act, 1951. The Constitution also prohibits a person from making any statement that incites people to commit offense.
- **Sovereignty and integrity of India :** This ground was also added subsequently by the Constitution (Sixteenth Amendment) Act, 1963. This is aimed to prohibit anyone from making the statements that challenge the integrity and sovereignty of India.

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PROTECTION OF LIFE AND PERSONAL LIBERTY

The Constitution of India provides Fundamental Rights under Chapter III. These rights are guaranteed by the constitution. One of these rights is provided under article 21 which reads as follows:-

Article 21 : Protection of Life And Personal Liberty : No person shall be deprived of his life or personal liberty except according to procedure established by law.

It is similar to Article 3 of the universal Declaration of Human Rights, 1948 which provides that "Everyone has the right to life, liberty and the security of person".

Similar provisions can be seen in International Covenant on Civil and Political Rights, 1976 in Article 6(1) which states, 'Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life', and in Article 9(1) which provides, "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such ground and in accordance with such procedure as are established by law".

Though the phraseology of Article 21 starts with negative word but the word No has been used in relation to the word deprived. The object of the fundamental right under Article 21 is to prevent encroachment upon personal liberty and deprivation of life except according to procedure established by law. It clearly means that this fundamental right has been provided against state only. If an act of private individual amounts to encroachment upon the personal liberty or deprivation of life of other person. Such violation would not fall under the parameters set for the Article 21. in such a case the remedy for aggrieved person would be either under Article 226 of the constitution or under general law. But, where an act of private individual supported by the state infringes the personal liberty or life of another person, the act will certainly come under the ambit of Article 21. Article 21 of the Constitution deals with prevention of encroachment upon personal liberty or deprivation of life of a person.

The state cannot be defined in a restricted sense. It includes Government Departments, Legislature, Administration, Local Authorities exercising statutory powers and so on so forth, but it does not include non-statutory or private bodies having no statutory powers. For example: company, autonomous body and others. Therefore, the fundamental right guaranteed under Article 21 relates only to the acts of State or acts under the authority of the State which are not according to procedure established by law. The main object of Article 21 is that before a person is deprived of his life or personal liberty by the State, the procedure established by law must be strictly followed.

Life :

v Right to Life means the right to lead meaningful, complete and dignified life. It does not have restricted meaning. It is something more than surviving or animal existence. The inhibition against its deprivation to all the limbs and faculties by which life is enjoyed. The meaning of the word life cannot be narrowed down and it will be available not only to every citizen of the country .

In Karak Singh v. State of U.P. AIR 1963 SC 1295, it has been observed that the expression 'life' is something more than mere animal existence and thus, it is not limited to bodily restraint or confinement to prison only. It should not be taken to mean merely the right to continuance of a person's right to the possession of each of his organs like legs, and arms etc.

Personal liberty :

v The word 'liberty' is derived from the Latin worhichd 'liber' which means 'free'. According to the Oxford Dictionary, liberty means the "right or power to do as one pleases or to do something". As far as Personal Liberty under Article 21 is concerned, it means freedom from physical restraint of the person by personal incarceration or otherwise and it includes all the varieties of rights other than those provided under Article 19 of the Constitution. Procedure established by Law means the law enacted by the State. Deprived has also wide range of meaning under the Constitution. These ingredients are the soul of this provision. The fundamental right under Article 21 is one of the most important rights provided under the Constitution which has been described as heart of fundamental rights by the Apex Court.

The scope of Article 21 was a bit narrow till 50s as it was held by the Apex Court in A.K.Gopalan vs State of Madras that the contents and subject matter of Article 21 and 19 (1) (d) are not identical and they proceed on total principles. In this case the word deprivation was construed in a narrow sense and it was held that the deprivation does not restrict upon the right to move freely which came under Article 19 (1) (d). at that time Gopalans case was the leading case in respect of Article 21.

A.K.Gopalan vs State of Madras AIR 1953 SC27 : In this case, the petitioner A.K.Gopalan, a Communist leader, was detained under the Preventive Detention Act, 1950. The petitioner challenged his detention on the following grounds:

i) His detention was violated his right to move freely throughout the territory of India which is the very essence of personal liberty guaranteed in Art. 19. The detention under the Preventive Detention Act was not a reasonable detention under clause (5) of Art.19 and hence the Act was void.

ii) The Preventive Detention Act, 1950 was in conflict with Art. 21 of the Constitution inasmuch as it provided for deprivation of the personal liberty of a man not in accordance with the procedure established by law.

The Supreme Court held that Art. 19 had no application to law depriving a person of his life and personal liberty enacted under Article 21 of the Constitution. It was held that Article 21 dealt with different subjects. Article 19 deals with certain (six freedoms) important individual rights of personal liberty and the restriction that can be imposed on them. Article 21, on the other hand, enable the State to deprive individual of his life and personal liberty in accordance with procedure established by law. The majority view was that so long as a law preventive detention satisfies the requirements of Art. 21, it would not be required to meet the challenges of Art. 19.

In the majority opinion, "Although our Constitution has imposed some limitations on the legislative authori- ties yet subject to and outside such limitations our Constitution has left our Parliament and the State legislatures supreme in their respective fields. In the main- our ac has preferred the supremacy of the legislature to that of judiciary." It was held that there is no safeguard for personal liberty under our Constitution besides Art. 21, such as natural law or common law. In the result, when personal liberty is taken away by a competent legislation the person affected can have no remedy.

The scope of Article 21 was a bit narrow till 50s as it was held by the Apex Court in A.K.Gopalan vs State of Madras that the contents and subject matter of Article 21 and 19 (1) (d) are not identical and they proceed on total principles. In this case the word deprivation was construed in a narrow sense and it was held that the deprivation does not restrict upon the right to move freely which came under Article 19 (1) (d). at that time Gopalans case was the leading case in respect of Article 21. along with some other Articles of the Constitution, but post Gopalan case the scenario in respect of scope of Article 21 has been expanded or modified gradually through different decisions of the Apex Court and it was held that interference with the freedom of a person at home or restriction imposed on a person while in jail would require authority of law.

In **Ram Singh v. Union of India, (1951) 1 SCR 451**, it has been held that it is not for the Court to see whether the law is reasonable or not. With the adoption of the expression 'procedure established by law' under Art. 21 the Constitution gave the Legislature the final word to determine the law and the validity of the law cannot be questioned.

In **Niranjan Singh v State of Punjab AIR 1952 SC 106**, the Supreme Court held that Article-21 places a limitation upon the executive and it is not intended in any way to restrict the power of the Legislature.

In **M.S.M. Sharma v. S.K. Singh AIR 1959 SC 395**, the Supreme Court held that procedure established by law means the procedure laid down by statute legislated by the Union or the State Legislature and if the Legislature framed rules under Article 208 to enforce its privilege and a person is deprived of his personal liberty as a result of the proceedings before the committee of privileges, the deprivation would be according to the procedure established by law.

Whether the reasonableness of a penal law can be examined with reference to Article 19, was the point in issue after Gopalans case in the case of Maneka Gandhi v. Union of India , the Apex Court opened up a new dimension and laid down that the procedure cannot be arbitrary, unfair or unreasonable one. Article 21 imposed a restriction upon the state where it prescribed a procedure for depriving a person of his life or personal liberty.

In **Maneka Gandhi v. Union of India, AIR 1978 SC 597**, the Supreme Court has over ruled the A.K.Gopalan's case and has held that the word 'law' in Art.21 does not mean merely an enacted piece of law but must be just, fair and reasonable law i.e. which embodies s the principles of natural justice. The Court held that Law should be reasonable law, and not enacted piece of law. Thus, the procedure prescribed for deprivation of personal liberty must be reasonable, fair and just and a procedure, to be a reasonable, fair and just, must embody the principles of natural justice.

Thus accepting the concept of natural as one of the essential component of law, the Court has imported the American concept of 'due process of law' into our Constitution that the makers of Constitution rejected the expression 'due process of law' in Constituent Assembly long back.

'Due process of law' :

v According to Munro, 'due process of law' in word means fair play. All legal proceedings which are in furtherance of public good and which preserve the principle of liberty and justice are held to be in accordance with the requirement as to due process of law.

'Due process' covers both substantive and procedural laws which must be just, fair and reasonable in judicial view. The protection against the deprivation of life, liberty and property is available not only against the executive but also against the legislative. The court has full control not only on the executive action but also on the legislative action by declaring procedure or law which is against to the principles of natural justice, unconstitutional on the ground that it is not just, fair or reasonable. In judicial proceedings, 'due process of law' means law in its regular course of administration through courts of justice, in accordance with the fundamental principles of free Government, or a course of proceeding according to whose rules and principles which have been established for the protection and enforcement of private right.

The term 'due process of law' is synonymous to 'due course of law', 'due course of law of land' and 'course of the common law'.

This view has been further relied upon in a case of **Francis Coralie Mullin v. The Administrator**, Union Territory of Delhi and others as follows :

Article 21 requires that no one shall be deprived of his life or personal liberty except by procedure established by law and this procedure must be reasonable, fair and just and not arbitrary, whimsical or fanciful. The law of preventive detention has therefore now to pass the test not only for Article 22, but also of Article 21 and if the constitutional validity of any such law is challenged, the court would have to decide whether the procedure laid down by such law for depriving a person of his personal liberty is reasonable, fair and just. In another case of Olga Tellis and others v. Bombay Municipal Corporation and others , it was further observed : Just as a mala fide act has no existence in the eye of law, even so, unreasonableness

Vitiates law and procedure alike. It is therefore essential that the procedure prescribed by law for depriving a person of his fundamental right must conform the norms of justice and fair play. Procedure, which is just or unfair in the circumstances of a case, attracts the vice of unreasonableness, thereby vitiating the law which prescribes that procedure and consequently, the action taken under it. As stated earlier, the protection of Article 21 is wide enough and it was further widened in the case of Bandhua Mukti Morcha v. Union of India and others in respect of bonded labour and weaker section of the society.

It lays down as follows :

v Article 21 assures the right to live with human dignity, free from exploitation. The state is under a constitutional obligation to see that there is no violation of the fundamental right of any person, particularly when he belongs to the weaker section of the community and is unable to wage a legal battle against a strong and powerful opponent who is exploiting him. Both the Central Government and the State Government are therefore bound to ensure observance of the various social welfare and labour laws enacted by Parliament for the purpose of securing to the workmen a life of basic human dignity in compliance with the directive principles of the state policy.

The meaning of the word life includes the right to live in fair and reasonable conditions, right to rehabilitation after release, right to live hood by legal means and decent environment. The expanded scope of Article 21 has been explained by the Apex Court in the case of Unni Krishnan v. State of A.P. and the Apex Court itself provided the list of some of the rights covered under Article 21 on the basis of earlier pronouncements and some of them are listed below:

1) The right to go abroad.

2) The right to privacy.

3) The right against solitary confinement.

4) The right against hand cuffing.

5) The right against delayed execution.

6) The right to shelter.

7) The right against custodial death.

8) The right against public hanging.

9) Doctors assistance

It was observed in Unni Krishnans case that Article 21 is the heart of Fundamental Rights and it has extended the Scope of Article 21 by observing that the life includes the education as well as, as the right to education flows from the right to life.

As a result of expansion of the scope of Article 21, the Public Interest Litigations in respect of children in jail being entitled to special protection, health hazards due to pollution and harmful drugs, housing for beggars, immediate medical aid to injured persons, starvation deaths, the right to know, the right to open trial, inhuman conditions in aftercare home have found place under it.

Through various judgments the Apex Court also included many of the non-justifiable Directive Principles embodied under part IV of the Constitution and some of the examples are as under:

a) Right to pollution free water and air.

b) Protection of under-trial.

c) Right of every child to a full development.

d) Protection of cultural heritage.

Maintenance and improvement of public health, improvement of means of communication, providing human conditions in prisons, maintaining hygienic condition in slaughter houses have also been included in the expanded scope of Article 21, this scope further has been extended even to innocent hostages detained by militants in shrine who are beyond the control of the state.

The Apex Court in the case of S.S. Ahuwalia v. Union of India and others it was held that in the expanded meaning attributed to Article 21 of the Constitution, it is the duty of the State to create a climate where members of the society belonging to different faiths, caste and creed live together and, therefore, the State has a duty to protect their life, liberty, dignity and worth of an individual which should not be jeopardized or endangered. If in any circumstance the state is not able to do so, then it cannot escape the liability to pay compensation to the family of the person killed during riots as his or her life has been extinguished in clear violation of Article 21 of the Constitution. While dealing with the provision of Article 21 in respect of personal liberty, Hon'ble Supreme Court put some restrictions in a case of Javed and others v. State of Haryana , AIR 2003 SC 3057 as follows: at the very outset we are constrained to observe that the law laid down by this court in the decisions relied on either being misread or read divorced of the context. The test of reasonableness is not a wholly subjective test and its contours are fairly indicated by the Constitution. The requirement of reasonableness runs like a golden thread through the entire fabric of fundamental rights. The lofty ideals of social and economic justice, the advancement of the nation as a whole and the philosophy of distributive justice- economic, social and political- cannot be given a go-by in the name of undue stress on fundamental rights and individual liberty. Reasonableness and rationality, legally as well as philosophically, provide colour to the meaning of fundamental rights and these principles are deducible from those very decisions which have been relied on by the learned counsel for the petitioners.

The Apex Court led a great importance on reasonableness and rationality of the provision and it is pointed out that in the name of undue stress on Fundamental Rights and Individual Liberty, the ideals of social and economic justice cannot be given a go-by. Thus it is clear that the provision Article 21 was constructed narrowly at the initial stage but the law in respect of life and personal liberty of a person was developed gradually and a liberal interpretation was given to these words. New dimensions have been added to the scope of Article21 from time to time. It imposed a limitation upon a procedure which prescribed for depriving a person of life and personal liberty by saying that the procedure which prescribed for depriving a person of life and personal liberty by saying that the procedure must be reasonable, fair and such law should not be arbitrary, whimsical and fanciful. The interpretation which has been given to the words life and personal liberty in various decisions of the Apex Court, it can be said that the protection of life and personal liberty has got multi dimensional meaning and any arbitrary, whimsical and fanciful act of the State which deprived the life or personal liberty of a person would be against the provision of Article 21 of the Constitution.

Article 21-A: Right to Education

v The Constitution of India, before the enactment of Constitution (86th Amendment) Act, 2002, does not provide the right to education in Part III as Fundamental Right, but incorporated it under Directive Principles of State Policy in Part IV. However, the Courts considered the right to education as Fundamental Right considering it as a right under Article 21 in their judgments.

However, Article 21-A [which was inserted in Part III (Fundamental Rights) by the Constitution (86th Amendment) Act, 2002, Sec.2 of the constitution provides that: "The State shall provide free and compulsory

education to all children of the age of six to fourteen years in such manner as the State may, by law, determine".

In Unni Krishnan, JP and others v. State of AP and others AIR 1993 SC 2178, the Supreme Court has held that the citizen of this country have a fundamental right to education. The said right flows from Article 21. This right is, however, not an absolute right. Its content and parameters have to be determined in the light of Article 45 and 41. In other words every child of this country has a right to free education until he completes the age of fourteen years. Thereafter his right to education is subject to the limits of economic capacity and development of the State.

After including Article 21-A in Part III (Fundamental Rights) of the Indian Constitution during the year 2002, in exercise of the power under Article 35, Parliament has enacted the right of Children to Free and Compul- sory Education Act, 2009.

1) Every child of the age of six to fourteen years shall have a right to free and compulsory education in a neighbourhood school till completion of elementary education (i.e. first class to eight class). No child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing the elementary education.

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RIGHT AGAINST EXPLOITATION IN INDIAN CONSTITUTION

The Right Against Exploitation in the Constitution of India :

The Rights against Exploitation is provided under Articles 23 and 24 of the Constitution of India. Right to personal liberty is never real if some people are exposed to exploitation by others. Arts. 23 and 24 of the constitution are designed to prevent exploitation of men by men. Thus rights ensured by these two articles may be considered as complimentary to the individual rights secured by Arts. 19 and 21 of the constitution.

Article 23 of the Indian Constitution reads as follows :

i. "Traffic in human beings and beggar and similar other forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law."

ii. "Nothing in this article shall prevent the state from imposing compulsory service for public purposes and in imposing such service the state shall not make any discrimination on grounds only of religion, race, caste of class or any of them."

Ever since the dawn of civilization in every society, the stronger exploited the weak. Slavery was the most prevalent and perhaps the cruelest form of human exploitation. Our constitution does not explicitly forbid slavery. The scope of Article 23 is far wide. Any form of exploitation is forbidden. Thus forcing the landless labour to render free service by the land-owner is unconstitutional. Equally, forcing helpless women into prostitution is a crime. The intention of the constitution is that whatever a person does must be voluntary. There must not be any element of coercion involved behind a man's action.

The state however may call upon citizens to render national service in defence of the country. Thus conscription is not unconstitutional. But in compelling people to render national service, the state must not discriminate on grounds of race, sex, caste or religion.

Art. 24 forbid employment of child-labour in factories or in hazardous works. The art. reads "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."

In an environment of all pervading poverty, children are often forced to seek employment to earn a living. Employers often find it less costly to engage child labour at a cheap price. But children so employed do not get opportunities for development. Thus, employment of child labor is a form of traffic in human beings. Hence it is justifiably and forbidden. But employment of child labor cannot be effectively checked unless there is overall improvement of economic conditions of the poorer sections of the society. This provision of the constitution remains a pious wish even today.

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v Since both the Fundamental Rights and the Directive Principles were of common origin, it is clear that they both had the same objectives, namely to ensure the goal of a welfare society envisaged by the Preamble. If the Fundamental rights seek to achieve the goal by guaranteeing certain minimal rights to the individual as against State action, the Directives enjoin the State to ensure the welfare of the people collectively. Whenever the State makes laws, they should be made consistently with these principles with a view to establishment of an egalitarian society.

The idea of embodying a code of Directive Principles has been borrowed by the framers of the Constitution from the Irish Constitution of 1937, which contains similar provisions.

The preamble, the Directive Principles and the Fundamental Rights constitute the more important features of our Constitution. The Directive Principals of the State Policy enshrined in Part IV and the Fundamental Rights, guaranteed in Part III of the Constitution.

Although Fundamental Rights and Directive Principles appear in the Constitution as distinct entities, it was the Assembly that separate them; the leaders of the freedom struggle had drawn no distinction between the positive and negative obligations of the states. Both types of rights had developed as a common demand, products of national and social revolutions, of their almost inseparable intertwining and of the character of Indian polity itself.

The directive principles, though fundamental in the governance of the country, are not enforceable by any court in terms of the express provisions of Article 37 of the Constitution, while fundamental rights are enforceable by the Supreme Court and the High Court in terms of the express provisions of Article 32 and 226 of the Constitution. This doest not, however, mean or imply any dichotomy between the two. It social aspect can, however, be amended only by legislation to carry out the objectives of the directive principles of state policy.

The enumeration of the fundamental rights and the non-justiciable directives was also performed by Sir B.N. Rau, in his draft of Fundamental Rights, presented by him in the Fundamental Rights Sub-Committee, which was appointed by the Constitution. It was pointed out by him that some of the provisions could not be enforced by legal action in courts of law, like the rights to work, leisure, and the like guaranteed under the Soviet Constitution (1936), by Articles 118-121. He therefore divided the rights in the draft into two groups- Group A and Group B. Group B included the Fundamental Rights which were to be "enforced by legal action". These rights later came to embodied in Part III of the Constitution. In Group A on the other hand, Sir B.N. Rau included the non-justiciable rights, which though could not be enforced by an individual in a court of law, was yet to be a part of the Constitution because of their educational value.

Conflict between Fundamental Rights and Directive Principles of State Policy :

v The important question is where there is a conflict between the fundamental rights and directive principles, which should prevail? The Fundamental Rights are the rights of the individual citizens guaranteed by the Constitution. The directive principles lay down various tenets of a welfare state. The conflict arises when the State needs to implement a directive principle and it infringes/ abridges the fundamental rights of the citizens. The chapters on the fundamental rights & DPSP were added in order of part III and part IV of the constitution. The Fundamental rights are justifiable and guaranteed by the constitution. The Directive principles were directives to the state and government machinery. But they are not enforceable, by the law. Champakam Dorairajan Case This conflict between Fundamental Rights and DPSP came to the Supreme Court for the first time in Champakam Dorairajan Case (1952). Smt Champakam Dorairajan was a woman from the State of Madras. In 1951, she was not admitted to a medical college because of a Communal G.O. (Government Order) which had provided caste based reservation in government jobs and college seats. This GO was passed in 1927 in the Madras Presidency. Champakam Dorairajan Case was a first major verdict of the Supreme Court on the issue of Reservation. Champakam Dorairajan Case led to the First amendment of Indian Constitution. This was the case, which when was in Supreme Court; the Lok Sabha was not formed. Lok Sabha was formed in 1952. The conflict was between article 16(2) from the chapter of Fundamental Rights and Article 46 of the Constitution. Article 16(2) says that : No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State. And article 46 says: The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation. The Supreme Court held that Article 37 expressly says that the

directive principles are not enforceable by court. Supreme Court mandated that the chapter on Fundamen- tal rights in the constitution is sacrosanct and the directive principles have to conform to and run subsidiary to the chapter on Fundamental Rights. This means that Fundamental Rights were given superiority over the Directive principles.'

Inter-relationship between Fundamental Rights and DPSP :

v The question of relationship between the Directive Princip.les and the Fundamental rights has caused some difficulty, and the judicial attitude has undergone transformation on this question over time.

Initially, the courts adopted a strict and literal legal position in this respect. The Supreme Court adopting the literal interpretative approach to Art. 37 ruled that a Directive Principle could not override a Fundamental right, and that in case of conflict between the two, the Fundamental right would prevail over the Directive Principle.

Champakam Dorairajan case, 1951 :

v The Supreme Court in State of Madras v. Champakam Dorairajan, stated —

1. The Directive Principles should conform, and run as subsidiary, to the Fundamental rights.

2. The Directive Principles of the state policy, which by Art. 37 are expressly made unenforceable by a court cannot override the provisions found in part III (fundamental rights) which, notwithstanding other provi- sions, are expressly made enforceable by appropriate writs, orders or directions under article 32.

3. The chapter on fundamental rights is sacrosanct and not liable to be abridged by any legislative or executive act or order, except to the extent provided in the appropriate article in part III.

4. The Directive Principles of state policy have to conform to and run as subsidiary to the chapter on Funda- mental rights."

DOCTRINE OF HARMONIOUS CONSTRUCTION :

v The Supreme Court started giving a good deal of value to the Directive principles from a legal point of view and started arguing for harmonizing the two the Fundamental rights and Directive Principles.

"Where two judicial choices are available, the construction in conformity with the social philosophy" of the Directive Principles has preference. The courts therefore could interpret a statute so as to implement Direc- tive Principles instead of reducing them to mere theoretical ideas. This is on the assumptions that the law makers are not completely unmindful or obvious of the Directive Principles.

Further the courts also adopted the view that in determining the scope and ambit of Fundamental rights, the Directive Principles should not be completely ignored and that the courts should adopt the principles of harmonious construction and attempt to give effect to both as far as possible.

Kerala Education Bill , 1958

v In re Kerala Education Bill , SC observed

1. while affirming the primacy of fundamental rights over the directive principles, qualified the same by plead- ing for a harmonious interpretation of the two.

2. that "nevertheless, in determining the scope and ambit of the Fundamental rights relied upon by or on behalf of any person or body, the court may not entirely ignore these Directive Principles of state policy laid down in part IV of the constitution but should adopt the principle of harmonious construction and should attempt to give effect to both as much as possible."

Without, therefore, making the directive principles justifiable as such, the courts began to implement the values underlying these principles to the extent possible. The Supreme Court began to assert that there is "no conflict on the whole" between the fundamental rights and the directive principles. 'They are complementary and supplementary to each other."

Golak Nath v. State of Punjab, 1967

v The Supreme Court there emphasized that the fundamental rights and directive principles formed an "inte- grated scheme" which was elastic enough to respond to the changing needs of the society.

Kesavananda Bharti v State of Kerala ,1973

SC observed :

1. "the fundamental rights and directive principles constitute the "conscience of the constitution" there is no antithesis between the fundamental rights and directive principles and one supplements the other."

2. both parts III (fundamental rights) and IV (directive principle) have to be balanced and a harmonized .

State of Kerala v. N.M Thomas, 1976

- The Supreme Court said that the Directive Principles and Fundamental rights should be construed in harmony with each other and every attempt should be made by the court to resolve any apparent in consistencybetween them.

Pathumma v. State of Kerala, 1978

- The Supreme Court has emphasized that the purpose of the directive principles is to fix certain socio-economic goals for immediate attainment by bringing about a non-violent social revolution. The constitution aims at bringing about synthesis between Fundamental rights and the Directive principles.

Minerva Mills v UOI, 1980

SC observed :

1. that the fundamental rights "are not an end in themselves but are the means to an end." The end is specified in the directive principles.

2. fundamental rights and directive principles together "constitute the core of commitment to social revolution and they, together, are theconscience of the constitution." The Indian constitution is founded on the bedrock of "balance" between the two.

3. "To give absolute primacy to one over the other is to disturb the harmony of the constitution. This harmony and balance between fundamental rights and directive principles is an essential feature of the basic structure of the constitution."

4. the goals set out in directive principles are to be achieved without abrogating the fundamental rights.

5. "It is in this sense" that fundamental rights and directive principles "together constitute the core of our constitution and combine to form its conscience. Anything that destroys the balance between the two parts will ipso facto destroy an essential element of the basic structure of our constitution."

Olga Tellis v. Bombay Municipa corpn, 1985

- The Supreme Court has argued in Olga Tellis that since the directive principles are fundamental in the governance of the country they must, therefore, be regarded as equally fundamental to the understanding and interpretation of the meaning and content of fundamental rights.

Unnikrishna v. state of Andhra Pradesh, 1993

SC said :

1. that the fundamental rights and directive principles aresupplementary and complimentary to each other, and not exclusionary of each other, and

2. that the fundamental rights are but a means to achieve the goal indicate in the directive principles ,that "fundamental rights must be construed in the light of the directive principles".

Dalmia Cement v. UOI, 1996

1. the Supreme Court has emphasized that the core of the commitment of the constitution to the social revolution through rule of law lies in effectuation of the fundamental rights and directory principles as supplementary and complimentary to each other.

2. The preamble to the constitution, fundamental rights and directive principles-the trinity-are the conscience of the constitution.

Ashoka Kumar Thakur v. Union of India, 2008

Recently, in Ashoka Kumar Thakur v Union of India SC observed that no distinction can be made between the two sets of rights.

- The Fundamental right represents the civil and political rights and the directive principles embody social and economic rights.
- Merely because the directive principles are non-justiciable by the judicial process does not mean that they are of subordinate importance.

CONCLUSION

- It may be concluded by saying that, one should try to establish harmony between fundamental rights and Directive Principles, since maintenance of harmony between them is a basic feature to the constitution.

- The Directive principles and Fundamental rights are not now regarded as exclusionary of each other. They are regarded as supplementary and complementary to each other. The directive principles which have been declared to be "fundamental" in the governance of the country cannot be isolated from fundamental rights. The directive principles have got to be read into the fundamental rights. An example of such relationship is furnished by the "right to education".
- By and large this assimilative strategy has resulted in broadening, and giving greater depth and dimension to, and even creating more rights for the people over and above the expressly stated, fundamental rights. That biggest beneficiary of this approach has been Art 21.
- At the same time, the values underlying the directive principles have also become enforceable by riding on the back of the fundamental rights. Courts have used directive principles not to restrict, but rather to expand, the ambit of the fundamental rights.
- The theme that "fundamental rights are but a means to achieve the goal indicated in the directive principles" and the fundamental rights must be construed in the light of the directive principles" has been advocated by the Supreme Court time and again.
- Accordingly, the directive principles are regarded as a dependable index of "public purpose". If a law is enacted to implement the socio-economic policy envisaged in the directive principles, then it must be regarded as one for public purpose. Thus, in State of Bihar v. kameshwar, the supreme court relied on Art. 39 to decide that the law to abolish zamindari had been enacted for a "public" purpose within the meaning of Art. 31.Article 51A Fundamental Duties.

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FUNDAMENTAL DUTIES

INTRODUCTION

v Rights and Duties are like two sides of a coin, absolutely inseparable. Whenever and wherever we have any rights, we must have corresponding duties. Whether it be the home, the society or the country, in every sphere of life we have rights and duties that go hand in hand. We have rights in the same measure as we have duties.

A duty means that some person has to do something or abstain from doing something in favour of another person. Salmond says, "A duty is roughly speaking an act which one ought to do, an act the opposite of which would be wrong". Duty is species of obligation. According to Dias, the factors that all duties into being are prescriptions of conduct towards the achievement of some end, moral, social or other.

Duties are either moral or legal. A moral duty is one that is enjoined by the rules of propriety and moral right. For example it is our moral duty not to waste food or paper. Bible says 'love thy neighbor thy self'. A legal duty is one that is enjoined by the law of the land. A man is said to have a legal duty towards any matter when he is under a legal obligation to do or not to do something. For example, it is the legal duty of the debtor to pay up the amount of the debt to his creditor or of the promisor under a contract to perform his promise in favour of the promise.

The Fundamental Duties are a novel feature of the Indian Constitution in recent times. Fundamental Duties of citizens serve a useful purpose. In particular, no democratic polity can ever succeed where the citizens are not willing to be active participants in the process of governance by assuming responsibilities and discharging citizenship duties and coming for ward to give their best to the country. Some of the fundamental duties enshrined in article 51A have been incorporated in separate laws. There has been some rather disproportion-ate emphasis on the rights of citizens as against their duties even though the traditions and temper of Indian thought through the ages laid greater emphasis on duties. Actually, rights and duties are the two sides of the same coin. For every right, there is a corresponding duty. Rights flow only from duties well performed. Duty is an inalienable part of right: What is duty for one is another person's right and respect human life and not to injure another person. If everyone performs his/her duty, every body's rights would be automatically protected.

Constitution is the supreme law of India. It is the longest written constitution of any sovereign country in the world, containing at the time of commencement, the constitution had 395 articles in 22 parts and 8 schedules. Now Constitution of India have 448 articles in 25 parts, 12schedules, 5 appendices, Besides the English version, there is an official Hindi translation. B. R. Ambedkar is the Chief Architect of Indian Constitution. Constitution was enacted by the Constituent Assembly on 26 November 1949, and came into effect on 26 January 1950. Date 26 January was chosen to commemorate the Purna Swaraj declaration of independence of 1930. There is reference to such duties in international instruments such as the Universal Declaration of Human Rights. Article 29 (1) of the Universal Declaration of Human rights, 1948, states: "Everyone has duties to the community in which alone the free and full development of his personality is possible". Article 51A brings the Indian Constitution into conformity with these treaties.

ORIGIN :

v Democratic rights are based on the theory that rights are not created by the state. Individuals are born with right. It is on this theory that the Indians before independence raised the slogan that "freedom is our birth right". It is in this sense again that Prof. Laski asserts that the "state does not create rights, it only recognizes rights.

The socialists on the other hand, make enjoyment or rights conditional on the fulfillment of duties. They claim that "he who does not work, neither shall he eat". The constitution of the world's first socialist country, that of Soviet Union contains a list of fundamental rights immediately followed by a list of fundamental duties. It is clearly asserted that the enjoyment of fundamental rights is conditional on the satisfactory performance of fundamental duties. It was on this Soviet model that fundamental duties were added to the Indian Constitution by 42nd amendment of the constitution in 1976. The fundamental duties are contained in Art. 51A.

The Fundamental Duties of citizens were added to the Constitution by the 42nd Amendment in 1976, upon the recommendations of the Swaran Singh Committee that was constituted by the government earlier that year. Originally ten in number, the Fundamental Duties were increased to eleven by the 86th Amendment in 2002, which added a duty on every parent or guardian to ensure that their child or ward was provided

opportunities for education between the ages of six and fourteen years. There is reference to such duties in international instruments such as the Universal Declaration of Human Rights and International, and Article 51A brings the Indian Constitution into conformity with these treaties.

The Fundamental Rights in Part III, the Directive Principles of State Policy in Part IV and the Fundamental Duties in Part IVA forms a compendium and have to be read together. It is true that there is no legal sanction provided for violation or non-performance of Fundamental Duties. There is neither specific provision for enforceability nor any specific prohibition. However, Fundamental Duties have an inherent element of compulsion regarding compliance. Out of the ten clauses in article 51A, five are positive duties and the other five are negative duties. Clauses (b), (d), (f), (h) and (j) require the citizens to perform these Fundamental Duties actively. It is said that by their nature, it is not practicable to enforce the Fundamental Duties and they must be left to the will and aspiration of the citizens. However, in the case of citizens holding public office, each and all Fundamental Duties can be enforced by suitable legislation and departmental rules of conduct. Appropriate sanctions can be provided for lapse in respect of each Fundamental Duty and it is quite practicable to enforce the sanction against every citizen holding a public office; for instance, departmental promotions can be deferred, increments can be withheld, etc. If an officer takes part in a strike or stalls the proceedings of his institution, he can be made to forgo the salary for that day.

FUNDAMENTAL DUTIES IN INDIA

Article 51 A : Under this article of our Constitution every citizen has been obligated to perform certain duties called the Fundamental Duties. These duties are defined as the moral obligations of all citizens to help promote a spirit of patriotism and to uphold the unity of India.

PART - IVA

FUNDAMENTAL DUTIES

51A. Fundamental duties.-It shall be the duty of every citizen of India :

a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;

b) to cherish and follow the noble ideals which inspired our national struggle for freedom;

c) to uphold and protect the sovereignty, unity and integrity of India;

d) to defend the country and render national service when called upon to do so;

e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;

f) to value and preserve the rich heritage of our composite culture;

g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;

h) to develop the scientific temper, humanism and the spirit of inquiry and reform;

i) to safeguard public property and to abjure violence;

j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement;

k) 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.

The following are the Eleven Fundamental Duties of every citizen of India :

a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;

v The first and the foremost duty assigned to every citizen of India are to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem. These are the very physical foundations of our citizenship. All of us are supposed to maintain the dignity of the Constitution by not indulging in any activities in violation of the letter or spirit of the Constitution. Ours is a vast country with many languages, sub-cultures and religious and ethnic diversities, but the essential unit of the country is epitomized in the one Constitution, one flag, one people and one citizenship. We are all governed and guided by this Constitution irrespective of caste, religion, race, sex, etc. The Constitution is the result of the many commitments, promises and pledges made by nationalist leaders to the people of India. Also, it embodies efforts of

reconciliation, accommodation and compromise. All of us and the Fundamental Rights of each of us are protected by it. Similarly, the National Flag and the National Anthem are symbols of our history, sovereignty, unity and pride. If a citizen of India by any overt or covert act shows disrespect to the Constitution, the National Anthem or the National Flag, it would be not only an anti-social and anti-national activity but it would also spell doom to all our rights and very existence as citizens of a sovereign nation. Each citizen must therefore not only refrain from any such activity but also do his best to prevent any miscreant trying to show disrespect to our national symbols. Every nation is proud of its citizens because of their dedication, sincerity and patriotism. We, the citizens of India, have to be equally proud of our nation, our Constitution, our National Flag and our National Anthem. We must put the nation above our narrow personal interests and then only we will be able to protect our hard-earned freedom and sovereignty.

b) to cherish and follow the noble ideals which inspired our national struggle for freedom;

v The citizens of India must cherish and follow the noble ideals which inspired the national struggle for freedom. The battle of freedom was a long one where thousands of people sacrificed their lives for our freedom. It becomes our duty to remember the sacrifices made by our forefathers for the cause of the country. But, what is much more important is to remember, imbibe and follow the ideals which pervaded our unique struggle. It was not a struggle merely for political freedom of India. It was for the social and economic emancipation of the people all over the world. Its ideals were those of building a just society and a united nation of freedom equality, non-violence, brotherhood and world peace. If we, the citizens of India remain conscious of and committed to rise above the various fissiparous tendencies raising their ugly heads now and then, here and there.

c) to uphold and protect the sovereignty, unity and integrity of India;

v It imposes a Fundamental Duty on every citizen of India that he shall not do anything derogatory of upholding or protecting the sovereignty, unity or integrity of India. It is a duty prohibitory in nature addressed to traitors and spies.

d) to defend the country and render national service when called upon to do so;

v In modern nation-States, it is considered axiomatic that every citizen is bound to be ready to defend the country against war or external aggression. The present day wars are not fought on the battlefield only nor are they won only by the armed forces; the citizens at large play a most vital role in a variety of ways. Sometimes, civilians may be required also to take up arms in defence of the country.

e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;

v The duty to promote harmony and the spirit of common brotherhood amongst all the people of India essentially flows from the basic value of fraternity enshrined in the preamble to the Constitution. India is a country of different castes, languages, religions and many cultural streams but we are one people with one Constitution, one flag and one citizenship. Spirit of brotherhood should come very normally among the citizens of a country like India where the norm has been to consider the entire world as one family. The Constitution also casts upon us the Fundamental Duty of ensuring that all practices derogatory to the dignity of women are renounced. This again should come normally to a country where it is an aphorism that Gods reside where women are worshipped. It is for us to rise above the later day degenerations and aberrations which tarnished the image of our society.

f) to value and preserve the rich heritage of our composite culture;

v To preserve the rich heritage of our composite culture is another Fundamental Duty ofevery Indian citizen. Our cultural heritage is one of the noblest and the richest. Also, it is part of the heritage of the earth. What we have inherited from the past, we must preserve and pass on to the future generations. In fact, each generation leaves its footprints on the sands of time. We must hold precious and dear what our fore-fathers have created and their successive generations bequeathed to us as symbols of their artistic excellence and achievements. Generations to come always draw inspiration from past history which stimulates them to aim at ever greater heights of achievement and excellence. It becomes the ardent duty of every citizen to ensure that these monuments and pieces of art are notin any way damaged, disfigured, scratched or subjected to vandalism or greed of unscrupulous traders and smugglers.

g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;

v In the face of the menace of the increasing pollution and environmental degradation, it is the duty of every citizen to protect and improve natural environment including forests, lakes, rivers and wild life and to have

compassion for living creatures. The rising air, water and noise pollution and large-scale denudation of forest are causing immense harm to all human life on earth. The mindless and wanton deforestation in thename of needs of development is causing havoc in the form of natural calamities and imbalances. By protecting our forest cover, planting new trees, cleaning rivers, conserving water resources, reforesting wastelands, hills and mountains and controlling pollution in cities, villages and industrial units, we can help save the future of our fellow citizens and of planet earth itself. What is needed is a concerted effort at, an awareness campaign and a planned strategy to move forward through voluntary citizen initiatives. Governmental steps alone cannot help bring about a pollution-free atmosphere to live now and in the future.

h) to develop the scientific temper, humanism and the spirit of inquiry and reform;

v It is the bounden duty of every citizen to preserve and promote a scientific temper and a spirit of inquiry to keep pace with the fast changing world. Also, the Constitution ordains that science and technology must be tempered with a sense of humanism because ultimately the end of all progress is the human being and the quality of life and relationships that is developed.

i) to safeguard public property and to abjure violence;

v It is most unfortunate that in a country which preaches non-violence to the rest of the world, we see from time to time spectacles of senseless violence and destruction of public property indulged in by a few of its citizens. This is why it became necessary to prescribe the responsibility "to safeguard public property and abjure violence" as a fundamental citizenship duty.

j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement;

v The drive for excellence in all spheres of individual and collective activity is the demand of times and a basic requirement in a highly competitive world. Nothing but the best would have survival potential in tomorrow's world. This would include respect for professional obligations and excellence. Whatever work we take up either as individual citizens or as groups, our effort should be directed to achieving the goal of excellence. Also, special emphasis is called for in the area of collective activity.

k) 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.

v To provide opportunities for education by the parent the guardian, to his child, or a ward between the age of 6-14 years as the case may be. Right to Education has been provided by Constitution of India by incorporating Art. 21 through Constitution (86th Amendment) Act, 2002. Art. 21A provides that "The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine". To implement this right, the Union Government enacted the Right of Children to Free and Compulsory Education Act, 2009 (known as Right to Education Act, 2009. The state realised that the parent has to take up it as his duty to educate his child, aged between six to fourteen. Hence a new clause (k) has been added to Art. 51-A by the Constitution (86th Amendment) Act, 2002 education and it is the duty of the parent or guardian to provide opportunities for education. This is the duty towards his family.

The fundamental duties are fine sentiments. They legalized the dictates of the ancient scriptures such as individual's 'katravya' which deals with one's duties towards society, the country. The Indian scriptures enjoin people to perform their duties without caring for their rights. The fundamental duties are fine sentiments. They cannot be enforced legally, except (a), (g), (i) and (k). Mandamus cannot be issued against the people for implementing these duties. The duties enumerated in clauses (b), (f), (h) and (j) are merely 'directory' in nature. They cannot signify the definite ideas or ideals. They are not capable of legal enforceability.

Value and Significance of fundamental duties in India :—

a) They serve as a reminder to the citizens that while enjoying their rights, they should also be conscious of duties they owe to their country, their society and to their fellow citizens.

b) They serve as a warning against the anti-national and antisocial activities like burning the national flag, destroying public property and so on.

c) They serve as a source of inspiration for the citizens and promote a sense of discipline and commitment among them. They create a feeling that the citizens are no mere spectators but active participants in the realisation of national goals.

d) They help the courts in examining and determining the constitutional validity of a law. In 1992, the Supreme Court ruled that in determining the constitutionality of any law, if a court finds that the law in question seeks

to give effect to a fundamental duty, it may consider such law to be 'reasonable' in relation to Article 14 (equality before law) or Article19 (six freedoms) and thus save such law from unconstitutionality.

e) They are enforceable by law. Hence, the Parliament can provide for the imposition of appropriate penalty or punishment for failure to fulfill any of them. The importance of fundamental duties is that they define the moral obligations of all citizens to help in the promotion of the spirit of patriotism and to uphold the unity of India.

JUDICIAL DYNAMICS :

Bijoe Emmannel v. State of Kerala, [(1986) 3 SCC 615],

v (Known as National Anthem case), it has been held that a citizen can refuse to sing the National Anthem on the grounds of personal faith and religion. However, clause (a) of the Art. 51-A states that it shall be duty of every citizen of India to respect the National Flag and the National Anthem. It indicates that it is the duty of every Indian to salute his National Flag and sing the National Anthem inspites his attachment to any faith, religion or region.

1. M.C.MEHTA (2) V. UNION OF INDIA (1983) 1 SCC 471 :—

v The Supreme Court has held that under art.51-A(g) it is the duty of the central government to introduce compulsory teaching of lessons at least for one hour in a week on protection and improvement of natural environment in all the educational institution of the country. It directed central government to get textbook written on that subject and distribute them to the educational institute free of cost. In order to arouse amongst the people ,the consciousness of cleanliness of environment, it suggested the desirability of organizing - keep the city clean week, keep the town clean, keep the village clean week in every city, town and village throughout India at least once in a year.

2. AIIMS STUDENT UNION V. AIIMS AIR 2001 SC 3262 :—

v In this case importance of fundamental duties enshrined in art 51A has been shown while striking down the institutional reservation of 33% in AIIMS coupled with 50% reservation discipline wise as violative of art.14 of the Constitution, the Supreme Court said that they are equally important like fundamental rights. Tough fundamental duties are not made enforceable like fundamental rights but it cannot overlook as "duties" in Part IV is prefixed by to same word "fundamental" which was prefixed by the founding fathers of the constitution to "right" in Part III. Every citizen of India is fundamentally obliged to develop the scientific temper and humanism. Though Art. 51A does not cast any fundamental duty on the state. The fact remains that the duty every citizen is the collective duty of the state. Any reservation apart from being substantive on the constitutional anvil must also be reasonable to be permissible. In assessing the reasonability one of the factors to be taken into consideration would be whether the character and quantum of reservation would stall or accelerate in achieving ultimate goal of excellence enabling nation constantly rising to higher level. It was also held that fundamental duties though not enforceable by a writ of the court, yet provide a valuable guide and aid to interpretation of constitutional and legal issues. In case of doubt or choice of people?s wish as manifested through Art. 51A can serve as a guide not only for resolving the issues but also for constructing or moulding the relief to be given by courts.

3. ARUNA ROY V. UNION OF INDIA AIR 2002 SC 3176 :—

v In this case the validity of National Curriculum Framework for School Education was challenged on the ground that it was violative of art.28 of the constitution and anti-secular. It provides imparting of value development education relating to basics of all religions. The court held that the NCFSE does not mention of imparting "religious instruction" as prohibited under art.28. what sought to be imparted is incorporated in art.51A(e) which provides "to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities ; to renounces practices derogatory to the "dignity of woman". And to see that universal values such as truth related conduct, peace , love and non-violence be the foundation of education. Accordingly, the court held that such education is neither violative of art. 28 of the constitution nor is against the concept of secularism.

4. GOVERNMENT OF INDIA V. GEORGE PHILIP AIR 2007 SC 705 :—

v In this case the respondent has challenged his compulsory retirement from service. He was granted leave by the department to pursue advanced research training. He was granted leave by the department to pursue advance research training. He was granted leave for two years. He overstayed in a foreign country in spite of repeated reminders come and join his duty after the expiry of his leave. An inquiry was instituted against him and the charge of overstaying in a foreign country was proved. He was compulsorily retired from service. The

tribunal and the high court granted him remedy of joining his service without back wages. The Supreme court set aside the order of the high court. The Supreme Court held that art.51A (j) imposed a duty on citizen to strive towards excellence in all sphere and it cannot be achieved unless employees maintain discipline and devotion to duty. The courts should not pass orders which instead of achieving underlying spirit and object of part IV A of the Constitution has tendency to negate or destroy the same. Overstay of leave and absence from duty by government employee and granting him six month's time to join duty amount to not only giving him premium to indiscipline but wholly subversive of work cultures in organization.

5. Dr. Dasarathi Vs. State of Andhra Pradesh (AIR: 1985 AP 136) :—

v It was held that under article 51A (j) of the Constitution, we all owe a duty to ourselves to strive towards excellence in all spheres of individual and collective activity so that this nation may constantly rise to higher levels of Endeavour and achievement. When the State undertakes to promote excellence, it can do so only through the methods which our Constitution permits to adopt. Rewarding of sycophancy only helps to retard the growth of efficiency and excellence.

However, the Supreme Court, in Surya Vs Union of India (1992) case, ruled that fundamental duties are not enforceable through judicial remedies by court. In Vijoy Immanuel Vs State of Kerala (1987), the Supreme Court overruled the decision of Kerala High Court and decided that though to Constitution provides it to be the duty of citizen to respect the National Anthem, it does not provide that singing of the National Anthem is part of such respect. Even a person, while standing during the singing of National Anthem (without himself singing it) can show respect to the National Anthem.

CONCLUSION :—

v Fundamental Duties of citizens serve a useful purpose. In particular, no democratic polity can ever succeed where the citizens are not willing to be active participants in the process of governance by assuming responsibilities and discharging citizenship duties and coming forward to give their best to the country. Some of the fundamental duties enshrined in article 51A have been incorporated in separate laws. For instance, the first duty includes respect for the National Flag and the National Anthem. Disrespect is punishable by law. To value and preserve the rich heritage of the mosaic that is India should help to weld our people into one nation but much more than article 51A will be needed to treat all human beings equally, to respect each religion and to confine it to the private sphere and not make it a bone of contention between different communities of this land. The most important task before us is to reconcile the claims of the individual citizen and those of the civic society. To achieve this, it is important to orient the individual citizen to be conscious of his social and citizenship responsibilities and so shape the society that we all become solicitous and considerate of the inalienable rights of our fellow citizens. Therefore, awareness of our citizenship duties is as important as awareness of our rights. Every right implies a corresponding duty but every duty does not imply a corresponding right. Man does not live for himself alone. He lives for the good of others as well as of himself. It is this knowledge of what is right and wrong that makes a man responsible to himself and to the society and this knowledge is inculcated by imbibing and clearly understanding one's citizenship duties.

The fundamental duties are the foundations of human dignity and national character. If every citizen performs his duties irrespective of considerations of caste, creed, colour and language, most of the malaise of the present day polity could be contained, if not eradicated, and the society as a whole uplifted. Rich or poor, in power or out of power, obedience to citizenship duty, at all costs and risks, is the essence of civilized life.

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WRIT

v An order issued by a court requiring that something be done or giving authority to do a specified act.

'Writ' is a written command, percept, or formal order issued by a court, directing or enjoining the person or persons to whom it is addressed to do or refrain from doing some act specified therein. Thus writ is a written document under the seal of the Court issued to a person or authority including Government in appropriate cases commanding them or any of them to do or forbear from some act.

The 'writs' have been in existence in Great Britain for a number of years. The term 'writ' is the translation of the Latin word 'breve', (means a 'letter' since it had the form of a shorter letter) and a German word 'brief'. The English word 'brief' is used into interchangeably with writ in older texts.

A writ means an order. A warrant is also a type of writ. Anything that is issued under an authority is a writ. In this sense, using the power conferred by Article 32, the Supreme Court issues directions, orders or writs. Article 32(3) confers the power to parliament to make law empowering any court to issue these writs. But this power has not been used and only Supreme Court by Article 32 (2) and High Courts (Article 226) can issue writs. Meaning of habeas corpus, mandamus, prohibition, quo warranto and certiorari Habeas corpus, mandamus quo warranto and certiorari are Latin words. They have different meaning and different implications.

The spirit of the Constitution of India reflects on its positive approach towards the enforcement of fundamental rights. Article 13 of the Constitution makes all laws made by the State, which are in violation of the Part III of the Constitution, void. Article 32(1) and 226 empower the Supreme Court and High Court respectively to enforce these Rights. Article 32 (3) also empowers the Supreme Court to delegate the power to enforce the fundamental rights to other Courts.

Courts can exercise this power by using the tools that have been given to them by Art 32(2) and 226. Art 32 (2) grants the Supreme Court the "power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this (III) Part".

Article 226 provides a parallel right to the High Courts. However, a major difference between the power endowed by Article 32 and Article 226 is that while Article 32 can be invoked only in case of a breach of Fundamental Rights, Article 226 can be invoked for "any other purpose also" .However, despite this positive approach, the Fundamental Rights are not absolutely enforceable. Article 32(4) allows the suspension of these rights in exceptional circumstances.

Article 32 Remedies for enforcement of rights conferred by this Part

1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warrant to and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).

4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

Article 226 Power of High Courts to issue certain rights

1) Notwithstanding anything in article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without - (a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and (b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.

4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32.

Articles 32 and 226 are the provisions of the Constitution that together provide an effective guarantee that every person has a fundamental right of access to courts. Article 32 confers power on the Supreme Court to enforce the fundamental rights. It provides a guaranteed, quick and summary remedy for enforcing the Fundamental Rights because a person can go straight to the Supreme Court without having to go undergo the dilatory process of proceeding from the lower to higher court as he has to do in other ordinary litigation. The Supreme Court is thus constitution the protector and guarantor of the fundamental rights.

The High courts have a parallel power under Article 226 to enforce the fundamental rights. Article 226 differs from Article 32 in that whereas Article 32 can be invoked only for the enforcement of Fundamental Rights, Article 226 can be invoked not only for the enforcement of Fundamental Rights but for any other purpose as well. This means that the Supreme Courts power under Article 32 is restricted as compared with the power of a High Court under Article 226, for, if an administrative action does not affect a Fundamental Right, then it can be challenged only in the High Court under Article 226, and not in the Supreme Court under Article 32. Another corollary to this difference is that a PIL (Public Interest Litigation) writ petition can be filed in Supreme Court under Article 32 only if a question concerning the enforcement of a fundamental right is involved. Under Article 226, a writ petition can be filed in a High court whether or not a Fundamental Right is involved.

v **Four important writes of India are : 1. Habeas Corpus 2. Mandamus 3.Prohibition 4. Certiorari 5. Quo Warranto !**

1. Habeas Corpus :

A writ of habeas corpus is in the nature of an order calling upon the person who has detained another, to produce the latter before the Court in order to let the Court know on what ground she/ he has been confined and to set him/her free if there is no legal justification for the imprisonment.

The words 'habeas corpus' literally mean 'you may have the body'. The writ may be addressed to any person whatever, an official or a private person who has another person in his custody and disobedience to the writ is met with punishment for the contempt of the court.

By Habeas corpus writ the Supreme Court or High Court can cause any person who has been detained or imprisoned (this means violation of his fundamental right to liberty) to be physically brought before the court. The court then examines the reason of his detention and if there is no legal justification of his detention, he can be set free.

In Kanu Sanyal v/s District Magistrate (AIR) (1974) case the Supreme Court laid down that the physical presence is NOT a part of the writ. When the writ of Habeas corpus is issued? When the person is detained and not produced before the magistrate within 24 hours when the person is arrested without any violation of a law. When a person is arrested under a law which is unconstitutional and when detention is done to harm the person or is malafide.

A general rule of filing the petition is that a person whose right has been infringed must file a petition. But Habeas corpus is an exception to that. This is because, a person detained or imprisoned may be severely handicapped. So anybody on behalf of the detainee can file a petition.

The different purposes for which the writ of habeas corpus can be issued are: (a) for the enforcement of fundamental rights, (b) to decide whether the order of imprisonment or detention is ultra vires the statute that authorises the imprisonment or detention.

The writ of habeas corpus is, however, not issued in the following cases :

(i) Where the person against whom the writ is issued or the person who is detained is not within the jurisdiction of the Court, (ii) To secure the release of a person who has been imprisoned by a court of law on a criminal charge, (iii) To interfere with a proceeding for contempt by a court of record or by the Parliament.

2. Mandamus :

Mandamus literally means 'we command.' It commands the person, to whom it is addressed to perform some public or quasi-public legal duty which she/he has refused to perform and the performance of which cannot be enforced by any other adequate legal remedy.

It is, therefore, clear that mandamus will not be issued unless the applicant has a legal right for the performance of that particular legal duty of a public nature and the party against whom the writ is sought, is bound to perform that duty.

A writ of mandamus or remedy is pre -eminently a public law remedy and is not generally available against private wrongs. It is used for enforcement of various rights of the public or to compel the public statutory authorities to discharge their duties and to act within the bounds. It may be used to do justice when there is wrongful exercise of power or a refusal to perform duties. [Binny Limited vs. V. Sadasivan 2005 AIR (SC) 3202.]

The purposes for which a writ may be issued are as :

a) For the enforcement of fundamental rights. Whenever a public officer or a Government has acted in a manner violating the Fundamental Right of a person, the court would issue a writ of mandamus restraining the public officer or the Government from enforcing that order or acting against the person whose fundamental right has been infringed,

b) Mandamus can be issued by a High Court for various other purposes, e.g.,

i) To enforce the performance of a statutory duty where in a public officer has got a power conferred by the Constitution or a statute. The Court may issue a mandamus directing him/her to exercise the power in case she/he refuses to do so.

ii) To compel a person to perform his public duty where the duty is imposed by the Constitution or a statute or a statutory instrument,

iii) To compel a court or judicial tribunal to exercise its jurisdiction when it has refused to exercise it.

iv) To direct a public official or the Government, not to enforce a law that is unconstitutional.

3. Prohibition :

The writ of prohibition is a writ issued by the Supreme Court or a High Court to an inferior court forbidding the latter to continue proceedings therein in excess of its jurisdiction or to usurp a jurisdiction with which, it is legally not vested.

A writ of prohibition is issued primarily to prevent an inferior court from exceeding its jurisdiction, or acting contrary to the rule of natural justice, for example, to restrain a Judge from hearing a case in which he is personally interested.

The term "inferior courts" comprehends special tribunals, commissions, magistrates and officers who exer- cise judicial powers, affecting the property or rights of the citizen and act in a summary way or in a new course different from the common law. It is well established that the writ lies only against a body exercising public functions of a judicial or quasi- judicial character and cannot in the nature of things be utilised to restrain legislative powers.

The writ can be issued only when the proceedings are pending in a court if the proceeding has matured into decision, writ will not lie.

This writ is issued from a higher Court to an inferior court or tribunal prohibiting it from proceeding further with the matter pending before it, either because-

i) Such inferior court or tribunal is exceeding its jurisdiction; or

ii) Such inferior court or tribunal is acting in contravention of law. This writ thus limits a judicial authority within its jurisdiction.

Where proceedings in an inferior court or tribunal are partly within and partly without its jurisdiction, prohibition will lie against I doing what is in excess of jurisdiction.

Thus where the Collector of Customs has imposed invalid conditions for release of gold on the payment of the fine in lieu of confiscation, the High Court can grant a writ of prohibition prohibiting the customs authorities from enforcing the invalid conditions.

A writ of prohibition can be issued only if there are proceedings pending in a court. It follows that it is incapable of being granted when the court has ceased to exist, because there can be then no proceeding on which it can operate.

This writ is a prerogative writ issued out of the superior court to an inferior court or tribunal prohibiting it to continue proceedings in excess of its jurisdiction in contravention of the laws of the land.

This writ of prohibition as its very name suggests, is issued for the purpose of preventing inferior Courts from exceeding their jurisdiction. The writ can be claimed as of right if prima facie grounds are shown

The writ of prohibition differs from the writ of mandamus in the sense that while mandamus commands activity, prohibition commands inactivity. Further, while mandamus is available not only against judicial authorities but also against administrative authorities, prohibition as well as certiorari are issued only against judicial or quasi- judicial authorities.

4. Certiorari :

It is a writ (order) of a higher court to a lower court to send all the documents in a case to it so the higher court can review the lower court's decision. Appellate review of a case that is granted by the issuance of certiorari is sometimes called an appeal, although such review is at the discretion of the appellate court. A party, the petitioner, files a petition for certiorari with the appellate court after a judgment has been rendered against him in the inferior court.

However, unlike a writ of prohibition, superior courts issue writs of certiorari to review decisions which inferior courts have already made. The writ of prohibition is the counterpart of the writ to certiorari which too is issued against the action of an inferior court. The difference between the two was explained by Justice Venkatarama Ayyar of the Supreme Court in the following terms:

When an inferior court takes up for hearing a matter over which it has no jurisdiction, the person against whom the proceedings are taken can move the superior court for a writ of prohibition and on that an order will issue forbidding the inferior court from continuing the proceedings.

On the other hand, if the court hears the cause or matter and gives a decision, the party aggrieved would have to move the superior court for a writ of certiorari and on that an order will be made quashing the decision on the ground of want of jurisdiction."

The literal meaning of the word 'certiorari' is "to be more fully informed of". Though prohibition and certiorari are both issued against Courts or tribunals exercising judicial or quasi-judicial powers, certiorari is issued to quash the order or decision of the tribunal while prohibition is issued to prohibit the tribunal from an ultra vires order or decision.

While prohibition is available at an earlier stage, certiorari is available at a later stage, on similar grounds. The object of both is to secure that the jurisdiction of an inferior court or tribunal is properly exercised and to see that it does not usurp the jurisdiction for which it does not possess an authority.

"Grounds for issuance of Certiorari", have been succinctly stated by the Supreme Court in Syed Yakoob v K.S.Radhakrishnan AIR 1964 SC 477, Writ of certiorari can be issued at any of the following grounds.

i) Want or excess of jurisdiction

ii) fails to exercise its jurisdiction,

iii) Violation of procedure required to be followed.

iv) Violation of principle of natural justice.

v) Error of law apparent on the face of the record.

vi) finding of fact based on no evidence.

In U.P. Sales Tax Service Assn. v. Taxation Bar Assn. (1995) 5 SCC 716, Supreme Court held that Writ of certiorari can be issued when it proceeds to act in contravention of the Fundamental Rights.

5. Quo Warranto :

Quo warranto is a proceeding whereby the court enquires into the legality of the claim which a party asserts to a public office, and to oust him/her from its enjoyment if the claim is found to be fake or invalid.

1. Meaning of quo warranto :

Literally meaning "By what authority", it is a high prerogative writ and the information in the nature of quo warranto lies against a person who claims or usurps any office, franchise or liberty, to inquire by what authority he supports his claim in order that the right to the office or franchise might be determined.

The object of this writ is to determine the right of a person to hold a particular public office. Such a person is asked to show what is the authority under which he is holding that office.

The person against whom the writ is issued must be in actual occupation of the office. Which office must be a permanent one created by a valid law whose duties is of a public nature?

The person who applies for the writ must show what interest he has in the office with reference to which the writ is sought. If the office is of a public nature it is not necessary that the person who applies for the writ must show any infringement of his right.

2. Who can apply for writ of quo warranto :

An information in the nature of quo warranto would lie even at the instance of a realtor who has no personal interest in the matter. Information in the nature of quo warranto can be filed in the case of Municipal Corporations of Local Boards on the relation of private parties.

It is open to a private individual to bring it to the notice of the Court that a person who is disqualified to hold an office is still holding it.

Therefore, it is competent for a voter or a member of any of the local bodies to invoke the jurisdiction of the High Court for the issue of the information in the nature of quo warranto.

A member of the Legislative Assembly of a State can apply for a writ of quo warranto against the Speaker. He has a right to know by what authority the Speaker of the body functions as such.

In Rex v. Speyer, it was held in England that a relator in proceeding for issue of a writ of qua warranto need not necessarily have a direct or personal interest as distinct from the interest which he may have in common with the public. In this connection the following observations of the Nagpur High Court in C.D. Karake v. T.L. Shevde may also be noted:

"In proceedings for a writ of quo warranto, the applicant does not seek to enforce any right of his as such, nor does he complain of any non-performance of duty to him. What is in question is the right of the non-applicant to hold the office and order that is passed is an order outing him from that office."

3. When to issue writ of quo-warranto :

In deciding whether information in the nature of quo warranto should be refused or whether the rule should be granted, the test is whether there has been usurpation of an office; in other words, whether there is a legal disability to hold the office by or a legal prohibition against a person occupying a particular place.

4. When writ of quo warranto cannot be issued :

Where the office is abolished, no information in the nature of quo-warranto lies.

The office must not be of a private nature when writ of quo warranto is to be availed of. It does not lie against the master of a hospital and free school appointed by Governors of a private charitable foundation whose duties are not public.

On the same ground the writ of quo warranto was refused by the High Court in Janialpur Arya Samaj v. Dr. D. Ram, AIR 1954 Pat. 297 where the petitioner moved the High Court for issue of a writ in the nature of quo warranto against the members of the Working Committee of the Bihar Raj Arya Pratinidhi Sabha a private religious institution.

The conditions necessary for the issue of a writ of quo warranto are as follows :

i) The office must be public and it must be created by statute or by the Constitution itself;

ii) The office must be a substantive one and not merely the function or employment of a servant at the will and during the pleasure of another.

iii) There has been a contravention of the Constitution or a statute or statutory instrument, in appointing such a person to that office.

The fundamental basis of the proceeding of quo warranto is that the public has an interest to see that an unlawful claimant does not usurp a public office. It is, however, a discretionary remedy that the court may grant or refuse according to the facts, and circumstances in each case. Quo warranto is thus a very powerful instrument for safeguarding against the usurpation of public offices.

There are 5 kinds of writs : Mandamus - Certiorari - Prohibition - Quo warranto - Habeas corpus

Definition of Mandamus

Mandamus according to Black's law dictionary,

"A writ issued by a court to compel performance of a particular act by lower court or a governmental officer or body, to correct a prior action or failure to act."

Mandamus according to Wharton's Law Lexicon,

"A high prerogative writ of a most extensive remedial nature. In form it is a command issuing in the King's name from the King's Bench Division of the High Court only, and addressed to any person, corporation, or inferior court of judicature requiring them to do something therein specified, which appertains to their office, and which the court holds to be consonant to right and justice. It is used principally for public purposes, and to enforce performance of public duties. It enforces, however, some private rights when they are withheld by public officers."

Mandamus literally means a command. This writ of command is issued by the Supreme Court of High court when any government, court, corporation or any public authority has to do a public duty but fail to do so. The writ may also be filed to stop the mentioned parties from doing a particular act that may be detrimental to the general public. It must be noted that a writ of mandamus or command may not be issued against the Indian President or Governor.

The order of mandamus is of a most extensive remedial nature, and is in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in nature of a public duty. Mandamus is not a writ of right, it is not consequently granted of course, but only at the discretion of the court to whom the application for it is made; and this discretion is not exercised in favour of the applicant, unless some just and useful purpose may be answered by the writ. A writ of mandamus or remedy is pre-eminently a public law remedy and is not generally available against private wrongs. It is used for enforcement of various rights of the public or to compel the public statutory authorities to discharge their duties and to act within the bounds. It may be used to do justice when there is wrongful exercise of power or a refusal to perform duties. [Binny Limited vs. V. Sadasivan 2005 AIR (SC) 3202.]

Mandamus lies against authorities whose duty is to perform certain acts and they have failed to do so. Under following circumstances mandamus can be issued :

i) The applicant must have a legal right to the performance of a legal duty .[Dr. Rai Shivendra Bahadur v, Governing Body of the Nalunda College, A.I.R. 1962 S.C. 1210.] It will not issue where to do or not to do an act is left to the discretion of the authority [Controller of Monghyr v. Keshav Prasad, A.I.R. 1962 S.C. 1694]. It was refused where the legal duty arose from an agreement which was in dispute [Carlsbad Mineral Water Mfg. Co. v. H.M. Jagtiani, A.I.R. 1952 Cal. 315]. The duty to be enforced by a writ mandamus could arise by a provision of the Constitution or of a statute or of the common law.

ii) The legal duty must be of a public nature. In The Praga Tools Corporation v. C.V. Imanual, A.l.R. 1969 S.C. 1306 and Sohanlal v. Union of India, A.I.R. 1957 S.C. 529: (1957) S.C.R. 738 the Supreme Court stated that mandamus might under certain circumstances lie against a private individual if it is established that he has colluded with a public authority.

It will not issue against a private individual to enforce a private right such as a contract17.Even though mandamus does not lie to enforce a contract inter partes, it will lie where the petitioner's contractual right with a third party is interfered with by the State18. Mandamus will not issue to enforce departmental manuals or instructions not having any statutory force which do not give rise to any legal right in favour of the petitioner as in the cases of Raman & Ramanv. State of Madras, A.l.R. 1959 S.C. 694; State of Assam v. Ajit Kumar, A.l.R. 1965 S.C. 1196.

However if the authority were under law obliged to exercise discretion, mandamus would lie to exercise it in one way or the other. Mandamus can be issued to compel an income-tax officer to carry out the instructions issued by income-tax appellate tribunal exercising its appellate power [Bhopal Sugar Industries v. I.T.O. AIR 1961 SC 182]. Again it can be issued to a municipality to discharge its statutory duty [Rampal v. State AIR

1981 Raj. 121].

There are however exceptions to this rule. Where there is no statutory provision, executive instructions fill in the gap and are capable of conferring rights on the citizen imposing obligations on the authorities. In appropriate cases the courts may even compel the performance of such a duty [Jiwat Bai & Sons v. G.C. Batra. A.l.R. 1976 Delhi 310]. Mandamus is not available where the order upon which the alleged right of the petitioner is founded is itself ultra vires [Prakaslt v. Principal, A.l.R. 1965 M.P. 217, 218]. Similarly it was held that the grant of dearness allowance at a particular rate is a matter of grace and not a matter of right and hence mandamus cannot issue to compel the Government to pay dearness allowance at a particular rate. [State of M P. v. G.C. Mandamir, A.l.R. 1954 S.C- 493.] Article 320 (3) of the Constitution which provides that before a government servant is dismissed, the Union Public Service Commission should be consulted, does not confer any right on a public servant and hence failure to consult the Public Service Commission does not entitle the public servant to get mandamus for compelling the government to consult the Commission [State of U.P. v.Manbodhantal, A.I.R. 1957 S.C. 912; (I958) S.C.R. 533.]. Where provi- sions are merely directory, non-compliance with them does not render an act invalid and hence no manda- mus issues.

iii) The right sought to be enforced must be subsisting on the date of the petition. If the interest of the petitioner has been lawfully terminated before that date, he is not entitled to the writ [Kalyan Singh v. State of U.P., A.I.R. 1962 S.C. IIS3.

iv) As a general rule, mandamus is not issued in anticipation of injury. There are exceptions to this rule. Anybody who is likely to be affected by the order of a public officer is entitled to bring an application for mandamus if the officer acts in contravention of his statutory duty [Guruswami v. State of Mysore, A.I.R. 1954 S.C. 592]. Thus an intending bidder at an auction is entitled to apply if the authority holding the auction acts contrary to the statute under which the auction is held or fails to perform his statutory duties in connection with the auction. A person against whom an illegal or unconstitutional order is made is entitled to apply to the court for redress even before such order is actually enforced against him or even before something to his detriment is done in pursuance of the order. For, the issue of such order constitutes an immediate encroachment on his rights and he can refuse to comply with it only at his peril [Bengal Immunity Co. Ltd. vs. State of Bihar, A.I.R. 1955 S.C. 661: (1955) 2 S.C.R. 603.].

No mandamus will lie against an officer or member of parliament or an officer or member of the legislature of a State In whom powers are vested by or under the Constitution for regulating procedure or the conduct of business or for maintaining order in Parliament or the State legislature.

Conclusion :

v Hence the writ of mandamus is to protect the interest of the public from the powers given to them to affect the rights and liabilities of the people. This writ makes sure that the power or the duties are not misused by the executive or administration and are duly fulfilled. It safeguards the public from the misuse of authority by the administrative bodies.

Writ of Habeas corpus :

v By Habeas corpus writ the Supreme Court or High Court can cause any person who has been detained or imprisoned (this means violation of his fundamental right to liberty) to be physically brought before the court. The court then examines the reason of his detention and if there is no legal justification of his detention, he can be set free.

In Kanu Sanyal v/s District Magistrate (AIR) (1974) case the Supreme Court laid down that the physical presence is NOT a part of the writ. When the writ of Habeas corpus is issued? When the person is detained and not produced before the magistrate within 24 hours when the person is arrested without any violation of a law. When a person is arrested under a law which is unconstitutional and when detention is done to harm the person or is malafide.

A general rule of filing the petition is that a person whose right has been infringed must file a petition. But Habeas corpus is an exception to that. This is because, a person detained or imprisoned may be severely handicapped. So anybody on behalf of the detainee can file a petition.

Is it applicable to Preventive Detention?

v Yes, it is applicable. What is the core philosophy of Habeas corpus ? To set at liberty a person who is confined without legal justification. Can Habeas corpus issued against state and individuals? Yes, the writ can be issued against authorities of states or individuals or organizations. Writ of Mandamus Mandamus

means "we order". The Supreme Court or High Court orders to a person, coropration, lower court, public authority or state authority. What order? The order to do something. It's a command or directive to perform something or some act. What kind of act? Performance of the ministerial acts or public duty. The Mandamus is also called a wakening call. It awakes the sleeping authority to perform their duty. It demands an activity and sets the authority in action.

Who can file a writ petition?

v A person can file a writ petition against anybody who seeks a legal duty from that person. What is legal duty? Legal duty means some duty which is by a law viz. constitution, act, subordinate, legislation etc. But did the person move to the authority? Yes, the petition requires that the person moved to the authority and the authority refused to do this duty. This is demand and refusal. What is the core philosophy of Mandamus? The core philosophy is that a person or authority despite of fulfillment of such conditions which demand an action refuses to act then, the Supreme Court or High Court can ask the person or authority to perform that duty. For example, if a person fulfills all the preconditions & formalities to be issued a license but still the authority refuses to issue a license even after that person approaches to that particular authority, the person may seek writ petition. What are essential conditions to file to request the court issue Mandamas writ? The person must have a real or special interest in the subject matter. The person must have specific legal right No other equally effective remedy is there. The third condition can be understood by the example: A person fulfills all the conditions of an appointment and the authority has completed the selection procedure then he must be issued an appointment letter. But when the authority refuses to do this duty, the person is eligible to file a writ petition under Mandamus. Writ of Prohibition The writ of prohibition means that the supreme court and High Courts may prohibit the lower courts such as special tribunals, magistrates, commissions, and other judiciary officers who are doing something which exceeds to their jurisdiction or acting contrary to the rule of natural justice. This implies that if a judicial officer has personal interest in a case, it may hamper the decision and the course of natural justice. Writ of Prohibition means to be issued in this case. Writ of Certiorari Certiorari means a writ that orders to move a suit from a inferior court to superior court. Quo Warranto Quo warranto means "by what warrant"? This means that Supreme Court and High Court may issue the writ which restrains the person or authority to act in an office which he / she is not entitled to. This writ is applicable to the public offices only.

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