

① India / Man<sup>n</sup> needs lot of  
influence

② in 60% of S<sup>n</sup> combat is real  
S<sup>n</sup> level

1.0. Constitution is a document which gives details about the set up of a government, about the nature of polity, rights and liabilities of its citizens, etc.

However it is the constitutionalism which place limitations on arbitrary power.

~~Constitution is~~ antithesis to  
arbitrary power :-

**De Facto IAS**  
R.C. Podyal v UOI

In this case it was held that merely having constitution doesn't ensure that a polity is governed by Rule of law. Constitutionalism is what ensures the limitations on arbitrary power.

Ram Jethmalani v UoI :-

In this case, it was held that constitutionalism ensures that all the organs of the Government function well within their limitations.

Mam Ram v UoI :-

It was held that Indian Constitution inherently includes constitutionalism as it imposes various limitations on arbitrary use of power.

Dictatorships can also have constitution but they don't have constitutionalism & this is the reason why those countries are called Dictatorships-

3.b.

The concept of Rule of Law was put forward by A.V. Dicey.

The concept of Rule of Law emphasises the following:-

- i) No one is above law.
- ii) All are equal in the eyes of the law.
- iii) Everyone must be subjected to common law courts of the country.

Cy Sphai

~~Rule of Law~~ The Annotations adopted

A.K. Gopalan v State of Madras :-

In this case, the annotation adopted was that we follow the doctrine of Procedure established by law wherein only arbitrary executive action is subject to law & not arbitrary legislative action.

Maneka Gandhi v UOI :-

Here it was held that 'due process of law' is part of Article 21 of Constitution & so arbitrary legislative Acts are also subject to law.

However other con-  
stitutions were adopted from  
time to time as follows:

Anwar Ali v State of West Bengal

It was held that Rule of law  
which promotes equality has  
another facet i.e. the classification  
on basis of intelligible differen-  
tia.

Thus the concept of positive  
discrimination was introduced.

Some exceptions to Doctrine of Rule  
of Law

- 1) Privileges to President & Governor  
    u/a 361 of Constitution
- 2) Privileges to Judges, etc.

Thus Rule of Law promotes  
equality as guaranteed u/a 14 of Constitution

1.c. Preamble of Indian Constitution have been regarded as introduction to our Constitution. Preamble states the following:-

- 1) Source - The People
- 2) Nature of Polity - Sovereign, Socialist, Secular, Democratic, Republic
- 3) Ideals to Secure - Justice, Liberty, Equality, Fraternity
- 4) Date of Adoption - 26<sup>th</sup> Nov, 1946

### Utility of Preamble :-

1) It reinstates the idea that our polity is democratic one as power is from people so it checks dictatorial tendencies.

2) It helps in assessing if the Acts or actions of legislature and executive conforms to the ideals mentioned in Constitution.

*Sujin Sait*

3) Preamble gives short hand inputs on ideals reflected in the Constitution, so it helps in understanding Constitution.

4) Whenever there is any doubt regarding any provision of Constitution, Preamble helps in giving meaning to the provision.

5) Preamble being a part of Constitution as held in Keshav Nanda Bharti case & U.C. v Consumer Research Org. case helps in promoting constitutionalism & Rule of law.

Thus Preamble must in all sense be regarded as important as any other provision of the Constitution.

1-d. Article 14 of the Constitution deals with 2 concepts -

- a) Equality before law
- b) Equal Protection of law

Equality before law promotes that all are equal in the eyes of law while equal protection of law states that the likes should be treated alike & vice-versa.

Article 14 provides Positive Equality & Not Negative Equality

The positive equality has to do with the concept of equal protection of law - as it states that all those people who are similarly situated should be treated similarly.

Positive equality prohibits discrimination among those who are similarly placed.

Anwar Sarkar v State of West Bengal

In this case the concept of intelligible differentia was developed to promote positive equality.

Example: The special provision made for women under article 15 of the Constitution are the corner stones of positive equality as women are now not differentiated among themselves.

Thus Article 14 doesn't promote negative equality.



i.e. Public Interest Litigation (PIL) is a tool in which legal action is initiated in a court of law in which general public interest is involved which deals with rights & liabilities of the parties.

PIL is a tool of strengthening Democracy;

Democracy is very wide form is referred to as Rule for the people, of the people & by the people. Here

PIL ensures the idea of 'Rule for the people' as can be seen from following cases:

Case: Minid labour case:

In this case, the labourers/workers were not given minimum wages & they were sleeping on

road. Court by entertaining PIL held that labourer workers were entitled to minimum wages. ✗

Law - S.P. Gupta v UoI :-

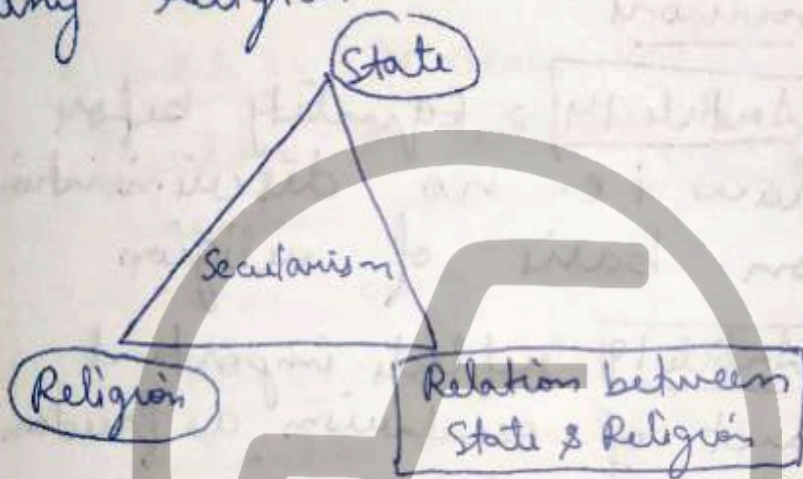
Court held that persons who are unable to approach court because of poverty, their rights are secured things. ✓  
PIL.

Law - M.C. Mehta v UoI :-

PIL regarding environment protection was entertained & was swiftly acted upon. ✓

Thus, PIL has led to promotion of democracy, there is not any doubt about it, but it is now a days used for Private Interest Litigation, so it needs to be checked.

2.a. Secularism in Indian sense means that state is neither anti-religion nor state will promote any religion.



Keshavnanda Bharti v State of Kerala :-

It was held that secular character of our polity is the basic str. feature of our constitution.

The word secular was added to preamble by 42nd Constitutional Amendment Act. But even before that

India was a secular entity as the minds of constituent makers can be understood from following provisions.

1) Article 14 → Equality before law i.e. no discrimination on basis of religion.

2) Article 19 reflects important fact of secularism as freedom of speech & expression is necessary to express secular ideas.

3) Article 21 which deals with life & personal liberty promotes idea of secular ~~beliefs~~ state.

4) Article 25-28 → These articles deal with freedom of religion and are the corner stone of secularism in India.

a) Article 25 :- It states that every ~~also~~ person has right to freely practice, propagate one's own religion.

b) Article 26 :- It deals with freedom to establish & maintain religious institutions of one's own choice.

c) Article 27 :- It deals with prohibition of religious instructions in certain institutions.

d) Article 28 :- It deals with freedom from payment of taxes for promotion of certain religions.

5) Article 32 :- It is corner-stone of secularism as when any of rights mentioned above are infringed persons can directly approach Supreme

Court u/a 32 of Constitution.

Case: St. Xavier College v State of Gujarat

In this case it was held that even though the word 'Secular' has nowhere been mentioned in the Constitution, yet the secular character is embedded in the Constitution.

This secularism which embodies **De Facto IAS** on liberty, equality & separation of state from religion is deeply rooted in Indian Constitution.

*Correct*

g. b. Article 12 of the Constitution defines state as under:

1) Government and Parliament of India i.e. Executive & legislative Authority of Union.

2) Government & State legislature i.e. Executive & legislative Authority of State.

3) All local & other authorities within India.

4) All local & other authorities under control of Government.

The word Other Authorities explained:

Case:- Sharda Bai v University of Madras

In this case it was held that the word 'Other authorities' means authorities of like nature i.e. ejusdem generis.

Case: Rajasthan State Electricity Board v Mohan Das

Here it was held that other authorities includes authorities created under a statute or Act or created by Government or exercising Government functions.

Case: R.D. Shetty v Int. Airport Authority

Here in this case it was held that if a body is an agency or instrumentality of State Government, then it is State under article 12 of Constitution.

Case: Jay Hara v Khalid Mujib

For an agency to be called a State under article 12, following needs to be seen:

- 1) If financial resources of State is chief funding source.



- 2) If there exists deep pervasive state control.
- 3) Functional character is governmental in essence, etc.

Organisations which were called state or not:

Mohian Khanna v NCERT:

It was held that NCERT is an autonomous organisation & not a state  $\forall$  12.

BCCI v <sup>Cricket Association</sup> State of Bihar:

It was held that BCCI is a registered society & not a state  $\forall$  12 of constitution.

Pradeep Kumar Biswas v Inst. of Chemical Biology -

It was held that CSIR is an instrumentality of state.

This is how judiciary has shaped the concept of state  $\forall$  12 of Constitution.

W

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2.c. Article 39A of Indian Constitution deals with the concept of Free legal aid. To give wings to this idea, National Legal Services Authority Act, 1987 was enacted. It

provides for the following setup.

- a) National Legal Services Authority wherein Chief Justice of India is the patron in chief.
- b) State Legal Services Authority wherein Chief Justice of High Court is the patron in chief.
- c) District Legal Services Authority wherein District Judge is the patron in chief.

The concept of legal services

Authority & free legal aid was put forward by Justice Bhagwati.

### Main features of legal services

#### Authority Act are:

- 1) Free legal service is provided to the people with an income bar.
- 2) No income bar is placed in case of -
  - a) Women,
  - b) SC/ST
  - c) Physically Handicapped people
  - d) Children, etc.
- 3) Act has provision for providing a lawyer to the person who cannot arrange his own lawyer.
- 4) Any support in any suit or criminal case at any

stage is provided for people dispensation of justice.

5) witness Deposition Rooms are recently been highlighted. (L)

6) Vulnerable Victim Deposition Scheme has been popularised under Act. (L)

like Adalat is an important concept popularised under it.

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This, there are some of the main provisions of the legal services authority Act.

(6)

work done

(L)

5.a.

The doctrine of Eminent Domain gained popularity soon after the Independence when the private land of the people was required for public purpose.

The concept of Eminent Domain emphasises that all the land belongs to state and for the welfare of general public, state can take that land from the people and in return appropriate compensation can be given by the state.

Law :- Kameshwar Singh v State of Bihar

It was held in this case that if state takes away

land of any person for any public purpose, state must give proper compensation to that person.

Has Doctrine lost its relevance today?

No, the doctrine has not lost relevance today as

i) Government has enacted Right to Rehabilitation and Fair Compensation Act to appropriate compensate the aggrieved person.

ii) Section 41A & H of Specific Relief Act has been used whereby power of civil court is taken & it is High Court who is to decide the issues.

iii) District Collector has been given power to deal with compensation matters.

Thus doctrine is still relevant.

56.

Supreme Court of India is the federal court of India and its independence is of prime importance.

Provisions ensuring Independence of Supreme Court:

i) Supreme Court Judges have security of tenure.

ii) The number of judges, their age, service conditions cannot be reduced by Parliament.

iii) The salaries of the Supreme Court judges are charged on the Consolidated Fund of India i.e. they are not subject to Annual vote of Parliament.

iv) Judges are mostly appointed by collegium system which

ensures the independence of judiciary.

v) Supreme Court Judges are in no way part of executive or legislature, thus there is separation of power & functions.

vi) There is bar on practice of judges after retirement.

Independence of Supreme Court ensures effectiveness of democracy & these provisions ensure independence of Supreme Court.

5



5.C.

Article 21 of Indian Constitution deals with Life & Personal Liberty. Supreme Court has in number of judgements elaborated the concept of Right to life & Personal Liberty.

Right to Die with Dignity:

The debate regarding right to die is age-old & Supreme Court has evolved on the issue in number of cases as under.

P. Ratinam v UOI:

In this case, court held that person has right to die & it forms part of Articles 21 of Constitution.

Case: Gian Kar v State of Punjab

In this case, court held that right to life doesn't include right to die as life is a precious thing.

Case: Common Cause Registered Society v UOI

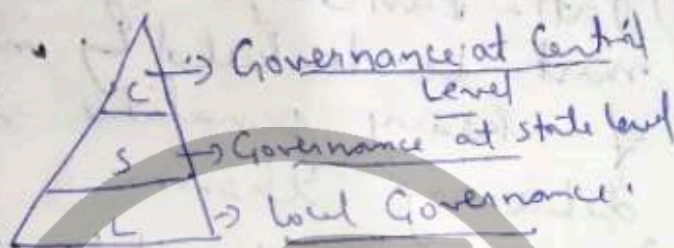
Court held that person has right to die with dignity. It is part of liberty & personal freedom. Patient deserves to die with dignity, thus court allowed passive euthanasia for terminally ill patient. Same was held in Anura Shambhu case.

Thus, right to die with dignity is under Rt. to life & Personal liberty.

~~Break in all para~~

4 1/2

5-d. Local Governance is the grassroot of Indian democratic set up.



73rd & 74th Constitutional Amendments strengthened the local Governance as they added Part IX & IXA which added Panchayats & Municipalities. Later Cooperative Societies were also added & made part of Part IX B.

Measures to Constitutionally Revitalise Local Governance.

1) Local Governance suffers badly from lack of funds. So, there should be constitutional backing of funds allotted to

Panchayats & Municipalities &  
it must be some minimum  
share of GDP.

ii) Pati-Panchayat syndrome  
must be tackled by imposition  
of heavy penalties like  
debaring them.

iii) More funds should be there  
for panchayats who are  
well performing.

iv) A model Panchayat should be  
set up which should act  
as a model.

v) Constitutionally Panchayats &  
Municipalities & even Cooperative  
Societies should be given priority  
for implementation of new  
schemes.

There are some  
measures for revitalising the  
Local Governance.

5.e.

legislative Power is divided between centre & state by the Constitutional provisions.

Main provisions of division of legislative Power between centre & state are:

1) Art. 245 of Constitution states that Parliament shall enact for whole of India and state legislature shall enact for respective states. Parliament even have extra-territorial powers.

2) Art. 246 of Constitution states that Parliament shall legislate w.r.t subjects in Union list, State legislature shall legislate with respect to subjects in State list & both Parliament

2) State legislature shall legislate with respect to Concurrent list

3) Parliament shall have Residuary power i.e. if any subject is not covered under any list

4) In case of supremacy under article-254, Parliament's Act will override state law subject to condition that state law has not received President's assent

5) De Facto IAS 5  
Parliament by 2/3rd majority has made any law for any state.

6) During emergency, Parliament enacts for states.

These are broad provisions under constitution governing legislative power division between states & Union

6-a

The office of Governor is a constitutional office. Article 153 of Indian Constitution talks of single Governor for number of states.

Governor is an independent judicial officer & is not subject to the control of Government.

Law's [Harjot Singh Pant v R. Tilak] :

It was held in this case that Governor is not an employee of the Government nor agent of any political party nor required to act on behalf of any party.

Governor has political constitutional obligations.

Law - [S.R. Bommai v UoI]

In this case it was held that Governor is not expected to fulfil any political mandate. He has to stay apolitical. He has to oblige to constitutional loyalty.

However despite these judgements it is mostly noted that governor ~~ob~~ mostly obliges to central government's instructions & if he fails to then he has to suffer.

Law: [B.P. Singh v UoI]

It was held in this case that Governor can be removed at any time without giving...



any notice to him. However, ordinarily he should office for a term of 5 years.

~~Trust~~

It is because of such issues, Punchi Commission recommended that 'Pleasure of President' in Governor's appointment & removal must be removed & instead he should be removed by State Legislature to ensure complete independence of the Governor.

Thus in the light of the above judgements it can be said that the office of the Governor

is an independent Constitutional  
office which is not subject  
to control Government of  
India but in reality  
Governor functions under  
Government & if he fails  
to do so, he is removed  
as he is under Pleasure  
Doctrine of Presidents

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6.6.

Article 19(1) of the constitution deals with freedom of speech & expression & many other rights.

1) Art-19(1)(a) deals with freedom of speech & expression.

2) Art-19(1)(b) deals with freedom of to assemble peacefully and without arms.

3) Art-19(1)(c) deals with freedom of association.

4) Art-19(1)(d) deals with freedom of movement in India.

5) Art-19(1)(e) deals with freedom to reside & settle in India.

6) Article 19(1)(g) deals with freedom of profession or carry any trade, business, occupation.

a) Freedom of Speech & Expression:

It includes freedom to express one's opinions & opinions of others even through internet.

Case: Anuradha Bhasin v UOI:

It was held that freedom of trade through internet is part of freedom of speech & expression.

Case: R. Rajagopal v State of Tamil Nadu

This is Anubhakar case & held that right to publish biography of other persons based on information in public is part of freedom of speech & expression.

Thus freedom of speech & expression, Art 19(1)(a) includes freedom of press, commercial aids, etc.

Law: Romesh Chappan v St of Madras :-  
Court held that restriction on  
press leads to restriction on  
freedom of speech & expression.

Law: Tata Press v MTL :-

① Court held that commercial  
aids are part of the  
freedom of speech & expression.  
Thus, art. 19(1)(a)  
opens a wide gambit of  
many other rights related  
to freedom of speech &  
expression.

② State not denied

6-c. Art. 29 of Indian Constitution states that any section of citizen having distinct culture, language, script etc shall have right to protect that.

Article 30 of Indian Constitution states that minority whether linguistic or religious shall have right to set up & administer educational institutions of their choice.

Law :- St. Stephens College v DU

Right to select students is an important part of administration & is inherent

in Article 30

However right to administer educational institutions doesn't include right to maladminister.

Case: T.M.A. Pai Foundation v State of Karnataka

Court held that Universities cannot regulate admission policy of minority institutions. However general guidelines can be provided so that these institutions do not maladminister.

Case: Shandana Das v State of West Bengal

Fundamental right of minority institutions  $\frac{1}{2}$  30(1) to administer educational

institutions cannot be wived off. However if there are evidences of mal administration, then appropriate actions can be taken.

But in no case it to administer educational institutions cannot be taken as just to mal administer same.

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mal  
Admin



8-a. Article 74 of Indian Constitution states that there shall be Council of Ministers headed by Prime Minister to aid & advise the President.

Law :- Ram Jawaya v State of Punjab

It was held that Council of Ministers shall always exist.

Our Constitution takes of collective responsibility of executive to the legislature i.e. Prime Minister & his Council is collectively responsible for all their acts to the legislature.

It means that legislature has power to remove the executive in certain cases.

The principle of collective responsibility of CoM to Lok Sabha is stated in Article 75(3)

Case: SP Anand v Deve Gowda

In this case it was held that the principle of collective responsibility binds even PMs who are not MPs.

Case: JDA v Daulat Mel Jant

It was held in this case that each minister

shall be individually & collectively responsible to the legislature.

Case:- Common Law Case:

It was held that misfeasance by ministers only unlawful. There are no tortious damages.

In number of cases, it has been held that Council must always exist to advise President and all Ministers of Council along with PM shall be responsible to Lok Sabha.

9/2 Council

8.6. Article 124(2D) deals with the appointment of judges of Supreme Court. Judges are appointed by the collegium system which got originated in Second Judges Case i.e.

SCORA v UOI:

In this case it was held that Chief Justice of India <sup>(CJI)</sup> must consult ~~De Facto~~ senior most judges before recommending names of judges to be appointed.

In Third Judges Case, it was held that CJI must consult 4 senior judges of SC before recommending names of judges to be appointed. Any judge could veto.

Issue of National Judicial Appointments Commission (NJAC).

It was set up for appointment of judges. It included 3 members from judiciary & 3 from Government. But this act was struck down.

Issue with Present System:

- 1) Non-transparent
- 2) Nepotism
- 3) Sometimes seniority not preferred
- 4) Biased.

Need for Reforms of Collegium System

Collegium system needs reforms because:

- 1) In name of independence, transparency is being compromised.

NJAC prefer  
Collegium

2) Merit is often not rewarded & many a times the sons & daughters of judges are promoted.

3) The convention that senior must be promoted is many a times jumped over without giving any reason.

4) To instill stronger confidence in judiciary it would be better if any independent organisation is allowed to appoint judges.

This reform of collegium system is now just matter of time before its actually done & it is also need of the time.

7

8-c.

Disqualification of Members of Parliament is dealt under Representation of People's Act <sup>RPA</sup> 1951 & also under Schedule X of Constitution which deals with Anti-Defection Law.

Main Provisions relative to disqualification of Members of Parliament under RPA, 1951 are:

- 1) A person who is involved in corruption, slavery, crimes against women, etc.
- 2) A person who is convicted in a crime & sentenced to imprisonment of more than 2 years.

Under Article 102 of Constitution person can also be disqualified to be member of Parliament under following conditions:

- 1) if he holds any office of Profit under any Government.
- 2) if he is an undischarged insolvent.
- 3) if he is of unsound mind & is declared so by competent court.

**De Facto IAS**

4) if disqualified under any law of Parliament.

Under X Schedule of Constitution dealing with Anti-Defection person can be disqualified to be member of Parliament. Main provisions are:

- 1) if an elected member of one party joins another



party.

(ii) If nominated member joins any political party after 6 months expiry.

(iii) If any independently elected member joins any party.

Is Anti-Defection Law against Democratic Principle?

The question if anti-defection law is against democratic principle is subject to debate but why this law?

It is important - is clear as it would control horse trading & buying & selling of Ministers & it would provide stability to Government thus in my opinion anti-defection law strengthens the democracy. (6)