DIRECTORATE OF LEGAL STUDIES
Chennai - 600 010

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V - Semester

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Compiled by:

Dr. N. Kayalvizhi M.L., Ph.D.,
Asst. Professor,
Dr.Ambedkar Govt. Law College, Chennai - 600 104

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For Your Information :

The Registrar,

THE TAMIL NADU Dr. AMBEDKAR LAW UNIVERSITY
"Poompozhil",
5, Dr. D.G.S. Dinakaran Salai,
Chennai - 600 028.
Telephone : (044) 2464 1212, 2464 1919,
Tele - Fax : (044) 2461 7996
Email : registrar.tndalu@gmail.com
: registrar@tndalu.ac.in
Website : http://www.tndalu.ac.in

THE DIRECTORATE OF LEGAL STUDIES,
Kilpauk, Chennai - 600 010.
Telephone : (044) 2532 1394
Email : dirlegal@tn.gov.in
Website : www.tndls.ac.in

Dr. AMBEDKAR GOVERNMENT LAW COLLEGE, CHENNAI -600 104.
Telephone : (044) 2534 0907
Email : draglc104@yahoo.com
Website : www.draglc.ac.in

GOVERNMENT LAW COLLEGE, MADURAI - 625 020.
Telephone : (0452) 253 39 96
Email : glcmadurai@gmail.com
Website : www.glcmadurai.ac.in

GOVERNMENT LAW COLLEGE, TIRUCHIRAPALLI - 620 023.
Telephone : (0431) 242 0324
Email : glctry@gmail.com
Website : www.glctry.ac.in

GOVERNMENT LAW COLLEGE, COIMBATORE - 641 046.
Telephone : (0422) 242 2454
Email : glccbe@yahoo.com
Website : www.glccbe.ac.in

GOVERNMENT LAW COLLEGE, TIRUNELVELI - 627 011.
Telephone : (0462) 257 8382
Email : glctvl.2010@gmail.com
Website : www.glctvl.ac.in

GOVERNMENT LAW COLLEGE, CHENGALPATTU - 603 001.
Telephone : (044) 2742 9798
Email : Chengalpattulawcollege@gmail.com
Website : www.glccgl.ac.in

GOVERNMENT LAW COLLEGE, VELLORE - 632 006.
Telephone : (01416) 224 1744
Email : law.college.vellore@gmail.com
Website : www.glcvellore.ac.in

Printed at : Abna Traders, Chennai - 45, Cell : 98400 16816.
Email : abnatraders@gmail.com

1. INDIAN PUBLIC ADMINISTRATION

UNIT-I

1. MEANING

The word "administration" is the noun from the English verb "administer". It is the combination of the Latin word "ad-rninistiar", meaning 'to serve'. To administer is to manage or to direct. Thus administration means management of affairs.

The word 'public' gives a specialized meaning Governmental or the Government. The public administration refers to the management of the Government affairs at all levels, i.e., national, state and local.

Definitions:

Prof. Woodrow Wilson,

> A detailed and systematic execution of public law, every particular application of General Law is an act of administration.

Prof. L.D. White,

> The public administration consists of all those operations having for their purpose the fulfillment or enforcement of public policy.

Prof. Pfiffner,

> It would seem that administration consists of getting the work of Government done by co-ordinating the efforts of the people so that they can work together to accomplish their set task.

2. NATURE

There are two views with regard to public administration. They are:

1. Integral view
2. Managerial view

1. Intergral view: In this view, the public administration is the sum total of all the activities undertaken in pursuit of and in fulfillments of public policy. The activities, manual, clerical, technical and managerial which are undertaken to realize the objective in view i.e., the implementation policy or policies in a given field. The work of all persons ranging from the lowest to the highest working in an enterprise are taken into account as being part of administration.

2. Managerial view: In this view, the work of only those persons who are engaged in the performance of managerial functions in an organization constitute administration. It includes managerial or supervisory activities as constituting administration and not the operational activities. Generally, in this view, the 'admin' is not doing things, but getting them done.

Luther Gulick,

Postulates, the managerial techniques as; POSDCORB; i.e., planning, organizing, staffing, directing, co-ordinating, reporting, budgeting.

3. SCOPE

The scope of public administration is wide enough, keeping in this mind, we can say that public administration refers to the organization of public affairs and their direction.

Luther Gulick,

Sum up the scope in the form of "POSDCORB"

P - Planning

o - Organizing

S - Staffing

D - Directing

Co - Co-ordinating R - Reporting

B - Budgeting

Pfiffner,

has divided the scope under two heads:

i) Principles of administration

ii) Sphere of administration

4. EVOLUTION:

The history of Public Administration is divided into five periods:

Period-I 1887 to 1926 (Period of Dichotomy)

Period-II 1927 to 1937 (Golden Period of Principles)

Period-III 1938 to 1947 (Mechanical Approach to Human Relation Theory)

Period-IV: 1948 to 1970 (Crisis of Public Administration)

Period-V : 1971 to till date (Renaissance Period of Public Administration)

5. PUBLIC AND PRIVATE ADMINISTRATION (Similarities & differences)

Similarities:

1. Government agencies do private natural activities.
2. Managerial techniques methods and work procedures are common.
3. Accounting, statistics, office management and procedures and stock staking are problems of administration management are common.
4. Expansion of public factors, candidates from private establishment recruited to senior administration positions in the Government.

Differences:

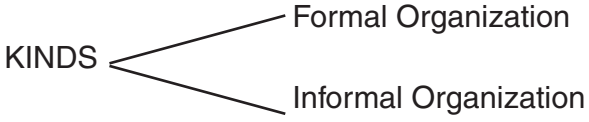
The four principles which differentiate the public from private administration is given by 'Sir Josiah Stamp' is as follows.

i) Uniformity
ii) External Financial Control
iii) Ministerial Responsibility
iv) Marginal Return

Apart from these, there are many differences which is described based on the following parts:

i. Political Direction
ii. Profit Motive
iii. Service and Cost
iv. Nature of Functions
v. Public Responsibility
vi. Uniform Treatment
vii. Anonymity
viii. External Financial Control
ix. Confirmity of Laws and Regulations
x. Social Prestige

6. ORGANIZATION



Theories of Organization:

There are many systems of organization which is very difficult to explain, each of them, we can consider the three important theories in detail.

1. Bureaucratic Theory:

Max Weber,

The German Social Scientist made sociological study of bureaucracy. Bureaucracy refers to the rule conducted from a desk or office. It is in fact, the division of labour applied to administration.

Characters:

1. Hierarchy
2. Contract
3. Control
4. Division of work leading to specialization
5. Efficiency
6. Neutrality

2. Classical Theory:

It is otherwise known as 'structural theory'. The Chief Exponent of this theory 'Henry Fayol', a French Industrialist by birth and wrote three books and many research papers.

Henry Fayol stressed that the management is one of the six activities of an enterprise:

(i) Technical (ii) Commercial (iii) Financial (iv) Security (v) Accounting and (vi) Managerial Functions.

He also classifies the fourteen principles of management as follows:

i. Division of work
ii. Authority and responsibility
iii. Discipline
iv. Unity of command
v. Unity of direction
vi. Sub-ordination of individual interest to general interest
vii. Remuneration of personnel
viii. Centralisation and Decentralisation
ix. Scalar chain
x. Order (placement)
xi. Equity
xii. Stability of tenure of personnel
xiii. Initiative
xiv. Espirit de corps.

3. Human Relations Theory:

This theory is a reaction to formalism and focuses on basing organization on human values, which are of cardinal importance. It takes into account the social, psychological and informal needs of the people. This theory is based on Hawthome Experiments which was conducted in the Western Electric Company in the U.S.A. in late 1920's under the guidance of Etton Mayo and his colleagues of the Harvard Business School.

Eiton Mayo is rightly called as the father of "Human Relation Movements". The following are the essential of this theory:

i) Need for human elements and motivation of working teams,
ii) Good supervision with the proper understanding of the subordinates,
iii) Proper consultation and communication between the managers and workers,
iv) The Hawthome Experiments is as such as follows:
   (a) Illumination Experiments
   (b) Relay Assembly Test Room
   (c) Massive Interviewing Programme
   (d) Bank Wire Experiment

The flow of work and arrangements of operations should give full pay to the Informal Organization of the workers.

UNIT - II

CHIEF EXECUTIVE

The persons or body of persons at the head of the administrative system of a country is a Chief Executive. It is the apex of the administrative pyramid. In England the Queen/King and in India the President holds the seat of the Chief Executive.

Forms of Chief Executive:

1. Titular Chief Executive; and
2. Real Chief Executive

Features of General Managerial System :

The main features of the system of administration is as follows:

1 . Scalar System
2. Chief Executive, the master of civil service
3. Control over Institutional Activities
4. Control over Administrative Reports

Administrative Functions of the Chief Executive:

1. Deciding administrative policy
2. To authorise details of organization
3. To co-ordinate the organization
4. To appoint and remove the personnel
5. To control the management of finance
6. To supervise, control and investigate the administrative operations
7. To participate in and control public relations

Other functions:

1. Formulation of long term plans
2. Guidance and direction
3. Integration
4. Staffing
5. Review and control
6. Public relations

DEPARTMENTS

The solid foundations of administration lie with the departments. The endless flow of administrative operations is performed by the officials and employees of high and low category working in the departments. Therefore it is essential to study the organization and internal administration of departments.

Bases of Departments:

1. The Functional or Purpose Principle
2. The Process or Professional Principle
3. The Clientele or Commodity Principle
4. The Geographical Principle

PUBLIC CORPORATIONS

The entry of state in the field of business and corporations.

Prof. Dimock,

The publicly owned enterprise that has been chartered under federal, state or local law for a particular business or financial purpose.

Prof. J.M. Pfiffner,

A corporation is a body framed for the purpose of enabling a number of persons to act as a single person.

Characteristics:

1. It is a legal person.
2. It is corporated under a special statute of parliament.
3. The functions are primarily a business or industrial nature.
4. It has its own budget and finance.
5. It enjoys complete administrative autonomy from the control of chief executive.
6. The appointment of personnel are based on independent approach.

Kinds of Corporation:

According to L.D. White there are three types of corporations:

1. Corporations owned by Government
2. Mixed Enterprises
3. Private Corporations

Features of Corporation System:

1. Suitable for Business Enterprises only.
2. Financial Autonomy.
3. Administrative Autonomy.
4. Judicial Character.

Problems of Public Corporation:

1. Problem of responsibility towards legislature.
2. Problem of protection and representation of consumer interest.
3. Problem of labour welfare.

Few Citations for Public Corporations:

1. Life Insurance Corporation of India.
2. Employees State Insurance Corporation.
3. Airways Corporation of India.

INDEPENDENT REGULATORY COMMISSIONS

Its origin is at USA. Due to industrialization and urbanization there is a need for the development of such commissions in USA. There are eleven commissions in the USA which is as follows:

1. The Inter-State Commerce Commission, 1887.
2. The Board of the Governors of the Federal Reserve System, 1913.
3. The Federal Trade Commissions, 1914.
4. The Federal Communications Commission, 1934.
5. The Federal Power Commission, 1930.
6. The Securities and Exchange Commission, 1934.
7. The National Labour Relations Board, 1935.
8. The United States Maritime Commission, 1936.
9. The Civil Aeronautics Board, 1938 and 1940.
10. The Nuclear Regulatory Commission.
11. The Consumer Product Safety Commission.

Main Functions of these Commissions:

1. They set up standards, rules and regulations to govern the behaviour of a particular industry;
2. They enforce these standards, rules and regulations; and
3. They prosecute the defaulters.

They therefore enjoy both the powers to make administrative legislation and to adjudicate administrative disputes and also regulate the economic procedures.

Main Features of these Commissions:

1. The functions of these commissions are of mixed nature i.e., administrative, quasi - legislative and quasi-judiciary.
2. These commissions are staffed by experts and are relatively small.
3. They are collegial in character and consist of a group of men discussing and deciding by majority vote.
4. They are relatively independent of the Chief Executive i.e., the President.

Advantages of these Commissions:

1. It creates a device which makes it possible to exclude the quasi-legislative and quasi-judicial activities from the hands of bureaucracy.
2. It puts the activities of national importance and of a technical nature outside the bane of party politics.
3. It is a good device of harmonizing the generalist and specialist administrators' relationships which are hard to achieve in a Departmental system of organization.

4. It brings different shades of opinions and interests together to shoulder a national problem.
5. It insulates the process of business from partisan political forces by making it plural headed.

Disadvantages of these Commissions:

1. The administrative set up of president is highly headless.
2. The exercising functions of legislative, executive, judiciary jeopardize rights and liberties of people.
3. The commissions not served the purpose for which it has been established.
4. The regulatory commissions are neither responsible to president nor to the congress.

Citations for IRC's :

1. Planning Commission
2. Election Commission
3. Union Public Service Commission
4. Finance Commission

AUTONOMY AND ACCOUNTABILITY IN ADMINISTRATION

The accountability can be analysed by the framing of public policies and its implementation techniques. The accountability is the contributing factor of the democratic country.

MEANING

Accountability - Weakening of power.
Responsibility - Need to feel committed towards certain activities.

ORIGIN

In England,

1. The parliament is accountable for the acts of cabinet.
2. Supremacy of treasury over all other departments.
3. Ministerial responsibility towards civil servants.

REASONS FOR DECLINE OF ACCOUNTABILITY

1. Immense increase in Government activity.
2. Big budget policies of today.
3. Rise of delegated legislation.
4. Top down planning.
5. Political nexus of bureaucracy.

REMEDIES

1. Representative bureaucracy.
2. Encouraging citizen's entrepreneurship.

Telecom Regulatory Authority of India (TRAI)

The policy of liberalization that was embarked by Prime Minister P. V. Narasimha Rao in the 1990s helped the Indian Telecoms sector to grow rapidly. The Telecom Regulatory Authority of India was established on 20 February 1997 by an act of parliament called "Telecom Regulatory Authority of India Act 1997".

The mission of TRAI is to create and nurture an environment which will enable the quick growth of the telecommunication sector in the country. One of the major objectives of TRAI is to provide a transparent policy environment. TRAI has regularly issued orders and directions on various subjects like tariff, interconnections, Direct To Home (DTH) services and mobile number portability.

TRAI functions through a Secretariat headed by a Secretary. All proposals for considerations are processed via Secretary, which organizes the agenda for Authority meetings (consulting with the Chairman), organizes preparation of minutes and issues regulations etc. in accordance to the meetings. The secretary is assisted by ten functional divisions, namely Mobile Network, Interconnection & Fixed Network, Broadband and Policy Analysis, Quality of Service, Broadcasting & Cable Services, Economic Regulation, Financial Analysis & IFA, Legal, Consumer Affairs & International Relation and RE &Administration & Personnel. Officers are selected from the premier *Indian Administrative Service and Indian Revenue Service* and also from the Indian Telecom Service.

Securities and Exchange Board of India (SEBI)

The SEBI is managed by six members, i.e. by the chairman who is nominated by central government & two members, i.e. officers of central ministry, one member from the RBI & the remaining two are nominated by the central government. The office of SEBI is situated at Mumbai with its regional offices at Kolkata, Delhi & Chennai.

Functions and Responsibilities

SEBI has to be responsive to the needs of three groups, which constitute the market:

- the issues of securities
- the investors
- the market intermediaries.

SEBI has three functions rolled into one body: quasi-legislative, quasi-judicial and quasi-executive. It drafts regulations in its legislative capacity, it conducts investigation and enforcement action in its executive function and it passes rulings and orders in its judicial capacity. Though this makes it very powerful, there is an appeals process to create accountability. There is a Securities Appellate Tribunal which is a three-member tribunal and is presently headed by a former Chief Justice of a High court. A second appeal lies directly to the Supreme Court. SEBI has been active in setting up the regulations as required under law.

Powers

For the discharge of its functions efficiently, SEBI has been invested with the necessary powers which are:

1. to approve by laws of stock exchanges.
2. to require the stock exchange to amend their by laws.
3. inspect the books of accounts and call for periodical returns from recognized stock exchanges.

4. inspect the books of accounts of a financial intermediaries.
5. compel certain companies to list their shares in one or more stock exchanges.
6. levy fees and other charges on the intermediaries for performing its functions.
7. grant license to any person for the purpose of dealing in certain areas.
8. delegate powers exercisable by it.
9. prosecute and judge directly the violation of certain provisions of the companies Act.

Insurance Regulatory and Development Authority (IRDA)

Insurance Regulatory and Development Authority (IRDA) is an *autonomous* apex statutory body which regulates and develops the *insurance* industry in India. It was constituted by a *Parliament of India* act called Insurance Regulatory and Development Authority Act, 1999 and duly passed by the *Government of India.*

The agency operates its headquarters at *Hyderabad, Andhra Pradesh* where it shifted from *Delhi* in 2001.

Duties, Powers and Functions

The duties, powers and functions of I RDA are laid down in section 14 of I RDA Act,1999 as:

1. Subject to the provisions of this Act and any other law for the time being in force, the Authority shall have the duty to regulate, promote and ensure orderly growth of the insurance business and re-insurance business.
2. Without prejudice to the generality of the provisions contained in sub-section (1), the powers and functions of the Authority shall include, -

- issue to the applicant a certificate of registration, renew, modify, withdraw, suspend or cancel such registration;
- protection of the interests of the policy holders
- specifying requisite qualifications, code of conduct and practical training for intermediary or insurance intermediaries and agents
- specifying the code of conduct for surveyors and loss assessors;
- promoting efficiency in the conduct of insurance business;
- promoting and regulating professional organizations connected with the insurance and re-insurance business;
- levying fees and other charges for carrying out the purposes of this Act;
- regulating investment of funds by insurance companies;
- regulating maintenance of margin of solvency;
- adjudication of disputes between insurers and intermediaries or insurance intermediaries;
- supervising the functioning of the Tariff Advisory Committee;
- exercising such other powers as may be prescribed

UNIT - III

PRINCIPLES OF ORGANIZATION

The various principles of organization are Hierarchy, Span of control, Unity of command, Delegation, Co-ordination, Centralization and Decentralization, Supervision, Authority.

Hierarchy

Organization is essentially the division of functions among people. The distribution of functions and responsibilities can be both horizontal and vertical. This is called hierarchy in an organization. Main functions of hierarcy are:

i) Definition, of power, functions and responsibility of each functionary of the organization.

ii) The co-ordination of their efforts to achieve the goals of the organization.

Span of Control

Span of control is simply the number of sub-ordinates or the units of work that an administrator can personally direct.

Unity of command

Unit of command means that an employee should receive orders from one superior only. The concept of unity of command requires that every member of an organization should report to only one leader.

Delegation

It means the entrusting of one's occupational authority to another. Delegation as an organizational principle has been favoured for its skills producing and confidence creating attribute. The subordinates who are asked to do the work delegated to them gain experience through this principle.

Co-Ordination

Co-ordination is the adjustment of the functions of the parts "to each other and of the movement and operation of parts in tune so that each can make its maximum contribution to the product of the whole". Co-ordination is the order of arrangement of group effort to provide unit of action in the pursuit of a common purpose.

Centralization and Decentralization

Centralization stands for concentration of authority at or near the top; decentralization denotes disposal of authority among a number of individuals or units.

The process of transfer of administrative authority from a lower to a higher level of Government is called 'centralization', the converse, decentralization.

Types of decentralization are political or administrative.

i) Political decentralization implies the setting-up of new levels of Government. e.g. The creation of autonomous States within the Indian Union and Panchayat Raj Institutions within the States.

ii) Administrative decentralization may be vertical and territorial or horizontal and functional. e.g. Districts and Divisions.

Supervision

Supervision is a compound of two words 'Super' and 'Vision', meaning superior power of perceiving. It means over-seeing or superintending the works of others. It has been defined as "the direction, accompanied by authority, of the work of others".

Supervision is more than inspection, investigation and superintendence as an administrative task. A supervisor is supposed to teach the workers under him the best way of doing their work. Generally, the term supervision is applied only to the lower levels of management, for higher levels the term used is direction.

Authority

To administer means to exercise authority. Authority is the right or power given to a person to command others. It is one of the essential tools of organized life. It results from the position of superiority or ascendancy occupied by some people over others. The 'head' of an organization plans, directs, commands and countermands. It is the eye which sees, supervises, watches the course of the action, which he has ordered. The authority, which a superior exercises are of three kinds.

i) Legal or statutory authority, which flows from the function, he performs or the office he holds;
ii) The nature of the position he holds; and
iii) His own personality.

73rd and 74th Amendment to the Constitution

The 73rd and 74th Constitutional Amendments Acts were introduced in the early 1990's in a bid to achieve democratic decentralization and provide constitutional endorsement of local self governance authorities. These amendments confer authority on legislatures of States to endow respectively Panchayats and Municipalities with such powers and functions as may be necessary to enable them to act as institutions of self-government. For the purpose, the Panchayats and Municipalities have been charged with the responsibility of preparing and implementing plans for economic development and social justice including those in relation to matters listed in the Eleventh and Twelfth Schedules of the Constitution.

The central objective of these amendments is the decentralization of planning and decision making procedures. It also has the implicit intention of removing centralized notions of control and monopoly over development of resources.

- Article 243G provides that, subject to provisions of the Constitution, the legislature of any State may, by law, endow the Panchayats, for the devolution of powers and responsibilities upon Panchayat at the appropriate level.
- Article 243W provides that, subject to provisions of the Constitution, the legislature of any State may, be law, endow the Municipalities, for the devolution of powers and responsibilities upon Municipalities respectively at the appropriate level.
- Article 243ZD provides for the creation of a district level planning committee for the preparation of the District Development Plan.
- Article 243ZE provides that for the Metropolitan areas, a Metropolitan planning committee for the preparation of the Metropolitan Development Plan.
- Article 243N and Article 243ZF provides that, any provision of law relating to Panchayats and Municipalities, which are inconsistent with the provisions of law time being in force shall be replealed or amended by a competent legislature or other competent authority or until one year from such commencement, whichever is earlier.

UNIT -IV
MANAGEMENT ISSUES

Participative Management

Participative Management means willingness to share authority and responsibility with subordinates. Participation may take two forms. First, it may take the form of interaction between a subordinate and his superior. Secondly, it may take the form of interaction between a group of subordinates and their superior.

Essence of true participation are:

- Group Identity, Team-Work, Interdependence;
- A say in decision-making;
- Access to new ideas from employees;
- Greater communication;
- Better mutual trust;
- Identification with organizational goals and shared values;
- Human potential better utilized;
- Better visibility and feed-back to employees.

Participative Management is based on the assumption that individuals are creative, show adequate initiative and accept and seek substantial responsibility when provided with the opportunity for their expression and share in the decision influencing them. It should be borne in mind that participation for the sake of participation has no utility unless it is backed by increased performance and employee satisfaction. Thus it becomes imperative that they are provided psychological as well as physical participation in their work.

Planning

Planning is the selection and relating of facts and making and using of assumptions regarding the future in the visualization and formalization of proposed activities believed necessary to achieve desired result.

The Six P's of Planning are:

i) Purpose;
ii) Philosophy;
iii) Premise;
iv) Policies;
v) Plans; and
vi) Priorities.

Importance of Planning are:

i) Primacy of planning;
ii) to offset uncertainty and change;
iii) to focus attention on objectives;
iv) to help in co-ordination; and
v) to help in control.

Forms of Planning:

1) Strategic Planning: It decides the major goals and policies of allocation of resources to achieve these goals.

2) Tactical Planning: It decides the detailed use of resources for achieving each goals.

Types of Plans:

- Purpose or Mission;
- Objectives;
- Strategies;
- Policies;
- Rules & Procedures;
- Programmes or Projects; and
- Budgets.

Planning Commission

The Planning Commission originated from the need for planned development to raise the living standards in the country. The National Planning Commission set up by the Indian National Congress with Jawaharlal Nehru as its Chairman and K.T.Sha as its Secretary in the year 1950. The commission is an advisory or staff body and is not responsible for the execution of development programmes. The resolution constituting the commission, referred to the fundamental rights and the directive principles of State policy.

Main functions of the Planning Commission are:

- to assess resources;
- to formulate the plan;
- to define its states;
- to appraise progress; and
- to make related recommendations on policy and administration.

Planning Commission consists of -

1) A person of standing with general experience of public affairs who would be the Chairman.
2) Two non-officials with knowledge and experience of industry, agriculture or labour.
3) A Government official with knowledge and experience of finance and general administration.
4) A person eminent in the field of science and technology.

National Development Council

For co-ordination of policies and plans of the Central and State Governments, a central organization, namely the National Development Council was established. It is a high level Policy Co-ordinating body comprising the Prime Minister of the States and Members of the Planning

Commission as Members. The Secretary of the Planning Commission acts as the Secretary of the Council. The ministers of the Central Government also participate in its deliberation and it makes recommendations to the Central as well as the State Governments.

The main functions of NDC are:

a) To prescribe guidelines for the formulation of the National Plan including the assessment of resources for the plan;
b) To consider the National Plan as formulated by the Planning Commission;
c) To consideration, important questions or social economic policy affecting national development council; and

d) To review the working of the plan from time to time and recommend such measures as are necessary for achieving the aims and targets set out in the national plan.

Co-ordination

Co-ordination means the integration of the several parts into an orderly whole to achieve the purpose of an organization. It means to secure co-operation and teamwork among the numerous employees of an organization. It also removes the conflicts and overlapping in administration.

The following are the important features of Co-ordination:

1) Co-ordination is a process. It is a process of achieving integration among different organization units.
2) It sub-division of work is inescapable, co-ordination becomes mandatory.
3) Co-ordination is present in all organizations but in varying degrees.
4) Undue confusion is a symptom of poor co-ordination.
5) Unity of effort is the heart of co-ordination problem.

Elements of Co-ordination are:

i) Co-ordination;
ii) Co-operation;
iii) Good human relations;
iv) Understanding; and
v) Communications.

DELEGATION

Delegation means entrusting part of one's work to others. Delegation as an organizational principle has been favoured for its skill producing and confidence creating attitude.

Forms of Delegation: According to the degree of authority delegated, delegation may be:

i) Full or Partial;
ii) Conditional or Unconditional;
iii) Formal or Informal; and
iv) Direct or Intermediate.

General Principles of delegation are:

i) Delegation should be written and specific;
ii) Authority and responsibility for each position in the organizational hierarchy should be clearly spelled out;
iii) Delegation should be made to an ex-officio authority and not to an individual;
iv) Only that much of authority should be delegated as is within the competence of sub-ordinates to exercise safely;
v) Delegation should be properly planned and systematically exercised;
vi) A systematic reporting system should be established with those to whom the authority has been delegated.

Organization and Method (0 & M)

The team 0 and M is used in two senses. In the broader sense, it means Organization and Management. It includes the study of the entire process of management, viz., planning organizing, co-ordinating, motivating, directing and controlling.

In restricted sense, it means Organization and Methods. In this sense, it deals with the organization of public bodies and their office procedures in order to effect efficiency and improvement in both.

O&M seeks to improve the efficiency of an organization. Its objective is to get the best organization and the best methods of work by reducing cost.

Functions of O&M are:

a) Research;
b) Investigation;
c) Training;
d) Information;
e) Publication; and
f) Co-ordination.

The main advantages of O&M are:

a) A device to improve administration;
b) Structure of Government office and its procedure made adaptable;
c) Reservoir of experience.

Disadvantages of O&M are:

a) It becomes a fault finder;
b) Usurpers of line functions;
c) Aura of technicality not avoided.

O&M has the following techniques:

a) Survey;
b) Inspections;
c) Forms control;
d) File operations;
e) Work simplification; and
f) Work Measurement.

UNIT - V

National Rural Development Guarantee Programme

Unemployment and under-employment are chronic problems in rural areas. As for the object of providing supplementary employment opportunities, a beginning was made in this direction through the food for work programme. The National Rural Employment Programme (NREP) was launched in October, 1980 and become a regular plan programme from April, 1981. The programme was expected to generate additional gainful employment in the rural areas, to the extent of 300-400 million man days per annum, create durable community standards of the poor. It will be implemented as a centrally sponsored scheme on 50:50 sharing basis between

the Centre and the States. The centre will provide its share in the form of food grains to the extend surplus food grains are available and the rest in cash.

NREP has the following three objectives:

i) Generation of additional gainful employment for the unemployed and underemployed persons both men and women in the rural areas.

ii) Creation of durable community assets for strengthening rural infrastructure which would lead to rapid growth of rural economy and steady rise in the income level of the rural poor.

iii) Improvement of nutritional standards of those who are living below the poverty line.

Protection of Human Rights

The term 'Human Rights' is a relatively modern invention. It covers under its umbrella three types of rights:

i) The Fundamental Freedom or Civil Liberties;

ii) Ethnic and Religious Rights; and

iii) Socio-Economic Rights.

To guarantee justice, equal status in very field of human activity to ensure freedom of thought, expression, belief, etc., to all the people of India especially to the minority, backward and the tribal people, the Constituent Assembly of India adopted a resolution at the need of the drawing of our freedom from the colonial rule. The architects of our Constitution felt that needy guaranteeing Fundamental Rights in the Constitution without an effective mechanism to monitor the violation of or infringement of these rights.

The Constitution of India gives importance to Remedial Rights and it is dealt in Art.32-35. According to this, every citizen has the right to move the Supreme Court for the enforcement of Fundamental Rights. To safeguard and uphold Fundamental Rights, the Supreme Court or High Court can issue different types of writs.

On 10th December, 1948, the United Nations General Assembly unanimously adopted the Universal Declaration of Human Rights. It contained an elaborate list of Human Rights intended as "common standard of achievement for all people and all nations".

Boards and Commissions

In India, we have made extensive use of the commissions and boards though none among them can be said to have been organized on the lines of independent regulatory commissions.

The commissions of India can be classified into three broad categories on the basis of the origin; they are:

a) Constitutional Commissions: Our Constitution makes a mention of some of the commissions and they have got to be appointed. e.g. The Finance Commission, The Union Public Service Commission, The Election Commission, The Backward Classes Commission and The Official Language Commission.

b) Statutory Commissions / Boards: These are set up by the Acts of the Parliament. e.g. Union Grant Commission, The Atomic Energy Commission, The Railway Board, The Oil and Natural Gas Commission.

c) Boards / Commissions set up by Executive Orders: These Boards/Commissions which are set up by an order of Executive and enjoy much less autonomy than the Constitutional Commissions and Statutory Commissions/Boards. e.g. Handicraft Board, The Handloom Board, The Central Social Welfare Board.

The protection of Human Rights Act, 1993 was passed by the Parliament to provide better protection of Human Rights. For this purpose, the Act established National Human Rights Commission at the National level and in States, a State Human Rights Commission and Human Rights Courts.

The National Commission shall inquire into a complaint of violation of Human Rights or negligence in the prevention of such violation. The commission shall have all the powers of a civil court. The commission shall submit an annual report to the Central Government and to the State Government concerned.

Every State Government may constitute State Human Rights Commission to exercise the powers conferred upon it. The Chairperson and other members of the State Commission shall be appointed by the Governor after obtaining the recommendation of a committee with Chief Minister as Chairperson.

For providing speedy trial of offences relation to violation of human rights, the Act empowers the State Government to specify a court of session to be a Human Rights Court.

Right to Information

With a view to introduce greater transparency and openness in the functioning of Government and public bodies, Government passed Freedom of Information Bill in 2002. The new bill was titled as Right to Information Act, 2005 and came into existence on 12th October, 2005.

Main provisions of the Act are:

i) The world 'information' under the Act means any material in any form including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, log-books, contracts, reports, papers, samples, models, data material held in electronic form.

ii) Any citizen can ask for information.

iii) Information sought will be supplied within 30 days from the date of application.

iv) If the information sought is concerned with the life and liberty of a person, it is to be supplied within 5 days.

v) Prohibited information cannot be supplied.

vi) If the Public Information Officer fails to supply information sought for, within the prescribed period, he shall be deemed to have refused the request.

vii) Appeal against the rejection by PIO can be made to the Appellate Authority.

The Act provides for the Constitution of a Central Information Commission and State Information Commission.

2. JURISPRUDENCE

Jurisprudence is the theory and philosophy of law. Scholars of jurisprudence hope to obtain a deeper understanding of the nature of law, legal reasoning, legal systems and legal institutions. Modern jurisprudence began in the 18th century and was focused on the first principles of the law of nature, civil law, and the law of nations.

General Jurisprudence can be broken into categories both by the types of questions scholars seek to address and by the theories of jurisprudence or schools of thought regarding how those questions are best to be answered.

Contemporary philosophy of law, which deals with general jurisprudence, addresses problems in two rough groups.

1) Problems internal to law and legal systems.
2) Problems of law as a particular social institution as it relates to the larger political and social situation in which it exists.

Answers to these questions come from four primary schools of thought in general jurisprudence:

Natural law

Natural law is the idea that there are rational objective limits to the power of legislative rulers. The foundations of law are accessible through human reason and it is from these laws of nature that human created laws gain whatever force they have.

Legal positivism

Legal Positivism, by contrast to natural law, holds that there is no necessary connection between law and morality and that the force of law comes from some basic social facts although positivists differ on what those facts are.

Legal Realism

Legal Realism is a third theory of jurisprudence which argues that the real world practice of law is what determines what law is. the law has the force that it does because of what legislators, judges, and executives do with it.

Critical Legal Studies is a younger theory of jurisprudence that has developed since the 1970s which is primarily a negative thesis that the law is largely contradictory and can be best analyzed as an expression of the policy goals of the dominant social group.

The English term is based on the Latin word jurisprudentia: juris is the genitive form of jus meaning “law”, and prudentia means “knowledge”. The word is first attested in English in 1628, at a time when the word prudence had the now obsolete meaning of “knowledge or skill in a matter”.

Nature of Jurisprudence

Philosophers of law ask “what is law?” and “what should it be?”

Nature and scope of Jurisprudence depends upon the ideology and nature of the society and the jurist according to their own notion, Growth of the Law is different and it differs according to social and political condition. There are different meaning for the word “Law” for example in French = Jurisprudence means “case Law”.

Due to the evolution of the society it is difficult to accept definition by all.The study of Jurisprudence started from Romans. Latin word “Jurisprudence” evolved = “knowledge of Law” or “skill in law”.

Ulpian = “The knowledge of things divine and human”.

“The science of the just and unjust”.

Paulus = “The law is not to be deducted from the rule, but the rule from the law”.

But these definitions are vague and inadequate but they put forth the idea of a legal science.

England:

During formative period of the common law the word Jurisprudence was in use. Meaning is little more than the study of or skill in law.

Early part of the 19th century the word began to acquire a technical significance among English lawyers.

Bentham distinguished

1. Expositorial Jurisprudence.
2. Censorial Jurisprudence.

Austin occupied himself with “expository” Jurisprudence. (His work consisted mainly at a formal analysis of the structure of English law).

Bentham analytical exposition or pioneered and Austin developed. Hence the word Jurisprudence has come to mean in English almost exclusively an analysis of the formal structure of law and its concepts.

Buckland: The analysis of legal concepts is what Jurisprudence meant.

Julius Stone: The lawyer’s extraversion, It is the lawyer examination of the precepts, ideas and techniques of the law in the light derived from present knowledge in discipline other than the law.

Austin:

He says the science of Jurisprudence is concerned with positive law. It is no matter whether it is good or bad law.

Austin divides the law as general jurisprudence and particular jurisprudence. General Jurisprudence is common to all systems.

Particular Jurisprudence confined only to the study of any actual system of law or any portion of it.

General Jurisprudence = science which is concerned with the exposition of the principles notions and distinctions which are common to all system of law.

Particular Jurisprudence is the science of any system of positive law actually obtaining in a specifically determined political society.

General Jurisprudence is a province of pure obstract jurisprudence to analyse and systematize the essential elements underlying the indefinite variety of legal rules without special reference to the institution of any particular country.

Particular Jurisprudence is a science of particular law General and particular jurisprudence differs from each other in this scope but not in its essence.

Generally it takes data from the system of more than one state while particular takes the data from a particular system of law.

Both are positive only.

Example: Possession is one of the fundamental legal concepts recognised by all system of law.

Criticism by Salmond Holland

1. Impracticability.
2. Error in Austin's idea of general jurisprudence.
3. Jurisprudence is the integral social science and the distinction between general and particular jurisprudence is not proper.
4. There may be many schools of jurisprudence but there are not different kind of Jurisprudence.
5. He says it is not correct to use English Jurisprudence as Hindu jurisprudence.
6. We are dealing with different systems of law and not different kinds of jurisprudence.
7. He says jurisprudence is a social science which deals with social institutions governed by law it studies them from the point of view of their legal significance.

Holland

1. Error on particular Jurisprudence.
2. We can classify a material into general and particular but we can't classify the science hence the study of particular legal system is not a science.
3. Example Geology of England Geology of India etc.

Lord Bryce "The law of every country is the outcome and result of the economic and social conditions of that country as well as the expression of its intellectual capacity for dealing with these conditions".

Savingny "Law grows with the growth and strengthens with the strength of people and its standard of excellence will generally be found of any given period to be in complete harmony with the prevailing ideas of the best class of citizens

Progress in the formation of law keep pace with the progress in the knowledge of the people.

Holland

Jurisprudence is the formal science of positive law.

It is a formal or analytical science rather than material science.

He terms the positive law as the general rule of external human action enforced by a sovereign political authority.

He follows the definition of auction but he adds the term formal which means that which concerns only the form and not its essence.

A formal science is one, which describes only the form or the extenrnal side of the subject and not it internal contents.

Salmond:

Jurisprudence as the science of law means civil law or law of the land. Jurisprudence is of 3 kinds.

Expository or systematic jurisprudence deals with the contents of an actual legal system as existing at any time whether past or present.

Legal history says about the process of historical development which helps us to setforth law as it ought to be. It deals with the ideas of the legal system and the purpose for which it exists.

Salmond makes distinction as generic Jurisprudence and specific Jurisprudence Generic Jurisprudence includes the entire body of legal doctrines and specific jurisprudence deals with a particular department of those doctrines.

He defines Jurisprudence as the science of the first principles of the civil law.

Specific Jurisprudence has three branches

1. Analytical Jurisprudence.
2. Historical Jurisprudence.
3. Ethical Jurisprudence.

Keeton

Jurisprudence the study and systematic arrangement of general principles of law. Jurisprudence deals with the distinction between public and private laws and considers the contents of the principal departments of law.

Pound

Jurisprudence the science of law using the term law in the juridical sense as denoting the body of principles recognized or enforced by public and regular tribunals in the administration of justice.

Gray

Jurisprudence is the science of law the statement and systematic arrangement of the rules followed by the courts and principles involved in those rules.

Jurisprudence is the study of fundamental legal principles it is any thought or writing about law and its relation to other disciplines such as philosophy, psychology, economics etc.

Scope of Jurisprudence

No unanimity of opinion regarding its scope.

However it covers moral and religious precepts but that has created confusion. Credit goes to Austin who distinguished law from morality and theology.

He also restricted the term to the body of rules set and enforced by the sovereign or supreme law making authority within the realm.

In the present view its scope includes all the conduct of human order and human conduct in state and society.

Nature of Law

Natural law

Aristotle is often said to be the father of natural law. Socrates Plato and Aristotle posted the existence of *natural justice* or natural right.

Natural law theory asserts that there are laws that are immenent in nature, to which enacted laws should correspond as closely as possible. This view is frequently summarised by the maxim an unjust law is not a true law, lex iniusta non est lex, in which 'unjust' is defined as contrary to natural law. Natural law is closely associated with morality and, in historically influential versions, with the intentions of God.

Natural law theory attempts to identify a moral compass to guide the lawmaking power of the state and to promote 'the good'. Notions of an objective moral order, external to human legal systems, underlie natural law. What is right or wrong can vary according to the interests one is focussed upon. Natural law is sometimes identified with the maxim that "an unjust law is no law at ali".

Thomas Aquinas was the most important Western medieval legal scholar. Main article: *Thomas Aquinas.*

He is the foremost classical proponent of natural theology. Aquinas distinguished four kinds of law. These are:

1. The eternal law
2. Natural law
3. Human law and
4. Divine law.

Eternal law is the decree of God which governs all creation.

Natural law is the human "participation" in the eternal law and is discovered by reason.

Natural law is based on "first principles": this is the first precept of the law, that good is to be done and promoted, and evil is to be avoided. All other precepts of the natural law are based on this The desire to live and to procreate are counted by Aquinas among those basic (natural) human values on which all human values are based.

Human law is positive law:

The natural law applied by governments to societies. Divine law is the law as specially revealed in the scriptures and teachings of the apostles

Thomes hobbes

He was an English enlightenment scholar.

Hobbes expresses a view of natural law as a precept, or general rule, found out by reason, by which a man is forbidden to do that which is destructive of his life, or takes away the means of preserving the same; and to omit that by which he thinks it may best be preserved. Hobbes was a social contractarian and believed that the law gained peoples' tacit consent.

He believed that society was formed from a state of nature to protect people from the state of war between mankind that exists otherwise. Life is, without an ordered society, "solitary, poor, nasty and short".

Legal positivists

Positivism simply means that the law is something that is "positive": laws are validly made in accordance with socially accepted rules. The positivist view are Firstly, that laws may seek to enforce justice, morality, or any other normative end, but their success or failure in doing so does not determine their validity. Provided a law is properly formed, in accordance with the rules recognized in the society concerned, it is a valid law, regardless of whether it is just by some other standard. Secondly, that law is nothing more than a set of rules to provide order and governance of society. No legal positivist, however, argues that it follows that the law is therefore to be obeyed, no matter what. This is seen as a separate question entirely.

What the law is - is determined by social facts

What obedience the law is owed - is determined by moral considerations.

Hans Kelsen is considered one of the pre-eminent jurists of the 20th century. He is most influential in Europe, where his notion of a Grundnorm or a "presupposed" ultimate and basic legal norm, still retains some influence.

It is a hypothetical norm on which all subsequent levels of a legal system such as constitutional law and "simple" law are based. Kelsen's pure theory of law described the law as being a set of social facts, which are normatively binding too. Law's normativity, meaning that we must obey it, derives from a basic rule which sits outside the law we can alter. It is a rule prescribing the validity of all others.

H. L. A. Hart

H. L. A. Hart, who argued that the law should be understood as a system of social rules.

Hart rejected Kelsen's views that sanctions were essential to law and that a normative social phenomenon, like law, cannot be grounded in non-normative social facts.

Hart divided into primary rules (rules of conduct) and secondary rules (rules addressed to officials to administer primary rules). Secondary rules are divided into rules of adjudication (to resolve legal disputes), rules of change (allowing laws to be varied) and the rule of recognition (allowing laws to be identified as valid). The "rule of recognition", a customary practice of the officials (especially judges) that identifies certain acts and decisions as sources of law.

Legal realism

Oliver Wendell Holmes was a self-defined legal realist.

The law should be understood and determined by the actual practices of courts, law offices, and police stations, rather than as the rules and doctrines set forth in statutes or learned treatises.

SOURCES OF LAW

1. Legislative.
2. Precedents.
3. Customs.
4. Opinion juris (statutory interpretation and preparatory works).
5. Justice equity and good conscience.

Sources of law means the origin from which rules of human conduct come into existence and derive legal force or binding characters. It also refers to the sovereign or the state from which the law derives its force or validity. Several factors of law have contributed to the development of law. These factors are regarded as the sources of law.

LEGISLATION

Legislation is that source of law which consist in the declaration of legal rules by a competent authority. Legislature is the direct source of law. Legislature frames new laws, amends the old laws and cancels existing laws in all countries. In modern times this is the most important source of law making. The term legislature means any form of law making. Its scope has now been restricted so a particular form of law making. It not only creates new rules of law it also sweeps away existing inconvenient rules.

1. Supreme legislation.
2. Subordinate Legislation.

1. Supreme legislation

Supreme legislation is the expression of the legislative will of a supreme authority in a state. It is supreme because no authority can annual, modify or control it. It proceeds from the sovereign or supreme legislative power in the state, and which is therefore, incapable of being abrogated by any other legislative authority.

2. Subordinate legislation

Subordinate legislation is that which proceeds from any authority other than the sovereign legislation power, and is, therefore, dependent for its existence or validity on some superior or supreme legislative authority. It comes from a subordinate legislature or any authority and is subject to the repealing or sanctioning control of a superior legislation. In England all form of legislative activity recognized by law, other than the power of parliament are subordinated and subject to parliamentary control.

Types of subordinate legislation

The chief forms or types of subordinate legislation are five in number. These are:

1. Colonial legislation

It means legislation by the legislature of the colonies or other dependencies. The parliament can repeal, alter or supersede any colonial enactment.

2. Executive legislation

Though the main function of the executive is to enforce laws, but in certain cases, the power of making rules is delegated to the various departments of the government, which is called subordinate delegated legislation.

3. Judicial legislation

It means rules of procedure made by superior courts for their own guidance under authority delegated to them for the purpose. In other words the superior courts have the power of making rules for the regulation of their own procedures.

4. Municipal legislation

Sometimes municipal authorities are provided with the power of establishing special laws for the districts under their control. They are allowed to make bye-laws for limited purposes within their areas. These are legislation of local bodies such as municipal or corporations.

5. Autonomous legislation

It is the process of law making by persons not by the state for their own guidance. Legislation thus made by private persons and the law created may be distinguished as autonomic view. These are autonomous bodies like municipal councils, universities etc.

PRECEDENT

Precedent is one of the sources of law. The judgements passed by some of the learned jurists became another significant source of law. when there is no legislature on particular point which arises in changing conditions, The judges depend on their own sense of right and wrong and decide the disputes. such decisions become authority or guide for subsequent cases of a similar nature and they are called precedents. The dictionary of English law defines a judicial precedent as a judgement or decision of a court of law cited as an authority for deciding a similar state of fact in the same manner or on the same principle or by analogy. Precedent is more flexible than legislation and custom. It is always ready to be, used.

Precedent is other wise called case law judicial decision judge made law it is the sources of law.

It enjoyed a high authority precedent plays a vital role when law is unwritten English common law is based on precedent.

Kinds of precedent

1. Authoritative precedents or absolute precedent.
2. Conditional precedent.
3. Persuasive precedents.

1. Authoritative precedents or absolute precedent

Whether judge approve it or not this king of precedent must be followed.

2. Conditional precedents

The judge may disregard either by dissenting or by over ruling it known as conditional precedent.

3. Persuasive precedents

Judges have no obligation to follow can take into consideration. Precedent of other court. Foreign court.

Theories of precedent

1. Declaratory theory

Declaration of existing law by the judges is known as declaratory theory. Judge only declare the existing law.

2. Original precedent theory

Law making by the judge known as original precedent theory judge are the law makers the role of judge is creative particularly when the law is absent.

Principles of precedent

1. Ratio decidendi

Reason for the decision - An authoritative principle of a judicial decision It contains a the principle of law formulated by a judge it is Essential for the decision of a case. It has force of law and binding on the courts.

Prof Keeton. Ration decidendi is a principle of law which forms the basis of decision in a particular case.

Bridges vs hawkesworth

Customer found money on the floor of a shopping complex both customer and shopkeeper claim that money.

Court treated shop as a public place and applied rule finder keeper and it favoured the customer.

Here the ratio decidendi is the finder of goods is the keeper principle.

2. Obiter dictum

Some thing said by the judge, does not have any binding authority. Judge may declare some general principles relating to law but that may be unnecessary and irrelevant to the issues before him.

Those unnecessary statements of law which lay down a rule is called Obiter dictum.

3. Stare decisis

Means let the decision stand in its rightful place. During 17 th century a progress made in the law reporting system. Reporting of the decisions of the court Act to stare decisis a principle of the law which has become settled by a series of decisions is generally binding on the courts and should be followed in similar cases. It is based on expediency and public policy.

4. Prospective overruling

Reversing the lower court's decision by supreme court can over rule their own earlier decisions by another bench of judges consisting of more number of judges than previous one. it is a modern trend which enables the court to correct its errors without affecting its past transactions.

CUSTOMS

A custom is a rule which in a particular family or in a particular district or in a particular section, class or tribe, has from long usage obtained the force of law. The dictionary of English law defines custom as a law not written, which being established by long use and consent of our ancestors has been and daily is put into practice. Custom as a source of law got recognition since the emergence of savigny on the horizon of jurisprudence. It is an exemption to the ordinary law of the land, and every custom is limited in its application.

A study of ancient shows that law-making was not the business of the kings. Law of the country was to be found in the customs of the people which developed spontaneously according to circumstances. It was felt that a particular way of doing things was more convenient then others when the same things was done again and again in a particular way, it is of custom.

According to salmond custom is the legal source of law.

According to Salmond:

"Custom is the embodiment of those principles which have commended themselves to the national and national conscience as the principles of justice and public utility."

According to Austin:

Custom is a rule of conduct which the governed observed spontaneously and not in pursuance of law set by political superior."

According to Holland:

"Custom is a generally observed course of conduct."

Kinds of Custom:

Custom are of two kinds:

I. Legal Custom.

II. Conventional Custom.

I. Legal Custom:

According to Salmond, a legal custom is one whose legal authority is absolute, one which in itself and propria vigore possesses the force of law:

Kinds of legal Custom: (a) General Custom (b) Local Custom

(a) General Custom:

General customs are those which have force of law throughout the territory. The common law of England is based upon general customs of the realm.

(b) Local Custom:

The local custom are those which operate have the force of law in a particular locality. The authority of a local custom is higher than that of general custom.

II. Conventional Custom:

A Conventional custom is one whose authority is conditional on its acceptance in the agreement between the parties to be bound by it. There is a process by which conventional usage comes to have the force of law.

Conditions for a valid custom:

Certain conditions must be satisfied before a court is entitled to incorporate the usages into contracts.

i) The usage must be so well-established as to be notorious.

ii) The usage must be reasonable.

iii) Usage cannot alter general law of land.

iv) A usage should not nullify or very the express term of the contract.

Requisites of Valid Custom:

Following are the requisites for a valid custom, treated as law.

I. Immemorial :

A Custom to be valid must be proved to be immemorial.

According to Blackstone:

"A custom in order that in may be legal and binding, must have been used so long that the memory of man runneth not to the contrary, so that if anyone can show the beginning of it, it is good custom."

II. Reasonable:

Another essential of a valid custom is that it must be reasonable. The unreasonableness of custom must be so great that its enforcement results in greater harm than if there were no custom at all.

According to Prof. Allen:

The unreasonableness of custom must be proved and not its reasonableness.

III. Continuous:

A custom must not continuously observed and if it has not been continuously and uninterruptedly observed, the presumption is that it existed at all.

IV. Peaceable enjoyment:

The enjoyment of a custom must be a peaceable one.

V. Certainty:

A valid custom must be certain and definite, if there is any ambiguities in it or it keeps change, it is not a valid custom.

VI. Compulsory Observance:

A custom is valid if its observance is compulsory. An optical observance is ineffective.

According to Blackstone:

"A custom that all the inhabitants shall be rated towards the maintenance of a bridge, will be good, but a custom that every man is to contribute thereto at his own pleasure is idle and indeed no custom at all."

VII. General Or Universal:

The custom must be general or universal.

According to custom:

"In the absence of unanimity of opinion, custom becomes powerless or rather dose not exist."

A valid custom must not be opposed to public policy or the principles of morality.

IX. Not Opposed With Statute Law:

(A) valid custom must be conflict with the statute law of the country.

According to Coke:

"No custom or prescription can take away the force of an Act of parliament."

(B) According to Blackstone customs must be consistent with each other, one custom cannot be set up in opposition to another.

Theories of customs

There are two theories regarding the question as to when a question is transformed into law:

(i) Historical theory (ii) Analytical theory

(i) Historical theory:

According to the historical theory, the growth of law does not depend upon the arbitrary will of any individual. It dose not depend upon any accident. It grows as a result of the intelligence of the people. Custom is derived form the common consciousness of the people.

According to Puchta:

Custom is not only self-sufficient and independent of state imprimature but is a condition to all sound legislation.

Criticism:

According to Paton:

The growth of most of the customs is not the result of any conscious thought but of tentative practice.

According to Allen:

"All customs cannot be attributed to the common consciousness of the people. In many cases, customs have arisen on account of the convenience of the ruling class."

(ii) Analytical theory:

Austin, Holland, and Gray are the advocates of analytical theory.

According to Austin:

Customs is a source of law and not law itself. Customs are not positive laws until their existence is recognized by the decisions of the Courts.

According to Holland:

Customs are not laws when they arise but they are largely adopted into laws by state recognition.

Criticism:

By Allen:

Custom grows by conduct and it is therefore a mistake to measure its validity solely by the elements of express sanction, accorded by Courts of law of by other determinate authority.

Reasons for Custom is given the force of law:

Following are the reasons, why custom is given the force of law.

(i) Principles of National Conscience:

Custom is the embodiment of those principles which have commended themselves to the national conscience as principles of truth, justice and public policy.

According to Salmond:

"Custom is to society what laws is to the state. Each is the expression and realization of the measure of man, insight and ability, of the principles of right and justice."

(ii) Expectation of continuance:

Another reason for the binding force of custom is the expectation of its continuance is the future. Justice demands that this expectation should be fulfilled and not frustrated.

(iii) Observance by a large number of people:

Sometimes a custom is observed by a large number of persons in society and in course of time the same come to have the force of law.

(iv) Interests of Society:

Custom rests on the popular conviction that it is in the interests of society. This conviction is so strong that it dose not found desirable to go against it.

(v) Useful to the law giver:

According to paton:

Custom is useful to the law-giver and codifier is two ways. It provides that material out of which the law can be fashioned. There is a tendency to adopt the maxim whatever has been authority in the past is a safe guide for the future.

OWNERSHIP

According to Austin ownership means a right, which avails against everyone who is subject to the law conferring the right to put thing to user of indefinite nature.

It is right in rem which is available to the owner against the world at large. It includes ownership over both corporeal and incorporeal things. The former refers to physical objects and the latter refers to all claims.

According to Hibbert ownership is a comprehensive right in rem. It is a bundle of four rights.

1. Right to use a thing
2. Right to exclude others from using the thing
3. Right to dispose of the thing and
4. Right to destroy the thing

Holland "ownership is a plenary control over a object".

Salmond the relation between a person and any right that is vested and an object forming the subject matter of his ownership

Ownership denotes the relation between a person and right that is vested in him. Nothing can be owned except the right over a thing. In other words a thing cannot be owned but a right over such thing can be owned. Therefore owning a right is called ownership.

Austin

1. Owner can use in many ways or indefinite in point of user
2. Owner has right of transfer or unrestricted in point of desposition
3. Ownership is permanent or unlimited in point of duration

Modes of acquisition of ownership:

The ownership is acquired in two ways

1. Original mode
2. Derivative mode

1. Original mode:

In this mode the owner acquires the ownership over the ownerless objects. They are called res nullis. Such object belonged to no one. It may be acquired by means of accession, occupation and specification.

2. Derivative mode:

In this mode the owner acquires the ownership by purchasing from the original or previous owner. The purchaser becomes the owner. It is merely a transfer of existing ownership but not a relation of the ownership ex buyer derives ownership from seller.

Kinds of ownership

1. Corporeal and incorporeal ownership
2. Trust and Beneficial ownership
3. Legal and Equitable ownership
4. Vested and Contingent ownership
5. Sole and co- ownership
6. Absolute and limited ownership

1. **Corporeal and incorporeal ownership:**
   The ownership over a tangible or material object is called corporeal ownership

2. **Trust and Beneficial ownership**
   The ownership of a trustee is called trust ownership

3. **Legal and Equitable ownership**
   The ownership which originated from the rules of common law is called legal ownership. A assigned a debt to B. A is the legal owner and B becomes an equitable owner.

4. **Vested and Contingent ownership:**
   The ownership which comes into existence immediately is called vested ownership. A transfer his property to B an unmarried daughter for life and to C, an unborn make child. C's ownership Is contingent because C's birth is uncertain.

5. **Sole and Co-ownership**
   An exclusive ownership of an individual as against the whole world is called sole ownership single owner. The ownership of two or more persons having interest in the same property or thing is called co ownership

6. **Absolute and limited ownership**
   The ownership which vests all the rights over a thing to the exclusion of all is called absolute ownership. Ownership which imposes limitations on user duration or disposal of rights of ownership is called limited ownership.

POSSESSION

Possession means custody or control. The idea of ownership developed slowly with the growth of civilization.

According to Salmomd possession establishes the relationship between men and the material things. It is a mere fact.

According to Pollock possession is a physical control over a thing.

According to Savigny possession is the physical power of exclusion. Protection of possession is a branch of protection to the person. Freedom of will is the ground for the protection of possession.

According to Ihering possession is de facto exercise of a claim over a thing.

According to Roman law possession is a prima facie evidence of ownership. It supports the title of ownership. The possessor of a thing is presumed to be the owner. Long enjoyment of a property creates ownership. This is known as prescription hence possession in nine points in law.

Kinds of Possession

1. Possession in fact
2. Possession in law

1. Possession in fact:

The actual or physical possession of a thing is called Possession in fact. Also known as defacto possession. It indicates physical control of a person over a thing. There may be a physical relation with the object and the person. That physical relation or control need not be continuous.

2. Possession in law

Possession which is recognized and protected by law is called Possession in law. It is also know as de jure possession it is a possession in the eye of law.

Elements of possession

1. Animus possidendi
2. Corpus possessionis

1. Animus Possidendi:

Means intention to possess a thing. It deals with subjective and mental intention to posses a thing. It deals with subjective and mental element. It denotes a strong desire to possess a thing. Here the possessor must have strong intention to posses a thing he must have an exclusive claim, Animus Possedendi need not be a claim or right and need not be a own claim and it need not be specified.

2.Corpus Possessionis

Corpus Possession is means physical possession of a thing it deals with objective element. According to savingny the actual physical control over a thing is called corpus possessionis. The physical control gives to an assumption that others will not interfere with it. Possessor must present personally and physically possess. The possession of a thing extends to accessories too. Possession includes protection and secrecy of thing

Acquisition of possession

1. By taking
2. By delivery
3. By operation of law

Types of Possession

1. Corporeal and incorporeal possession

The possession of a material object is called Corporeal possession. Actual use or control over such material object is not necessary e.g. possession of car. The Possession of other than a material object is called incorporeal possession. Actual use and enjoyment of right is necessary.

2. Immediate and Mediate Possession

The direct or primary possession of a material object is called Immediate possession. The possessor holds thing personally without any intermediary e.g. possession of a car owner.

Indirect or secondary possession of a material object is called Mediate possession the possessor of a material object is called Mediate possession. The possessor holds the thing on behalf of another. e.g. possession of a car driver.

3. Representative Possession

The Possession of a thing through an agent or a servant is called Representative Possession. The representative is not the real possessor e.g. master's money in the servant' pocket.

4. Concurrent Possession

Two or more persons may jointly possess a thing at the same time. This Is known as Concurrent possessison e.g. B may have right of way on the A' land.

5. Derivative Possession

The possession of the holder of a thing is called Derivative possession. He derives title from the person who entrusts the thing. e.g. a watch repairer. He need not return the watch until the repair charges are paid.

6. Constructive possession

The possession in law is called constructive possession. It is not an actual possession. It is a possession in law and not a possession in fact. Possession of keys of a car implies the possession of car.

7. Adverse possession

The possession againt every other person having or claiming to have a right to the possession of that property is called Adverse possession. It is a possession of a thing without the permission of its real owner. Lessee possession after expiry of lease period.

8. Duplicate possession

The possession of a thing by two persons is called Duplicate possession. The possession of one persons is compatible with the possession of another person. It is possible only when two claims are not mutually adverse. Possession of co owners.

Distinction between Ownership and Possession

Ownership	Possession
1. It is an absolute right	1. It is an evidence of ownership
2. It is defacto exercise of fact	2. It is de jure recognition of claim
3. It is the guarantee of the law	3. It is the guarantee of the fact
4. It is related to a right	4. It is related to a fact
5. It includes possession	5. It does not include ownership
6. It excludes interference	6. It excludes other except owner
7. It developed on possession	7. It is developed with civilization
8. It provides proprietary remedies	8. It provides possessory remedies
9. Its transfer is too technical	9. Its transfer is less technical

LEGAL PERSONALITY

In the common law tradition, only a person could sue or be sued. This was not a problem in the era before the Industrial Revolution, when the typical business venture was either a sole proprietorship or partnership the owners were simply liable for the debts of the business. A feature of the corporation, however, is that the owners/shareholders enjoyed limited liability the owners were not liable for the debts of the company. Thus, when a corporation breached a contract or broke a law, there was no remedy, because limited liability protected the owners and the corporation wasn't a legal person subject to the law. There was no accountability for corporate wrongdoing.

To resolve the issue, the legal personality of a corporation was established to include five legal rights

1. The right to a common treasury or chest (including the right to own property),
2. The right to a corporate seal (i.e., the right to make and sign contracts),
3. The right to sue and be sued (to enforce contracts),

4. The right to hire agents (employees) and
5. The right to make by-laws (self-governance).

Legal personality

Legal personality (also artificial personality, juridical personality, and juristic personality also commonly called as a vehicle) is the characteristic of a non-living entity regarded by law to have the status of personhood.

A legal person has a legal name and has rights, protections, privileges, responsibilities, and liabilities under law, just as natural persons (humans). the concept of a legal person is a fundamental legal fiction.

Legal personality allows one or more natural persons to act as a single entity (a composite person) for legal purposes. Legal personality allows that composite to be considered under law separately from its individual members or shareholders. They may sue and be sued, enter contracts, incurd debt, and own property. Entities with legal personality may also be subjected to certain legal obligations, such as the payment of taxes. An entity with legal personality may shield its shareholders from personal liability.

The concept of legal personality is not absolute. "Piercing the corporate veil" refers to looking at the individual natural persons acting as agents involved in a corporate action or decision; this may result in a legal decision in which the rights or duties of a corporation are treated as the rights or liabilities of that corporation's shareholders or directors. Generally, legal persons do not have all of the same rights - such as the right to freedom of speech - that natural persons have.

Types of legal persons

1. Cooperatives

A corporation sole is a corporation constituted by a single member, such as The Crown in the Commonwealth realms.

2. Corporation

A corporation aggregate is a corporation constituted by more than one member. Municipal corporations (municipalities) are "creatures of statute." Other organizations may be created by statute as legal persons. business association that carries on an industrial enterprise, are usually corporations, although some companies may take forms other than a corporation, such as associations, partnership, unions, joint stock companies, trusts, and funds. Limited liability companies are unincorporated associations having certain characteristics of both a corporation and a partnership or sole proprietorship.

3. Sovereign states are legal persons.

4. International legal systems

Various organizations possess legal personality. These include intergovernmental organizations (e.g. U.N)

5. Temples

Temples, in some legal systems, have separate legal personality.

Not all organizations have legal personality. For example, the board of directors of a corporation, legislature, or governmental agency typically are not legal persons in that they have no ability to exercise legal rights independent of the corporation or political body which they are a part of.

There are limitations to the legal recognition of legal persons. Legal entities cannot marry, they usually cannot vote or hold public office and in most jurisdictions there are certain

positions which they cannot occupy. The extent to which a legal entity can commit a crime varies from country to country. Certain countries prohibit a legal entity from holding human rights; other countries permit artificial persons to enjoy certain protections from the state that are traditionally described as human rights.

Special rules apply to legal persons in relation to the law of defamation. Defamation is the area of law in which a person's reputation has been unlawfully damaged. This is considered an ill in itself in regard to natural person, but a legal person is required to show actual or likely monetary loss before a suit for defamation will succeed.

Theories of corporate personality

There are five theories which explains the nature of corporate personality

1. Fiction theory
2. Realistic theory
3. Concession theory
4. Bracket theory
5. Purpose theory

ADMINISTRATION OF JUSTICE

Punishment according to dictionary- involves the infliction of pain or forfeiture, it is infliction of penalty. chastisement or castigation by the judicial arm of the state. If the sole purpose behind punishment is to cause physical pain to the wrongdoer, it serves little purpose. However, if punishment is such as leads him to realize the gravity of the offence committed by him, and to repent at once for it, it may be said to have achieved its desired effect.

There are many theories of concerning the justification of punishment. It is clear that the philosophy of punishment will affect the actual standards of liability laid down by the law.

The ends of criminal justice are four in number, and in respect of the purpose so served by it, punishment may be distinguished as

1 . Deterrent
2. Preventive
3. Reformative
4. Retributive.

1. Deterrent theory:

Punishment is before all things deterrent and the chief end of the law of crime is to make the evil-doer an example and warning to all who are like minded with him. According to this theory, offences are result of a conflict between the interests of the wrong-doer and those of society. The aim of punishment is to dissolve the conflict of interests by making every offence.This theory has been criticised on the ground that it is ineffective in cases where crime is committed under severe mental stress. In such cases to punish the wrongdoer to deter him is meaningless.

2. Preventive theory:

Punishment is, preventive or disabling. Its primary and general purpose being to deter by fear, its secondary and special purpose is wherever possible and expedient, to prevent a repetition by wrongdoer by the disablement of the offender. The most effective mode of disablement is the death penalty, which in practice, in time of peace, is confined to the crime of murder, though it is legally possible for treason and certain form of piracy and arson.

A similar secondary purpose exists in sub penalties as imprisonment and forfeiture of office, the suspension of driving licenses and in the old penalty of exile. The aim of this theory is not to repeat the crime the crime but this theory takes no note of criminal. It prefers to disable the wrong-doer from committing any more crime but it ignores one of the basic object of the criminal law, i.e. to reform the criminal.

3. Reformative theory:

A crime is committed as a result of the conflict between the character and the motive of the criminal. One may commit a crime either because the temptation of the motive is stronger or because the restrain imposed by character is weaker.

The deterrent theory by showing that crime never pays separate the motive., while the reformative theory seems to strengthen the character of the man so that he may not become victim of his own temptation. This theory would consider punishment to be curative or to perform the function of medicine.

According to this theory crime is like a disease .. This theory maintains that you can cure by killing.

The ultimate aim of reformists is to try to bring about a change in the personality and character of the offender, so as to make him a useful member of society.

4. Retributive theory:

Retributive punishment, in the only sense in which it is admissible in any rational system of administering justice, is that which serves for the satisfaction of that emotion of retributive indignation which in all healthy communities is strived up by injustice. This was formerly based on theory of revenge.-"tooth for tooth" and "eye for eye".

The idea behind the retributive punishment is that of the restoration of the moral character, the appraisement of the disturbed conscience of society itself and the maintenance of the sovereign power of the state which becomes aggrieved when a crime is committed and inflicts punishment to set matters of right. Though the system of private revenge has been suppressed, the instincts and emotion that lay at the root of these feelings are yet present in human nature. Therefore, according to this moral satisfaction that the society obtains from punishment can not be ignored.

On the other hand, if the criminal is treated very leniently or even in the midst of luxury, as the reformative theory would have it, the spirit of vengeance would not be satisfied and it might find its way through private vengeance. According to this theory eye for eye and tooth for tooth is deemed to be a complete and really sufficient rule of natural justice.

In the last, we can easily say that the only logical inference from the reformative theory, if aken itself, is that they should be abandoned in despairs as no fit subject for penal discipline. The deterrent and disabling theories on the other hand, regard such offenders as being pre-eminently those with whom the criminal law is called upon to deal.

The application of purely reformative theory, therefore would lead to astonishing and inadmissible results. The perfect idea of criminal justice is based on neither reformative nor the deterrent principle exclusively, but the result of comprise between them.

In this it is the deterrent principal which possesses predominant influence. It will not be out of place to mention here that Gandhiji "hate the sin and not the sinner", is merely a philosophical assertion and can not furnish a practical guide in the administration of justice.

3. CONSTITUTIONAL LAW - I

Constitution of India

India became independent of the British rule in August 1947, One of the most important tasks that the new nation had to take was to give itself a Constitution. It did so in 26th November 1949.

What is a Constitution?

A constitution is a set of rules by which the people of a country are governed. It says how the government should work and what its powers and duties are. And it guarantees or, promises the people important rights like justice and freedom. It also tells people what their rights are and what they can and cannot do. The constitution is higher than all other laws in the country. All laws passed by a country have to be in line with its constitution.

Classification of Constitution

History

The Fundamental Rights and Directive Principles had their origins in the Indian independence movement, which strove to achieve the values of liberty and social welfare as the goals of an independent Indian state. The development of constitutional rights in India was inspired by historical documents such as England's Bill of Rights, the United States Bill of Rights and France's Declaration of the Rights of Man.[2] The demand for civil liberties formed an important part of the Indian independence movement, with one of the objectives of the Indian National Congress (INC) being to end discrimination between the British rulers and their Indian subjects. This demand was explicitly mentioned in resolutions adopted by the INC between 1917 and 1919. The demands articulated in these resolutions included granting to Indians the rights to equality before law, free speech, trial by juries composed at least half of Indian members, political power, and equal terms for bearing arms as British citizens.

The experiences of the First World War, the unsatisfactory Montague-Chelmsford reforms of 1919, and the rise to prominence of M. K. Gandhi in the Indian independence movement marked a change in the attitude of its leaders towards articulating demands for civil rights. The focus shifted from demanding equality of status between Indians and the British to assuring liberty for all Indians. The Commonwealth of India Bill, drafted by Annie Beasant in 1925, specifically included demands for seven fundamental rights - individual liberty, freedom of conscience, free expression of opinion, freedom of assembly, non-discrimination on the ground of sex, free elementary education and free use of public spaces. In 1927, the INC resolved to set up a committee to draft a "Swaraj Constitution" for India based on a declaration of rights that would provide safeguards against oppression. The 11-member committee, led by Motilal Nehru, was constituted in 1928. Its report made a number of recommendations, including proposing guaranteed fundamental rights to all Indians. These rights resembled those of the American Constitution and those adopted by post-war European countries, and several of them were adopted from the 1925 Bill. Several of these provisions were later replicated in various parts of the Indian Constitution, including the Fundamental Rights and Directive Principles.

In 1931, the Indian National Congress, at its Karachi session, adopted a resolution committing itself to the defence of civil rights and economic freedom, with the stated objectives of putting an end to exploitation, providing social security and implementing land reforms. Other new rights proposed by the resolution were the prohibition of State titles, universal adult franchise, abolition of capital punishment and freedom of movement. Drafted by Jawaharlal Nehru, the resolution, which later formed the basis for some of the Directive Principles, placed the primary responsibility of carrying out social reform on the State, and marked the increasing influence of socialism and Gandhian philosophy on the independence movement. The final phase of the Independence movement saw a reiteration of the socialist principles of the 1930s, along with an increased focus on minority rights - which had become an issue of major political concern by then - which were published in the Sapru Report in 1945. The report, apart from stressing on protecting the rights of minorities, also sought to prescribe a "standard of conduct for the legislatures, government and the courts".

During the final stages of the British Raj, the 1946 Cabinet Mission to India proposed a Constituent Assembly to draft a Constitution for India as part of the process of transfer of power. The Constituent Assembly of India, composed of indirectly elected representatives from the British provinces and Princely states, commenced its proceedings in December 1946, and completed drafting the Constitution of India by November 1949. According to the Cabinet Mission plan, the Assembly was to have an Advisory Committee to advise it on the nature and extent of fundamental rights, protection of minorities and administration of tribal areas. Accordingly, the Advisory Committee was constituted in January 1947 with 64 members, and from among these a twelve-member sub-committee on Fundamental Rights was appointed under the chairmanship of J.B. Kripalani in February 1947. The sub-committee drafted the Fundamental Rights and submitted its report to the Committee by April 1947, and later that month the Committee placed it before the Assembly, which debated and discussed the rights over the course of the following year, adopting the drafts of most of them by December 1948. The drafting of the Fundamental Rights was influenced by the adoption of the Universal Declaration of Human Rights by the U.N. General Assembly and the activities of the United Nations Human Rights Commission, as well as decisions of the U.S. Supreme Court in interpreting the Bill of Rights in the American Constitution. The Directive Principles, which were also drafted by the sub-committee on Fundamental Rights, expounded the socialist precepts of the Indian independence movement, and were inspired by similar principles contained in the Irish Constitution. The Fundamental Duties were later added to the Constitution by the 42nd Amendment in 1976.

What is Federation ?

A Federation (Latin: foedus, foederis, 'covenant'), also known as a Federal state, is a political entity characterized by a union of partially self-governing states or regions united by a central (federal) government. In a federation, the self-governing status of the component states, as well as the division of power between them and the central government, are typically constitutionally entrenched and may not be altered by a unilateral decision of the latter. The form of government or constitutional structure found in a federation is known as Federalism. It can be considered the opposite of another system, the unitary state.

Essential Characteristics of the Federation

Distribution of powers: An essential feature of a federal Constitution is the distribution of powers between the Central Government and the Governments of the several units forming the federation.

Supremacy of the Constitution: The Constitution is binding on the Federal and the State Governments. The Central Government as well as the State Governments derives their powers from the Constitution. Also, neither of the two Governments should be in a position to override the provisions of the Constitution related to the powers and status enjoyed by the other.

Written Constitution: The Constitution must be necessarily a written one. This is basically to avoid any doubt about the supremacy of the Constitution as well as to clearly demarcate the powers between the Centre and the State governments.

Rigidity of the Constitution: This feature is a corollary to the supremacy of the Constitution. Rigidity does not mean unamendability of the Constitution, but simply means, the power of amending the Constitution, especially the regulating status and powers of the Federal and the State Governments, should not be confined exclusively either to the Federal or to the State Governments.

Authority of the Courts: There must be an authority that can prevent the Federal and State Governments from encroaching upon each other's powers. Secondly, there should be a final Supreme Court which should not be dependent upon the Federal or State Governments and should have the last word in matters involving Constitutional affairs.

Difference Between a Federation and Confederation

Federation is a close association (legal) between two or more units, while Confederation is a loose association of two or more States.

In a Federation, units normally do not have the right to secede (as in India and Pakistan), but in the case of a Confederation, the States always enjoy the right to secede (e. g. CIS, erstwhile USSR). A Federation is a sovereign body, while in a Confederation the units or the States are sovereign.

In a Federation, there exists a legal relation between the Federation and its people, but in Confederation, the people are the citizens of the respective of the Confederation. The following are the provisions in the Indian Constitution which are not strictly federal in character:

In the USA and Australia, the states have their own Constitutions which are equally powerful as the federal Constitution, but in India, there are no separate Constitutions for the member States.

India follows the principle of uniform and single citizenship, but in the USA and Australia, double citizenship is followed.

In the USA, it is not possible for the Federal Government to unilaterally change the territorial extent of a State but in India, the Parliament can do so even without the consent to the State concerned (Art 3). Thus, the States in India do not enjoy the right to territorial integrity.

If the President declares national emergency for the whole or part of India under Art. 352, the Parliament can make laws on subjects, which are otherwise, exclusively under the State List. The Parliament can give directions to the States on the manner in which to exercise their executive authority in matters within their charge. The financial provisions can also be suspended.

Under Art. 155, the Governor of a State is appointed by the President and the former is not responsible to the State Legislature. Thus indirectly, the Centre enjoys control over the State through the appointment of the Governor.

If financial emergency is declared by the President under Art. 360. on the ground that the financial stability or credibility of India or any of its units is threatened, all the Money Bills passed by the State Legislatures during the period of financial emergency are also subject to the control of the Centre.

Under Art. 256, the Centre can give administrative directions to the States, which are binding on the latter. Along with the directions, the Constitution also provides measures to be adopted by the Centre to ensure such compliance.

Under Art. 312. All India Services officials "IAS, IPS and IFS (forest)" are appointed by the Centre, but are paid and controlled by the State. However, in case of any irregularities by the officer, States cannot initiate any disciplinary action except suspending him/her.

Judges of the High Courts are appointed by the President in consultation with the Governors under Art. 217 and the States do not play any role in this. Thus, apart from certain provisions which are biased towards the Union, the Constitution of India, in normal times, is framed to work as a federal system.

But in times of war and other emergencies, it is designed to work as though it were unitary. The federal Constitutions of the USA and Australia, which are placed in a tight mould of federalism, cannot change their form. They can never be unitary as per the provisions of the Constitution. But, the Indian Constitution is a flexible form of federation a federation of its own kind. That is why Indian federation is called federation sui generis. Prof K C Wheare described the Constitution of India as 'Quasi Federal' and remarked that Indian Union is 'a unitary State with subsidiary Federal features rather than a Federal State with subsidiary unitary features'. Granville Austin described Indian Federalism as 'Co-operative federalism'. Dr B R Ambedkar said that Indian Political system is both "Unitary as well as federal according to the requirements of time and circumstances".

How was India's Constitution framed?

The Indian Constitution was framed or, put together by the Constituent Assembly of India. The Assembly had over 300 members, From the many communities of India. They included lawyers, Constitutional experts and leading politicians like; Jawarharlal Nehru [The first Prime Minister of India] and Dr. Rajendra Prasad [The first President of India]. The Constituent Assembly met 11 times, Over 165 days between 1946 and 1949.

In August 1947, the Drafting Committee was set up, under Dr. B.R.Ambedkar. This Committee's job was to write the Constitution. On 26 November 1949, the final Draft of the Constitution was adopted by the Constituent Assembly.

The Indian Constitution

The Constitution of India came into force on 26 January 1950. It is the longest written constitution in the world. It has so far been amended, or changed, 94 times.

The Preamble to the Constitution says that it is from the people of India that the constitution gets it authority. It also states that the aim of the Constitution is to ensure justice, Freedom and equality for the citizens of India and the unity of nation.

The Fundamental Rights, which are a part of the Constitution, guarantee "civil liberties" to the people of India; that is, citizen have the right to freedom of speech and expression, to equality before the law and against discrimination based on religion, race, caste, or gender. They

have the right to practise their own religion. All communities have the right to preserve and use their own language and script. Most importantly, All citizens have the right to move a court of a law in case any of the fundamental rights have been denied to them.

Unique Features of the Indian Constitution

There are some unique features of the Indian Constitution. These features are mentioned below:

The Indian Constitution is said to be "framed by the People of India". The Constituent Assembly formed for drafting the constitution of assembly was framed by the people belonging to all parts of the society. This Constituent Assembly is considered to be a representative body of people living in the country.

Sovereignty of the people is another unique feature of the Indian Constitution. According to the Constitution, people of the country are the supreme authority. Earlier, the supreme power was in the hand of the British Parliament. The term "Sovereignty" connotes that the people of India are not subordinate to any other external authority.

The Constitution of India renders the republican form of polity in the country. During British era, the king was the Head of the State.

The Indian Constitution also provides for a secular polity in India. The term "Secular" implies that in the country, there would be no discrimination on grounds of religion. There should be equal respect for all religions.

Fundamentals Rights and Duties of the citizens of India is another unique feature of the Indian Constitution, which was absent in the previous constitutions. Fundamental Rights were mentioned in the constitution at the time of its adoption in 1949. The provision for Fundamental Duties was included through the Constitution (Forty Second Amendment) Act, 1976.

The Indian Constitution has provision for the Directive Principles of State Policy. These principles and policies are included in the Chapter IV of the constitution. These rights cannot be enforced by the courts of law, but these are fundamental principles, awareness of which should be there among people and the government.

The Indian Constitution has provision for judicial review of the Acts of both the State Legislatures and the Union Legislature and the activities of the Union and State executives, so that authority of the legislative and executive branches are not misused.

Provision for the universal adult franchise is another unique feature of Indian Constitution. In this provision, all adult citizens of the country has right to vote.

The Indian Constitution has given recognition of Hindi as the official language of the country. Earlier, English was the only official language of India. Apart from Hindi, the Constitution has also recognized 17 other Indian languages as regional languages.

Unique Blend of Rigidity and Flexibility is another feature of the Indian Constitution. The Constitution can be amended for revising the laws mentioned in it. Amendments to Constitution can be made through various procedures.

Features of the Indian Constitution

The features of the Indian Constitution are mentioned below:

1. Indian Constitution is a comprehensive document including 395 Articles and twelve Schedules.
2. The Indian Constitution has a provision of a full-fledged Parliamentary Democracy.
3. There is the provision for federal form of polity in India in the Constitution of India.
4. The Constitution of India encourages affirmative action to be taken by the State to improve the conditions of the weaker sections of society.
5. There are emergency provisions made in the Indian Constitution. There are provisions for national emergency, financial emergency and failure of constitutional machinery.
6. The constitution has also made provision for some Independent Agencies to perform various functions assigned to them. The Election Commission, the Comptroller and Auditor General and the Union and State Public Service Commissions are three such agencies.
7. Longest written Constitution
8. Partly Rigid and Partly Flexible
9. A Democratic Republic
10. Parliamentary System of Government
11. A Federation
12. Fundamental Rights
13. Secular State
14. An Independent Judiciary
15. Single Citizenship

The PREAMBLE

"WE, THE PEOPLE OF INDIA, having solemnly resolved to constituent 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."

Features of Indian Constitution include most of the aspects of the Western legal systems and runs on the system of the liberal democracy. The most important aspect of the features of Indian Constitution is the tendency to eradicate inequality that the traditional social relations

have given birth to. The prime feature of the Indian Constitution is to look after the social welfare of the people of the nation. There are elaborate explanations that are given to enhance the social relationships and this is one of the prime reasons that many famous scholars have regarded the features of Indian Constitution as the motivating factors behind the ever "changing and rebuilding society" of India.

One of the special features of the Indian Constitution is the steady concentration of power in the hands of the Prime Minister and his office. Although there is a wide range of ethnic groups and caste races that are distributed allover the land, the ultimate power resides in the hands of the Prime Minister.

OBJECTIVES RESOLUTION The underlying principles of the Constitution were laid down by Jawaharlal Nehru in his Objectives Resolution: India is an Independent, Sovereign, Republic; India shall be a Union of erstwhile British Indian territories, Indian States, and other parts outside British India and Indian States as are willing to be a part of the Union; Territories forming the Union shall be autonomous units and exercise all powers and functions of the Government and administration, except those assigned to or vested in the Union; All powers and authority of sovereign and independent India and its constitution shall flow from the people;

THE UNION AND ITS TERRITORY

Article 1: Name and territory of the Union

(1) India, that is Bharat, shall be a Union of States.

(2) The States and the territories thereof shall be as specified in the First Schedule.

(3) The territory of India shall comprise -

(a) the territories of the States;

(b) the Union territories specified in the First Schedule; and

(c) such other territories as may be acquired.

Article 2 Admission or establishment of new States

Parliament may by law admit into the Union, or establish, new States on such terms and conditions as it thinks fit.

Article 2a Sikkim to be associated with the Union

Article 3 Formation of new States and alteration of areas, boundaries or names of existing States

Parliament may by law -

(a) form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State;

(b) increase the area of any State;

(c) diminish the area of any State;

(d) alter the boundaries of any State;

(e) alter the name of any State:

Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless, where the proposal contained in the Bill affects the area, boundaries or name of any of the States, the Bill has been referred by the President to the Legislature of that State for expressing its views thereon within such period as may be specified in the reference or within such further period as the President may allow and the period so specified or allowed has expired.

Explanation I: In this article, in clauses (a) to (e), "State" includes a Union territory, but in the proviso, "State" does not include a Union territory.

Explanation II: The power conferred on Parliament by clause (a) includes the power to form a new State or Unionterritory by uniting a part of any other State or Union territory to any other State of Union territory.

Article 4 Laws made under articles 2 and 3 to provide for the amendment of the First and the Fourth Schedule and supplemental, incidental and consequential matters

(1) Any law referred to in article 2 or article 3 shall contain such provisions for the amendment of the First Schedule and the Fourth Schedule as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions (including provisions as to representation in Parliament and in the Legislature or Legislatures of the State or States affected by such law) as Parliament may deem necessary.

(2) No such law as aforesaid shall be deemed to be in amendment of this Constitution for the purposes of article 368.

While discussing certain facts about India it is necessary to mention about the Indian states and the union territories which stands as an integral and inseparable parts of the country called India.

There are 28 Indian states, six union territories and a National Capital territory. The 28 states have their own government and the union territories are under the rule of the central government of India. Each state is further sub divided into districts and further the districts are divided into tehsils and villages.

Each state has its own administrative, judicial and legislative capital city or town. The place from where the executive government operates is called the administrative capital, the city where the legislative assembly stands is called the Legislative capital of the state and the city where the territorial high court of the state is situated is called the judicial capital of the state

With a difference, Pondicherry though a union territory it has a government of its own. The national capital of India, Delhi still stands different from the rest as it is categorized as a special region which is neither a state nor a union territory and has an elected government of its own

The Constitution of India is set in a way where there is an unbiased distribution of legislative powers between the state legislatures and the Parliament. The boundaries of Indian states were reorganized as per the States Reorganization Act of 1956. The states were roughly divided on linguistic lines and as per the opportunity of amendment in the Indian Constitution, the primarily segmented three types of states were joined into a single type of state. Several changes in the state boundaries have occurred since the Independence of India in the year 1947. Recently, in November 2000, three new states were introduced, which were cut out from Madhya Pradesh,

Bihar and Uttar Pradesh and the new states were respectively known as, Chattisgarh, Jharkhand and Uttaranchal. While discussing facts about India, the Indian states and the union territories needs a special mention.

The union of India is a federal Union, with a distribution of powers, of whihcthe judiciar is the interpreter, Although there has beenconsiderable controvers whether India isor is not a federation and although some writeres have called it quasi federal, still it would seem to suggest that Indian Constiution is Federal,Special Reference of 1956(AI R 1965 SC 745)

CITIZENSHIP

CITIZENSHIP

The Constitution provides for single citizenship. There is no separate citizenship of states. According to the Constitution the following three categories of persons are entitled to citizenship:(1) persons domiciled in India(2) refugees who migrated to India from Pakistan(3) Indians living in other countries.

Acquisition and Termination of Citizenship

Rules regarding acquisition and termination of Indian citizenship have been laid down in the Citizenship Act of 1955. A person can acquire citizenship of India in five ways:

(1) Citizenship by birth
(2) Citizenship by descent
(3) Citizenship by registration
(4) Citizenship by naturalization
(5) Citizenship by incorporation of territory

Loss of Indian Citizenship

(1) Renunciation
(2) Termination
(3) Deprivation

The Fundamental Rights, Directive Principles of State Policy and Fundamental Duties are sections of the Constitution of India that prescribe the fundamental obligations of the State to its citizens and the duties of the citizens to the State. These sections comprise a constitutional bill of rights for government policy-making and the behaviour and conduct of citizens. These sections are considered vital elements of the constitution, which was developed between 1947 and 1949 by the Constituent Assembly of India.

The Fundamental Rights are defined as the basic human rights of all citizens. These rights, defined in Part III of the Constitution, apply irrespective of race, place of birth, religion, caste, creed or gender. They are enforceable by the courts, subject to specific restrictions.

The Directive Principles of State Policy are guidelines for the framing of laws by the government. These provisions, set out in Part IV of the Constitution, are not enforceable by the courts, but the principles on which they are based are fundamental guidelines for governance that the State is expected to apply in framing and passing laws.

The Fundamental Duties are defined as the moral obligations of all citizens to help promote a spirit of patriotism and to uphold the unity of India. These duties, set out in Part IV-A of the Constitution, concern individuals and the nation. Like the Directive Principles, they are not legally enforceable.

FUNDAMENTAL RIGHTS

Fundamental Rights, embodied in Part III of the Constitution, guarantee civil rights to all Indians, and prevent the State from encroaching on individual liberty while simultaneously placing upon it an obligation to protect the citizens' rights from encroachment by society. Seven fundamental rights were originally provided by the Constitution - right to equality, right to freedom, right against exploitation, right to freedom of religion, cultural and educational rights, right to property and right to constitutional remedies. However, the right to property was removed from Part III of the Constitution by the 44th Amendment in 1978.

The purpose of the Fundamental Rights is to preserve individual liberty and democratic principles based on equality of all members of society. They act as limitations on the powers of the legislature and executive, under Article 13, and in case of any violation of these rights the Supreme Court of India and the High Courts of the states have the power to declare such legislative or executive action as unconstitutional and void. These rights are largely enforceable against the State, which as per the wide definition provided in Article 12, includes not only the legislative and executive wings of the federal and state governments, but also local administrative authorities and other agencies and institutions which discharge public functions or are of a governmental character. However, there are certain rights - such as those in Articles 15, 17, 18, 23, 24 - that are also available against private individuals. Further, certain Fundamental Rights - including those under Articles 14, 20, 21, 25 - apply to persons of any nationality upon Indian soil, while others - such as those under Articles 15, 16, 19, 30 - are applicable only to citizens of India.

The Fundamental Rights are not absolute and are subject to reasonable restrictions as necessary for the protection of public interest. In the Kesavananda Bharati vs. State of Kerala case in 1973,the Supreme Court, overruling a previous decision of 1967, held that the Fundamental Rights could be amended, subject to judicial review in case such an amendment violated the basic structure of the Constitution. The Fundamental Rights can be enhanced, removed or otherwise altered through a constitutional amendment, passed by a two-thirds majority of each House of Parliament The imposition of a state of emergency may lead to a temporary suspension any of the Fundamental Rights, excluding Articles 20 and 21, by order of the President. The President may, by order, suspend the right to constitutional remedies as well, thereby barring citizens from approaching the Supreme Court for the enforcement of any of the Fundamental Rights, except Articles 20 and 21, during the period of the emergency. Parliament may also restrict the application of the Fundamental Rights to members of the Indian Armed Forces and the police, in order to ensure proper discharge of their duties and the maintenance of discipline, by a law made under Article 33.

Basic structure of Constitution:

It means that the constitution is the Supreme law of the land and any law in consistent there with is void. The term refers to "the power of a court to inquire whether a law executive order or other official action conflicts with the written constitution and if the court concludes that it does, to declare it unconstitutional and void."

The constitution of India, in this respect, is more a kin to the U.S. Constitution than the British. In Britain, the doctrine of parliamentary supremacy still holds goods. No court of law

there can declare a parliamentary enactment invalid. On the contrary every court is constrained to enforce every provision" of the law of parliament.

Under the constitution of India parliament is not Supreme. Its powers are limited in the two ways. First, there is the division of powers between the union and the states. Parliament is competent to pass laws only with respect to those subjects which are guaranteed to the citizens against every form of legislative encroachment.

Being the guardian Fundamental Rights and the arbiter of-constitutional conflicts between the union and the states with respect to the division of powers between them, the Supreme Court stands in a unique position where from it is competent to exercise the power of reviewing legislative enactments both of parliament and the state legislatures.

The basic structure doctrine is an Indian judicial principle that the Constitution has certain basic features that cannot be altered or destroyed through amendments by the parliament. As part of these "basic features", the fundamental rights granted to individuals by the constitution cannot be abridged or abrogated by an amendment of parliament. The doctrine thus forms the basis of a limited power of the Indian Supreme Court to review and strike down, constitutional amendments enacted by the parliament which conflict with or seek to alter this "basic structure" of the constitution.

The basic structure doctrine was first articulated by Chief Justice Sarv Mittra Sikri in the landmark decision of Kesavananda Bharati vs. State of Kerala (Case citation: AIR 1973 SC 1461). Previously, the Supreme Court had held that the power of parliament to amend the constitution was unfettered. However, in this landmark ruling, the court held that while parliament has "wide" powers, it did not have the power to destroy or emasculate the basic elements or fundamental features of the constitution.

Although Kesavananda was decided by a narrow margin of 7-6, the basic structure doctrine has since gained widespread acceptance and legitimacy due to subsequent cases and judgments. Primary among these was the imposition of a state of emergency by Indira Gandhi in 1975, and the subsequent attempt to suppress her prosecution through the 39th Amendment. When the Kesavananda case was decided, the apprehension of the majority bench that elected representatives could not be trusted to act responsibly was perceived as unprecedented. However, the passage of the 39th Amendment by the Indian National Congress' majority in central and state legislatures, proved that in fact such apprehension was well-founded. In Indira Nehru Gandhi vs. Raj Narain, a Constitutional Bench of the Supreme Court used the basic structure doctrine to strike down the 39th amendment and paved the way for restoration of Indian democracy.

The basic structure doctrine applies only to the constitutional amendments. It does not apply to ordinary Acts of Parliament, which must conform to the entirety of the constitution and not just to its "basic structure".

Suspension of Fundamental Rights

During the period of emergency, as declared under the either of the two categories discussed above, the State is empowered to suspend the Fundamental Rights guaranteed under Article 19 of the Constitution. Theterm 'State' is used here in the same sense in which it has been used in the Chapter on Fundamental Rights. It means that the power to suspend the operation of these Fundamental Rights is vested not only in Parliament butalso in the Union Executive and even in subordinate authority. Further, the Constitution empowers the President to suspend the right

to move any court of law for the enforcement of any of the Fundamental Rights. It means that virtually the whole Chapter on Fundamental Rights can be suspended during the operation of the emergency. However, such order are to be placed before Parliament as soon as possible for its approval. But Art. 20 and Art.21 can not be suspended.

Judicial review and fundamental rights:

Article 13 provides for judicial review of all legislation in India.

The power of Judiciary to review and determine validity of a law or an order may be described as the power of "Judicial Review."

Judicial Review has two prime functions:

(1) Legitimizing government action; and

(2) To protect the constitution against any undue encroachment by the government.

The most distinctive feature of the work of United States Supreme Court is its power of judicial review. As guardian of the constitution, the Supreme Court has to review the laws and executive orders to ensure that they do not violate the constitution of the country and the valid laws passed by the congress.

The power of judicial review was first acquired by the Supreme Court in Marbury vs. Madison case. (1803)

Right to Equality

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.

Supreme Court decision on Right to Equality: Article 14.

In State of West Bengal vs. Anwar Ali Sarkar, (AIR 1952SC 75), Patanjali Sastri. CJ, has rightly observed that the second expression is corollary of the first and it is difficult to imagine a situation in which the violation of the equal protection of laws will not be the violation of the equality before law. Thus in substance the two expressions mean one and the same thing.

The Rule of law required that no person shall be subjected to harsh, uncivilized or discriminatory treatment even when the object is the securing of the paramount exigencies of law and order, Rubir Singh vs. Union of India, (AIR 1983 SC 65)

Equal law should be applied to all in the same situation, and there should be no discrimination between one person and another. As regards the subject, matter of the legislation their position is the same, (State of West Bengal vs. Anwar Ali Sarkar, AIR 1952 SC 75), Thus, the rule is that like should be treated alike and not that unlike should be treated alike, Raghubir Singh, V, State of Haryana, (AI R 1980 SC 1087)

The rule of law embodies in Article 14 is the basic feature of the India Constitution and hence it cannot be destroyed even by an amendment of the Constitution under Article 368 of the Constitution, Indra Gandhi vs. Raj Narain, AIR 1975 SC 2299.

The equality before the law is guaranteed to all without regard to race, colour or nationality. Corporation being juristic persons are also entitled to the benefit of Article 14. Chiranjit lal vs. Union of India, AIR 1951 SC 41.

In Sanjeev Coke Mgf. Co. vs. Bharat Cooking Coal Ltd, (1983) 1 SCC 147.the Supreme court has held that" where Article 31-C comes in, Article 14 goes out".

Article 14 forbids class legislation but it does not forbid reasonable classification. The classification, however, must not be arbitrary, artificial or evasive but must be based on some real and substantial distinction 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 equal and unequal's are treated, differently, Article 14 does not apply.(R.K. Garg vs. Union of India, AIR 1981 SC 2138, Re Special Courts Bill, AIR 1979 SC 478, Air India vs. Nargesh Meerza, AIR 1981 SC 1829. R.C. Cooper vs. Union of India, AIR 1970 SC 564, Ameeroonisa vs. Mahboob, AIR 1953 SC 91).

No contract can be made to depend on upon the statute or colour of the hair. Such a classification will be arbitrary, Anwar Ali's case, AIR 1952 SC 75.

The classification made by the legislature need not be scientifically perfect or logically complete, Kedar Nath vs. State of West Bengal, AIR 1953 SC 494

Mathematical nicety and perfect equality are not required, Kameshwar Singh vs. State of Bihar, AIR 1954 SC 91.

Equality before the law does not require mathematical equality of all persons in all circumstances. Equal treatment does not mean identical treatment, Similarity, not identity of treatment is enough, (Sate of Bombay vs. F. N. Balsara, AIR 1951 SC 318)

There can be discrimination both in the substantive as well as the procedural law. Article 14 applies to both, State of West Bengal vs. Anwar Ali, AIR 1952 SC 75.

If the classification satisfies the test laid down in the above propositions, the law will be declared constitutional. The question whether a classification is reasonable, and proper or not, must, however, be judged more on commonsense than on legal subtleties, Sagir Ahmad vs. state, AIR 1954 All 257.

New Concept of equality: Protection against arbitrariness: Natural Justice - In E.P.

Royappa vs. State of Tamil Nadu, AIR 1974 SC 555, the SC challenged the traditional concept of equality which was based on reasonable classification and has laid down a new concept of equality.

In Maneka Gandhi vs. Union of India, Justice Bhagwathi again quoted with approval the new concept of equally propounded by him in the E. P. Royappa's case.

In International Airport Authority case, AIR 1978 SC 597 Bhagwati J reiterated the same principle.

In D.S. Nakara vs. Union of India, AI R 193 SC 130, the SC struck down rule 34 of the Central Services (Pension) Rules, 1972 as unconstitutional on the ground that the classification made by it between pensioners retiring before a particular date and referring after that date was not based on any rational principle and was arbitrary and violative of Article 14 of the Constitution.

In Suneet Jatleyv vs. State of Haryana, (1984) 4 SCC 396 - The reservation of 25 seats for admission to M.B.B.S. and B.O.S. course for students who were educated from class I to VIII in common rural schools was held to be violative of Article 14 and the classification between rural educated and urban educated students was held to be invalid.

In Mithu vs. State of Punjab, AIR 1983 SC 473 - The the validity of cinematograph Act, 1952, a classification between U and A certificate was held to be a reasonable as the treatment of motion picture on a different footing.

In Nishi Maghu vs. State of Hand K, AI R 1980 SC 1975 - The court held the classification made on the basis of regional imbalance was vague in absence of identification of areas suffering from such imbalance and accordingly selection of candidate for admission to MBBS course from this category was arbitrary and violative of Article 14 and invalid under the constitution of India.

In Ajay Hasia vs. Khalid Muhib, AIR 1981 SC 487 - The court struck down the rule prescribing high percentage of marks for oral test, i.e. allocation of one-third of total marks for oral interview was plainly arbitrary and unreasonable and violative of Article 14 of the Constitution.

In Arti Sapru vs. J&K, AI R 1981 SC 1009, SC held that the allocation of 30 percent marks for the viva-voce for admission to the medical college was excessive, but in Lila Ohar vs. Rajasthan, AIR 1981 SC 1777, where 25 percent of the marks were allotted for interveiw for the selection of munsifs in the Rajasthan Judicial Service it was held that the selection were not illegal.

In D.K. Bakshi vs. Union of India, (1993) 3 SCC 662, the SC held that the test evolved in Ajay Husia and Ashok Kumar adav vs. State of Haryana (1985(SCC 417, cannot be applied in every case and particularly in selection of professionals. The above rule cannot be applied for matters of grant of license by a custom house agent where the duties, responsibilities, and functions are very special demanding not only a higher degree of probity and integrity but also intellectual skills, adaptability, judgment and capacity to take prompt decisions in conformity with the law, rules and regulations. In case of selection of professionals higher marks for oral test can be allotted.

In Air India vs. Nargesh Meerza, AIR 1981 SC 1829 - SC struck down the Air India and Indian Airlines Regulations on the retirement and pregnancy bar on the services of air hostesses as unconstitutional on the ground that conditions laid down there were entirely unreasonable and arbitrary.

In A.V.S. Nachane vs. Union of India, AIR 1982 SC 1126, the popularly known as LIC Bonus case the SC upheld the constitutional validity of LIC amendment Act, 1981 and the Ordinance preceding it and the rules framed thereunder relating to bonus payable to Class III and IV employees. The Act and the rules had changed the basis for fixation of dearness allowance and bonus and took it out of the purview of the Industrial Disputes Act. There was no material to show that the rules were violative of Article 14.

In K. Nagaraj vs. State of AP., (1985) 1 SCC 524 - The validity of A. P. Public Employment (Regulation of Conditions of Service ordinance which reduced the age of retirement of all

Government employees from 58 to 55, the court held that the reduction of age of retirement was not arbitrary and unreasonable and violative of Article 14 as it was taken by the Government after due considerations and with a view to providing employment opportunities to younger sections of society.

In Surendra Kumar vs. State of Bihar, AIR 1985 SC 87, the SC quashed the nomination of candidates by the Bihar Government for admission to medical colleges in the States of J and K as violative of Article 14 on the ground that no basis of selection was indicated for nominating candidates.

In Pradeep Jain vs. Union of India (1984) 3 SCC 654 - The SC held that the wholesale reservation of all seats in the MBBS and BDS courses made by State Government of Karnataka, Uttar Pradesh and Union Teriroty of Delhi on the basis of domicile or residence within the State or on the basis of institutional preference for student who have passed the qualifying examinations excluding all students not satisfying the residence requirement, regardless of merit, was unconstitutional and as being violative of Article 14 of the Constitution.

In Y. Sreenivas Rao vs. Veeraiah, AI R 1993 SC 929, the court held that the policy of the government to prefer an uneducated person over an educated person amounts to allowing premium on ignorance, incompetence and consequently inefficiency, and therefore unconstitutional.

In Indian council of Legal Aid and Advice vs. Bar Council of India, (1995) 1 SCC 732 - The validity of new Rule 9, added by the Bar Council of India in Bar Council Rules which barred the entry of persons who have completed the age of 45 years on the date of application for enrolment as and advocate was challenged as discriminatory and unreasonable and violative of Article 14, the SC held the rule to be arbitrary and unreasonable.

In Maharashtra Mambhai vs. Vashim (1995) 5 SCC 730 - The SC held that denial of grants-in-aid to recognized private law colleges while extending such benefits to other faculties viz, Arts, Science, Commerce, Engineering, Medicine etc, by the State of Maharashttra is discriminatory and violation of Article 14 of the Constitution.

Arbitrary Action: State liable to pay compensation to a Citizen: In Lucknow Development Authority vs. M.K. Gupta, (1994)1 SCC 243 - SC held that if loss is caused to a citizen by the arbitrary actions of State employees the State is liable to pay compensation to him. Under our constitution sovereignty is vested in the people.

Rules of Natural justice implicit in Article 14 - In Central Indian Water Transport Corpn, Ltd, vs. BrooNatha, AI R 1986 SC 171, SC has held that Service Rules empowering the Government Corporation to terminate services of permanent employees without giving reasons on three months notice or pay in lieu of notice period is violative of Article 14. audi altem partem. (i.e. hear the parties).

Following the central Inland water decision the SC in Delhi Transport Corporation vs. D.T.C. Mazdoor congress, AIR 1991 SC 101, held that regulation 9 (b) of the Delhi Road transport authority which conferred power on the authority to terminate the services of a permanent and confirmed employee by non issuing of notice without assigning any reasons and without giving any opportunity of hearing was wholly arbitrary, unreasonable and violative of Article 14 of the Constitution and therefore void.

In F.C.I. vs. Kam Dhenu Cattle Feed Industries, (1993) 1 SCC 71 - In this case instead of accepting higher bid in the tender FCI called all tenders to participate in the negotiation

as the amount of the highest bidder was insufficient, and the SC held that higher tender was superseded only by a significantly higher bid with all tenderers giving them equal opportunity to compete. In contractual sphere as in all State actions, the state and all its instrumentalities have to confine to Article 14 of which non-arbitrariness is a significant fact.

In Mahesh vs. Regional Manager, UPFC, (1993) 2 SCC 229 - The appellants plots against hypothecation was sold in auction and the respondents offer after negotiation was accepted but before accepting the tenders no notice nor an opportunity was given to the appellant. The appellant challenged the action of the corporation and the SC held that the action of the corporation accepting the tender of the respondents ignoring the appellant was unjust and unfair and no reasonable prudent would have accepted such offer.

Exclusion of Rule of Natural Justice - In Madras City Wine Merchants Assn. vs. State of T.N., (1994) SCC 09 - It has been held that legislative action plenary or subordinate is not subject to natural justice rules. Accordingly, the SC upheld the repeal of the Tamil Nadu liquor vnein in Bar Rules, 1992 under the T. N. Prohibition act, 1937.

No distinction between quasi-judicial function and administrative function for purpose of application of rules of natural justice

In D. K. Yadav vs. JMA Industries, (1993) 3 SCC 254 - The SC court held that termination of the service of a worker without giving reasonable opportunity of hearing is unjust, arbitrary and illegal. The court held that the right to life enshrined under Article 21 of the Constitution includes the right to livelihood and an order of termination of service of an employee visits with civil consequences of depriving of his livelihood.

In Sukumar Mukherjee vs. State of W.B., (1993) 3 SCC 724 - Challenged the validity of West Bengal State Health Services Act, 1990 on the ground that it was discriminatory and violative of Article 14 of the Constitution as the Act separates two services West Bengal Medical education service and West Bengal Health service but the court held that the Act was not violative of Article 14.

In Director Generalof Police vs.Mritynhoy Sarkar, AI R 1997 SC 249 - The respondents were discharged on the ground of producing a fake list and no opportunity of representation in inquiry was given to the respondent and the SC held that principles of the natural justice require that they should have been given reasonable opportunity of representation in the inquiry to be conducted.

In Revathi vs. Union of India, AI R 1988 SC 835 - The constitutional validity of Section 198 (2) Cr. P.C. Section 497 which disables the wife from prosecuting her husband for the offence of adultery was challenged on the ground that it was violative of Article 14 of the Constitution. The SC held that there was no discrimination based on sex and these provisions were valid.

In Arti Gupta vs. State of Punjab, AI R 1988 SC 481 - It has been held that reduction of minimum qualifying marks from 35 to 25 in order to accommodate more SC's and S1's candidates to fulfill the reserved quota is not arbitrary and violative of Article 14 of the Constitution.

In Bhagwanti vs. Union of India, Air 1989 SC 2038 - It has been held that classification between marriage during service and marriage after retirement for the purpose of giving family pension is arbitrary and violative of Article 14 of the Constitution.

In P& T SC/ST Employees Welfare Association vs. Union of India AIR 1989 SC 139 - The validity of new policy of promotion was challenged where all employees whether belonging to the

general category or to the category of the SC's and S1's were to be promoted to a higher post on the completion of 16 years whereas under the old scheme SC's and S1's could get promotions to the higher cadre within 10 to 12 years and other to wait for 20 to 23 years. The court held that this was discriminatory and violative of Article 14 as others who were similarly situated in other departments were allowed to enjoy it.

In Deepak Sibal vs. Punjab University, AIR 1989 SC 903 - It was held that the classification between the Governmentl Semi Government employees for the purpose of admission to the evening LLb classes to the exclusion of the other employees was unreasonable and unjust and therefore the rule was struck down as discriminatory and violative of Article 14 of the Constitution.

In A.N. Parasuraman vs. State of Tamil Nadu, AI R 1990 SC 40 - Section 3 of th TN. Private Educational Institutions (Regulation) Act made it mandatory for private educational institutions to obtain permission of the competent authority for running them. It was held that the Act conferred unguided power on the authority was therefore ultra vires and illegal.

In Mahabir Auto Store vs. Indian Oil Corporation, (1990) 3 SCC 752 - The SC held that the mandate of Article 14 also applies to exercise of State's executive power under Article 298 in entering or not entering in contrast with individual parties. The decision under Article 298 is an administrative decision and can be challenged on the ground that it is arbitrary or violative of Article 14.

In Shrilekaha Vidyathi vs. State of U.P., (1991)1 SCC 212 - The validity of UP Government Legal Remembrancers Manual (1975) under which the government had terminated the appointment of all District Government Counsels without assigning any reason was challenged as violative of Article 14 of the constitution, following the Mahabir Auto Stores caser the SC held that the termination of the appointment of all D.G.C. without assigning any reason was arbitrary and violative of Article 14 of the constitution.

In Charan Lal Sahu vs. Union of India, (1990) 1 SCC 663 - The Constitutional validity of the Bhopal Gas leak Disaster (Processing of claims) Act, 1985 was challenged. The Act empowers the Central Government to take over the conduct of all litigations on behalf of the victims of Bhopal Gas Tragedy. The validity of the Act was challenged on the ground that the deprivation of the claimants individual rights to legal remedy against theUnion Carbide Company was violative of Article 14 of the Constitution. The court held that the Act is valid as the State in a capacity parens patriae(parent of the country) for protection of the disabled victims of Bhopal gas disaster is competent to represent the victims.

In Dr. K. Lakshmanan vs. Stateof TN., (1996) 2 SCC 266 - The validity of the TN. Horse Races (Abolition and wagering or Betting) Act 1974was challenged on the ground that the amended Act had brought the horse racing within the definition of 'gaming' which was not prohibited by two earlier Acts.

It was held that the horse racing is neither gaming nor gambling as defined by the two act read with the 1974 Acts, and, therefore, the penal provisions of these Acts are not applicable to the horse racing which is a game of skill. There is no nexus between the Act of 1986 and the object contained in article 39(b)(c) of the Constitution. Therefore its protection is not available to the TN. Act. The court held that the provisions of the Act of 1986 are discriminatory and arbitrary and as such violative of Article 14 of the constitution and therefore liable to be struck down.

In Ankul chandra Pradhan vs. Union of India, AIR 1997 SC 2814- It has been held that debarment of persons who are in prison or police custody under Section 5 of the Representation of the peoples Act, 1951, to vote in an election, but no of person under preventive detention is not discriminatory and violative of Article 14 of the Constitution.

In Visaka vs. State of Rajasthan, AIR 1997 SC 3014 - The SC has laid down exhaustive guidelines to prevent sexual harassment of working women in places of their work until a Legislation is enacted for this purpose.

Equal pay for equal work:

Randhir Singh vs. Union of India. AIR 1982 SC 879.

SC has held that although the principle of equal pay for equal work is not contained in the constitution as fundamental right but Article 14, 16 and 39(c) recognizes it.

FrankAnthony Public School Employee's Association vs. Union fo India, (1986) 4 SCC 707 - The court struck down Section 12 of the Delhi School Education act as unconstitutional on the ground that it was violative of Article 14 under which terms and conditions of service of employees of recognised private School.Section 10 requires that the scales of pay etc, of the employees of recognised private school must not be less than those of Government schools, Section 12 excludes the operation of section 80-11 to unaided minority schools. The court held that the teachers and employees of Frank Antory Public School are entitled to parity of scales and other conditions of service with those available with their counterparts in government schools.

Dhirendra Chamoli vs. State of U.P., (1986)1 SCC 637 - It has been held that the principle of equal pay for equal work is also applicable to casual workers employed on daily wages basis. Such denial would amount to violation of Article 14.

Daily Rated Casual Labour vs. Union of India, (1988) 1 SCC 122 - It was held that Classification of employees into regular employees and casual employees for the purpose of payment of less than minimum pay is violative of Articles 14 and 16.

F.A.I.C. and C.E.S. vs. Union of India, (1988) 3 SCC 91 - The SC has held that different pay scales can be fixed for government servants holding same post and performing similar work on the basis of difference in degree of responsibility, reliability and confidentially and as such it will not be violative of the principle of equal pay for equal work, implicit in Article 14.

Mewa Ram vs. A. I. I. Medical Science, AIR 1989 SC 1256

The SC held that the doctrine of equal pay for equal works is not an abstract doctrine, it is open to the state to prescribe difference scales of pay for different posts having regard to educational qualifications, duties and responsibilities of the post.

Gopika Ranjan Chawdhary vs. Union of India, AIR 1990 SC 1212 - The pay scales of the staff at the headquarters were higher than those of the staff attached to the Battalion/units. It was held that this was discriminatory and violative of Article 14 as there was no difference to the nature of the work, the duties and responsibilities of the staff working in the Battalion/units and there those working at the headquarters.

Basis of Classification:

Geographical classification:

Krishna Singh vs. State of Rajasthan, Air1955 SC 795 - The validity of Marwar Land

Revenue act, 1949, was challenged on the ground that it applied only to Marwar portion of the State of Rajasthan and not to the whole of the State. SC held the law not to be violative of Article 14.

Ram Chadra vs. State of Orissa, AIR 1950 SC 298:

Two Acts were passed to nationalize road transport. One Act applied to one part of the 'state and the other in other part of the State because the conditions differed materially in two parts. It was held valid as the basis of classification was rational and based on intelligible differential.

Discrimination by the state in its own favour:

Sagir Ahmad vs. State of UP, AI R 1955 SC 728 - Monopoly created by the State in its favour was held not to be violative of Article 14.

Baburao vs. Bombay Housing Board, AIR 1954 SC 153

A law which exempt the factories was held not to be discriminatory.

Article 14 and Taxation:

E.1. Tobacco Co, vs. State of A.P." AIR 1962 SC SC 1733 - A sales tax on viriginia tobacco but not on country tobacco has been held to be valid.

Western India Theatre vs. Cantonment Board, AIR 1959 SC 582 - Higher tax on more accommodation and busy locality theater then the lesser accommodation and locality not so busy were held to be not violative of the equal protection clause of Article 14.

Venakateshwar Theatre vs. State of Andhra Pradesh, AIR 1993 SC 1947 - Tax was levied on the basis of gross collection capacity per show and different percentage was prescribed depending on the type of the theatre and the nature of the local area where it was situated. and the court held such classification was not violative of Article 14.

Indian Express Newspapers vs. Union of India, (1985) 1 SCC 641 - It has been held that the classification of newspapers into small, medium and big newspapers on the basis of their circulation for the purpose of levying customs, duty on newsprint is not violative of Article 14.

G.K. Krishnan vs. State of Tamil Nadu, AIR 1974 SC 582 - The T.N. Government by a notification under the Motor Vehicles Taxation Act, 1931 enhanced the tax on omnibuses from Rs, 30 to per seat per quarter to Rs.1 00 per seat per quarter. The court held that the levy of enhanced taxation contract carriages was valid and did not offend Article 14.

R. K. Garg vs. Union of India, AI R 1981 SC 2138 - Popularly known as the Bearer Bond's case, the constitutional validity of the Special Bearer Bonds, Ordinance Act, was challenged on the ground of violative of Article 14 of the Constitution. The court by 4-1 majority upheld the validity of the Ordinance and the Act upon the ground that the classification made by the Act between persons having black money and persons not having black money was based on intelligible differential having relation with the object of the Act.

D.S. Nakara vs. Union Of india, AIR 1983 SC 142:

Now there is no doubt that these concepts will playa significant role in judging the validity of a law under Article 14.

State of Maharashtra vs. Madukar Balkrishna Badiya, (1988) 4 SCC 290:

The validity of the Bombay Motor Vehicles Tax Act, 1958, as amended by the Maharahtra Act of 1987 and 1988 was challenged as violative of Article 14. The Act provided for levy of one time tax at 15 times the annual rate on all motor cycles and tricycles used or kept for use in the State. But provided that in case of motor cycle sent or kept for use by a company or other commercial organization the rate of tax was three times the rate. The difference between the tax rate was not without basis and as such there was no discrimination.

Kerala Hotel and Restaurant Association vs. State of Kerala, (1990) 2 SCC 502 - It was held that classification made between the two type of hotels for the purpose of imposing tax was neither discriminatory nor arbitrary and was based on intelligible differential and had a rational nexus with the object sought to be achieved by the Acts.

In Secretary to Government of Madras vs. P. R. Sriramulu (1996) 1 SCC 345 - The respondent had challenged the validity of the Madras Court fees and Suits valuation Act, 1955, under which court fee was levied on certain appeal was ad valorem at the rate of 7112 percent the total claims without any upper limit on the ground that it was not only exhorbitant but wholly arbitrary, unreasonable, and unjustified bearing no relationship to the cost of administration of justice and that in fact was not a levy of fee but really a levy of tax. The SC held that the levy of court fee on an ad valorem fee of 7112 percent was valid

Special courts and special procedure:

State of W.B. vs. Anwar Ali, Air 1952 SC 75 - The court held that the procedure laid down by the Act for the trial by the Special courts varied substantially from the procedure laid down for the trial of offences generally by the Criminal Procedure Code.

But in Kathi Ranning vs. State of Saurashtra, AIR 1952 SC 123 - The validity of a similar Act was upheld on the ground that it had laid down proper guidelines for the exercise of discretion by the executive to rare cases to Special Courts for trial.

In re Special Courts Biill, 1978: AIR 1979 SC 478 - The question was referred under Article 143(2) for advisory opinion about the bill. The court held that apart from the requirement of Article 14 the law must also satisfy the requirement of Article 21 and court found procedural defects in the Bill and the Government accepted the procedural amendments to cure the defects and the court held that the Bill was constitutional.

Administrative Discretion:

Re Kerala Education Bill, Air 1958 SC 956 - Gave a broad power to the Government to control private schools. The court held that the power given to the Government to take over schools could be exercised only for the purposes mentioned in the Bill and hence it was not hit by Article 14.

Organo Chemical Industries, vs. Union of India, Al R 1979 Sc 1803 - The SC held that the power conferred under Section 14-B of the Act on the Provident Fund Commissioner to impose damages on an employer defaulting in payment of contributions to the provident fund was not unguided nor arbitrary and hence not violative of Article 14.

Suman Gupta v, State f J. and K., (1983) 4 SCC 339 - The SC held that nomination of candidates by the States for admission to the reserved cannot be left to the absolute discretion and uncontrolled choice of the State Governments. Article 14 is violated to by powers and procedures which in themselves result in unfairness and arbitrariness.

A single individual may constitute a class - Chiranjit Lal vs. The Union of India, AIR 1961 SC 41 - The SC held that a law may be constitutional even though it applies 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 itself, unless it is shown that there are others who are similarly circumstanced.

Ammerunnisa Begum vs. Mahboob, AIR 1953 SC 91 - The SC held the Act passed by the Hyderabad legislature, namely the Wali-ud-Dowla Succession, Act, 1950 by which claims of on party i.e,. two ladies in the private litigation regarding succession to the property of late Nawab of Hyderabad were dismissed and the property was adjudged to the other party was unconstitutional on the ground that did not furnish any reasonable basis for the discrimination made it. The court said that the continuance of a dispute even for the long time between two sets of rival claimants to the property of a private person is not such an unusual circumstance by itself justifying its differentiation from all other cases of such succession dispute.

Ram Prasad vs. State of Bihar, AI R 1953 SC 215 - The Bihar Sathi Land (Restoration) Act, 1950 to evict the private lessees was held to be unconstitutional by the SC on the ground that the dispute was a legal dispute between two private parties and it was a matter for determination by duly constituted courts in accordance with normal procedure.

L.N.M. Institute of Economic development and Social Change vs. State of Bihar, Air 1988 SC 1136 - The SC held that the ordinance and the Act by which the Institute was taken over by the Government and other similar institutes were left out were not violative of Article 14 and as such were neither discriminatory nor arbitrary.

A.R. Antulay vs. R.S. Nayak, (1988) 2 SCC 602 - The SC by a majority of 5-2 held that by giving direction the SC had unintentionally caused the appellant the denial of rights under Article 14 by denying him the equal protection of law by being singled out for a special procedure not provided for by law.

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.

Supreme court decision on Article 15:

Article 15 (3) :

In C. Masilamani Mudaliar vs. Idol of Sri Swaminathaswami Swaminathswami Thirukoil (1996) 8 SCC 525- the court held that Article 2 (e) of CEDAW enjoins the SC to breathe life into the dry bones of the Constitution, international conventions and the Protection of Human Rights Act and the Hindu Succession Act to prevent gener-based discrimination and to effectuate right to life including empowerment of economic, social and cultural rights to women.

Article 15 (4) -

Valsamma Paul (Mrs.) vs. Cochin University. (1996) 3 SCC 545-

Acquisition of the Status of Scheduled Caste etc, by voluntary mobility into these categories would play fraud on the Constitution, and would frustrate the benign constitutional policy under Articles 15 (4) and 16 (4).

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.

Supreme court decisions on Article 16 (4) -

Article 14 and 16 including Article 16 (4), 16 (4-A) must be applied in such a manner that balance is struck in the matter of appointments by creating reasonable opportunities for the reserved classes and also for the other members of the community who do not belong to reserved classes. Such view has been taken in the Constitutional Bench decisions in Balaji vs. State of Mysore, AIR 1963 SC 649, Devadasan vs. Union of India, AIR 1964 SC 179 and Sabharwal cases. Even in Indra Sawhney vs. Union of India, AIR 1993 SC 477, 1992 Supp (3) SCC 217,AIR 1993 SC 477 case, the same view has been taken by saying that only a limited reservation not exceeding 50 is permissible.

Article 16 has been amended by the 77th amendment by which new clause 4-A was inserted to overcome the SC dictum in Indra Sawhney case to the effect that there can be no reservation in the mater of promotion.

In State of Madras vs. Champakam Dorairajan, AIR 1950 SC 226, - Madras government had reserved seats in State Medical and Engineering Colleges for different communities in certain proportions on the basis of religion, race, and case. The State defended the law on the ground that purported to promote the social justice for all sections of the people as required by Article 46 of the Directive Principles of State Policy. The SC held tha law void because it classified students on the basis of caste and religion irrespective of merit.

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.

Right to Freedom

The Right to Freedom is covered in Articles 19-22, with the view of guaranteeing individual rights that were considered vital by the framers of the Constitution, and these Articles also include certain restrictions that may be imposed by the State on individual liberty under specified conditions. Article 19 guarantees six freedoms in the nature of civil rights, which are available only to citizens of India. These include the freedom of speech and expression, freedom of assembly, freedom of association without arms, freedom of movement throughout the territory of India,freedom to reside and settle in any part of the country of India and the freedom to practice any profession. All these freedoms are subject to reasonable restrictions that may imposed on

them by the State, listed under Article 19 itself. The grounds for imposing these restrictions vary according to the freedom sought to be restricted, and include national security, public order, decency and morality, contempt of court, incitement to offences, and defamation. The State is also empowered, in the interests of the general public to nationalise any trade, industry or service to the exclusion of the citizens.

Supreme court decisions under Article 19 of Constitution:

Romesh Thapper vs. State of Madras, (AIR 1950 SC124) - Freedom of speech and of press lay at the foundation of all democratic organistion.

LIC vs. Manubhai D. Shah(1992) 3 SCC 637 - Held that LIC is a state under Article 12 of the Constitution of India. The LIC's house magazine is financed from public fund and therefore its refusal to publish the respondent's rejoinder was unfair and unreasonable and arbitrary and was violative of Article 19 (1) (a) of the constitution.

Bijoe Emmanuel vs. State of Kerala (1986) 3 SCC 615 - The National Anthem case, held expulsion of children from School was violative of Article 19 (1) (a) of the constitution.

Cricket Association of Bengal case (1995) 2 SCC 161 - A citizen under Article 19 (1) has a right to telecast and broadcast the views of listeners through electronic media televisios and Radio any important event.

Tata Press Ltd, vs Mahanagar Telephone Nigam Ltd, (1995) 5 SCC 139 - A commercial speech (advt.) is a part of the freedom of speech and expression granted under Article 19 (1) (a) of the constitution.

Right to Privacy:

People's Union for civil Liberties vs. Union of India, (AIR 1997 SC568) - Telephone tapping is violative under Article 19 (1) (a) where it comes within grounds of restrictions under Article 19 (2) CPI (M) vs. Bharat Kumar and others, (AIR 1998 SC 184) -The Kerala High court held that no political party has right to call for bandh on the ground that it is part of its fundamental right of freedom of speech and expression under Article 19 (1) (a). The Supreme Court upheld the Kerala High court's decision.

Indian Express Newsprint vs. Union of India (1985) 1 SCC 641 - The expression freedom of the press has not been used in Article 19 but it is comprehended within Article 19 (1) (a).

Express Newspapers vs. Union of India (AIR 1988 SC 578) - A law which imposes pre-censorship or contains the circular or permits newspapers from being started or require the government to seek government aid in order to survive was violative of Article 19 (1) (a).

Bennet Colemn and co vs. Union of India (AI R 1973 SC 106) - The validity of the newsprint control order which fixed the maximum number of ten pages was challenged as violative of fundamental right guaranteed in Article 19 (1) (a) and Article 14 of the constitution, The court held that the newsprint policy was not reasonable restriction within the ambit of Article 19 (2).

Sakal Papers Ltd, vs. Union 0 India (AIR 1962 SC 305) - The daily newspapers (Price and control) order, 1960, which fixed a minimum price and number of pages which a newspapers was entitled to publish was, challenged as unconstitutional by the petitioner on the ground

that it infringed the liberty of the press. The court struck down the order rejecting the state's argument.

Odyssey Communications (P) Ltd.,vs. Lok vidayan Sanghathan, (1988) 3 SCC 410 - Urged to restrain I and B Ministry from telecasting Honey Anonee on the ground it spread false or blind beliefs and superstition against the members of public. The court held that terms and conditions imposed by the Doordarshan is part of fundamental right of freedom os speech guaranteed under Article 19 (1) (a) which can be curtailed only on the grounds mentioned in Article 19 (2).

Rajagopal vs. State of T. N.(Auto Shankar case), (1994) 6 SCC 632 - The SC held that the government has no authority in law to impose a prior-restraint upon the publication of defamatory material against its officials.

K.A. Abbas vs. Union of India, (AIR 1971 SC 481) - The petitioner's film 'Tale of four cities' was refused 'U' certificate, claimed equality of treatment. SC held pre-censorship of films was justified under Article 19 (2) on the ground that films have to be so treated separately from other forms of art and expression because a motion picture was able to stir up emotions more deeply than any other product of art. Hence, the classification of films between two categories A and U was held to be valid.

Bobby Art International vs. Om Pal Singh Hoon, (1996) 4 SCC-1 - The court held that certificate issued to the film Bandit queen upon conditions being imposed by the Appellate tribunal is valid.

The freedoms guaranteed by Article 19 are further sought to be protected by Articles 20-22. The scope of these articles, particularly with respect to the doctrine of due process, was heavily debated by the Constituent Assembly. It was argued, especially by Benegal Narsing Rau, that the incorporation of such a clause would hamper social legislation and cause procedural difficulties in maintaining order, and therefore it ought to be excluded from the Constitution altogether. The Constituent Assembly in 1948 eventually omitted the phrase "due process" in favour of "procedure established by law". As a result, Article 21, which prevents the encroachment of life or personal liberty by the State except in accordance with the procedure established by law, was, until 1978, construed narrowly as being restricted to executive action. However, in 1978, the Supreme Court in the case of Maneka Gandhi vs. Union of India extended the protection of Article 21 to legislative action, holding that any law laying down a procedure must be just, fair and reasonable, and effectively reading due process into Article 21. In the same case, the Supreme Court also ruled that "life" under Article 21 meant more than a mere "animal existence"; it would include the right to live with human dignity and all other aspects which made life "meaningful, complete and worth living". Subsequent judicial interpretation has broadened the scope of Article 21 to include within it a number of rights including those to livelihood, clean environment, good health, speedy trial and humanitarian treatment while imprisoned. The right to education at elementary level has been made one of the Fundamental Rights under Article 21 A by the 86th Constitutional amendment of 2002.

Article 21 of Constitution of India:

Important decisions of supreme court of India under Article 21 of Constitution of India:

A. K. Gopalan vs. State of Madras, AI R 1950 SC 27 - 5th and 14th Amendment to the US Constitution(Scope of liberty is narrower in our Constitution than the US) - (Maneka Gandhi vs.

Union of India (AIR 1978 SC 597) Personal liberty has inter-relationship between Article 19 and Article 21.

Kharak Singh vs. State of U. P. (AI R 1963 SC 1295) - Agreeing with minority, Bhagwathi in Maneka Gandhi, held Article 21 gives additional protection under Article 19.

Francis Colarie vs. Union Territory of Delhi, (AIR 1986 SC 746) - Held personal liberty includes right to socialize with family members.

R.C. Cooper vs. Union of India, (AIR 1970 SC 564) - (Bank Nationalisation case)issue was relationship between repealed Article 19 (1) (F) and 31 (2). However, main basis for establishing relationship between Articles 14, 19 and 21 of the Constitution of India.

ADM Jabalpur vs. Shukla, (AIR 1976 SC 1207) (Habeas Corpus case) -Article 21 was the sole repositor of the right to life.

Satwant Singh vs. Asst. Passport officer, New Delhi, (AIR 1967 SC 1836) - SC further extended the scope of Article 21 and held that 'right to travel abroad' was part of a person's 'personal liberty' within the meaning of Article 21 of the Constitution of India.

A.K. Roy vs. Union of India, AIR 1982 SC - (NSC Case) - SC by 4-1 majority upheld the constitutional validity of the NSA and the ordinance which preceded the Act. The court held that

Act was neither vague nor arbitrary in the provisons providing for detention of person on certain grounds, as acting in a manner prejudicial to the defense of India, security of India, security of State and to relations with foreign power.

Right to livelihood:

Olga Tellis vs. Bombay Municipal Corporation, (AIR 1986 SC 180) - SC ruled that word life under Article 21 included the' right to livelihood 'also.

Right to Shelter: Chameli Singh vs. State of U.P. (1996) 2 SCC 54) - SC held the right to shelter is a fundamental right under Article 21 of the Constitution of India.

Right to privacy: R.Rajagopal vs. State of T.N., (1994) 6 SCC 632) - SC held right to privacy or right to be left alone is guaranteed by Article 21 of the Constitution.

Right to Health and Medical Assistance:

Parmananda Kataria vs Union Of India, (AI R 1989 SC 2039) - SC held that it is the Professional obligation of all doctors whether government or priavate, to extend medical aid to the injured immediately to preserve life without waiting legal formalities to be complied with by the police under Cr. P. C.

Paschim Bang Khet Mazdoor Samiti vs. State of W. B. (1996) 4 SCC - SC held that denial of medical aid by government hospital to an injured person on ground of non-availability of beds amounted to violation of right to life under Article 21 of the Constitution.

Consumer education and Research centre vs. Union of India, (AI R 1986 SC 424) - SC held that the right to health and Medical care is a fundamental right under Article 21 of the Constitution as it is essential for making the life of workman meaningful and purposeful with dignity of person.

Kirloskar Brothers Ltd, vs. Employee's State Insurance Corporation, (1996) 2 SCC 682 - SC held that right to health is a fundamental right of the workmen.

State of Punjab vs. Mohinder Singh Chawla(AI R 1997 SC 1225 - Court held that right to life under Article 21 of the constitution includes the right to health and therefore the state employees are entitled to medical reimbursement of expenses for treatment and room rent charges both in approved specialized hospitals outside the Government hospitals.

Jolly Verghese vs. Bank of Cochin,(AIR 1980 SC 470) - It has been held that arrest and detention of an honest judgment debtor in civil prison who has no means to pay the debt in absence of mala fide and dishonesty, violates Articles 11 of the International Covenant on civil and political rights and Article 21 of the Constitution.

Right to protective homes:

Vikram Deo Singh Tomar vs. State of Bihar, (AIR 1988 SC 1782):

It was brought to the notice that the female inmates of the care Home Patna were compelled to live in inhuman conditions in an old ruined building, SC held that 'right to live with human dignity is the fundamental right of every citizens and the state is under duty to provide at least minimum conditions ensuring human dignity.

Right to die not a fundamental right under Article 21 - In Gian Kaur vs. State of Punjab (1996) 2 SCC 648) a five judge Constitution bench of SC overruled the P, Rathinam's case (1994) 3 SCC 394 - And rightly held that right to life under Article 32 of Constitution does not include to right to die.

Right to get Pollution free water and air - Subhash Kumar vs. State of Bihar, (AIR 1991 SC 420).

Held PIL is maintainable for ensuring against pollution free water and air which is included in the right to live under Article 21 of the Constitution.

Protection of Ecology and Environmental Pollution: Rural Litigation and Entitlement Kendra vs., State of U.P. (1985) 2 SCC 431) - The court ordered the closure of certain lime stone quarries on the ground that there were serious deficiencies regarding safety and hazards in them.

Shriram food and fertilizers (1986) 2 SCC 176 - The SC directed the company manufacturing hazardous and lethal chemicals and gases posing danger to health and life of workmen and people living in its neighbourhood to take all necessary safety measures before reopening the plant.

M.C. Mehta vs. Union of India (1987) 4 SCC463 - The Supreme court ordered the closure of tanneries at Jajmau near Kanpur polluting the inner Ganga (M.C. Mehta vs. union of India (2) (1988) 1 SCC 471.)

Indian Council for Euro-Iegal action vs. Union of India - (1996) 3 SCC 212 - SC held that if in a action of private corporate bodies,a person's fundamental right is violated the court would not accept the argument that is not state within the meaning of Article 12 and therefore action must be taken against it.

Vellore citizens welfare forum vs. Union of India (1996) 5 SCC 650 - PIL filed during allotment of Housing pollution by enormous discharge of untreated effluent by the tanneries and other industries in the State of T.N.

Article 47, 48A, 51 A(g) forms the constitutional mandate to protect and improve the environment. The court suggested a constitution of 'Green Bench' by the Madras High court.

Right to education - Mohini Jain vs. State of Karnataka (1992) 3 SCC 666 - Popularly known as capitation fee case, SC has held that the right to education is a fundamental right under Article 21 which cannot be denied to a citizen by charging higher fee known as the capitation fee.

Prisoner's right under Article 21 - Babu Singh vs. State of U.P. (AIR 1978 SC 527) - SC held that refusal to grant bail in a murder case without reasonable ground would amount to deprivation of personal liberty under Article 21 of the Constitution of India.

Right to free legal Aid - M.H. Hosket vs. State of Maharashtra (AIR 1978 SC 1578) - SC held that if a prisoner is unable to exercise his constitutional and statutory right of appeal including special leave to appeal for want of legal assistance, there is implicit in the court under Article 142 read with Articles 21 and 39- A of the constitution the power to assign consent to the prisoner provided he does not object to the lawyer named by the court.

State of Maharashtra vs. Manubjhai Prajaji (1995)5 SCC 730 - The right to free legal aid and speedy trail are guaranteed fundamental right under Article 21 and 39A.

Suk Das vs. union Territory of Arunachala Pradesh (1986) 2 SCC 401 - SC held failure to provide legal aid to an accused at the State cost, unless refunded by the accused vitiates trial.

Right against Solitary confinement - In Sunil Bhatra (no.1) vs. Delhi Administration (AIR 1978 SC 1575) (AI R 1980 SC 1579) (2)

Question before SC was whether 'solitary confinement' imposed upon prisoner who were under sentence of death was violative of Article 14, 19 and 20 and 21 of the Constitution. It was held that if by imprisonment solitary confinement there is total deprivation of friendship against co-prisoner congling and taking and by taken would offend Article 21 of the constitution. The liberty to move, mix, mingle talk, share company with co-prisoners if substantially curtailed would be violative of Article 21 unless curtailment has the backing of law.

Right to speedy trial: Hussainara Khatoon (no.1) vs Home Sectrary. State of Bihar, (AIR 1979 SC 1360), Habeas Corpus Petition was filed by number of under trial prisoner who were in jails in the State of Bihar for years awaiting the trial. The SC held that right to a speedy trial is a fundamental right is implicit in the guarantee of life, and personal liberty enshrined under Article 21 of the Constitution.

In Sunil Bhatra (no.2) vs. Delhi Administration, (AIR 1980 SC 1579) - Was held that the practice of keeping under trials with convicts in the jails offended the test of reasonableness under Article 19 and fairness under Article 21 of the Constitution of India.The court converted the letter into a Habeas Corpus Petition and approved and reiterated the specific guidelines laid down by SC in Sunil Bhatra's case(AI R 1978 SC 1675) (no.1)

Right against handcuffing: In prem Shankar vs. Delhi Administration (AI R 1980 SC 1535) - the Supreme court added yet another projectile in its armoury to be used against the war of prison reform and prisoners rights. Krishna Iyer, J delivering the majority judgment held that provisions in paras 26,22 that every under-trial would be handcuffed, were violative of Articles 14,19,21 of the constitutions, Handcuffing should be resorted to only when there is 'clear and present danger of escape'

In citizen for Democracy vs. State of Assam (1995) 3 SCC 743 - The Supreme court

expressed serious concern over the violation of the law laid down by that court in Prem Shankar shukla's case against handcuffing of under trial or convicted prisoners by the police authorities.

Right against inhuman treatment:

In Kishore singh vs. state of Rajasthan AIR 1981 SC 625 - The Supreme court held that the use of third degree method by police is violative of Article 21 and directed the Government to take necessary steps to educate the police so as to inculcate a respect for the human person. The court held the solitary confinement for a long period of 8 to 9 months is violative of Articles 21, 19 and 14 of the constitution.

Right against delayed execution:

In T. V. Vaijeeswaram vs. State of Tamil Nadu (AIR 1981 SC 643) - A two judge bench of the SC held that delay in execution of death sentence exceeding 2 years would be sufficient ground to invoke the protection of Article 21 and the death sentence would be commuted to life imprisonment. In Sher Singh vs State of Punjab, AI R 1983 SC 465, the three judge bench of the court agreed with this view that prolonged delay in the execution of a death sentence was an important consideration for invoking Article 21.

In Trivenio Ben vs. State of Gujarat(AIR 1989 SC 142) - A five judge bench of the SC has set the matter at rest and held that undue long delay in execution of the death sentence will entitle the condemned person to approach the court for conversion of death sentence into life imprisonment, but before doing so the court will examine the nature of delay and circumstances of the case,

In Vincent Parikurlangara vs. Union of India(1987) 2 SCC 165 - The SC held that the right to maintenance and improvement of public health is included in the right ot live with human dignity enshrined in Article 21 of the Constitution.

In National Human rights Commission vs. State of Arunachal Pradesh, (1996) 1 SCC 742, the SC has held that the State is bound to protect the life and liberty of every human being whether he is a citizen or non-citizen.

In People's Union for Civil Liberties vs. Union of India (AIR 1997 SC 8) - Popularly known as phone tapping case the SC has held that telephone tapping is a serious invasion of an individual's right to privacy which is part of the right to life and personal liberty enshrined under Article 21 of the Constitution and it should not be resorted to by the State unless there is pubic emergency or interest of public safety requires.

Sentence of death and Article 21 :-

In Jagmohan Singh vs. Uttar Pradesh (AIR 1973 SC 947) - The petitioner challenged the validity of death sentence on the ground that it was violative of Articles 18 and 21 because it did not provide any procedure. The five member Bench of the court held that capital punishment was not violative of Articles 13, 19 and 21 and was therefore constiutionally valid.

But in Rajendra Prasad vs. State of UP AIR 1979 SC 916 - Krishna Iyer, J. held that capital punishment would not be justified unless it was shown that the criminal was dangerous to the society. he held that giving discretion to the judge to make choice between death sentence and life imprisonment on special reasons under Section 34 (3) Cr.P.C. would be violative of Article 14

which condemns arbitrariness. But this case was overruled in Bachan Singh vs. State of Punjab, AIR 1980 SC 898.the SC 4-1 majority has overruled the Rajendra Prasad's decision and has held that the provision of death penalty under section 302 IPC as an alternative punishment for murder is not violative of Article 21. Article 21 of the Constitution recognises the right of the State to deprive a person of his life or personal liberty in accordance with fair, just and reasonable procedure established by valid law.

In Deena vs. Union of India (1983) 4 SCC 645 - The court held that section 354(5) Cr.P.C. which prescribed hanging as mode of execution lays down fair, just and reasonable procedure within the meaning of Article 21 hence is constitutional.

In Attorney General of India v Lachma Devi, (AI R 1986 SC 467) - It has been held that the execution of death sentence by public hanging is barbaric and violative of Article 21 of the Constitution.

In Triveniben vs. State of Guraj, (AIR1989 SC 142) -It has been held that a person sentenced to death is also entitled to procedural fairness till his last breath of life. Article 21 demands that any procedure which takes away the life and liberty of such person must be reasonable, just and fair.

In Madhu Mehta vs. Union of India (1989) 4 SCC 62 - Following Triveniben case the court directed the death sentence to be commuted to life imprisonment as there were no sufficient reasons to justify such long delay in disposal of the convict's mercy petition.

In Joginder Kumar vs. State of U. P. (1994) 4 SCC 260 - The SC has laid down guidelines governing arrest of a persons during investigation.

In O.K. Basu vs. State of W.B.(AIR 1997 SC 610) - The SC has laid down detailed guidelines to be followed by the Central and State investigating and security agencies in all cases of arrest and detention.

Compensation under Article 21 -

Rudal Shah vs. State of Bihar, (1983) 4 SCC 141 - The SC has held that the court has power to award monetary compensation in appropriate cases where there has been violation of the constitutional right of citizens.

In Bhim Singh vs. State of Jammu and Kashmir (1988) 4 SCC 677 - The court awarded a sum of Rs.50,000 to the petitioner as compensation for the violation of his constitutional right of personal liberty under Article 21 of the Constitution.

In people's Union for Democratic Rights vs. Police Commissioner, Delhi Headquarter, (1989) 4 SCC 730 - A labourer was taken to the police station for doing some work, he was severely beaten when he demanded wages and ultimately succumbed to the injuries. It was held that the State was liable to pay compensation and accordingly directed to the Government to pay Rs, 75,000/-

In State of Maharashtra vs. Ravikant S. Patil, (1991)3 SCC 373 - The SC directed the Delhi Administration to pay RS.75,000/- as exemplary compensation to the mother of a 9 years old child who died due to beating by the Police officer,

In Chiranjit Kaur vs. Union of India(1994) 2 SCC 369 - An Army officer died in service due to negligence of army officers resulting in great mental agony and physical and financial hardship to the widow of the deceased and two minor children. The Court awarded the widow

of the deceased a compensation of Rs. 6 lakhs as well as special Family Pension and children Allowance.

In Shakuntala Devi vs. Delhi Electric Suppl Undertaking, (1995) 2 SCC 369 - The petitioner's husband died when he came into contact with the live electric wire while returning from the place of his employment and got electrocuted. The court held the Delhi Electric Supply undertaking liable and awarded compensation to the Widow and her minor children

In Kewal Pati vs. State or UP (1995) 3 SCC 600 - The court has awarded compensation to the widow of a convict who was killed in jail by a co accused while serving his sentence under section 302 IPC as it resulted in deprivation of his life contrary to law and in violation of Article 21.

Compensation to persons killed in Fake encounter - In people's Union for Civil Liberties vs. Union of India, AIR 1997 SC 1203- The SC held that killing of two persons in fake encounter by the police was clear violation of the right to life guaranteed in Article 21 of the Constitution. And the defense of sovereign immunity does not apply in such a case and the court awarded Rs, 1,00,000 as compensation for each deceased. Following Nilbhati Behera vs. State of Orissa,(1993) 2 SCC 746 the court held that the provisions of Article 9(5) of the International Covenant on Civil and Political Rights, 1966, which says' anyone who has been victim of unlawful arrest or detention shall have an enforceable right to compensation for enforcing fundamental rights are enforceable.

Compensation for Rape Victims:

In Delhi Domestic Working women's Forum vs. Union of India, (1995) 1 SCC 14 - Four domestic women servants who were raped by seven army personnel in a runnig train while travelling by the Muri Express from Ranchi to Delhi. The victims were helpless tribal women belonging to state of Bihar, the court expressed serious conceren and suggested to remove the defects in criminal laws.

Interim Compensation - In Bodhisathwa Gautam vs. Subhra Chakrborty, (1996) 1 SCC 490 - The SC awarded an interim compensation of RS.1 000 per month to the victim of rape until her charges of rape are decided by the trial court.

Sexual Harassment of Working women. In a land mark judgment in Vishaka vs. State of Rajasthan, AIR 1997 SC 3011 - The SC has laid down exhaustive guidelines to prevent sexual harassment of working women in place of their work until a legislation is enacted for the purpose.

Article 20 provides protection from conviction for offences in certain respects, including the rights against ex post facto laws, double jeopardy and freedom from self-incrimination. Article 22 provides specific rights to arrested and detained persons, in particular the rights to be informed of the grounds of arrest, consult a lawyer of one's own choice, be produced before a magistrate within 24 hours of the arrest, and the freedom not to be detained beyond that period without an order of the magistrate. The Constitution also authorises the State to make laws providing for preventive detention, subject to certain other safeguards present in Article 22. The provisions pertaining to preventive detention were discussed with skepticism and misgivings by the Constituent

Assembly, and were reluctantly approved after a few amendments in 1949. Article 22 provides that when a person is detained under any law of preventive detention, the State can detain such person without trial for only three months, and any detention for a longer period must be authorised by an Advisory Board. The person being detained also has the right to be informed about the grounds of detention, and be permitted to make a representation against it, at the earliest opportunity.

Right against Exploitation

The Right against Exploitation, contained in Articles 23-24, lays down certain provisions to prevent exploitation of the weaker sections of the society by individuals or the State. Article 23 provides prohibits human trafficking, making it an offence punishable by law, and also prohibits forced labour or any act of compelling a person to work without wages where he was legally entitled not to work or to receive remuneration for it. However, it permits the State to impose compulsory service for public purposes, including conscription and community service. The Bonded Labour system (Abolition) Act, 1976, has been enacted by Parliament to give effect to this Article. Article 24 prohibits the employment of children below the age of 14 years in factories, mines and other hazardous jobs. Parliament has enacted the Child Labour (Prohibition and Regulation) Act, 1986, providing regulations for the abolition of, and penalties for employing, child labour, as well as provisions for rehabilitation of former child labourers.

Right to Freedom of Religion

The Right to Freedom of Religion, covered in Articles 25-28, provides religious freedom to all citizens and ensures a secular State in India. According to the Constitution, there is no official State religion, and the State is required to treat all religions impartially and neutrally. Article 25 guarantees all persons the freedom of conscience and the right to preach, practice and propagate any religion of their choice. This right is, however, subject to public order, morality and health, and the power of the State to take measures for social welfare and reform. The right to propagate, however, does not include the right to convert another individual, since it would amount to an infringement of the other's right to freedom of conscience. Article 26 guarantees all religious denominations and sects, subject to public order, morality and health, to manage their own affairs in matters of religion, set up institutions of their own for charitable or religious purposes, and own, acquire and manage property in accordance with law. These provisions do not derogate from the State's power to acquire property belonging to a religious denomination. The State is also empowered to regulate any economic, political or other secular activity associated with religious practice. Article 27 guarantees that no person can be compelled to pay taxes for the promotion of any particular religion or religious institution. Article 28 prohibits religious instruction in a wholly State-funded educational institution, and educational institutions receiving aid from the State cannot compel any of their members to receive religious instruction or attend religious worship without their (or their guardian's) consent.

Cultural and Educational Rights

The Cultural and Educational rights, given in Articles 29 and 30, are measures to protect the rights of cultural, linguistic and religious minorities, by enabling them to conserve their heritage and protecting them against discrimination. Article 29 grants any section of citizens having a distinct language, script culture of its own, the right to conserve and develop the same, and thus

safeguards the rights of minorities by preventing the State from imposing any external culture on them. It also prohibits discrimination against any citizen for admission into any educational institutions maintained or aided by the State, on the grounds only of religion, race, caste, language or any of them. However, this is subject to reservation of a reasonable number of seats by the State for socially and educationally backward classes, as well as reservation of up to 50 percent of seats in any educational institution run by a minority community for citizens belonging to that community.

Article 30 confers upon all religious and linguistic minorities the right to set up and administer educational institutions of their choice in order to preserve and develop their own culture, and prohibits the State, while granting aid, from discriminating against any institution on the basis of the fact that it is administered by a religious or cultural minority. The term "minority", while not defined in the Constitution, has been interpreted by the Supreme Court to mean any community which numerically forms less than 50 of the population of the state in which it seeks to avail the right under Article 30. In order to claim the right, it is essential that the educational institution must have been established as well as administered by a religious or linguistic minority. Further, the right under Article 30 can be availed of even if the educational institution established does not confine itself to the teaching of the religion or language of the minority concerned, or a majority of students in that institution do not belong to such minority. This right is subject to the power of the State to impose reasonable regulations regarding educational standards, conditions of service of employees, fee structure, and the utilisation of any aid granted by it.

Right to constitutional remedies

Right to constitutional remedies empowers the citizens to move a court of law in case of any denial of the fundamental rights. For instance, in case of imprisonment, the citizen can ask the court to see if it is according to the provisions of the law of the country. If the court finds that it is not, the person will have to be freed. This procedure of asking the courts to preserve or safeguard the citizens' fundamental rights can be done in various ways. The courts can issue various kinds of writs. These writs are habeas corpus, mandamus, prohibition, quo warranto and certiorari. When a national or state emergency is declared, this right is suspended by the central government.

There are mainly five types of Writs-

(i) Writ of Habeas Corpus,

(ii) Writ of Mandamus,

(iii) Writ of Quo-Warranto,

(iv) Writ of Prohibition, and

(v) Writ of Certiorari.

(I) Writ of Habeas Corpus:

It is the most valuable writ for personal liberty. Habeas Corpus means, "Let us have the body." A person, when arrested, can move the Court for the issue of Habeas Corpus. It

is an order by a Court to the detaining authority to produce the arrested person before it so that it may examine whether the person has been detained lawfully or otherwise. If the Court is convinced that the person is illegally detained, it can issue orders for his release

(II) The Writ of Mandamus:

Mandamus is a Latin word, which means "We Command". Mandamus is an order from a superior court to a lower court or tribunal or public authority to perform an act, which falls within its duty. It is issued to secure the performance of public duties and to enforce private rights withheld by the public authorities. Simply, it is a writ issued to a public official to do a thing which is a part of his official duty, but, which, he has failed to do, so far. This writ cannot be claimed as a matter of right. It is the discretionary power of a court to issue such writs.

(III) The Writ of Quo-Warranto:

The word Quo-Warranto literally means "by what warrants?" It is a writ issued with a view to restraining a person from acting in a public office to which he is not entitled. The Writ of quo-warranto is used to prevent illegal assumption of any public office or usurpation of any public office by anybody. For example, a person of 62 years has been appointed to fill a public office whereas the retirement age is 60 years. Now, the appropriate High Court has a right to issue a Writ of quo-warranto against the person and declare the office vacant.

(IV) The Writ of Prohibition:

Writ of prohibition means to forbid or to stop and it is popularly known as 'Stay Order'. This Writ is issued when a lower court or a body tries to transgress the limits or powers vested in it. It is a Writ issued by a superior court to lower court or a tribunal forbidding it to perform an act outside its jurisdiction. After the issue of this Writ proceedings in the lower court etc. come to a stop. The Writ of prohibition is issued by any High Court or the Supreme Court to any inferior court, prohibiting the latter to continue proceedings in a particular case, where it has no legal jurisdiction of trial. While the Writ of mandamus commands doing of particular thing, the Writ of prohibition is essentially addressed to a subordinate court commanding inactivity. Writ of prohibition is, thus, not available against a public officer not vested with judicial or quasi-judicial powers. The Supreme Court can issue this Writ only where a fundamental right is affected.

(V) The Writ of Certiorari:

Literally, Certiorari means to be certified. The Writ of Certiorari is issued by the Supreme Court to some inferior court or tribunal to transfer the matter to it or to some other superior authority for proper consideration. The Writ of Certiorari can be issued by the Supreme Court or any High Court for quashing the order already passed by an inferior court. In other words, while the prohibition is available at the earlier stage, Certiorari is available on similar grounds at a later stage. It can also be said that the Writ of prohibition is available during the tendency of proceedings before a sub-ordinate court, Certiorari can be resorted to only after the order or decision has been announced.

Directive Principles of State Policy

Directive Principles of State Policy, embodied in Part IV of the Constitution, are directions given to the State to guide the establishment of an economic and social democracy, as proposed by the Preamble. They set forth the humanitarian and socialist instructions that were the aim of social revolution envisaged in India by the Constituent Assembly. The State is expected to keep these principles in mind while framing laws and policies, even though they are non-justiciable in nature. The Directive Principles may be classified under the following categories: ideals that the State ought to strive towards achieving; directions for the exercise of legislative and executive power; and rights of the citizens which the State must aim towards securing.

Despite being non-justiciable, the Directive Principles act as a check on the State; theorized as a yardstick in the hands of the electorate and the opposition to measure the performance of a government at the time of an election. Article 37, while stating that the Directive Principles are not enforceable in any court of law, declares them to be "fundamental to the governance of the country" and imposes an obligation on the State to apply them in matters of legislation. Thus, they serve to emphasise the welfare state model of the Constitution and emphasise the positive duty of the State to promote the welfare of the people by affirming social, economic and political justice, as well as to fight income inequality and ensure individual dignity, as mandated by Article 38 in order to ensure equitable distribution of land resources.

Article 39 lays down certain principles of policy to be followed by the State, including providing an adequate means of livelihood for all citizens, equal pay for equal work for men and women, proper working conditions, reduction of the concentration of wealth and means of production from the hands of a few, and distribution of community resources to "subserve the common good". These clauses highlight the Constitutional objectives of building an egalitarian social order and establishing a welfare state, by bringing about a social revolution assisted by the State, and have been used to support the nationalisation of mineral resources as well as public utilities. Further, several legislations pertaining to agrarian reform and land tenure have been enacted by the federal and state governments, in order to ensure equitable distribution of land resources.

Articles 41-43 mandate the State to endeavour to secure to all citizens the right to work, a living wage, social security, maternity relief, and a decent standard of living. These provisions aim at establishing a socialist state as envisaged in the Preamble. Article 43 also places upon the State the responsibility of promoting cottage industries, and the federal government has, in furtherance of this, established several Boards for the promotion of khadi, handlooms etc., in coordination with the state governments. Article 39A requires the State to provide free legal aid to ensure that opportunities for securing justice are available to all citizens irrespective of economic or other disabilities. Article 43A mandates the State to work towards securing the participation of workers in the management of industries The State, under Article 46, is also mandated to promote the interests of and work for the economic uplift of the scheduled castes and scheduled tribes and protect them from discrimination and exploitation. Several enactments, including two Constitutional amendments, have been passed to give effect to this provision.

Article 44 encourages the State to secure a uniform civil code for all citizens, by eliminating discrepancies between various personal laws currently in force in the country. However, this has remained a "dead letter" despite numerous reminders from the Supreme Court to implement the provision. Article 45 originally mandated the State to provide free and compulsory education to

children between the ages of six and fourteen years, but after the 86th Amendment in 2002, this has been converted into a Fundamental Right and replaced by an obligation upon the State to secure childhood care to all children below the age of six. Article 47 commits the State to raise the standard of living and improve public health, and prohibit the consumption of intoxicating drinks and drugs injurious to health. As a consequence, partial or total prohibition has been introduced in several states, but financial constraints have prevented its full-fledged application. The State is also mandated by Article 48 to organise agriculture and animal husbandry on modern and scientific lines by improving breeds and prohibiting slaughter of cattle. Article 48A mandates the State to protect the environment and safeguard the forests and wildlife of the country, while Article 49 places an obligation upon the State to ensure the preservation of monuments and objects of national importance. Article 50 requires the State to ensure the separation of judiciary from executive in public services, in order to ensure judicial independence, and federal legislation has been enacted to achieve this objective. The State, according to Article 51, must also strive for the promotion of international peace and security, and Parliament has been empowered under Article 253 to make laws giving effect to international treaties.

Overview of Articles of Part IV:-

1. Art. 36: Provides the definition of the word “state”.
2. Art. 37: Non-justiciability of any provision contained in this part of the Constitution.
3. Art. 38: Mandates the state to strive for the social welfare of the people.
4. Art. 39: Lists the principles to be followed by the state while carrying out its policy, notably, to provide adequate means of livelihood to people, distribution of resources and prevention of concentration of wealth in few hands.
5. Art. 39A: Secures equal justice and free legal aid for the people.
6. Art. 40: Provides for organization of Village Panchayats.
7. Art. 41: Provides work, education and public assistance to unemployed, sick and old age.
8. Art. 42: Provides for just and humane conditions of work and maternity relief.
9. Art. 43: Provides for decent standard of life for all workers.
10. Art. 43A: Directs to provide participation of workers in management of industries.
11. Art. 44: Mandates a Uniform Civil Code for whole of the country.
12. Art. 45: Provides for free and compulsory education.
13. Art. 46: Directs to work for benefit for backward communities.
14. Art. 47: Mandates to raise the level of nutrition.
15. Art. 48: Directs to improve animal husbandry and agriculture.

16. Art. 48A: Provides for improvement for environment.

17. Art. 49: Provides for care of monuments.

18. Art. 50: Separation of Judiciary and Executive.

19. Art. 51: Lays down principles of International policy.

FUNDAMENTAL DUTIES

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. The other Fundamental Duties obligate all citizens to respect the national symbols of India, including the Constitution, to cherish its heritage, preserve its composite culture and assist in its defense. They also obligate all Indians to promote the spirit of common brotherhood, protect the environment and public property, develop scientific temper, abjure violence, and strive towards excellence in all spheres of life Citizens are morally obligated by the Constitution to perform these duties. However, like the Directive Principles, these are non¬justifiable, without any legal sanction in case of their violation or non-compliance. There is reference to such duties in international instruments such as the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights, and Article 51 A brings the Indian Constitution into confirmity with these treaties.

Relationship between the Fundamental Rights, Directive Principles and Fundamental Duties

The Directive Principles have been used to uphold the Constitutional validity of legislations in case of a conflict with the Fundamental Rights. Article 31 C, added by the 25th Amendment in 1971, provided that any law made to give effect to the Directive Principles in Article 39(b)-(c) would not be invalid on the grounds that they derogated from the Fundamental Rights conferred by Articles 14, 19 and 31. The application of this article was sought to be extended to all the Directive Principles by the 42nd Amendment in 1976, but the Supreme Court struck down the extension as void on the ground that it violated the basic structure of the Constitution. The Fundamental Rights and Directive Principles have also been used together in forming the basis of legislation for social welfare. The Supreme Court, after the judgment in the Kesavananda Bharati case, has adopted the view of the Fundamental Rights and Directive Principles being complementary to each other, each supplementing the other's role in aiming at the same goal of establishing a welfare state by means of social revolution.t'"? Similarly, the Supreme Court has used the Fundamental Duties to uphold the Constitutional validity of statutes which seeks to promote the objects laid out in the Fundamental Duties. These Duties have also been held to be obligatory for all citizens, subject to the State enforcing the same by means of a valid law. The Supreme Court has also issued directions to the State in this regard, with a view towards making the provisions effective and enabling a citizens to properly perform their duties

Fundamental Right :

1. Part-III, containing Articles from 12 to 35 deal with Fundamental Rights.

2. The Fundamental Rights can be enforceable by a court against the State.

3. These are primarily aim at assuring political freedom to the citizens by protecting them against the excessive State action.

4. The Fundamental Rights are given a pride of place by the Constitution makers.

5. The chapter of Fundamental Rights is sacrosanct and not liable to be abridged by legislative or executive act or orders, except to the extent provided in appropriate Article in Part III.

6. Grover Justice Supreme Court said: “where as the fundamental rights lay down the means by which that goal was to be achieved.”

7. Fundamental rights occupy a unique place in the lives of civilized society and have been variously described in judgment of the Supreme Court as “transcendental”, “inalienable” and “personal”.

8. There are negative in character. The State is asked not to do certain things for the people.

Directive Principles of State Policy :

1. Part -IV, containing Articles from 36 to 50, deal with Directive Principle of State Policy.

2. The Directive Principles of State Policy can not be enforceable by any Court.

3. These are aimed at securing welfare, social and economic freedoms by appropriate State action.

4. The Directive Principles are given a place of permanence by the Constitution makers.

5. The Directive Principles of State policies have to confirm and to run as subsidiary to the Chapter of Fundamental Rights.

6. Grover Justice Supreme Court said: “Directive Principles prescribe the goal to be attained.”

7. The Supreme Court described the Directive Principles of State policy as “Conscience of our Constitution”.

8. These are positive in character. The State is directed to take certain positive steps for the welfare and advancement of the people.

4. PROPERTY LAW

TRANSFER OF PROPERTY

Immovable Property

The provision of Section 3 of the Transfer of Property Act, 1882 does not provide for a comprehensive definition of 'immovable property', however, it only mentions that 'immovable property' does not include standing timber, growing crops, or grass. Thus the definition only points out certain kinds of property to be not considered as an immovable property and further classifies certain kind of properties which can be considered to be immovable property.

Attestation

Meaning of 'attested' the term 'attested' in this section means that a person has signed the document by way of testimony of the fact that he was it executed. Attestation is stated in Section 3 of the Transfer of Property Act. In order to constitute valid attestation the essential conditions are:

(1) there must be two attesting witnesses,

(2) each must have seen the executant sign or affix his thumb mark to the instrument,

(3) each of the two attesting witnesses must have signed the instrument in the presence of the executant.

Notice

The last paragraph of the section 3 states under what circumstances a person is said to have notice of a fact. He may himself have actual notice or he may have constructive notice may be imputed to him when information of the fact has been obtained by his agent in the course of business transacted by the agent for him.

(a) Express or actual notice:

An express or actual notice of fact is a notice whereby a person acquires actual knowledge of the fact. It must be definite information given in the course of negotiations by a person interested in the property.

(b) Constructive Notice:

It is a notice which treats a person who ought to have known a fact, as if he actually does know it. In other words, a person has constructive notice of all facts of which he would have acquired actual notice had he made those enquiries which he ought reasonably to have made.

Doctrine of Fixtures

A fixture is something fixed. In Transfer of Property Act, a fixture is a chattel which is affixed to the soil or land. But a chattel by merely being affixed to the land will not become an immovable property. There are two things which have to be considered for arriving at the point whether a chattel is an immovable property. This can be called the Doctrine of Fixtures.

(1) Mode of annexation

If the chattel remains on the land by its own weight and is not affixed to the land there is a presumption that it is only a movable property. Here the criteria is the intention to make whether it a fixture or not. If the intention was to make it part of the land it is treated as a fixture.

If the chattel is fixed to the land by means of nails or such things the presumption is that it is a fixture and become an immovable property.

(2) The Purpose for Annexing

The tenure of beneficial enjoyment of the land is a necessary criterion to hold whether the chattel is an immovable property.

If the purpose of annexation is the permanent beneficial enjoyment of the land the presumption is that it is a fixture.

Definition of Transfer of Property (Section 5)

Transfer of Property has been defined in Section 5 of the Transfer of Property Act meaning 'an act by which a living person conveys property, in present or in future to one or more other living persons and "to transfer property" is to perform such act'.

What may be transferred: (Section 6)

Property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force.

(a) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, (Spec successionis),

(b) A mere right of re-entry for breach of a condition subsequent

(c) An easement,

(d) An interest in property restricted in its enjoyment to the owner personally,

(e) A right to future maintenance,

(f) A mere right to sue,

(g) A public office, nor can the salary of a public officer, whether before or after it has become payable,

(h) Stipends allowed to military, naval, air-force and civil pensioners of the Government and political pensions,

(i) No transfer can be made (1) in so far as it is opposed to the nature of the interest affected thereby, or (2) for an unlawful object or consideration within the meaning of section 23 of the Contract Act, 1872, or (3) to a person legally disqualified to be transferee,

(j) Nothing in this section shall be deemed to authorise a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue or the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee.

Spes Successionis

Property of any kind may be transferred, except as otherwise provided by this Act, or by any other law for the time being in force:

(a) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred.

Illustration

A has a wife B and a daughter C. C in consideration of Rs. 1,000 paid to her by A, executes a release of her right to share in the inheritance to A's property. A dies and C claims her one-third share in the inheritance. B resists the claim and sets up the release signed by C. The release is no defence, for it is a transfer of spes successions, and C is entitled to her one-third share but is bound to bring into account the Rs. 1,000 received from her father.

Rule against alienability: (Section 10)

Section 10 of the Transfer of Property Act provides that if a property is transferred subject to a condition or limitation restraining the transferee's right of parting with or disposing his interest in the property absolutely, then such a condition is void. This general rule is referred to as the rule against inalienability. Therefore, any condition that restrains alienation is considered void.

It must be noted that a right of transfer is incidental to and inseparable from beneficial ownership of the property. So a restraint on alienation which may be an absolute one is a void one. Partial restraint is not void.

Exceptions

In the case of transfer of property by way of Lease there can be absolute restraint. The lessee may be restrained from alienating the property. In England the law recognised that a married woman can enjoy the fruits of the property only when she is in the status of a wife. She cannot transfer the same when in the status of a married woman. It was later abolished. The rule is still in force in India.

Repugnant conditions: (Section 11)

Repugnant conditions are those that are inconsistent with the nature of the interest transferred. Section 11 prohibits the imposition of any condition directing the transferee to apply or enjoy in a particular manner, any interest that is transferred absolutely in a particular manner. Such conditions or directions are void and the transferee is entitled to receive property as if such a condition did not exist in the first place. These conditions are inconsistent with the nature of the interest transferred. Therefore, they are called repugnant conditions.

Illustration:

A and B enter into a sale deed for a piece of land. The terms of the sale deed provides that the piece of land should be used for the purposes of starting a factory for the manufacture of jute textiles only. This condition is invalid. B can enjoy the land in any manner that he chooses and the sale deed itself continues to be valid.

The exception to this rule is that if the transferor owns another piece of immovable property, he may, for the benefit of that property, impose a restriction on the enjoyment of that by him. In such a case, the restriction on the enjoyment of the interest would be valid.

Transfer for benefit of Unborn Persons: (Section 13)

Section 13 explains about Transfer for benefits of unborn and represents the common law rule against remoteness of limitation. “Gift to an unborn child is unknown to Hindu Law” observed in Tagore Vs. Tagore. Whilby Vs. Minshell the rule laid down in this case it was held that if the property is transferred to a person, it cannot be further granted to an unborn of that unborn child.

The Conditions required to create an interest in favor of unborn person

1. There must always be an estate for life
2. The unborn person should come into existence on or before the expiry of the prior estate
3. The whole Remainder in the estate must be conferred on the unborn person
4. The vest of the estate must not be postponed beyond a life or lives in being and minority of the unborn person that is to say. it cannot be deferred to a longer period then what is necessary for him to attain Majority (section 13 and 14).

Rule against perpetuity: (Section 14)

The word “perpetuity” means for (almost) ever. As a term used in the Act, it means an inalienable and indestructible interest in the property or interest, which cannot vest till a remote period of time.

No transfer of property can operate to create an interest which is to take effect after the life¬time of one or more persons living at the date of such transfer, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the interest created is to belong. Cadell v. Palmer and Thelluson v. Woodford, according to the rule every estate or interest must vest, if at all, not later than 21 years after the determination of some life in being at the time of the creation of such estate or interest and not only must the person to take be ascertained but the amount of his interest must be ascertained within the prescribed period.

Transfer to class of persons: (Section 15)

If, on a transfer of property, an interest therein is created for the benefit of a class of persons with regard to some of whom such interest fails by reason of any of the rules contained in sections 13 and 14, such interest fails [in regard to those persons only and not in regard to the whole class].

It has been held by the Supreme Court that although no interest could be created in favour of an unborn person but if gift was made to a class of series of person some of whom were in existence and some were not, it was valid with regard to the former and invalid as to the latter; Raj Bajrang Bahadur Singh v. Thakurain Bakhtraj Kuer, (1953) SCR 232.

Direction for accumulation: (Section 17)

Where a testator issues a direction separating the income from ownership of property so as to form a separate fund or so as to postpone the beneficial enjoyment of property is called “Direction for Accumulation”. In Indian law, limits within which a direction may be made for accumulation given (a) the life of the transferor, or (b) a period of 18 years from the date of transfer.

- The direction for accumulation may be express or implied
- A direction for accumulation may be void under the perpetuity rule, if the accumulation is directed for a period excess of that allowed by the perpetuity rule.
- A direction for accumulation may be void for repugnancy

Exceptions:

(i) The payment of the debts of the transferor or any other person taking any interest under the transfer; or

(ii) The provision of portions for children or remoter issue of the transfer or of any other person taking any interest under the transfer; or

(iii) The preservation or maintenance of the property transferred.

Vested and Contingent Interests

Vested and contingent interests are dealt with in the Transfer of Property Act under Sections 19 to 23.

Vested Interests: (Section 19)

In a transfer, when an interest is created in favour of a person without specifying the time in which it is to take effect, or specifying that it shall take effect on the happening of an event which is certain to happen, such an interest is said to be vested unless the terms of the transfer indicate a contrary intention. It depends upon the happening of the event which must happen, i.e. certain event. It is not defeated by the death of the transferee.

Illustration:

A may transfer ownership to B but retain a life interest in the estate. In such a case, the life estate of A is a particular estate, as it is a specific part of the owner's interest and the interest of B is the remainder. The remainder is obviously what is left out after carving out the particular estate. The remainder is seen as vested when the only obstacle between securing possession is the existence of the particular estate. Therefore, in the above example, B's remainder interest is vested in him and he can take possession the moment the particular estate ends.

The primary requirement for a vested interest to take effect is that it must not be subject to a condition precedent. It can only be subjected to a condition that relates to an event that is certain to happen by its very nature. If there is a condition precedent and it relates to an event, which is uncertain, then it ceases to be a vested interest and becomes a contingent one.

Contingent Interests: (Section 21)

A contingent interest is one that is created on a transfer that will take effect only on the happening or non-happening of a specified uncertain event. As you may be aware, such an interest is regarded as a contingent interest, one whose existence is contingent or dependent on the occurrence of an uncertain event. If the event occurs, the interest becomes vested. If the event does not occur, the interest does not get vested. Contingent Interest depends upon the happening of the uncertain event.

Illustration:

'A' transfers property to 'B' for life and then to 'C' on the completion of college graduation. Here, C's interest is dependent on her graduating from college. This is a specific uncertain event. Therefore, her interest is a contingent interest.

Exception:

Where a person is entitled to an interest on attaining a certain age and is also given the income arising from such interest before he attains the age or the income is directed to be applied for his benefit, then the interest is not contingent.

Although it is uncertain that a person may attain that age, his interest is considered to be vested by virtue of the above exception when the interim income is also transferred to him absolutely.

Conditional Transfer: (Section 25)

Transfer upon an impossible condition is void. A conditional transfer may be defined to be a transfer, the existence of which depends upon the happening or non happening of some uncertain event by which it is either to take place or to be defeated. There are two kinds of conditions:

(i) Condition Precedent and (ii) Condition Subsequent.

Illustration:

A lets a farm to B on condition that he shall walk a hundred miles in an hour. The lease is void.

Fulfillment of Condition Precedent: (Section 26)

Where the terms of a transfer of property impose a condition to be fulfilled before a person can take an interest in the property, the condition shall be deemed to have been fulfilled if it has been substantially complied with.

Illustrations:

(a) A transfers Rs.5000 to B on condition that he shall marry with the consent of C, D, and E.E dies. B marries with the consent of C and D.B is deemed to have fulfilled to condition.

(b) A transfers Rs.5, 000 to B on condition that he shall marry with the consent

Of C, D and E.B marries without the consent of C, D and E, but obtain their consent after the marriage. B has not fulfilled the condition.

Doctrine of cypres

Abbreviated form of cy pres is “as far as possible.” The name of a rule employed in the construction of such instruments as trusts and wills, by which the intention of the person who executes the instrument is effectuated as nearly as possible when circumstances make it impossible or illegal to give literal effect to the document.

Illustration:

A transfers Rs.1 0, 000 to B on condition that he shall marry with the consent of C, D and E. E dies. B marries with the consent of C and D. B is deemed to have fulfilled the condition, as far as possible under the Doctrine of cypres.

Law leans in favour of vesting and against divesting: (Section 26)

Law favour vesting. Section 26 provides, where a settler or testator imposes certain condition precedent and such conditions are performed, the law leans in favour of vesting the

property to the transferee. If the condition is clear it cannot be evaded. Where the intention of the transferor may be given effect in full it should be given effect in full. But where incapable of being acted upon literally or where its literal performance would be unreasonable or in excess of what the law allows, the intention of the donor or transferor is to be carried out by cypres.

Fulfillment of Condition Subsequent: (Section 29)

A condition subsequent is one which destroys or divests the right upon the happening of an event. Condition subsequent refers to an event or state of affairs that brings an end to something else. A condition subsequent is often used in a legal context as a marker bringing an end to one's legal rights or duties. A condition subsequent may be either an event or a state of affairs that must either (1) occur or (2) fail to continue to occur.

Illustration:

A transfers Rs.500 to B to be paid to him on his attaining majority or marrying, with a proviso that, if B dies a minor or marries without C's consent, the Rs.500 shall go to D. B marries when only 17 years of age without C's consent. The transfer to D takes effect.

Rule of Acceleration: (Section 27)

The rule of acceleration applies to both immovable and movable transfer of property. It arises on the failure of prior interest in the estate. If that prior interest is failed whether by the death of a prior beneficiary or for any other reason, the reason for postponement goes and the subsequent interest is accelerated.

Where the prior interest is valid and fails, due to the valid condition being not fulfilled, then the doctrine acceleration comes into play.

Illustration:

A transfers Rs.5, 000 to B on condition that he shall execute a certain lease within 3 months after A's death, and if he should neglect to do so, to C. B dies in A's lifetime. The disposition in favour of C takes effect.

Doctrine of Election: (Section 35)

It is an exception to Latin Maxim "Nemo dat quod non habet" - "No one can convey better title than what he has". The principle given in Section 35 is that the person who takes the benefit must also bear the burden.

Illustration:

A has one acre land worth Rs.1 ,00,000 in a district. A's father B wanted to give that land to his daughter C as a gift. B proposes that B would give Rs.1 ,50,000 to A, if A consents to give the land to his sister C. Then it is A to elect whether to retain the property or to receive the gift of Rs.1 ,50,000 and to transfer the land to C. however, there should not be any compulsion, threat, coercion, undue influence against A by B. If A elects the gift of Rs.1,50,000 he is to benefit Rs.1 ,50,000 and C with one acre land. This is called Doctrine of Election

In the leading case Cooper vs Cooper, the House of Lords held that since the testatrix was not the owner of the property, her attempt to dispose of it by her will when she had no longer a disposing power over it raised a case of election against the persons who taking under her will, had an interest in that property. Maltiland made observation in this case is that a person who takes the benefit under the deed must give full effect to that instrument under which he takes the benefit.

Covenants: (Section 40)

Section 40 should be read along with section 11 of the transfer of property act. An agreement creating an obligation contained in a deed. Covenants may be used to serve the purpose of a bond. A covenant is said to run with the land, or with the reversion, when either the liability to perform it, or the right to take advantage of it, passes to the assignee of the land, or the reversion, as the case may be.

Restrictive Covenant:

A restrictive covenant is a type of real covenant, a legal obligation imposed in a deed by the seller upon the buyer of real estate to do or not to do something. Such restrictions frequently "run with the land" and are enforceable on subsequent buyers of the property. It is also called as negative covenant.

Restrictive covenants may arise from many sources, and may be registered against titles or included in leases. E.g., some covenants exist for safety purposes, such as a covenant forbidding the construction of tall buildings in the vicinity of an airport or one restricting the height of fences on corner lots (so as not to interfere with drivers' sight lines).

In the leading case, Tulk vs. Moxhay, the Court granted the injunction restraining the Moxhay-defendant and ordered not to construct the building in that vacant site.

Affirmative Covenant:

Affirmative covenant is also called a "Positive Covenant". A positive covenant never runs with the land either in law or in equity. Affirmative covenants are collateral. They are not annexed to the land, and do not run with the land. The positive covenants are burden on covenanter. It is not enforceable by law.

In Austerberry vs Corpn of Oldham, A sold his vacant land adjoining to his house to B with a covenant that B should construct a road from the main Municipality Road to A's door and also should keep it in repair, for the convenience of A. B sold the site to C. C had notice of the covenant to repair of road. But C refused to repair the road. The Court of Appeal held that C holding that the repair covenant could not be enforced against C.

Doctrine of holding out: (Section 41)

It is also called doctrine of ostensible owner. It is also an exception to the latin maxim "nemo dat quod non habet".

No one can transfer to another, a right or title greater than what he himself possess. "No man can give that which has not". The transferor should have title to the property or authority to transfer it. This has been enunciated in Section 7. To the rule that no person can confer a better title than he has, exceptions are recognized on equitable grounds by the rule of estoppels the true owner is precluded from putting forward title to the property.

Doctrine of feeding the grant by estoppels: (Section 43)

The object of the doctrine is to protect the bona fide transferee. The transferor, who has promised more than he can perform, must make good his contract when he acquires the power of performance. This doctrine permits the acquisition of title by means of estoppel.

Illustration:

A, a Hindu, who has separated from his father B, sells to C fields, X,Y and Z, representing that A is authorised to transfer the same. Of these fields Z does not belong to A, it having been retained by on the partition; but on B's dying, A as the heir obtains Z. C, not having rescinded the contract of sale, may require A to deliver Z to him.

Essential conditions:

(i) The transferor should have made a fraudulent or erroneous representation that he is authorizes to transfer the property;

(ii) The transfer is for consideration;

(iii) The transferor subsequently acquires the interest which he had professed to transfer;

(iv) The transaction should not have been forbidden by law.

Improvements made by bonafide holder under defective title: (Section 51)

This is an option given to the real owner either to pay compensation for the improvement or to sell his interest in the property to the bonafide holder under defective title. The important conditions of Section 51 are:

i) The person evicted under a prior title must have been a transferee,

ii) He must have made certain improvement on the property, and

iii) Such improvements must have been made by him in good faith.

In Narayana Rao Vs. Besavarayappa, the Supreme Court held that the defendant is entitled for Rs. 19,000 and which should be paid by the plaintiff, for the defendant's improvements made with good faith.

Doctrine of Lis Pendens: (Section 52)

"Lis Pendens" generally means "pendency of a suit in a Court". It embodies the principle that the subject matter of the suit should not be transferred to third party during the pendency of the suit. The transferee is bound by the result of the suit in a case when such property is transferred during the pendency of the suit.

This doctrine aims at the final adjudication of the dispute. Nothing new should be brought in litigation. It helps to prevent multiplicity of suits.

The essential condition for the application of this doctrine is that the right to immovable property must be directly and specifically in question in the suit. The doctrine is mainly based upon the principles of equity, justice and good conscience. It is applicable to all cases between co-heirs. It applies to ex-parte judgments, compromise decrees etc. It applies to both voluntary transfers and involuntary transfers. The doctrine is contained in Section 52 of the Transfer of Property Act. The suit must be pending in a court of competent jurisdiction. So if the suit is filed in a court not of competent jurisdiction, it is not a suit pending as per Section 52 of the Transfer of Property Act.

Illustration:

A has some property. He mortgaged that property to Bin 1997. B filed a case against A in the competent court for the recovery of money in March 1999. During the pendency of the case,

A sold the said property to C. The sale transaction between A and C has been prohibited under the Doctrine of Lis Pendens, as it affects B's right. The leading case is Bellamy Vs. Sabine

Fraudulent Transfer: (Section 53)

Every transfer of immovable property is made with intent to defraud the creditors, the transfer is voidable at the option of the creditor so defeated or delayed.

Doctrine of part performance: (Section 53A)

Where the contract as not registered or the transfer following upon the contract has not been completed according to law and the transferee has in part performance of the contract, taken possession of the property or the transferee, being already in possession, continued in possession in part performance of the contract and has done some executes in furtherance of the contract, then the transferor will not be allowed to evict the transferee from the property. The equity recognized in Sec.53A is passive equity.

In Maddison Vs. Alderson it was held that "In a suit founded on such part-performance, the defendant is really charged upon the equities resulting from the acts done in execution of the contract and not (Within the meaning of the Statute) upon the contract itself, if such equities were excluded, injustice of a kind which the statute cannot be thought to have had in contemplation, would follow."

The section has been described by Privy Council, and the Supreme Court in U N Sharma v. Puttegowdas, as a partial importation of the English equitable doctrine of part performance. By virtue of this section, part performance does not give rise to equity, as in English equity in two respects:

(1) there must be a written contract; and

(2) it is only available as a defence.

The following are the essential elements for the application of the doctrine:

(i) An act of part performance must be an act done in performance of the contract.

Accordingly, acts previous to the agreement do not constitute part performance, e.g., making of arrangement for the payment of the purchase price.

(ii) The act relied on a performance must be unequivocally, and in their nature, referable to contract as that alleged.

In Indian Law, the Supreme Court has elaborately considered the requirements for the application of the doctrine of part performance in Govindarao Vs Devi Salal AI R (1982) SC 989.

SPECIFIC TRANSFERS

Section 54 to 137 of the Transfer of Property Act provides specific transfers such as sale, mortgage, lease, exchange, gift, etc.

SALE

Sections 54 to 57 dealt with Sale.

Definition: (Section 54)

Sale is a Transfer of Ownership in exchange for a price paid by promised or part paid and part provided price means money and money only.

Essentials:

i) The parties

ii) The subject matter

iii) The transfer or conveyance and

iv) The price or consideration

Sale how Made:

Such transfer in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property. A contract for sale does not create any interest in or change in such property.

Rights and liabilities of buyer and seller: (Section 55)

In the absence of a contract to the contrary, the buyer and the seller of immovable property respectively are subject to the liabilities, and have the rights, mentioned in the rules next following or such of them as are applicable to the property sold:

Obligations of Seller:

The seller is bound -

(a) to disclose to the buyer any material defect in the property or in the seller's title;

(b) to produce to the buyer on his request for examination all documents of title relating to the property which are in the seller's possession or power;

(c) to answer to the best of his information all relevant questions put to him by the buyer in respect to the property or the title;

(d) on payment or tender of the amount due in respect of the price, to execute a proper conveyance of the property when the buyer tenders it to him for execution at a proper time and place;

(e) to take as much care of the property and all documents of title between the date of the contract of sale and the delivery of the property;

(f) to give, the buyer, or such person as he directs, such possession of the property as its nature admits;

(g) to pay all public charges and rent accrued due in respect of the property up to the date of the sale.

Rights of Seller:

The seller is entitled to -

(a) to the rents and profits of the property till the ownership thereof passes to the buyer;

(b) where the ownership of the property has passed to the buyer before payment of

the whole of the purchase-money, to a charge upon the property in the hands of the buyer, any transferee without consideration or any transferee with notice of the non¬payment, for the amount of the purchase-money, or any part thereof remaining unpaid, and for interest on such amount or part from the date on which possession has been delivered.

Obligations of Buyer:

The buyer is bound-

(a) to disclose to the seller any fact as to the nature or extent of the seller's interest in the property of which the buyer is aware,

(b) to payor tender, at the time and place of completing the sale, the purchase-money to the seller or such person as he directs:

Rights of Buyer:

The buyer is entitled-

(a) to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof;

(b) to accept delivery of the property

Doctrine of Marshalling (Section 56)

Right of Marshalling in claimed by subsequent purchaser in the absence of contract to the contrary.

MORTGAGE

Sections 58 to 99 of Transfer of Property Act 1882, deals with Mortgage. A mortgage is a transfer of an interest in specific immovable property as security for the repayment of a debt.

Definition: [Section 56 (a)]

Mortgage is a transfer of interest in specific immovable property for the purpose of securing loan, an existing or future debt or the performance of an engagement which may give rise to a pecuniary liability.

Mortgagor, Mortgagee and Mortgage money

The person who transfers the interest in property is called the mortgagor. The person who receives it is named the mortgagee. Mortgage money is the amount for which the property is transferred as a security.

Characteristics of Mortgage

Given below are the general characteristics or elements of a mortgage.

a. Interest should be transferred

b. Specific immovable property

c. Transfer for securing a debt

Types of Mortgage

Mortgages are generally divided into six. They are:

1. Simple Mortgage
2. Mortgage by Conditional Sale
3. Usufructuary Mortgage
4. English Mortgage
5. Mortgage by deposit of title deeds
6. Anomalous Mortgage

Remedies for the various kinds of Mortgages

- Section 58(b) Simple mortgage remedies given to simple mortgage are (i) Money suit on personal covenant and (ii) Judicial Sale
- Section 58(c) Mortgage by conditional sale - remedy to mortgage - foreclosure preventing mortgage or from redeeming the property.
- Section 58 (d) Usufractory Mortgage remedy to mortgage - to remain in possession till the mortgage debt is paid.
- Section 58 (e) English mortgage - remedies to mortgage - (i) Suit a personal covenant (ii) Judicial Sale (iii) Private Sale.
- Section 59(f) Mortgage by deposited of title deeds - Remedies to mortgage - (i) Suit on personal covenant (ii) Judicial Sale.
- Section 59(g) Anamolous Mortgage - it is a combination of two or more mortgages. Remedy to mortgages. It depends upon the contract between the parties

Rights and Liabilities of Mortgagor

1. Section 60 - Rights of mortgagor to redeem.
2. Section 60A - Obligation to transfer to third party instead of re-transference to mortgagor
3. Section 60-8 Right to inspection and production of document
4. Section 61- Right to redeem separately or simultaneously
5. Section 62 - Right of usufructuary mortgagor to recover possession.
6. Section 63 - Accession to mortgaged property
7. Section 63A - Improvements to mortgaged property
8. Section 64 - Renewal of mortgaged lease.
9. Section 65A - Mortgagor's power to lease.
10. Section 66 - Waste by Mortgagor in possession.

Rights and Liabilities of Mortgagee

1. Section 67 - Rights to foreclosure or sale
2. Section 67A - Mortgagee when bound to bring one suit on several mortgagees
3. Section 68 - Right to sue for mortgage-money.-
4. Section 69 - Power of sale when valid.
5. Section 69A - Appointment of receiver.
6. Section 70 - Accession to mortgaged property.
7. Section 71 - Renewal of mortgaged lease
8. Section 72 - Rights of mortgages in possession
9. Section 73 - Right to proceeds of revenue, sale or compensation on acquisition.
10. Section 77 - Receipt in lieu of interest

Doctrine of consolidation:

A mortgagee who holds two or more distinct mortgages upon different parcels of land made by the same mortgagor, if the mortgages are no longer redeemable at law but are redeemable only in equity, may, within certain limits, and against certain persons, "consolidate" them, that is, treat them as one, and decline to be redeemed as to any unless he is redeemed as to both or all. Consolidation is founded on the equitable maxim that he who seeks equity must do equity.

The whole doctrine of consolidation, whatever may have been the particular circumstances under which it has been applied to different cases, arises from the power of the court of equity to put its own price upon its own interference as a matter of equitable consideration in favour of any suitor.

Doctrine substituted security: (Section 73)

If any property is substituted in the place of original security, substituted property becomes the security to the mortgagee.

Right of redemption:

The most important right possessed by the mortgagor is the right to redeem the mortgage. Under this section, at any time after the principal money has become due, the mortgagor has a right on payment or tender of the mortgage-money to require the mortgagee to reconvey the mortgage property to him. The right conferred by this section has been called the right to redeem and a suit to enforce this right has been called a suit for redemption. In English Law, the mortgagor's right to redemption contained in for Equity of redemption. This remedy is available to the mortgagor only before the mortgagee has filed a suit for enforcement of the mortgage. Subsequent to the filing of the suit, this remedy is not available.

Clog on Redemption:

The right of redemption is, therefore, in evadable in the sense that it cannot be denied to the mortgagor even though he may by express contract abandon his right to redeem the property. Equity in its insistence upon the principle that a mortgage is intended merely to afford security to the lender has held an agreement which prevents redemption as void.

Lord Lindley in Stanley v. Wilde, expounded the principle as under: "The principle is this- a mortgage is a conveyance of land or an assignment of chattels as securities for the payment of a debt or the discharge of some other obligation for which it is given. That is the idea of a mortgage; and the security is redeemable on the payment or discharge of such debt or obligation, any provision to the contrary notwithstanding. Any provision inserted to prevent redemption on payment or performance of the debt or obligation for which the security was given, is what is meant by a clog or fetter on the equity of redemption and is, therefore, void. It follows from this that 'once a mortgage always mortgage'.

Doctrine of Priority: (Section 78 & 79)

The determination of the relative rights and priorities of successive assignees of the same or overlapping rights has been a serious problem for the Courts. When there are two or more competing equitable interests, the equitable maxim qui prior est tempore potior est jure (he who is earlier in time is stronger in law) applies. This means that the first in time prevails over the others.

Madras High Court in Duraiswami Reddi v. Angappa Reddi held that the prior transferee would be entitled to enforce his rights though his document is registered later and even if the subsequent transferee entered into transactions bona fide without knowledge of the first transaction. It was held that this result was implicit and was a direct consequence of the combined operation of Section 47 of the Registration Act and Section 48 of the Transfer of Property Act. It is also observed that the right of priority of the first transferee would be postpones only if the later transferee establishes any informative circumstances like fraud, estoppels or gross negligence.

Exceptions:

There are some exceptions to the above principle. They are

1) Fraud;

2) Misrepresentation; and

3) Gross Negligence.

Doctrine of Marshalling: (Section 81)

Marshalling refers in law to an arrangement. It is dealt within Section 81 of the Transfer of Property Act, India. In this there will be one common debtor who has taken loan from more than one creditor.

Suppose A being the owner of two properties mortgages both of his properties viz 1 and 2 to X. Later A mortgages 2nd property alone to Y. Here if X proceeds to realise the debt due to him by A by way of loan from 2nd property, Y can compel X to proceed first against 1 st property and then if the debt is not satisfied, to the 2nd property. Thus Section 81 of the Transfer of Property Act protects the subsequent mortgagees from prior mortgagees with respect to property mortgaged to them.

Doctrine of Contribution: (Section 82)

If several properties belonging to several persons are mortgaged to secure a debt due to taking of a loan, the law says that each property should contribute towards the debt in proportion to its value. This is called the doctrine of contribution.

This doctrine is contained in Section 82 of the law of Transfer of Property. This law refers to the scheme of rateable distribution.

If some persons takes a loan from one person by mortgaging their separate properties which may be of different values and the mortgagee/creditor realises the loan amount from only one of the properties, the owner of such property can compel the other property owner to contribute in proportion to its value for the amount realised by the mortgagee.

For example if the property X belongs to A and the property Y belongs to B, and A and B jointly executes a mortgage of both the properties for securing a loan taken from C. Later C realised the debt from property X alone. In this case B must contribute rateably in proportion to the value of his property Y. Here A can claim contribution from B.

Doctrine of Subrogation: (Section 92)

Subrogation means substitution. If the property is subject to two or more mortgages, and the subsequent mortgagee redeems the earlier mortgage, the doctrine of subrogation enables a person to stand in the shoes of an earlier mortgagee whom he has paid off and claim to be entitled to all the remedies open to that creditor respect of the securities held by him.

Subrogation is the substitution of one person in the place of another with respect to a lawful claim, demand or right against a third party, so that the substituted party succeeds to the rights of the other, or "stands in the shoes of" the other, with respect to the claim against the third party. A person's right to be subrogated to the rights of another generally arises when that person, acting pursuant to some obligation, pays the debt of the other.

The doctrine of subrogation is based on considerations of equity and good conscience and is granted as a means of placing the ultimate burden of the debt on the person who should bear it.

Kinds of Subrogation:

1) Legal Subrogation - arises by the operation of law
2) Conventional Subrogation - arises by an agreement

Doctrine of Tacking: (Section 93)

The owner of an immovable property may mortgage his property to others for securing the repayment of the loans advanced or to be advanced. Doctrine of Tacking is a special doctrine which arises in certain type of transaction during the mortgage.

In this doctrine, the owner of an immovable property can mortgage his property to other for securing the different advances made. Here the same property is mortgaged again and again.

Illustration:

A may mortgage his immovable property with B for a loan. He can mortgage the same property to other people for loans from such persons. He can again mortgage the same property subsequently with B for a fresh advancement of money. Here the rule of priority in case of realization rests with B; but only for the first advancement he made. He can claim the second advancement after the claims of other persons.

Charge: (Section 100)

Where immovable property of one person is, by act of parties or by operation of law, made

security for payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property; and all provisions in respect of 'simple mortgage' will apply to such charge.

Kinds of Charges:

1) Charges by act of parties and

2) Charges by operation of law

Floating Charge

A security (i.e. mortgage, lien, etc.) that has an underlying asset or group of assets which is subject to change in quantity and value. Corporations can use floating charges and it does not affect their ability to use the underlying asset as normal. An equitable charge on the assets for the time being of a going concern. It attaches to the subject charged in the varying conditions. It happens from time to time.

Specific Charge:

A floating charge becomes a specific charge when a receiver is appointed or possession is taken of any property compromised in the charge, or a winding up commences. It is said to "crystallize" and preferential debts thereupon become payable. Only if the company fails to repay the loan and/or goes into liquidation, does the floating charge become "crystallized" or frozen into a fixed charge. At that point the lender becomes the first-in-line creditor to be able to draw against the underlying asset and/or its value to recoup its loss on the loan.

LEASE

Sections 105 to 117 dealt with lease.

Definition: (Section 105)

Lease is a transfer or right to enjoy the immovable property for a certain time, express or implied or the perpetuing the consideration of the price paid or promised or of money a share of crop, services or any thing or value, to be rendered periodically or on specified occasions to the to the transferor by the transferee, who accepts the transfer on such terms.

The person who transfers the right is called the lessor and the person to whom the right is transferred is called the lessee. Whether an instrument operates as a lease or a licence is a matter not of words but of substance.

Section 106

In the absence of a contract or local law or usage of the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year by its six month's notice expiring with the end of a year of the tenancy, and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, by fifteen day's notice expiring with the end of a month of the tenancy.

Rights and Liabilities of the Lessor

a) The lessor is bound to disclose to the lessee any material defect in the property, with reference to its intended use, of which the former is and the latter is not aware, and which the latter could not with ordinary care discover;

b) the lessor is bound on the lessee's request to put him in possession of the property

c) the lessor shall be deemed to contract with the lessee that, if the latter pays the rent reserved by the lease and performs the contracts binding on the lessee, he may hold the property during the time limited by the lease without interruption.

Tenancy - at - Will:

A lease which is silent as to duration of term would be void as a lease, but if the lessee has taken possession, a tenancy-at-will is created. It arises by implication of law in cases where a person takes possession of the premises with the consent of the owner. It may also arise by an express agreement to let for an indefinite period for compensation accruing from day to day. The tenant in such a case is not a trespasser and his only liability is to pay compensation for use and occupation. A tenancy-at-will is terminable by either party. Ademand by the landlord for possession is sufficient to terminate his tenancy-at-will..

Tenancy by sufferance

It arises by implication of law when a person who has been in possession under a valid lease continues in possession even after the expiration of the lease without the consent of the lessor. Thus, a tenant holding over after the expiration of the term is a tenant at sufferance. A tenancy at sufferance is terminated at any time by the landlord entering without notice or demand.

Tenancy by Holding Over:

The expression 'holding over' means retaining possession. There is a distinction between a tenant continuing in possession of a property after the determination of lease without the consent of the landlord, and a tenant doing so with the consent of the landlord. The former is called a tenant by sufferance in common law. On the other hand, the latter is called a tenant holding over a tenancy at will. In fact, a lessee holding over with the consent of the lessor is in a better position than a mere tenant at will. The assent of the landlord to the continuance of the tenancy after the determination of the tenancy agreement would create a new tenancy.

If Lessee remains in possession of the Premises or any part thereof after the expiration of the term hereof with the express written consent of Lessor, such occupancy shall be a tenancy from month to month at a rental in the amount of the last monthly rental plus all other charges payable hereunder, and upon the terms hereof applicable to month-to-month tenancy.

Determination of lease: (Section 111)

A lease is determined by

(i) expiring of time,

(ii) by proper notice to quit,

(iii) by forfeiture

(iv) by merger

Determination of lease by forfeiture: [Section 111 (g)]

According to the provision, a lease of an immovable property determines by forfeiture in the following cases:

1. Breach of Express Condition
2. Disclaimer or denial of the landlord's title
3. Insolvency of the lease

This right of determination of lease by forfeiture, as defined under Section 111 (g), however, can be waived by the lessor.

Section 112 of the Transfer of Property Act, 1882 lays down the provision regarding the waiver of forfeiture.

Section 117 - Exemption of leases for agricultural purposes.

Distinction between a lease and a license

(1) A lease is a transfer of an interest in land whereas the license does not create any interest in land in favour of the licensee.

(2) A lease can sue a trespasser in his own name but a licensee cannot do so.

(3) A lease can be assigned, but a license cannot be assigned.

(4) A lease cannot be revoked until the term, but a license, subject to certain exceptions, can be revoked.

EXCHANGE

Sections 118 to 121 dealt with exchange.

In an exchange, the ownership of one thing is transferred in consideration of the ownership of the thing taken in exchange. When two persons mutually transfer the ownership of one thing for the ownership of another, either thing or both things being money only, the transaction is called an "exchange".

A transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale.

Right of party deprived of thing received in exchange: (Section 119)

If the party deprived of thing received in exchange, such other party is liable to him or any person claiming the range for loss caused thereby, or at the option of the person so deprived, for the return so deprived, for the return of the thing transferred, if still no possession of such other party or his legal representatives or a transferee from him without consideration.

Rights and liabilities of the parties: (Section 120)

Rights and liabilities of the parties are precisely those provided for the parties in a transaction of sale. Each party to an exchange has a dual capacity. He is a seller as to that which he gives and buyer, as to which he takes.

Section 121 - On an exchange of money, each party thereby warrants the genuineness of the money given by him.

GIFT

Sections 122 to 129 dealt with gift.

Gift is the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person called the donor, to another, called the done, and accepted by or on behalf of the done. A gift is complete only on acceptance by or one behalf of the done. So there can be no unilateral gift.

Parties to the Gift:

The parties in gift are known as donor and donee. The person who transfers the property by way of gift to another is known as donor. The person in whose favour property is transferred by gift is known as donee.

Elements of gift

- There must be transfer of ownership of the property
- The transfer must be of an existing property
- Both movable and immovable property can be transferred.
- The transfer must be voluntarily.
- The transfer must be gratuitous or without consideration.
- The property must be accepted by or on behalf of the person to whom it is transferred.

Revocation of Gift: (Section 126)

The following are the conditions where a gift may be revoked:

(1) that the donor and donee must have agreed that the gift shall be suspended or revoked on the happening of a specified event;

(2) such event must be one which does not depend upon the donor's will;

(3) the donor and donee must have agreed to the condition at the time of accepting the gift; and

(4) the condition should not be illegal, or immoral and should not be repugnant to the estate created under the gift. Such a gift deed can be cancelled only by resorting to legal remedy in a competent court of law.

Onerous Gift: (Section 127)

Subject to the provisions of section 127, where a gift consists of the donor's whole property, the donee is personally liable for all the debts due by and liabilities of the donor at the time of the gift to the extent of the property comprised therein. Onerous gift refers to a gift that is subject to conditions. These conditions are imposed on the recipient of the gift. Sometimes, onerous gift takes the nature of a sale because it involves the element of consideration. Some features of onerous gift are:

1. The onerous gift is subject to certain charges or obligations imposed on the donee by the donor;
2. The donee is at liberty to accept any transfer of gift which is beneficial to him/her and refuse any gift which are onerous to the donee.

'Onerous gift' is a gift made subject to certain charges imposed by the donor on the donee.

The principle behind this is that he who accepts the benefit of a transaction must also accept the burden of the same. This section, being an embodiment of a rule of equity, applies equally to Hindus and Mahomedans. For acceptance of an onerous gift, acceptance of the gift itself is sufficient; there need not be any separate and express acceptance of the onerous condition also at the same time. The acceptance of the gift will carry with it the acceptance of the onerous condition also, even though at the time of the gift the donee was not aware of such condition, specially where the onerous condition is of a trifling nature (payment of Rs. 5 as monthly maintenance to a certain person for life).

Universal Donee: (Section128)

The essential condition to constitute a universal donee is that the gift must consist of the donor's whole property. If any portion of the donor's property, no matter whether it is moveable or immovable, is excluded from the operation of the gift or the endowment, the donee is not a universal donee. This concept is embodied in Section 128 of the Transfer of property Act. Where a Mohamedan made a gift of the whole of his estate to his son and directed him to pay his debts, the son was a universal donee and he was liable to pay all debts of the donor. There is no rule of Mohamedan law which conflicts with the provisions of this Section.

Donatio Mortis Causa:(Section129)

A **donatio mortis causa** (Latin, meaning "gift on the occasion of death") is a gill. made during the life of the donor which is conditional upon, and takes effect upon, death. It is separate and distinct from both a normal *inter vivos* gift, under which title passes immediately to the transferee, and from a testamentary gift, which takes effect under the provisions of a properly executed will.

There are three requirements for a valid donatio mortis causa, the gift must have been made in contemplation of, though not necessarily in expectation of, death;

1. the subject matter of the gift must have been delivered to the donee; and
2. the gift must have been made under such circumstances as to show that the property is to revert to the donor if the donor should recover

ACTIONABLE CLAIM

Sections 130 to 137 dealt with actionable claim

Definition: (Section 3)

Actionable claim means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property.

Illustrations

(i) A owes money to B, who transfers the debt to C. B then demands the debt from A, who, not having received notice of the transfer, as prescribed in Section 131, pays B. The payment is valid, and C cannot sue A for the debt.

Notice to be in writing, signed: (Section 131)

Every notice of transfer of an actionable claim shall be in writing, signed by the transferor or his agent duly authorised in this behalf, or, in case the transferor refuses to sign, by the transferee or his agent, and shall state the name and address of the transferee.

Liability of transferee of actionable claim: (Section 132)

The transferee of an actionable claim shall take it subject to all the liabilities and equities and to which the transferor was subject in respect thereof at the date of the transfer.

EASEMENT

Definitions:

Easement is a right which one man can have in the property of another without being entitled to the ownership or possession thereof.

Easement: (Section 4)

An easement is a right which the owner or occupier of certain land possesses, as such, for the beneficial enjoyment of that land, to do and continue to do something, or to prevent and continue to prevent something being done, in or upon, or in respect of certain other land not his own. Dominant and servient heritages and owners The land for the beneficial enjoyment of which the right exists is called the dominant heritage, and the owner or occupier thereof the dominant owner; the land on which the liability is imposed is called the servient heritage, and the owner or occupier thereof the servient owner.

Indian Law on Easements:

In India, the term "easement" has a much wider cannotation than it has under the English or American Law. The Indian Easements Act 1882 deals with the provisions for easements. A right of easement is a reasonable restriction on the powers of alienation of an owner of immovable property.

Essentials of Easements:

The essential ingredients of a right of easement are as follows:

(1) There must be two tenements, the dominant and the servient;

(2) These two tenements must be owned by two different persons;

(3) The right of easement must be possessed for the beneficial enjoyment of the dominant tenement;

(4) The right should entitle the dominant owner to do and continue to do something, or to prevent and continue to prevent something being done, in or upon or in respect of the servient tenement;

(5) That something must be of certain or well defined character and be capable of forming the subject matter of a grant;

(6) The right claimed as an easement should not be so large as to amount to an interest in the land itself, as by conferring exclusive use of the property.

Classification of Easements:

1. Affirmative and negative easements.
2. Continuous and discontinuous easement Section 5.
3. Apparent and non-apparent.
4. Permanent and limited Section 6.
5. Subordinate easements Section 9.
6. Accessory easements Section 24.
7. Easement of necessity Section 13.
8. Quasi easement Section 13.
9. Natural rights or natural easements Section 7 and
10. Customary easements Section 18.

Acquisitions of Easements

The several modes in which easements may be acquired are as follows:

1. Express grant
2. Implied grant (Sections13 & 14)
3. Imparted grant
4. Presumed grant
5. Statutory prescription (Sections 15 to 17)
6. Local Custom (Section 18)
7. Transfer of dominant tenement (Section 19) and
8. Status.

Extinction, Suspension and Revival of Easements: (Sections 37-51)

How are easements extinguished? State the circumstances under which Easements can be revived.

Easements are extinguished in the following ways:

1. By the dissolution of the right of servient owner in his heritage except when it is imposed by a mortgagor in accordance with Section 10 (Section 37)
2. By release by the dominant owner expressly or impliedly. It may be released as to part only of the servient heritage (Section 38)
3. By revocation by the servient owner in exercise of a power reserved by him in this behalf. (Section 39)
4. On expiration of the limited period, it is for a fixed period or on fulfillment of the contingent condition, if it is contingent (Section 40)
5. On termination of necessity, if it is an easement of necessity (Section 41)
6. By its being useless (Section 42)
7. By permanent change in the dominant heritage, if the burden on the servient owner is thereby increased and cannot be reduced by the servient owner without interfering with the lawful enjoyment of the easement (Section 43)
8. By the permanent alteration of the servient tenement by superior force (Section 44)
9. By the complete destruction of either heritage dominant of servient (Section 45)
10. By unity of ownership i.e. when the same person becomes entitled to absolute ownership of both the heritages (Section 46)
11. By non-enjoyment for a period of 20 years (Section 47)

Suspension of easement: (Section 49)

An easement is suspended when the dominant owner becomes entitled to possession of the servient heritage for a limited interest therein, or when the servient owner becomes entitled to possession of the dominant heritage for a limited interest therein.

Easements can be revived in the following ways:

1. If it is suspended easement, it revives when the cause of suspension is removed before the right is extinguished by 20 years non enjoyment.
2. If it is extinguished under Section 46 by unity of ownership, it is revived if the grant

or bequest by which the unity of ownership was produced it set aside by a decree of a competent court except in the case of an assessment of necessity which is revived when the unity ceases from any other cause.

3. If it is extinguished because of destruction of either heritage, it is revived when the destroyed heritage is restored or rebuilt on the same site before expiry of 20 years.

Quasi Easements:

Apparent and continuous easements which are necessary for the enjoyment of the dominant tenement in the state in which it was enjoyed at the time when it was severed from the servient tenement are called Quasi easements. Before such severance they are only the ordinary rights of property and assume the character of rights of easement on such severance only provided they fulfill certain specified conditions, i.e,

i) they are apparent; ii) they are continuous; iii) they are necessary for the enjoyment of the tenement.

Easement of necessity:

Easement of necessity means an easement without which the property cannot be enjoyed at all. It does not mean an easement which is merely necessary to reasonable enjoyment of the property.

Customary Easements:

An easement may be acquired by virtue of a local custom. Such easements are called "Customary Easements"

Kinds of Customary Easements are

i) Easements of pasturage,

ii) Easements of religious observances,

iii) Easements of privacy and

iv) Easements of sports and recreation.

Distinction between Licence and Easement:

1. An easement is a right appertaining to property whereas a licence is only a personal right.
2. An easement is a right in rem but a licence is a right in personam.
3. Easement cannot be revoked at the will of the grantor, whereas licence may be revocable by the licensor at his will.
4. An easement may be heritable, but a licence generally cannot become heritable.
5. An easement is acquired either by assertive enjoyment or by a negative covenant, whereas a licence is a permissive right.
6. An easement may positive or negative in character, but a licence is always positive in character.
7. An easement can be assigned, with the property to which it is annexed whereas a licence cannot be assigned.

5. LAW OF EVIDENCE

The Indian Evidence Act, 1872 comprises of 167 sections divided in to 11 chapters under 3 parts.

Part-I deals with relevancy of facts [Ss.1-55]
Part-II deals with on proof [Ss.56-100]
Part-III deals with production and effect of evidence [Ss.101-167].

Preliminary:

Law of Evidence is a procedural code which determines what sort of facts have to be proved to establish a matter in dispute and what sort of proof is to be given and by whom and in what manner such proof is to be given. Law of Evidence regulates both civil as well as criminal trial.

The fundamental rules of evidence are:

1. Evidence should be confined to the facts in issue,
2. Hearsay evidence should not be admitted i.e., hearsay evidence is not an evidence, and
3. Best evidence rule or best evidence must be given in all cases.

RELEVANCY

Facts in issue [Sec.51]
It means matter in controversy.

Relevant facts which may be
- facts connected with the facts in issue [Ss.6-16]
- Admissions and confessions[Ss.17-31]
- Statements by persons who cannot be called as witnesses [Ss.32-33]
- Statements made under special circumstances [Ss.34-39]
- Judgments in other cases [Ss.40-44]
- Opinions [Ss.45-51]
- Character [Ss.52-55]

Doctrine of Res-Gestae:

It means “the thing done, a subject matter, a transaction or essential circumstances surrounding the subject”. It is things done including words spoken, forming a part of the same transaction.

R vs Foster, [1941] SC 363

The accused was charged with manslaughter for killing a person by driving over him. A witness saw the vehicle at a high speed, but did not see the accident. On hearing cries of the victim, he reached the spot. The victim died after making statement as to cause of the accident. The statement was held to be admissible.

Identification parade [Sec.9]:

Identification is an important process in the administration of justice. Identification parades are held for the purpose of identifying the properties, which are subject matter of an offence or persons concerned in an offence.

Conspiracy [Sec.10]:

Where there is reasonable ground to believe that two or more persons have inspired together to commit an offence or an actionable wrong, then anything that is said, done or written by any one of the conspirators with reference to a common design, can be used as an evidence against all other conspirators.

L.K.Advani vs C.B.1. [1997] Cr.L.J 2559.

C.B.I. seized certain diaries from the residence of one S.K.Jain. The entries in the diary showed that a payment of Rs. 60 lakhs has been made as an illegal gratification to Mr.L.K.Advani for pursuing the award of Govt. contract to foreign bidders. The court refused to accept the diary as a piece of evidence against Advani, on the ground that, the prosecution had failed to prove primafacie case of conspiracy and there is no evidence to show that the entries were made only in reference to a common design.

Alibi [sec.11]:

Facts not otherwise relevant are made relevant-

- if they are inconsistent with any fact in issue or relevant fact
- if by themselves or in connection with other facts they make the existence or nonexistence of any fact in issue or relevant fact highly probable or improbable.

Admissions and confessions [Ss.17-31]:

Admission:

Admission means acknowledgement of existence or truth of a particular fact. The statements made by the parties during judicial proceedings are 'self regarding statements'. It is of two types:

1. Self-serving statements; and
2. Self-harming statements.

Sections 18-20 of the Act lay down the provisions relating to persons competent to make admissions.

1. Parties to the suit,
2. Authorized agents of the parties expressly or impliedly assigned,
3. Persons having proprietary or pecuniary interest in the subject matter of the suit, and
4. Persons from whom the party to the suit has derived his interest.

Confession [Sec 22]:

If a person accused of an offence makes a statement against himself, it is called confession. The confession made to a police officer cannot be proved against the accused person. "all confessions are admissions, but all admissions are not confessions".

A person may be convicted on the basis of his confession enshrined in two latin maxims such as:

1. Confession in Judicio Omini Probatione Major Est:

It means 'confession in judicial proceedings is greater than any other proof'.

2. Confession Facta in Judicio Est Plena Probatio:

Confession is the absolute proof'.

Sitaram vs State [1996] Supp. S.C.R. 265

The accused after commiting murder left a confessional letter on the dead body. The letter was addressed to police officer. The court treated the letter, not addressed to police, since police officer was not nearby. The confession was admitted and the accused was convicted.

Dying declaration: [Ss.32 and 33]

A dying declaration is a declaration written or verbal made by a person, as to the cause of his death or as to any of the circumstances of the transaction, which resulted in his death.

Sec 32 makes relevant statements made by person.

1. Who is dead,
2. Who cannot be found,
3. Who has become incapable of giving evidence, or
4. Whose attendance cannot be procured without unreasonable delay or expenses.

Dying declaration is of the utmost importance and the evidence as to it should be exact and full. The general Ie is that hearsay evidence is no evidence and is not admissible in evidence. But Ss.32 and 33 are exceptions to it.

Moti Singh vs State of U.P, [A.I.R. 1964 SC 900]

It was held in this case that, if the person survives, his statement cannot said to be the statement as to cause of his death.

Pakala Narayana Swamy vs Emperor [A.I.R. 1939 PC 47]

The accused Pakala has borrowed a sum of Rs. 3000/- from the deceased. The deceased received a letter from the accused's wife asking him to come down to Berhampur to collect the money. After 2 days, his dead body, cut in to seven pieces, was found in a trunk in a railway compartment. After investigation the accused was arrested and he was tried for murder. At the trial the statement made by the deceased to his wife, while showing the letter, that he is proceeding to Berhampur to collect money was held to be admissible as dying declaration.

The Privy Council was of the opinion that this statements related to the circumstances that he was proceeding to the spot where he was killed, that he was invited by a particular person and all those constituted circumstances that brought about his death and are therefore admissible as dying declarations.

Judgments: [Ss. 40-44]

Ss. 40-44 lays down the provisions relating to judgments of court of justice, when relevant judgments are categorized it to 2 types:

1. Judgments in rem;and
2. Judgments in personam.

For the application of sec.41 , the following conditions are to be satisfied:

1. It should be final judgment and not an interlocutory one,

2. The court must be competent,
3. The judgment must be in exercise of any of following jurisdictions namely; probate, admiralty, matrimonial and insolvency,
4. Such judgment must confer upon or take away from any person any legal character or declare that any person is entitled to any specific thing absolutely.

Opinion of experts: [Ss. 45-51]

An expert is a skillful professional in particular field viz., art or trade, foreign law, identity of hand writing and finger expressions etc. the expert opinion is only a piece of evidence and cannot be taken as substantive evidence since it is to be judged along with the other evidence.

Mubarak Ali vs State of Bombay [A.I.R. 1957 SC 857]

The Supreme Court laid down that a witness must confine himself to the facts and not to the state of his opinion.

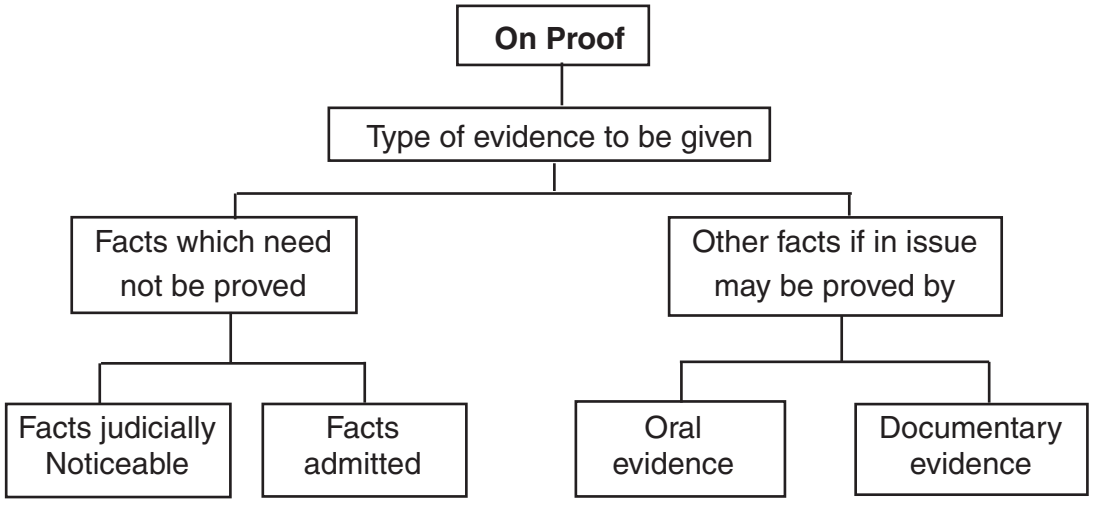
Relevancy of character: [Ss.52-55]

In civil proceedings, the evidence of good character or bad character is not relevant except in cases where such a bad conduct is itself a fact in issue in that particular case. In civil cases whenever damages are claimed, if evidence of character is likely to affect or mitigate such damages, the evidence of character becomes provable and not otherwise.

In criminal proceedings, the previous bad character of the accused is not relevant except under the following circumstances.

1. Where the accused himself comes forward and gives evidence of his good character and challenges the prosecution to prove his bad character, then as a reply to his challenge, the prosecution can let in evidence to prove the bad character of the accused.
2. Where the character of the accused itself is in dispute then evidence regarding bad character may be placed.
3. If the accused person has already been convicted for some other cases, the previous conviction can be used as an evidence for enhancement of punishment under section 75 of I.P.C.

Burden of Proof:



Whenever a party approaches the court for redressal for any injustice done to him, he release upon certain facts to claim his legal; right. Then, a question arises before the court is, who has to prove these facts, whether the plaintiff or the defendant?

In other words on whom the burden of proof shall lie. The burden of proof signifies on obligation imposed on a party to prove a fact. The general rule is who ever approaches the court to get a judgment in his favour, relying upon certain facts, he has to prove those facts. Whenever some facts which are within the special knowledge of a party and places as evidence, then the party who has such special knowledge should prove it.

Whenever an accused person pleads that his action does not constitute an offence, and his activities squarely fall within the general exceptions, that it is for the accused to prove that he comes within the general exceptions.

Where there is a question whether a man is alive or dead and if it shown that he was alive with in a period of 30 years, the burden of proving that he is dead is on the person who affirms it. On the other hand, if it is proved that he has not been heard for 7 years by those who would naturally have heard of him if he had been alive, the burden 0 proving that he is alive is shifted to the person who affirms it.

Estoppel:

When a person tells us something we generally hear him. If he says something different or contradicting, we would not hear any more and contradict such statement. This principle is enshrined in the maxim:

" **Aligans Contraria Non Est Audiendus**" which means "a man alleging contradictory facts ought not to be heard".

The principle of estoppels was laid down in the case of -

Pickard vs Seers [1832 A and E 469]

A was the owner of machinery. A allowed his friend, B to be in possession of the machinery. C obtained a decree against B and seized the machinery for which A did not raise any objection immediately. Later, C sold the machinery to other persons. Then, A raised an objection and sued C for getting up his title. The suit was dismissed on the ground that C cannot be stopped from sale. The doctrine is based upon 3 moral principles namely;

1. No one can blow hot and cold in the same breath.
2. No one can take the advantage of one's wrong.
3. No one can accept and reject at the same time.

M.P.Sugar Mills vs State of U.P [A.I.R. 1979 SC 621]

The Government through the Chief Secretary announced categorical assurance for the total exemption from the sales tax. Basing on this promise, the defendant setup a hydro generation's plant by raising huge loan. Later, the Government challenged its policy and announced the exemption of sales tax at 3, 2.1/2 and 2 for the 1 S\ z= and 3rd years respectively. The tax exemption was completely withdrawn latter, when the defendant's factory started its production. The Supreme Court held that the Government is bound by its promise and directed to give exemption to the defendant's company.

Privileged communication: [Ss. 122-132]

The expression 'privilege' means 'a peculiar advantage or some special benefit conferred by virtue of sex or one's position'. Such persons are immune from liability or privileged. Any statements made by such persons is said to be privileged communication. Following are the instances of privileged communication.

1. Communication during marriage [Sec.122]
2. Evidence as to affairs of state [Sec.123]
3. Official communication [Sec.124]
4. Information as to commission of offences [Sec.125]
5. Professional communications [Sec.126]

T.J.Ponnen vs M.C.Verghese [AIR 1970 SC 1876]

The defendant i.e., husband of the plaintiff's daughter addressed a letter containing defamatory matter to his wife about the father i.e., plaintiff. Plaintiff noted the defamatory contents through his daughter i.e., wife of the defendant. In an action by the plaintiff against the son-in-law i.e., defendant the Kerala High Court held that suit was not actionable. But the Supreme Court reversed the above decision on the ground that if the communications between husband and wife have fallen into the hands of third person, they can be proved in any other way.

Examination of witness: [Ss.135-166]

Examination of witness consists of the following stages:

1. Examination-in-chief
2. Cross examination
3. Re-examination

Leading questions: [Ss.141-143]

Leading question means "a question, which by itself suggests the answer as expected by the person asked the same". The court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved.

Leading questions can be asked in cross-examination. They cannot be asked during chief examination or re-examination if they objected to by the adverse party except with the permission of the court. Indecent, scandalous questions intended to insult or annoy the witnesses shall not be asked.

Hostile witness: [Sec.154]

The word 'hostile' literally means "unfriendly". A witness is generally expected to give evidence in favour of the party by whom he is called. But in certain cases such witness may unexpectedly turn hostile and gives evidence against the interest of the party, who has called him. He is known as "adverse witness" or "unfavourable witness".