CHAPTER - I
CHAPTER I

HISTORICAL PERSPECTIVE OF RIGHT TO INFORMATION

Introduction

The rights of individual form the essence of democracy. The rights which are essential for the individual to lead a dignified life and which cannot easily be taken away by the government are called "Fundamental Rights". The historical background of fundamental rights is the foundation of the Right to Information. A study of the present title would be incomplete without a brief account of its evolution. Political institutions of every country may be said in a sense to grow rather than being made and they cannot be fully understood unless they are traced from their origin. Charters, revolutions were the production of political stress and crisis and they contain the terms of settlement of that crisis.

Doctrine of Separation of Power

In every state, there are three kinds of powers – Executive, Legislative and Judicial. The function of the executive is to promote social and economic ends of every kind. It is a distinct function of the legislature to alter the existing law from time to time. Interpretation and application of the law is the judicial function. It is the part of constitutional law to examine the organs by which these functions are carried out, their inter-relations, and the position of the members of the community in relation to these organs and the functions of the State. Technically for Doctrine of Separation of Power it may be said "to include all rules which directly or
indirectly affect the distribution or the exercise of the sovereign power in the state.” (1)

Sources of Constitutional Law

It is the fundamental characteristic of the English Constitution that it has evolved continuously without any such revolutionary changes as to necessitate its restatement in a single instrument establishing a constitution. Despite accession of territory England has remained unitary kingdom. France has never lost her unity but has passed from monarchy to republic, from republic to Empire, then to monarchy in varied forms, to republic again, to Empire, and finally has a republican regime. Germany has passed from disunion to confederation, to Imperial federation, and is now discarding the republican quasi-federal constitution of Weimar for unification. The States of America had to pass from monarchy to republicanism, often combined with federation. Switzerland has reformed her federal system, and the war of 1914 called into being a large number of new states or states virtually reconstructed. It is significant that, when monarchy disappeared for a time, Cromwell fully recognized the need for a formal constitution.

The sources of constitutional law are (1) common law, and (2) statute law.

There are various forms of statutory enactment – Quasi-statutes are legislative enactment's marking solemn compacts made between the Crown and Parliament defining constitutional
principles, similar to the general declarations of popular liberties which are usually found in the written constitutions of foreign nations, and marking the result of the great national and constitutional crises in history. The most important contribution to the growth of liberal political tradition has come from England. The principal of these great constitutional landmarks are Magna Carta, 1215; the Petition of Right, 1628; the Bill of Rights, 1689; the Act of Settlement, 1701 and French Revolution etc.

**Magna Carta**

When Queen Matilda ascended the English throne after the death of Henry I, a section of the English barons raised their banner of revolt. The civil war of the barons continued for two decades. They built their fortresses and followed the example of the European feudal lords in exploiting and oppressing the peasants. But Matilda's son, Henry II, succeeded in suppressing this rebellion, destroyed their fortresses and prohibited the barons from fortifying their manors. He dismissed a large number of the sheriffs and prohibited all illegal executions from the peasants.

The fiefs of the English Crown never rival sovereignties to be absorbed one by one in the process of national unification as in France, until all were gone and only royal absolutism was left. The English barons were administrative subordinates of the Crown, dangerous to weak kings through casual combinations, but never able to act in opposition to the Crown save by joining their forces and appealing for general support, a
process which involved terms and conditions, the setting forth of which produced constitutional documents.

The power of the Church increased during the Norman rule. Competition began between the King’s Courts and the tribunals set up by the Church. The bishops claimed exclusive jurisdiction over the cases involving the priests and awarded them lighter punishments as compared to those awarded to other citizens in the king’s courts. The laws enforced by the Church were based on the Roman system of jurisprudence. The royal courts enforced the Common Law based on usages and customs followed by the Saxon people of England. The Pope not only intervened in the appointment of the bishops but also claimed a share of the revenues and income of the Church.

Henry succeeded in claiming jurisdiction over the civil cases involving the priests who could now be tried in the King’s Courts. He also started the convention of the Circuit Courts trying case in different manors as mobile representatives of the King’s authority.

This practice brought down the influence of the courts set up by the barons. The trial by jury began but members of the jury were not as yet impartial adjudicators. Their object was to assist the court in punishing the accused and presumed from the start that he was guilty and acted as the King’s witnesses.

French continued as the language of the royal court and Norman aristocracy till the end of the thirteenth century. The Norman lords also
participated in the feudal wars of France on the continent. Thus, London emerged as a great centre of trade for the English and French merchants, foreign traders arrived to settle in London from all parts of Europe. When the third Crusade began, England was trading with commercial centres as far as Italy.

When King Richard demanded money from the rich bankers and merchants to raise an army to fight in the third crusade, they asked for the charters granting them civic autonomy in return for the financial contribution. The merchants in small towns demanded similar charters of civic autonomy from the local barons. Traders' Guilds came into existence in several English cities and towns. Free cities thus emerged in feudal environment. The brief reign of Richard has acquired great constitutional significance due to the adoption of those charters for civic freedom. Richard's departure to Europe further proved that the King's administration could be successfully carried on by other persons in his absence exploding the myth of the monarch's indispensability.

Magna Carta is regarded as the greatest event of the Norman era. Some writers like Keith regard it as one of the basic documents of the British Constitution. But the contemporary significance of the great charter was very limited. It does not mention the democratic rights of the people at all but merely reiterates the customary privileges of the baron or feudal lords. King John, who was efficient and strict ruler, violated some customary privileges of English barons. He raised a few new taxes,
Merchants of London and the Saxon Militia refused to co-operate with the king, therefore had to accept the terms of the Magna Carta presented to him by the barons on 15th June 1215. The historical value of Magna Carta is that the feudal lords of England united with the merchants of London to place certain limits on the autocratic powers of the Norman Monarchy. A committee of 25 barons was formed to safeguard the terms of a charter. Magna Carta was a mutual contract confirming the rival claims and privileges of various sectors in the feudal establishment such as the monarch, barons and the Church hierarchy.

When the powers of parliament increased in England, the importance of Magna Carta was also enhanced. The process of the decline of Feudalism started during the thirteenth century. New social classes emerged in the British society. They pleaded for the recognition of their new rights disguised in an ancient customs. The evolution of Parliament began, which was used first by the British aristocracy and later by bourgeoisie to achieve their own political supremacy in the state.

On June 15, 1225, the barons, who had renounced their allegiance and taken up arms in order to enforce a settlement of their grievances, met King John at Runnymede, and presented articles containing an outline of the concessions required. The King accepted the terms contained in the articles, and executed the Great Charter in which those terms were embodied upon the same day. Up to the reign of Henry VI the
The charter was renewed thirty-seven times. The terms of the Great charter were:

1) Heirs were to enter upon their possessions upon payment of the customary relief, and infants upon coming of age were not to pay either relief or fine. Wardship and marriage were regulated, and meson lords were only to exact the normal aids.

2) Land was not to be taken in execution for debt if sufficient chattels were to be found.

3) The City of London was to enjoy its ancient customs and liberties.

4) No scutage or aid was to be imposed without the consent of the Commune Concilium (Parliament). But there were three customary feudal aids which were exception to it. They are: ransoming the King, knighting his son and giving a dowry to his eldest daughter. Archbishops, bishops, abbots, earls, and greater barons by individual writ; & all other tenants in capite by general writ were summoned.

5) The Common Pleas were to be held in a fixed spot (in aliquo certo loco).

6) Fines were to be regulated according to the magnitude of the offence. Earls and barons were not to be fined except by their peers.
7) No sheriff, constable, or coroner, or other officer of the Crown, was to hold pleas of the Crown. These were reserved to the royal justices.

8) No freeman was to be arrested, imprisoned, put out of his freehold, outlawed, exiled, destroyed, or put upon in any way except by the lawful judgment of his peers or the law of the land.

9) Justice was not to be sold or denied to any one, or to be delayed.

10) Merchants were to be free to enter and leave the kingdom, and to remain there for purposes of buying and selling subject only to the customary tolls.

11) Justices, constables, sheriffs, and other officers of the Crown were only to be appointed from upright persons possessing knowledge of the law.

12) The forest laws to be reformed.

13) Twenty-five barons were to be chosen as representatives of the nation, the King contracting to allow them to see that the terms of the Charter were enforced and observed fundamental assertion of the subjection of the King. (2)

In short, the barons presented articles containing an outline of the concessions required to the King. The King accepted the above mentioned terms contained in the
The Petition of Right (1628) - After reciting the various statutes by which the liberties of the subject had been assured and the various infringements of those statutes which formed the present subject of grievance, including the issue of commissions to try offenders by martial law, the Petition of Right humbly prayed His Majesty as follows:

1) That no man should be compelled to make or yield any gift, loan, benevolence, or tax without common consent by Act of Parliament.

2) That no freeman should be forejudged of life or limb, or imprisoned or detained against the form of the Great Charter and the law of the land.

3) That soldiers and marines should not be billeted upon private persons.

4) That commission should not be issued to try persons according to the martial law, as is used by armies in time of war.

Thus, the petition of Right 1628 covered the issue of commissions to try offenders by martial law.

The Bill of Rights, 1689

After petition of Right 1628, the Bill of Rights 1689 declared that freedom of speech and expression ought not to be impeached in any court or parliament. James II ascended the Throne in 1685 with a fixed
design to make himself an absolute monarch and to subvert the Protestant Church of England. Parliament was immediately dissolved and thereafter the King attempted to rule without Parliament. He began by issuing a proclamation requiring payment of custom duties. The standing army was increased from strength of six thousand to twenty thousand. With the help of a servile court he secured a judicial decision in favour of his assumed prerogative of dispensing with the observance of laws. Similarly he sought to exercise the suspending power also.

The climax of his reign was fast approaching. By another proclamation James ordered that a Declaration of Indulgence in matters of religion should be read by the clergy in their churches and is thereafter distributed throughout their district for which a bishop is responsible. A petition was drawn up to the effect that the King should not insist upon the reading and distribution of the Declaration and this was personally presented to the King. The seven Bishops who presented this petition were charged with a conspiracy to diminish the royal authority. At the trial of the seven Bishops, although the judges were divided, the jury returned a verdict of not guilty. This trial agitated a lot of people. Thus forcing eminent leaders of both parties sent an invitation to Prince William of Orange. James tried to retrace his steps but it was too late. Thus on 23rd December 1687 people witnessed the flight and the de facto abdication by James. The constitutional position was indeed difficult. The King had abdicated; Parliament had been dissolved in 1685; and even the great
Seal of the King had been thrown into the Thames River by the fleeing James. An ad hoc Assembly consisting of the spiritual and temporal Lords, all persons who had been members of the Commons in the reign of Charles II, and the Lord Mayor, aldermen and fifty of the common council of London requested Prince William to assume the provisional government of the country. They further requested him to summon all the constituent bodies of the kingdom to send representatives to a Convention Parliament. This Convention Parliament met on the 22nd of January 1688 and in course of its subsequent proceedings enacted the Bill of Rights, which has been called the third great charter of English liberty and the copingstone of the constitutional building.

The Bill describes itself as "an Act declaring the rights and liberties of the subject and settling the Crown". The contents of the Bill of Rights fall into three parts. It consists of the restatement of the Declaration made on the 13th of February 1688 by the Convention parliament. In this part we have a recital on the various illegal and improper acts whereby James had endeavored to subvert the Protestant religion and the laws and liberties of the country. It is further mentioned that James had abdicated and the Throne being vacant the Convention Parliament had to be summoned by Prince William of Orange. It consists of the substantive declarations. These seek to ensure that hereafter the King will rule in a constitutional and proper manner. They clarify the relationship between King and Parliament and confirmed that the King has to run the
administration in accordance with the laws and regulations enacted by Parliament.

The Bill of Rights, after reciting the various ways in which James II had infringed upon the liberties of the subject, and that, the throne being vacant by the abdication of James II, the Prince of Orange had caused letters to be written summoning such representatives as would ordinarily be elected for Parliament to meet and sit at Westminster.

Some important declarations of Bill of Rights are as follows:

1) That the pretended power of suspending of laws or the execution of laws without consent of Parliament is illegal.

2) That the commission for erecting the Court of Commissioners for Ecclesiastical Causes and all other commissions and courts of like nature is illegal and pernicious.

3) That levying money for or to the use of the Crown without grant of Parliament or for longer time or in other manner than the same is or shall be granted as illegal.

4) All commitments and prosecutions for petition are illegal.

5) That the raising or keeping a standing army within the kingdom in time of peace without the consent of Parliament, is against law.

6) That the election of members of Parliament ought to be free.
7) That freedom of speech and debates, or proceedings in Parliament, ought not to be impeached or questioned in any court or place out of Parliament.

8) Excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

9) That all grants and promises of fines and forfeitures of particular persons before conviction are illegal and void.

10) That for redress of all grievances and for the amending, strengthening, and preserving of laws, meetings of the Parliament ought to be held frequently. (5)

Bill of Rights embodied the rights and liberties of the people. A zone of freedom is, thus, established wherein no government may illegally operate.

**The Act of Settlement – Succession to the Throne**

The title to the Crown was originally elective. The notion of a hereditary right grew gradually. At the common law the title to the Crown of England was governed by the feudal rules of hereditary descent applicable to land. The descent of the Crown was varied and finally fixed by the Act of Settlement.

The Act of Settlement provides that Princess Sophia, Electress and Duchess Dowager of Hanover, grand-daughter of James I, was to be next in succession. It further enacted that title to the Crown shall descend in perpetuity on the heirs of Princess Sophia of Hanover. Thus, under the Act
of Settlement, the title to the Crown was fixed in the House of Hanover. The Act further provides that any person who shall hold communion with the Church of Rome or shall marry a Catholic shall be incapacitated from inheriting the Crown. Further there are other minor provisions. It was provided that if the Crown shall come to any person not a native of England then the country cannot be obliged to engage in any war for the defence of non-English territory without the concurrence of Parliament. It was also enacted that the Royal pardon cannot be pleaded to an impeachment by the Commons in Parliament.

Every King or Queen must make, either on the first day of the meeting of the first Parliament after the accession or at the Coronation, whichever shall first happen, a declaration that he is a faithful Protestant. It is a fundamental term of the Union of England and Scotland that every person who succeeds to the Crown must take and subscribe to the oaths for the preservation of the Established Church in England and the Presbyterian Church in Scotland. The King was the head of the Church of England.

The Crown was thus a hereditary institution, which was regulated by Parliament by rules of succession. Under the terms of the Preamble to the Statute of Westminster, any alteration in the law concerning the succession to the Throne or the Royal style and title requires the assent of the Dominions.
In the succession to the Throne, the principle of primogeniture is observed, but, in the same degree, males were preferred to females. Provision has been made by Parliament for the setting up of Regency for the performance of the King's duties in the event of his absence, infancy, insanity or ill health. After he succeeds to the Throne, the King is formally crowned at the Coronation but this is a mere ceremony devoid of any legal effect. Every person inheriting the Crown must take the Coronation Oath in the form prescribed by statute. At the beginning of his reign, the King voted the Civil List, which is a yearly allowance from public funds for his personal and court expenses. Various powers vested in the King in the theory of law, these powers are described as the Royal Prerogative.

In 1701, Mary being dead and William-III was in the last stages of his life. Princess Anne of Denmark seemed past the age of child-bearing and all her children had predeceased her. Thus, it became necessary to extend the limitations of the crown contained in the Bill of Rights.

Thus further under the Act the limitations were made to the heirs of the Princess Sophia subject to the following provisions:

1) That any person inheriting the Crown under the Act who should profess the Roman Catholic religion or marry a papist should be subject to the incapacitates provided by the Bill of Rights.

2) That persons inheriting the Crown should take the coronation oath provided by the Act.
3) That any person coming into possession of the Crown under the Act should join in communion with the Church of England.

4) That in case the Crown should come to any person not being a native of England, this nation should not be obliged to engage in any war for the defence of any dominions or territories which do not belong to the Crown of England without the consent of Parliament.

5) That no person born outside the United Kingdom should be capable to become a Privy Councilor or a member of either House of Parliament, or to enjoy any office or place of trust either civil or military, or to have any grant of lands from the Crown to himself or to any others in trust for him.

6) That no pardon under the Great Seal should be pleaded as a bar to an impeachment by the Commons in Parliament.

7) It should be lawful to remove the Commission of Judges upon the advice of both Houses of Parliament. (7)

Thus, Charters as instruments for conferring privileges were not altogether abandoned as they reflected the wishes of Parliament rather than the personal wishes of the Crown.

The French Revolution

Democratic and Authoritarian Tendencies

French citizens created the Fourth Republic in 1946. They built it, out of the ruins of the War and the ravages of four years of the German occupation of the Second World War. The fact that it is a Fifth Republic
suggests that there existed other governmental systems prior to the present system. During the century and a half following the French Revolution, France experienced three further revolutions, three wars etc. She adopted and rejected, during this period, more than dozen constitutions, three of them monarchic, two dictatorial, three imperial and four republicans. Besides these constitutional experiments, for a number of years she was governed by provisional systems, not based on any written text.

Several times, in between the history of the four republics France has passed through many phases and tried many experiments. "She adopted democracy by a swift and sudden stroke, without the long and gradual preparation through which the United States, Switzerland and England passed, springing almost at one bound out of absolute monarchy into the complete equality of all citizens." And France did this not merely because "the rule of the people was deemed the complete remedy for pressing evils, not because other kinds of government had been tried and wanting, but also in defence of general and abstract principles which were taken for self-evidence truths." (8) The democratic and authoritarian tendencies in France, therefore, form an indispensable background for the proper appreciation of the political system. No country can rid itself of its past, but past in France most conspicuously runs in the present and may go deep in the future as well.
The Declaration of the Rights of Man stated 'Men are born free and remained free and equal in rights'. The aim of all political associations was the preservation of the natural and imperceptible rights of man, namely, liberty, prosperity, security and resistance to oppression. The Declaration of the Rights of Man was founded on the ideas of Voltaire, Montesquieu and Rousseau and the same declaration was made a part of the preamble of the Constitutions of Fourth and Fifth Republics.

During the next decade France experimented with four Constitutions. It was the result of the labour of the National Assembly. It attempted to carry out the ideas which brought about the French Revolution. The Revolution which had started in 1789 as an attempt to reform ended in 1792 and 1793 by abolishing of the monarchy and executing the King.

The Convention was summoned by the extreme radicals. It prepared another Constitution to replace the Constitution of 1791. It established a collegiate executive composed of 24 men and a legislative assembly on a broader popular basis. The draft Constitution could never be put into effect as a result of political circumstances and remained a dead letter. The Convention, then, set up another Constitution in 1795, the system of Directory.

It established a plural executive or Directory. It was composed of five members chosen by the legislature. It provided a bicameral legislature. It was chosen by voters with property qualifications. The
Directory failed to distinguish itself. Its members were men of mediocre ability, were divided amongst themselves and failed to control the situation. Anarchy again threatened the country and the Directory was replaced in 1799 by a Consulate. This system derived its name from the three Consuls in which the executive authority was vested. Napoleon Bonaparte was the first consul.

The Constitution of 1799 was strictly authoritarian and its machinery was placed under the exacting control of the First Consul. He did not believe in the popular constitutions. To all intents and purposes, France had again become a monarchy. In 1804 Napoleon proclaimed himself Emperor of France and made the office hereditary.

Napoleon was abdicated in 1814. In terms of the agreement with the victorious allied powers of Bouchons were restored to the throne in the presence of Louis-XVII. But pledged to advance a limited monarchy. But the Frenchmen soon discovered that it was far easier to transplant the form than the spirit of the government. The monarchs, too, had never caught the spirit of the Constitution, which they had sworn to uphold. Charles X violated certain provisions of the Constitution and, France, once again, was faced with the problem of providing herself with a new government.

Most Frenchmen believed that the monarch was at fault and not the monarchy and, therefore, changed the line of Kings. Louis Philippe, of the House of Orleans, was put on the throne on a clear understanding
that he would be a strict constitutional ruler. But the royal ineptness and partisan squabbles, owing to the multiplicity of political parties, made the parliamentary system unworkable. Gradually, the system of government lost all support and the sentiment in favour of a republic grew apace. Paris was once more flamed into revolution. On February 24, 1848 Louis Philippe was abdicated. A provisional government was set up on May 4, 1848 and France was proclaimed a republic, known in history as the Second Republic.

The Constitution of the Second Republic was based on the American type of Presidency. But the people were not in mood to accept the new type of government. When the first National Assembly was elected, two-third of its members turned out to be avowed monarchists. On December 2, 1848 the French people went to the polls. They elected Louis Napoleon, nephew of Napoleon I, as the first President of the Republic by overwhelming majority. Louis Napoleon was himself certainly not republican. He boosted staged a coup d'etat and gave the country a new Constitution. On November 7, 1852 the Senate passed the re-establishment of the Empire. It was submitted to the people for their approval and they gave an affirmative vote. The imperial power became as fully centralized under Napoleon III as it had been in the days preceding Waterloo. However some important changes were made in the plan of government.
A number of reforms were initiated. A new Constitution of the Second Empire was drafted on May 21, 1870. But on July 19, the Emperor plunged the country in a hasty and ill-conceived war against Prussia. At the disastrous battle of Sedan, Napoleon surrendered. He was subsequently released by his German captors and went to England where he died in 1875.

The period of 1870 to 1875 not only gave rise to the Third Republic but also created the foundations of the Fourth Republic. The Government created in 1875.

The pace and growth of national movement depend upon various factors, like the quality of leadership, the spirit of discipline and sacrifice among the people and the national and international situation.

The French Revolution was the first revolution in the world which brought about social transformation. It gave the three important principles like liberty, fraternity and equality to the modern world on which the Republican States are dependant.

**Position in India**

In India, whose political history extends over centuries, the political and national unity though formulated as a concept even in earlier times, was never consciously realized before the nineteenth century. The country had a cultural and social unity which sustained her people through several political vicissitudes. The country had also known both the monarchical and republican forms of government. Moreover
representative institutions had functioned in villages for centuries. Whatever the form of government, the Indian polity was characterized by this ethical basis, the prevalence of popular will and a concern for the general well being.

The British developed an effective system of administration. Independent India adopted in large measure the same system and continues with it since then. This a legacy of fundamental importance. The British in India restored peace where life and limb was in danger. The theoretical basis of political unity was provided by the British crown holding together the British and princely India. The period from 1858 to the end of First World War presented a picture of the administrative unification in India.

**The Theory of Fundamental Rights**

The modern world finds itself divided into two camps, each supporting a theory of government and a way of life and each opposed diametrically to the other. One affirms the concept that the State is an entity over and above and separate from the individuals living under it. She is therefore exempt from ordinary moral laws and standards. She is responsible to none and is in fact an end in itself. The general mass of people is presumed to be merely the tools or agencies which the State might utilize for its own purpose. They are not to have any control over the actions and policies of the Government, which for the time being is the State. On the other hand there is the opposing theory, namely, that the
State is but a means to an end, that it comes into being and has its raison d'etre in the common good of the individuals that go to compose the State; that it is a sort of social framework and the Government of the day must operate within that framework with only such authority and powers as the sovereign people may expressly or impliedly confer upon it; that the Government is therefore subject to popular control, and the individuals and groups within the State retain a large body of rights and liberties which they are entitled to assert and uphold against any governmental agency. The State must recognize those rights, which would enable the citizen to pursue a common end together with her fellow members of society involving the maximum good of the maximum number.

Since rights are meant for the advancement of the common good, no one can have rights against the public welfare. But it is, a far cry to deduce from this that there can be no rights against the State, because the State is represented by a body of individuals called the Government. Since no Government can be all wise, the individual's judgement and his claim based upon that judgement is likely to be as right as the judgment of the Government. A state is a territorial society divided into Government and subjects.

**Demand for Declaration of Rights**

The demand for fundamental rights and their constitutional guarantees had its deep root in the nineteenth century. It was implicit in the formation of the Indian National Congress in 1885, which wanted the
same rights and privileges for Indians that the British enjoyed in their own country. After the formation of the Indian National Congress in 1885, the promoters of the Indian National Congress emphatically demanded an end to discriminate inherent in a colonial regime. Perhaps the first implicit demand for fundamental rights appeared in the Constitution of India Bill, 1895. This bill, described by Mrs. Annie Beasant as the Home Rule Bill, envisaged to guarantee to all citizens freedom of speech and expression, right to personal liberty, inviolability of one's house, right to property, equality before the law, equality to admission to public offices and right to petition for redress of grievances etc. Immediately after the publication of the Montague – Chelmsford Report; the Indian National Congress, at its Bombay session in August 1918, demanded that the new constitution of India should contain a declaration of the rights of the people of India as British citizens, guaranteeing equality before the law, freedom of speech and press, and protection in respect of liberty, life and property.

By the mid-twenties, Congress and Indian leaders had acquired a forceful consciousness of their rights. It was influenced by various factors; like the experience of World War I, the deep disappointment caused by the Montague-Chelmsford Reforms, support for self-determination by President Wilson, the arrival of M.K.Gandhi in India and his active participation in the politics of the country. The Constitution of the Irish Free State in 1921, which contained a Bill of Rights, had also a profound effect on political thought in India. The Commonwealth of India Bill, drafted by
the National Convention under the inspiration of Mrs. Annie Beasant in 1925, embodied a declaration of rights more or less similar to the provisions of the Irish Constitution.

Within two years of the publication of the Commonwealth of India Bill came the announcement of the appointment of the Indian Statutory (Simon) Commission. To set a model for the Simon Commission, the Forty-third Annual Session of the Congress was held at Madras in 1927. It resolved that the Working Committee be empowered to set up a Committee "to draft a Swaraj Constitution for India on the basis of a declaration of rights". The Nehru Committee was, accordingly, appointed in 1928. It included in its membership representatives of all the political parties. The Nehru Committee in its report included a comprehensive bill of rights. In recommending their declaration the Committee urged that Ireland is the only country where conditions prevalent before the Treaty are nearest to those we have in India. The first concern of the people of Ireland was, as it is indeed with the people of India today, to secure fundamental rights that had been denied to them". Another reason why India attached importance to the declaration of the fundamental rights, in the opinion of the Committee, was the unfortunate existence of communal differences in India. "Certain safeguards and guarantees," the Committee urged, "are necessary to create and establish a sense of security among those who look upon each other with distrust and suspicion. We could not better secure the full enjoyment of religious and
communal rights to all communities than by including them among the
basic principles of the constitution." The Committee added, "It is obvious
that our first care should be to have our fundamental rights guaranteed in
manner which will not permit their withdrawal under any circumstances".

In 1931, the Indian National Congress passed a Resolution on
Fundamental Rights. In order to end the exploitation of the masses, the
Resolution emphasized on the political freedom of the citizens. The
Political Freedom in turn must include real economic freedom of the
starving millions. It was further declared that any constitution which might
be agreed to on behalf of the Indian National Congress should provide, or
enable the Swaraj Government to provide, for certain fundamental rights
and duties. But the British Government was not in mood to reconcile itself
to this primary demand of the Indians. In fact, such a demand was
unsuited to the British genius. The Simon Commission had ridiculed the
idea of fundamental rights. The Commission observed, "Abstract
declarations are useless unless there exists the will and the means to make
them effective." (10)

Then, the matter came up for consideration during the Round Table
Conferences. At the Second Round Table Conference, M.K.Gandhi, the
sole representative of the Indian National Congress, circulated
memorandum, inter alia, demanding that the new Constitution should
"include a guarantee to the communities concerned for the protection of
their cultures, languages, scripts, education, profession and practice of
religion and religious endowments." Another memorandum on the subject was put forward jointly by the representatives of the minorities.

**Constituent Assembly and Fundamental Rights**

The Cabinet Mission Plan conceded the demand for the Constituent Assembly as well as the need for a written guarantee of fundamental rights in the Constitution of India. It recommended the appointment of an Advisory Committee on the Rights of Citizens, Minorities and Tribal and Excluded Areas, containing the interests affected, which would prepare a list of fundamental rights and also to recommend their inclusion in the State or the Union List. By the Objectives Resolution introduced by Jawaharlal Nehru and adopted on January 22, 1947, the Constituent Assembly solemnly pledged itself to draw up for India's future governance a constitution wherein "shall be guaranteed and secured to all the people of India, justice, social, economic and political, equality of status, of opportunity and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality."

Two days after adopting Objectives Resolution, the Constituent Assembly elected an Advisory Committee for reporting on minorities, fundamental rights and on the tribal and excluded areas. The Advisory Committee consisted of 54 members with Sardar Vallabhbhai Patel as its Chairman. The Committee was constituted on February 12, 1947, with five sub-committees one of which was to deal with fundamental rights. The

After discussion the final report was submitted to the Chairman of the Advisory Committee on April 16, 1947.

The Advisory Committee accepted the recommendations of the Sub-Committee as follows:

(1) for division of rights into justiciable and non-justiciable rights; that is, rights enforceable by appropriate legal process and rights consisting of directive principles of state policy, which though not enforceable in courts, were nevertheless to be regarded as fundamental in the governance of the country;

(2) certain rights being guaranteed to all persons and certain others to citizens only; and

(3) all such rights being made uniformly applicable to the Union and the units. The Constituent Assembly adopted all these recommendations and the Constitution of 1950 contains Chapter III enumerating the Fundamental Rights.

The legal nicely between the Fundamental Rights and the Directive Principles of State Policy, the Constitution of India, as Granville Austin says, is "a social document, the majority of its provisions are either directly aimed at furthering the goals of the social revolution or attempt to foster
The core of the commitment to the social revolution lies in Parts III and IV, in Fundamental Rights and in the Directive Principles of State Policy. Both together constitute the conscience of the Constitution. They had their roots in the struggle for independence and were included in the Constitution in the expectation that one-day the tree of true liberty and justice would bloom in India.

The Fundamental Rights and the Directive principles connect India's future, present and past 'adding greatly to their significance of inclusion in the constitution, and giving strength to the pursuit of the said revolution in India'. (12)

In March 1948, the United Nations convened a conference at Geneva on the subject matter of freedom of Information which was attended by fifty four countries. It passed a series of resolutions recommending constructive action and adopted three draft conventions for further considerations by the United Nations which ultimately, led the General Assembly of the United Nations to declare freedom of Information is a fundamental human right. (13)

The judicial system had tended to reserve its attention and energies for those who could pay to seek redress for the damage done to them for infringement or violation of their rights. By entertaining public interest...
The Supreme Court has opened the portals of justice for the people enforcing their fundamental right to live with human dignity.

The Universal Declaration of Human Rights (14) in Article 19 declares:

Every one has right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. In 1960, the economic and social council of the United Nations adopted a Declaration of Freedom of Information, a derivative from Article 19 of the Universal Declaration of Human Rights, 1948. Sweden became the first country in the world to enact a provision for access to official information for the citizens.

The Right to Freedom under the Indian Constitution:

The right to freedom is covered by Articles 19 to 22 and embraces the classical liberties of the individual. Of these, Article 19 is the most important as it originally guaranteed six fundamental rights, which may be described as six freedoms, viz., (a) freedom of speech and expression; (b) freedom of assembly; (c) freedom of association; (d) freedom of movement; (e) freedom of residence and settlement; (f) freedom of property, and (g) freedom of profession, occupation, trade or business. All these freedoms are the most important ingredients of human happiness and progress, as without them no individual can rise to the full stature of his personality. The Preamble of almost every Constitution epitomises these freedoms and declares them as its objectives.
Fundamental Rights as contained in Part III of the Constitution are neither rooted in the doctrine of natural law nor are they based on the theory of 'reserved rights'. They are conferred rights and embody the social values of the present generation. As the social values are not static, the Fundamental Rights are subject to changes and modifications in order to fulfill the aspirations of man in the context of his changed conditions and the environment in which he lives.

There are four important benefits occurred by the Fundamental Right- i.e. freedom of speech and expression are-

1) It helps on individual to attain self-fulfillment.
2) It assists in discovery of truth.
3) It strengthens the capacity of an individual in decision making.
4) It provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change.

The right to impart and receive information is a species of the right of freedom of speech and expression guaranteed by Article 19(1)(a) of the constitution of India. Thus, every citizen has a Fundamental Right to use the best means of imparting and receiving information for his overall development.
References:

3) Ibid, Pg.10
4) Cooper K.S., Desai S.K., Elements of Constitutional Law, Fourth Edition, Pg.51
5) Keith A.B., Op.Cit. Pg.11
11) Granville Austin, The Indian Constitution: The Cornerstone of a Nation, Pg.50
12) Ibid
14) Proclaimed on December 10, 1948
Felicitations of Anna Hajare.

Discussion with Anna Hajare.