

UNIT – II

Lesson 4

PHILOSOPHY OF INDIAN CONSTITUTION

The Constitution of India

Constitution of India is an important document which is fundamental to the governance of the state. Constitution of the Indian Republic is the product not of political revolution but of the research and deliberations of a body of eminent representative of the people who sought to improve upon the existing system.

Philosophy of Indian constitution

Resolution was passed at the Karachi session of the Indian National Congress in 1931. Stated that in order to end the exploitation of the masses, political freedom must include the real economic freedom of the starving millions. State was to safeguard the 'interest of industrial workers' ensuring that 'suitable legislation should secure them a living wages, healthy conditions limited hours of labour and protection from the economic consequences of old age, sickness and unemployment'.

The historic objectives resolution was moved by Pandit Jawahar Lal Nehru on December 9, 1946 and was subsequently adopted by the constituent assembly on 22 January 1947 for shaping of the constitution through all its subsequent stages.

Constitution consists of three parts

1. The Preamble
2. The fundamental Rights
3. Directive principles of state policy

1. Preamble:

Preamble of the Indian constitution states that the people of India have solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR Democratic Republic to secure to all its citizens.

- A. Justice, Social, economic and political Liberty of expression, belief, faith and worship.
- B. Equality of status and of opportunity and to promote among them all.
- C. Fraternity assuring the dignity of the individual and integrity of the nation.

Preamble of a statute conveys the general objectives and intention of the legislature in enacting it. Preamble expresses the political religions and socio-economic values which it envisages to promote. But it does not control the meaning and scope of other previous provisions of the constitution. However, the Preamble may be a guide when the statute is vague. Preamble of the Indian constitution contains the attainment of social, economic and political justice and equality of status. The constitution was amended in 1976 to add that 'India should be a socialist state'. Early December 1954, Indian parliament had accepted the socialist pattern of society as the objective of social and economic policy. So it was incorporated in the Preamble to the constitution in 1976 under the controversial 42nd amendment.

Fundamental Rights: The Indian constitution offers all citizens- individual and collective the best fruit of democracy and the basic freedom and conditions of life which important & productive.

The theory of fundamental rights implies limited government. It aims at preventing the government and the legislature from becoming totalitarian and in doing so; it affords the individual opportunity for self development. But these rights are not absolute, they are subject to limitations imposed by the state in order to secure rights for all individuals or to promote the greater interest of community or the state or to serve the ends of planned society.

Rights:

1. Rights to equality
 2. Rights to Freedom:
 - Freedom of speech and expression
 - Freedom to assemble peacefully and without arms
 - Freedom to form associations or unions
 - Freedom to move freely throughout the territory of India
 - Freedom to reside and settle in any part of the territory of India
 - Freedom to practice any profession or to carry on any occupation, trade or business
 3. Rights to freedom of Religion
 4. Rights to cultural and educational freedom
 5. Rights against exploitation
 6. Rights to constitutional remedies
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1. Rights to equality for ex prohibits discrimination against citizens on the grounds of religion, race, caste, sex or place of birth. In public employment it ensures equality of opportunity to all citizens. However subject to curtains limitations or right of the state to reserve posts for backward classes.

2. Rights to Freedom to practice any professions, carry on any occupation, trade or business subject to reasonable restrictions in the interest of the general public.

The constitution guarantees the citizens to the fundamental rights of freedom to take up any job or carry on any trade or business.

Freedom of profession is exceptional in three cases:

- (a) Public interest
 - (b) Requiring technical or professional qualification
 - (c) When a state itself decides to engage in any trade or occupation the individual freedom is restricted.
3. Right against exploitation prohibits the exploitation of the worker sections of society by individual as well as by the state. Prohibits traffic in human beings and forced labour. Any contravention of this provision shall be an offence punishable in accordance with the law that a child below the age of 14 years shall not be employed to work in any factory or mine.

Thus, the constitution guarantees different economic rights to the citizens but at the same time state has the power to impose reasonable restrictions on the rights in the interest of public connected with statutory. Control over the business and substantial expansion of the entrepreneurial.

Directive principles:

The Directive principles are in this nature of directions to the legislature and executive that they should exercise their authority to ensure due respect.

The court cannot altogether avoid taking cognizance of them. Directives are not justice able; they are imperative basis of state to apply principles in making laws.

1. The duty of state is to promote the welfare of the people by securing and protecting effectively as a social order in which justice, social, economic and political situation has to be informed to all the institution of the national life.
2. Strive to minimize the inequalities in income and endeavor to eliminate inequalities in status facilities and opportunities not only among individuals but also amongst groups of people residing in different areas or engaged in different vocations.
3. The duty of state to direct its policy for securing:
 - (a) The citizens, men and women equally have the right to an adequate means of livelihood
 - (b) The ownership and control of the material resources of the community are distributed as best to sub-serve the common good.
 - (c) The operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.
 - (d) Equal pay for equal work for men and women

- (e) The health and strength of workers men and women and the tender age of children are not abused and citizen are not forced by economic necessity to enter a vocation unsuited to their age or strength.
 - (f) Children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity.
4. The duty of state to ensure the operation of the legal system promotes justice on basis of equal opportunity and provides legal aid by suitable legislation of schemes.
 5. State will be responsible to organize village panchayat and endow them with powers to functions on units of self government.
 6. Within the limits of state economic capacity and development, the state will make effectives provision for securing the right to work, to education and to public assistance in cases of unemployment old age sickness and disablement and in old other cases of under served wants.
 7. State will be responsible for making provision just and human conditions of work and for maternity relief.
 8. State will also be responsible to promote cottage industries on an individual or co-operative basis in rural areas.
 9. State will be responsible to take stage through legislation to secure the participation of workers in the management of undertakings, establishment or other organization engaged in any industry.
 10. The duty of state will be to promote special care of educations and economic interest of the weaker sections particularly scheduled castes and scheduled tribes.
 11. The state will provide efforts to organization agriculture and animal husbandry on modern and scientific lives and prohibiting the slaughter of cows and calves and drought cattle.
 12. State will give efforts to protect and improve the environment and to safeguard the forests and wild life of the country.

These principles make clear how important is the economic responsibility on the state by the constitution.

Division of power:

India's constitution defines the items for legislation among

1. Union list
2. State list
3. Concurrent list

Union has exclusive power to make laws on all matters in the union list.

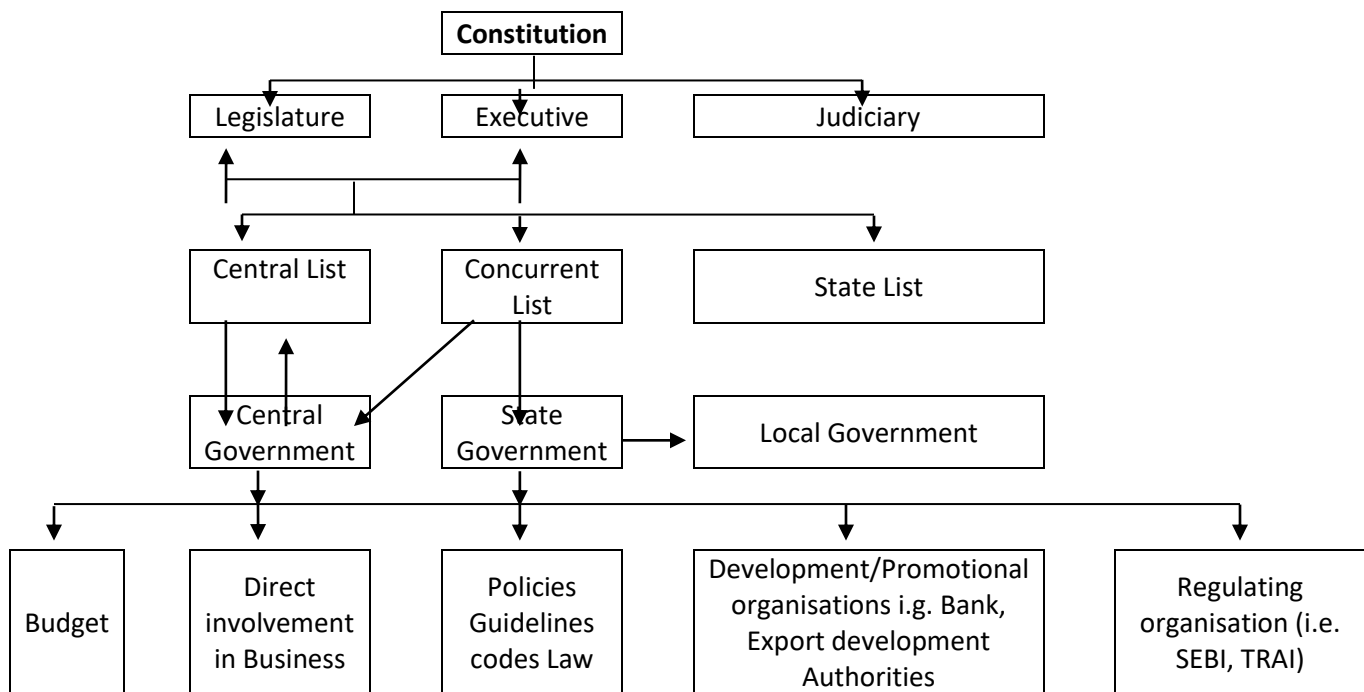
The states have exclusive powers to make laws in the state list.

Except for the union territories the centre cannot normally legislate on any matter included in the state list.

However parliament can do so, if the Council of State recommends by at least two third of its majority that the legislation is in national interest if 2 or more states mutually agree that this should be done for the state and to implement treaties or international agreement as conventions.

Both unions and state can legislate on matters in concurrent list. But in case any conflict arises between the union laws and state laws the unions laws shall prevail. Union has exclusive power to make laws on any matter not enumerated in concurrent list or state list.

The constitutional environment



Industries (Development and Regulation) Act 1951 amended from time to time is the effective weapon where government possesses to regulate the development and to control the activities of the industrial sector. The act is under central control, the development and regulation of industrial activities affect the country as a whole and the development is governed by the economic factors.

Object

The main object is to provide the central government with the means to implement industrial policy. The principle objective of IDRA is to empower the government.

1. To take necessary steps for the development of industries
2. To regulate the pattern and direction of Industrial development

3. To control the activities performance and results of industrial undertaking in the public interest

Provisions

1. Development measures central advisory council established by the central government consisting of representatives of the owners of the employees, consumers, industrial undertakings, and primary suppliers for advising the central government for the matters related to the development of the industries.

It also provides the establishment of any scheduled industry or group of scheduled industries with a development council of the owners, employees consumer and persons having special knowledge of matters relating to the technical for recommending measures for improving the performance of the industries.

Regulation of entry and growth

The act authorizes the central government to develop industries by given licensing with suitable exemptions decided by the government. Entry of business or expansion of existing business may regulated by licensing.

Supervision and Control

Government can make full and complete investigation if –

1. Any scheduled industry or undertaking has been or likely have a substantial fall in the volume of output or deterioration in the quality of output or unjustified rise in the price of output
2. Any Industrial undertaking is managed in highly detrimental to the scheduled industry or to the public interest.
3. Government is authorized to kens directions to the industrial undertaking or undertaking for
 - (i) Regulating the productions of any article and fixing the standards of production
 - (ii) Prohibiting industrial undertaking(s) from resorting to any act or practice which might reduce its or their production capacity or economic value
 - (iii) Controlling prices or regulating the distributions of any article or class of articles

Any person can be authorized by the central government under the rules of the act for ascertaining the position of working of any industrial undertaking where the person can-

- (i) Enter and inspect any premises

- (ii) demand the production of any document, book, register or record
- (iii) Examine any person having the control of or employed in connection with any industrial undertaking

Takeover of Management

Central government can takeover the management of the whole or any part of Industrial undertaking which fails to comply with any of the direction. Government can also take step for management of highly detrimental to scheduled industry. Central government can take over the management of industrial undertaking owned by a company under liquidation with the permission of high court, if government is of opinion that the running or resorting the operation of any undertaking the operation of any undertaking necessary for maintaining or increasing production supply or distribution in the public interest.

In respect of industrial undertaking, the IDRA provides power to the government to take steps in appropriate cases or reconstruct the company concerned in the public interest.

Price and distribution control: Securing the equitable distribution and availability of any article at fair prices of any scheduled industry the central government is authorized by the act to control its supply, distribution and price. It is authorized by IDRA for securing the equitable distribution and availability of any article at fair prices.

Exemption:

Central government is authorized by the act to exempt any industrial undertaking or class of industrial undertaking or any scheduled industry or class of scheduled industries from the provisions of the act in certain case in public interest.

Industrial licensing:

Central government is authorize by the act to issue license for establishment and certain different activities of industrial undertaking.

IDRA licensing provision apply to industrial undertaking setup by any person or authority including government.

SELF CHECK QUESTIONS

LONG ANSWER TYPE QUESTIONS:

1. What is constitution of India? Discuss its different parts.
2. Discuss the constitutional environment with diagram.

SHORT ANSWER TYPE QUESTIONS:

1. Discuss the items for legislation of union list.
2. Discuss industrial licensing.

OBJECTIVE TYPE QUESTIONS:

1. The Constitution of India was amended to add "India should be a Socialist state," in _____
(a) 1947 (b) 1974 (c) 1967 (d) 1976 (e) None of these

Ans: (d)

2. Indian Parliament has accepted "the socialist pattern of society" in _____
(a) Early January 1954 (b) Early April 1954
(c) Early July 1954 (d) Early Dec. 1954 (e) None of these

Ans: (d)

3. The Indian constitution is generally presumed as important document in our country because of -
(a) Its fundamental relates to the governance of the president of India.
(b) fundamental relates to the governance of the foreign company.
(c) Its fundamental relates to the governance of the state
(d) Its fundamental relates to the governance of the public company

Ans: (c)

4. An Industries (development and regulation) act has brought under _____
(a) State control (b) Union territory control
(c) Joint government control (d) None of these

Ans: (d)

Lesson 5

Licensing of Industrial Undertaking

What is license?

License is a written permission of the government to any industrial undertaking to manufacture specified articles included in the schedule of the act. Suppose if a new company has to be formed, first industrial license is issued in the name of applicant and later when the company has been formed the required endorsement is made in the license.

Industrial Information

License contains information of industrial undertaking which are:

- Its location
- Articles to be manufactured
- Its capacity on the basis of maximum utilisation of plant and machinery
- Other conditions enforceable under the act.

Prior to economic liberalization ushered in 1991 licensing was helpful to achieve objectives of the economic policy as:

- Desired pattern of industrial dispersal
- Encouraging new entrepreneurs and wider dispersal of industrial ownership
- Prevention of concentration of economic power
- Protection and promotion of the small scale sector
- Regulation of foreign capital and technology
- Use of proper technology
- Achieving demand supply balance promotion of exports

Before the policy liberalization 1991 license was required for —

- (i) Establishment of new undertaking
- (ii) Manufacture of new item
- (iii) Substantial expansion of capacity
- (iv) Continuation of business in certain cases
- (v) Change of location

Projects involving investment up to specified limits were exempted from licensing. The exemption limit was periodically revised.

Before announcement of the new policy in July 1991 the limit was Rs. 15 crores in non-backward areas and Rs. 50 crores in backward areas.

New policy:

Industrial policy announced in July 1991 has abolished industrial licensing irrespective of levels of investment for all industries except 18 industries.

Now all industrial undertakings are exempted from obtaining an industrial license to manufacture except for:

- (i) Industrial reserved for the public sector
- (ii) Industrial retained under compulsory licensing
- (iii) Items of manufacture reserved for the small scale sector
- (iv) If the proposal attracts location restriction

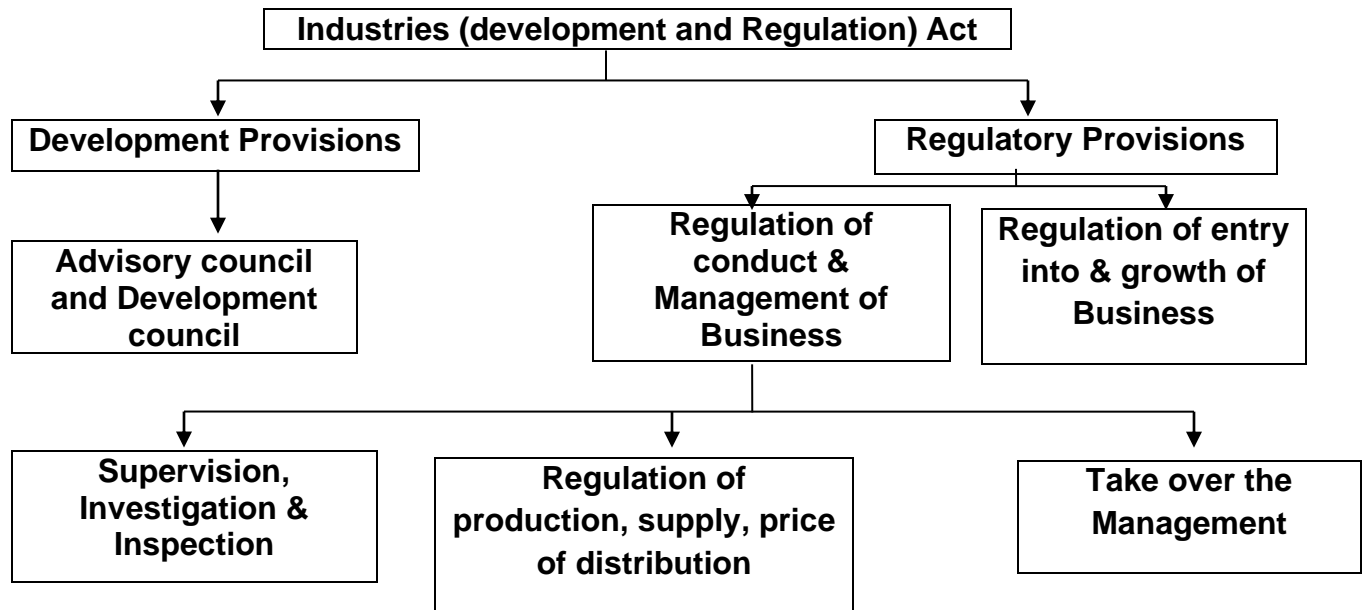
Industries which required compulsory industrial licensing now:

- (i) Distillation and brewing of alcoholic drinks
- (ii) Cigars and cigarettes of tobacco and manufactured tobacco substitutes
- (iii) Electronic aerospace and defense equipment of all types
- (iv) Industrial explosives including detonating fuses, safety fuses gun power
- (v) Hazardous chemicals
- (vi) Drugs and pharmaceuticals

⇒ The compulsory licensing provision is not applicable in respect of small scale units taking up manufacture of any of the items reserved for exclusive manufacture in small scale sector.

For exemption from obtaining industrial license, industrial undertakings are required to submit Industrial Entrepreneur Memoranda (IEM) to the secretariat of Industrial Assistance, Department of industrial policy and promotion government of India.

Feature of IDRA



Provision of MRTP Act 1969

The act is important piece of economic legislation to ensure that the operation of the economic system does not result in the concentration of economic power to the common detriment. Authority derived from the directive principles of state policy of constitution of India which enjoins the state to ensure that 'the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment'.

The act was promulgated on the pattern of nehruvian - mahalanobis model learning towards socialistic pattern of society.

Monopoly law in India as in any other country was based on the presumption that big business is not only harmful to distribution justice but also results in monopolistic tendencies which could be misused to the detriment of the public at large and consumers in particular.

The act came into force from 1st June, 1970 and has been amended in 1974, 1980, 1982, 1984 and 1991. The act applies to the whole of India except the state of Jammu & Kashmir.

Amendment made in 1991 as a total change with the growing complexity of industrial structure and the need for achieving economies of scale for ensuring high productivity and competitive advantage in the international market. The industrial policy of central government (announced in parliament on 24 July 1991) shifted to controlling and

regulating the monopolistic, restrictive and unfair trade practices rather than necessary for certain undertakings to obtain prior approval of the central government for expansion establishment of new undertakings merger and amalgamation.

Objectives of MRTP Act before amendment

- (1) Regulation of monopolistic and prevention of concentration of economic power
- (2) Prohibit monopolistic restrictive and unfair trade practices

Present objects of MPTP Act after amendment

- (1) Controlling monopolistic trade practices
- (2) Regulating restrictive and unfair trade practice

Regulation of trade practices:

The main objective of MRTP Act is the regulation of monopolistic, restrictive and unfair trade practices to be achieved through the instrumentality of the MRTP commission. A quasi judicial body is set up by the government required by the act. Commission is authorized to inquire into any monopolistic restrictive or unfair trade practices.

In matters relating to monopolistic trade practices, the central government can take an appropriate order, after the commission inquiry comes to the conclusion that the practice operates against the public interest.

In matters relating to restrictive and unfair trade practices the commission is authorized to pass a cease and desist order where it is of the opinion that the practice is against public interest.

Concept of public interest includes consumer interest permeates the entire regulatory framework provided for the prevention of concentration of economic power, control of monopolies and regulation of monopolistic restrictive and unfair trade practices. Public interest and consumer protection serve as the goal as well as the touch stone for evaluating the consequences of monopolies and trade practices.

Monopolistic trade practices:

Certain business firms tempt to charge unreasonably high prices and prevent competition in distributions, production of goods to maximize profit and to increase market power by adopting unfair trade methods or deceptive practices.

They tend to lower the quality of goods supplied, limit the capital investment or technical development for the production purpose or increase the cost of production of goods or the charges for the provision of services and increase their profit unreasonably.

These practices of business tend to create monopoly and often harm the public interest through the exploitation of consumers and bring economic imbalance in the country.

Monopolistic trade practice is an aspect of monopolization and effective control of monopoly is the first requirement of effective economic legislation.

Monopoly appears where a dominant undertaking raises prices or excludes competitors. In order to bring a balanced economic growth coupled with consumer welfare it is necessary to curb these practices.

Meaning of MTP:

Monopolistic trade practice is a trade practice which represents the abuse of the market power in the production or marketing of goods or in the provision of services by changing unreasonably high prices, preventing or reducing competition, limiting technical development, deteriorating product quality or adopting unfair or deceptive practices.

Monopolistic trades practice: (after Amended MRTP Act)

Any trade practice which has or likely to have an effect of-

- (i) Maintaining the prices of goods or the charges for services at an unreasonable level by limiting, reducing or controlling the production supply or distribution of goods of any description or supply of any services in any other manner.
- (ii) Unreasonably preventing or lessening competition in the production, supply or distribution of any goods or in the supply of any services.
- (iii) Limiting technical development or capital investment to the common detriment or allowing the quality of any goods produced, supplied or distributed or any service rendered in India to deteriorate.
- (iv) Preventing or lessening competition in the production, supply or distribution of any service by the adoption of unfair methods or deceptive practices.

How we can be sure about any trade practice is monopolies trade practice or not, this depends on two points-

- (i) Abuse of market power
- (ii) Unreasonableness in any practice

So monopolies and trade practices are:

- (i) Maintaining the prices of goods or charges for any services at an unreasonable level
- (ii) Limiting technical development or capital investment to the common detriment
- (iii) Unreasonably preventing or lessening competition
- (iv) Allowing quality of goods produced supplied or distributed or any service rendered to deteriorate
- (v) Increasing unreasonably the cost of production of any goods or charges for maintenance services.
- (vi) Increasing unreasonably the selling price of goods or charges for services may be provided
- (vii) Increasing unreasonably the profits derived from the production supply or distribution of any goods or the provision of any services.
- (viii) Preventing or lessening competition in the production supply or distribution of any goods or in the provision or maintenance of any service by adopting an unfair method.

Regulation of MTP

MRTP Act appears to the central government that if the owners of one or more undertakings are indulged in any monopolistic trade practices, government may appoint the MRTP commission for enquiry and report thereon. Enquiry may be conducted by MRTP commission on its own initiatives or information available to it. On the basis of report government may take steps for:

- (i) Regulation of production and fixing the terms of sale (including prices)
- (ii) Prohibiting any action that restricts competition
- (iii) Fixing standards for the goods produced

Reasons why central government should authorize any person to carry on a practice otherwise deemed to be prejudicial to public interest -

- (i) To meet the requirements of the defense of India for the security of the state
- (ii) To ensure the maintenance of supply of essential goods and services
- (iii) To give effect to the terms of any agreement to which the central government is a party

SELF CHECK QUESTIONS**LONG ANSWER TYPE QUESTIONS:**

1. Explain the different roles which are played by the Government in business with special reference to India?
2. Explain the main provisions of the Industries (Development and Regulation) Act 1951.

SHORT ANSWER TYPE QUESTIONS:

1. Write a note on licensing policy of government of India.
2. Discuss the regulation of monopolistic trade practices in India.

OBJECTIVE TYPE QUESTIONS:

1. Resolution of Indian constitution was passed at the Karachi session of the _____
(a) Royal commission of labor (b) Council of labor legislation
(c) Indian National Congress (d) United Nation Organization
Ans: (c)
2. The MRTP act brought into force w.e.f. _____
(a) 1st Jan. 1970 (b) 1st April 1970 (c) 1st June 1970 (d) 1st Aug. 1970 (e) None of these
Ans: (c)
3. The Preamble of the constitution expresses _____
(a) political religion and socio-economic values (b) socio-economic and cultural values
(c) legal and socio- economic values (d) none of these
Ans: (a)
4. When activities of business are generally controlled by monetary incentive penalties, the situation comes under _____
(a) Direct control (b) indirect control (c) both of these (d) none of these
Ans: (b)

Lesson 6

TRADE PRACTICES IN INDIA

RESTRICTIVE TRADE PRACTICES (RTPs)

To maximize profit and to give more market power trader often tempt to indulge in certain trade practices which restrict, reduce or prevent competition in the market and harm the consumer interest.

These practices relate to restrictive trade practices.

A trade practice which restricts or reduces competition is termed as restrictive trade practice.

According to MRTP Act:

A restrictive trade practice means a trade practice which has or may have the effect of preventing, distorting or restricting competition

1. In any manner which tends to disturb the flow of capital or resources into the stream of production or
2. Which tends to bring about manipulation of prices or condition of delivery or to affect the flow of supplies in the market relating to goods or services in a manner as to impose on the consumers' unjustified costs or restrictions

The term trade and trade practices

Trade includes any trade business industry profession or occupation relating to the production, supply, and distribution of goods and provision of any services whereas

Trade practice means any practice relating to carrying on any trade which includes:

- a. Anything done by any person which:
 - (i) Controls or affects the price charged or the method of trading of any trade or any class of trade
 - (ii) A single or isolated action of any person in relation to any trade.
- b. So restrictive trade practice does not limit to trade alone. It covers practice related to production, distribution or supply of goods or provision of services.
- c. A restrictive trade practice can be adopted by manufacturer distributor dealer supplier of goods or who provides any services or carries on any profession or occupation.

Restrictive trade practices according to MRTP Act

- (1) Refusal to deal with persons or classes of persons - any agreement which is restricted by any methods the persons or classes of persons to whom goods are sold or from whom goods are bought.
- (2) Tie in sales or full live forcing any agreement requiring purchaser of goods a condition of purchaser to purchase some goods.
- (3) Exclusive dealing agreement - any agreement restricting the purchaser in any manner in the course of his trade from acquiring or dealing in any goods other than of seller or any other goods.
- (4) Collective price fixation and treading - any agreement to purchase or sell goods or to under for the sale or purchase of goods only at prices or terms and conditions agreed upon between the sellers or purchasers.
- (5) Discriminatory dealings - any agreement to grant or allow concessions or benefits, including allowances, discount, rebate or credit in connection with or by reason of dealings
- (6) Resale price maintenance - any agreement to sell goods on condition that the prices to be charged on resale by the purchases shall be the price stipulated by the seller unless it is clearly mentioned that prices lower than those prices may be charged.
- (7) Restriction on output or supply of goods - exclusive distributorship, territorial restriction and market sharing
- (8) Control of manufacturing process
- (9) Boycott any agreement for the exclusion from any trade association or any person carrying on the trade in good faith in relation to which the trade association is formed
- (10) Price control arrangements
- (11) Governmental recognitions of practice as restrictive
- (12) Residual restrictive trade practices - any agreement to enforce the carrying out of any agreement is referred to as the foregoing classes.

Under the act restrictive agreement is necessarily be submitted to the registrar within sixty days for registration from the date of entering into the agreements. Here the onus is on the company or the undertaking

Regulation of restrictive trade practices

MRTP commission is authorized to conduct an enquiry into any RTP after the enquiry if commission found that the practice is really restrictive and is prejudicial to public interest; the commission may direct that-

- (i) the practice should not be repeated, this is called the cease and desist order

- (ii) the agreement will be void and will stand modified

Similarities and differences

- (i) Both MTPs and RTPs are deemed to be prejudicial to public interest
- (ii) Both require enquiry by the commission
- (iii) Temporary injunction can be issued by the commission in either case
- (iv) Compensation can be awarded in both cases in respect of any person as a result of practice.

MTPs	RTPs
<ol style="list-style-type: none"> 1. Market power is sought to be misused. Stress is on abusing market power 2. Commission can conduct enquiry on either (a) reference from the central government , (b) on its own knowledge or information 3. Commission submits its reports about the findings to the central government and a final order lies with the central government. 4. Commission's role is advisory. It can only conduct enquiry 5. Consequences of indulging in MTP are more serious. The central government is authorized to pass orders to remedies or prevent any mischief resulting from the practice 6. Agreements relating to MTPs need not be registered 	<ol style="list-style-type: none"> 1. Competition is sought to be curbed. Stress is on preventing competition from its free play 2. Commission can conduct enquiry on any base: <ol style="list-style-type: none"> (a) Complains from 25 or more consumers or dealers (b) Reference from central government (c) Reference from the state government (d) The application of the director general (e) On its own knowledge or information 3. Commission can pass final order after enquiry 4. Commission has the power of passing final order which is subject to appeal only to supreme court 5. Consequences of indulging in an RTP are not very serious. A cease and desist order is passed and the relevant clauses of the RTP agreement are declared void. 6. All agreements relating to specified restrictive trade practices are required to be furnished for registration to the director general

Exemption

RTPs are outside the provision of the act-

- (i) Those which take place in the state of Jammu & Kashmir
- (ii) RTP necessary to safeguard the rights of patentees under the Indian Patents Act in regard to conditions laid down in licenses
- (iii) RTPs relating exclusively to the production, supply, distribution or control of goods for export
- (iv) RTPs are as a result of any agreement between buyers relating to goods bought by them for consumption and not for resale whether in the same or different form of goods
- (v) Those expressly authorized by any law

Division of undertaking

MRTP Act provides that central government can refer the matter to the MRTP commission for an enquiry if the working of a registered undertaking is prejudicial to public interest or has led or is leading to the adoption of any monopolistic or restrictive trade practices.

In this connection the MRTP commission is also responsible to conduct necessary enquiring and recommend division, subsequent to which the government may order the splitting of the contained undertaking.

Unfair Trade Practices

Consumer needs no special protection; everything can be left to the market forces. The perfectly competitive market is an economist's dream and consumer sovereignty is a myth. In real life, products are of great variety, many of them are complex and the consumer has imperfect product knowledge. Moreover, the supplier has a dominant position against the buyer who has less bargaining power in the market. Therefore consumer needs legal protection against certain trade practices and business methods. Not alone consumer needs protection, even an honest businessman needs legal protection from the unscrupulous and dishonest competitors.

In India there is a great need of protection of consumers because the large majority of consumers are illiterate, ill informed and possessing limited purchasing power, which creates a perennial shortage of many goods and requires the growth of social justice.

M RTP Act Seeks to Provide Protection

Before 1984 there was no provision in MRTP Act for the protection of consumers from unfair trade practices as misleading advertising of goods and supply of unsafe and hazardous products. The act was directed against restrictive and monopolistic trade practices and the consumer interest was protected by promoting competition and curbing of anti- competitive activities of manufactures and dealers. So, consumer needs protection not only from restrictive and monopolistic trade practices but also from unfair and unethical practices adopted by unscrupulous businessman to maximize profit and sales at the expense of the consumer

Concept of Unfair Trade Practices

Any practice which is considered unfair and harmful to the consumer is an unfair trade practice genesis of unfair trade practice is the human greed which leads to the exploitation of the consumer by the trader. Under MRTP Act unfair trade is connected to loss or injury to consumers by-

- (i) Misleading advertisements and false representation
- (ii) Advertising of bargain price (or bait advertising) and switch selling
- (iii) Offering of pseudo gifts or prizes and conducting of promotional contests, lottery and games of chance or skill
- (iv) Supply of unsafe or hazardous products
- (v) Hoarding or destroying of goods or refusal to sell goods, resulting in a price increase.

MRTP commission or any other authority is not authorized to include any other trade practice in the meaning of unfair trade practice.

Conditions when any trade practices convert as an unfair trade practice-

- (i) Practice within one or more five trade practices
- (ii) The practice is adopted for any
 - (a) Promoting the sale, use or supply of any goods
 - (b) Provision of any services
- (iii) The practices causes loss or injury to the consumers of the relevant goods or service
- (iv) The loss or injury to the consumers may caused by eliminating or restricting competition.

Regulation of UTPs

MRTTP commission is authorized to make an enquiry of any UTP-

- (i) In case of receiving a complaint from any trader or consumer association of at least 25 or more membership
- (ii) If referred by the central or state government
- (iii) Application to commission of director general of commission
- (iv) Through its own knowledge or information
- (v) Application from any member of public

If any case found that particular trade practice comes UTP and is prejudicial to public interest then, commission can direct-

- (i) To discontinue of practice and ensure not to be repeated
- (ii) Agreement relating to UTP will be void or required modification as directed by the commission

Areas exempted from MRTTP act unless notified by the central government

- (i) Any undertaking owned or controlled by a government company
- (ii) Any undertaking owned or controlled by the government
- (iii) Any undertaking owned or controlled by a corporation (not being a co.) established or under any central provincial or state act.
- (iv) Any trade union or other association of workmen or employees formed for their own reasonable protection as the workmen or employees
- (v) Any undertaking engaged in an industry taken over by any person or body of person in pursuance of any authorization by central government under any law for the time being
- (vi) Any undertaking owned by a co-operative society formed and registered under any central, provincial or state act relating to co-operative societies
- (vii) Any financial institution

The central government directed, by the notification dated 27th September that the act is applicable to all undertakings except trade unions or associations of workmen or employees for their own reasonable protection. Central government exempted undertakings owned or controlled by a government company or government engaged in the production of arms and ammunition and allied items of defense equipment, defense aircraft, atomic energy, specified minerals and industrial units under the currency and coinage division, ministry of finance department of economic affairs.

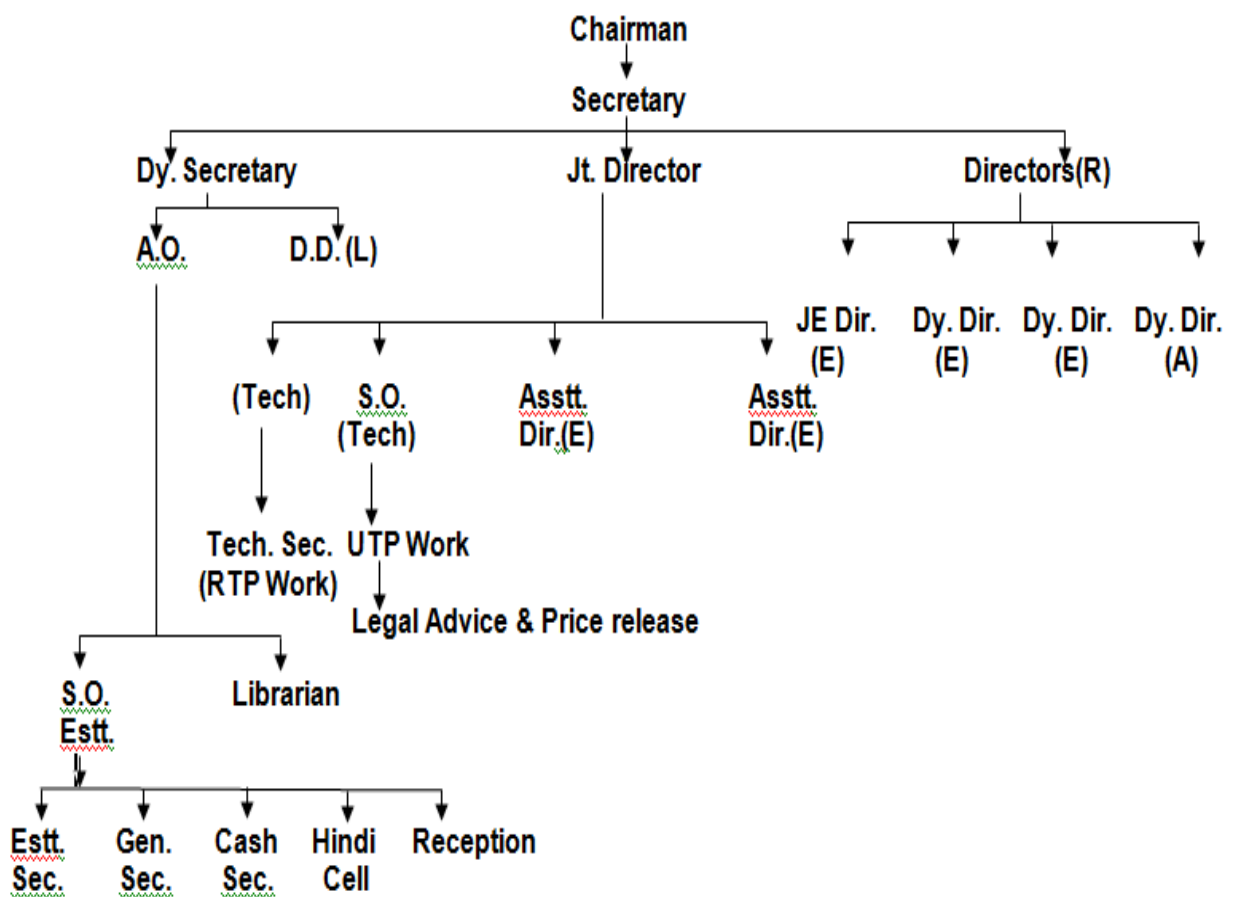
Enforcement Machinery

According to MRTP act the enforcement machinery consists of different authorities like-

- (i) The monopolies and restrictive trade practice commission
- (ii) The director general of investigation and registration
- (iii) The central government
- (iv) The supreme court

Monopolies and restrictive trade practices commission

This commission is set up by the central government for the purpose of MRTP act. The commission consists of a chairman and members, at least two and not more than eight appointed by central government.



Power and function of commission

- (1) Commission can make enquiry and pass appropriate orders to—
 - (a) Restrictive trade practices
 - (b) Unfair trade practices
- (2) Commission can also make enquiry of monopolist trade practices and report to the central government
- (3) Commission can also make an enquiry of UTP and submit report to central government relating to (deleted in the recent amendment)
 - (a) Division of undertaking
 - (b) Severance of interconnection between undertaking
 - (c) Substantial expansion
 - (d) Establishment of new undertakings
 - (e) Merger, amalgamation and take over of undertakings
- (4) Powers of civil court for certain purposes
- (5) Powers of entry and search and seizure
- (6) Granting of temporary injunctions
- (7) Awarding of compensation for any loss or damage caused
- (8) Monitoring the enforcement of its orders
- (9) Deterrent penal punishment for contravention of orders passed
- (10) Compounding of offenses relating to the contravention of orders

Powers and functions of Central Government

- (1) Division of undertakings
- (2) Severance of inter-connection of undertaking
- (3) Passing of final orders relating to monopolistic trade practices
- (4) To call necessary information from undertaking
- (5) Making rules
- (6) References to the commission for enquiry into any monopolistic restrictive or unfair trade practice
- (7) Extending the act to public sector undertaking

Supreme Court:

Supreme Court, High court and other courts are part of machinery for enforcement of the MRTP Act provision.

Supreme court has the power to decide appeals against certain decisions and other orders passed by the central government and MRTP commission.

SELF CHECK QUESTIONS

LONG ANSWER TYPE QUESTIONS:

1. Discuss the main provisions of the MRTP Act 1969.
2. Discuss the Restrictive Trade Practices with suitable examples.

SHORT ANSWER TYPE QUESTIONS:

1. Discuss the unfair trade practices in India.
2. Differentiate between monopolistic trade practices and restrictive trade practices in India.

OBJECTIVE TYPE QUESTIONS:

1. Pt. Jawaharlal Nehru was the chief architect of _____.
 (a) Development designing in India. (b) Development infracture in India.
 (c) Development relations in India. (d) Development planning in India.
 Ans: (d)
2. The prominent example of unfair trade practice is _____.
 (a) Competitive product to the customer (b) Competitive strategy of the business
 (c) Comparative prices of products in the market (d) Misleading advertisement
 Ans: (d)
3. The historic objective of the constitution resolution was moved by _____.
 (a) British government (b) Radhakrishnan ji
 (c) Pt. Jawaharlal Nehru (d) V.V.giri (e) None of these
 Ans: (c)
4. Indian constitution offers the fundamental rights as _____.
 (a) The best fruit of communist (b) The best fruit of socialism
 (c) The best fruit of democracy (d) The best fruit of ideology
 Ans: (c)
5. Before announcement of new industrial policy in 1991, some projects located in non backward areas were exempted from government licensing whose investment limit was up to _____.
 (a) Rs. 5 crore (b) Rs. 10 crore (c) Rs. 15 crore (d) Rs.20 crore (e) None of these
 Ans: (c)
6. "The industries (development and regulation) act 1951 always focus on _____.
 (a) Advisory provisions & Managerial provisions
 (b) Development provisions & Investigation provisions
 (c) Development provisions & Distribution provisions
 (d) Development provisions & Regulatory provisions
 (e) None of these
 Ans: (d)