Chapter 2

The Constitution of India: Reflected Liberalism

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2.1 Introduction

In previous introductory chapter first, we have studied briefly about the research title “Reflected Various Ideologies in the Constitution of India: A Critical Study”. The research objectives, hypothesis, research methodology, and chapter scheme we have studied briefly in that. The chapter “The Constitution of India: Reflected Liberalism” is to study.

Liberalism is recognized as an ideology, philosophy, and movement founded on ideas of liberty and equality. Liberals generally support ideas and programmes such as freedom of speech, freedom of press, freedom of religion, civil rights, democratic societies, secular governments, gender equality and international cooperation. These ideas and scheme is prevails in the Constitution part III i.e. the ‘Fundamental Rights’ and the ‘basic structure’ of it.

And in this chapter, is to study what the Liberalism is, and its reflection in the Indian Constitution.

2.2 Ideological Approach to the Study

The Constitution of India can be understood through the ideological approach. One point, the Constitution is a fundamental law and the social document of the country, and behind the law the certain political, social and economic ideas function. For example, a law might prohibit discrimination of persons on grounds of language, religion and sex etc. such as the law is connected to the idea of social equality. Thus the various ideologies are reflected in the Constitution.

The concept of equality is a certain kind of idea. We can either found the definitions of alike these terms or not in the Constitution, but the responsibility of the interpretation is given to the Supreme Court of India. When contradiction found between the ideas behind the provisions and policies of the government, then confusion and tension arise. Therefore, it is
necessary to look upon the constitution as a legal document which is based on the certain ideologies.

So, there is adopted an ideological approach to the study of the Constitution. First, there is the need to understand the conceptual structure of the Constitution of India. There must be attempted to work out a coherent (logical and well organized) vision of society and polity conditional upon an interpretation of the key concepts of the constitution.

The framers of the Constitution very deliberately framed the logical set of ideals, theoretical foundation, and justification of values and philosophical treatment of the Indian society. In this chapter we are going to study about the liberalism or liberal ideas reflected in the Constitution of India.

There is not a single but varies ideas are reflected in the Constitution. In these various reflected ideas are “liberal, democratic, egalitarian, secular, and federal, open to community values, sensitive to the needs of religious and linguistic minorities as well as historically disadvantaged groups, to find unity in diversity and committed to building a common national identity, etc. While all ideas unfold on this playfield (playground), democracy is the ‘Umpire’. In short, it is committed to freedom, equality, social justice, and some form of national unity. But underneath all this, there is a clear emphasis on peaceful and democratic measures for putting this philosophy into practice”.

Liberal ideas reflected or expressed in the Constitution through its various provisions. Fundamental rights to the citizens and the Directive Principles of State Policy of the Indian Constitution are the most important to understand the reflection of liberalism with other articles. Liberalism gives the essential importance to the freedom of individual. So there is to evaluate the individual freedom for criticizing the liberal ideas in the Constitution of India.

Liberalism is one of the elements to the life-structure of the modern world. It can be considered as an effective historical force, the movement of liberation, a clearance of obstruction, an opening of channels for the flow of
free spontaneous vital activity, and as a living force. It is to be studied that, this liberalism is reflected in what measure in the Constitution of India.

According to W. Lyon Blease, “Liberalism meant, not a policy, but a habit of mind. The man in the society looks upon each of his fellows as of equal worth with himself. He does not assume that all men and women are equal capacity, or equally entitled of offices and privileges. But he is always ready to leave and to give them equal opportunity with himself for self-expression and for self-development”.

He assumes, as the basis of his activity, that he has no right to interfere with any other person’s attempts to employ his natural powers in what he conceives to be the best way.”

He is unwilling to impose his judgment upon that of others or to force them to live their lives according to his ideas rather than their own. They are never to be used by him for his own ends, but for theirs. Each is to left to himself, to work out his own salvation.

The Liberal habit of mind has its positive as well as its negative side. Just as it leads its possessor to refrain (prevent) from interfering with the development of others, so it leads him to take active steps to remove the artificial barriers which impede (hinder) that development.

Natural obstacles will remain, though even these may be minimized. But the artificial conditions, which prevent and hinder growth, are nonstop obnoxious (evil) to the Liberal.

Upon class distinctions in society, privileges of sex, rank, wealth, and creed, he wages (to start) unceasing war. They are in his eye, weight and impediments (hindrances). To one of two individuals, not distinguishable in natural capacity, they give an advantage which is denied to the other.

It is the object of the Liberal not to deprive any individual of such opportunities as are required for the exercise of his natural powers, but to prevent the excessive (beyond the normal) appropriation (allocation) of such opportunities by members of the privileged class.
The differences between the practical aims and methods of Liberals at different times are very wide. But the mental habit has always been the same. Liberalism is the attitude of person whom wants to give equal opportunities and not to privileges. It is the habit of mind rather than policy. Before the independence somewhat liberal ideas can be found in Indian writings and speeches.

“Indian liberalism has two streams. The first stream began with Rammohan Roy. He emphasised individual rights, particularly the rights of women. The second stream included thinkers like K.C. Sen, Justice Ranade and Swami Vivekananda.

They introduced the spirit of social justice within orthodox Hinduism. For Vivekananda, such a reordering of Hindu society could not have been possible without liberal principles. Historical freedom movement of India has made a background for idea of liberalism in the mind of Indian people through the various resolutions of major political parties.

**Karachi Congress Resolution, 1931**

Those of them Karachi Congress Resolution, 1931 can be considered as important. Reflection of liberalism can be seen in that resolution. That resolution was one of the definitions of *Swaraj*.

The Congress declares that no constitution will be acceptable to it unless it provides or enables the *Swaraj* Government. The government will provide freedom of expression, association and meeting, freedom of religion, Protection of all cultures and languages.

All citizens shall be equal before the law. No discrimination in employment or trade or profession on account of religion, caste or sex, equal rights and duties for all in regard to public wells, schools, etc., all to have right to bear arms in accordance with regulations, no person to be deprived of property or liberty except in accordance with law.
And religious neutrality of State, adult Suffrage, free compulsory primary education, no titles to be conferred, capital punishment to be abolished, freedom of movement for every citizen of India and right to settle and acquire property in any part thereof, and equal protection of law. Proper standard of life for industrial workers and suitable machinery for settlement of disputes between employers and workers and protection against old age, sickness, etc, all labour to be free from conditions of serfdom (bonded labour).

Special protection of women workers, children not to be employed in mines and factories, rights of peasants and workers to form unions, reform of system of land revenue and tenure and rent, exempting rent and revenue for uneconomical holdings and reduction of dues payable for smaller holdings.

abolition of Salt tax, protection of indigenous cloth against competition of foreign cloth., total prohibition of intoxicating drinks and drugs, currency and exchange in national interest, nationalization of key industries and services, railways, etc. Relief of agricultural indebtedness and military training for citizens, Karachi resolution condensed (shorter or smaller) to be printed on membership forms.4

“The Congress Session held at Karachi in March 1931 adopted the Resolution on Fundamental Rights and Economic and Social Change, which was both a declaration of rights and a humanitarian socialist manifesto. The Karachi Resolution, as it came to be called, meant that the social revolution would have a vital share in shaping India’s future constitution, and the provisions did in fact become the spiritual, and in some cases the direct, antecedents (parents or reason) of the Directive Principles”.5 The main concern was the legislature and executive must not become a dictator, people should enjoy their democratic rights. Thus the liberal ideas reflected in the Indian Constitution. So it is necessary to study the meaning of liberalism.
2.3 Meaning of Liberalism

The word "liberal" derives from the Latin "liber" (meaning "free" or "not a slave"). In everyday use, it means generous and open-minded, as well as free from restraint and from prejudice. Its use as a political term, however, only dates from the early 19th Century.

Liberalism includes a broad spectrum of political philosophy that considers individual liberty to be the most important political goal, and emphasize individual rights and equality of opportunity. Although most Liberals would claim that a government is necessary to protect rights, different forms of Liberalism may propose very different policies. They are, however, generally united by their support for a number of principles, including extensive freedom of thought and freedom of speech, limitations on the power of governments, the application of the rule of law, a market economy (or a mixed economy with both private-owned and state-owned enterprises) and a transparent and democratic system of government.

Liberalism believes that society should be organized in accordance with certain unchangeable and inviolable human rights, especially the rights to life, liberty and property. It also holds that traditions do not carry any inherent value, that social practices ought to be continuously adjusted for the greater benefit of humanity, and that there should be no foundational assumptions such as the Divine Right of Kings, hereditary status or established religion that take precedence over other aspects of government.

Now it is to see meaning of Liberalism. Nicholas Murray Butler argued, “What has been the aim of liberalism? Aim of liberalism has been to make it plain that “the individual is not to be subject (under the control of a ruler) to the compulsion of the group, but that the group is organized in political or economic state for a common purpose which will the individual free in his thought, in his speech, in his religion and his press.” ⁶ This argument of
liberalism and the resolution of Karachi 1931 have been reflected in each other. And then the Karachi resolution of 1931 has been reflected in the Constitution of India.

The modern ideology of Liberalism can be traced back to the Humanism which challenged the authority of the established church in Renaissance Europe, and more particularly to the 17th and 18th Century British and French Enlightenment thinkers, and the movement towards self-government in colonial America.

John Locke’s two well-known fundamental liberal ideas are economic liberty (meaning the right to have and use property) and intellectual liberty (including freedom of conscience). His natural rights theory (for Locke being essentially life, liberty and property) was the distant forerunner of the modern conception of human rights, the idea of natural rights played a key role in providing the ideological justification for the American and the French revolutions, and in the further development of Liberalism.

For liberals, democracy is not an end in itself, but an essential means to securing liberty, individuality and diversity. Towards the end of the 19th Century, though, splits were developing within Liberalism between those who accepted some government intervention in the economy, and those who became increasingly anti-government, in some cases adopting varieties of Anarchism.

In the 20th Century, in the face of the growing relative inequality of wealth, a theory of Modern Liberalism or New Liberalism or Social Liberalism was developed to describe how a government could intervene in the economy to protect liberty while still avoiding Socialism.\(^7\)
According to Manorama, “Liberalism is a Political philosophy that emphasizes human values like freedom of individual, civil rights, a Universalist approach to rights and duties etc.”

The Constitution of India did not accept of totalitarianism; the political concept that the citizen should be totally subject to an absolute state authority and monarchy. It is accepted as the “Republic Democracy”. In that sense the principle of liberal idea can be found reflected in the Constitution.

The modern State starts from the protest against authoritarian order “a protest religious, political, economic, social, and ethical, is the historic beginning of Liberalism…It finds humanity oppressed, and would set it free. It finds a people groaning under arbitrary rule, a nation in bondage to a conquering race, industrial enterprise obstructed by social privileges or crippled (disabled) by taxation, and it offers relief.” Thus, liberalism does not concede to the arbitrariness or unreasonableness. And the Indian Constitution also does not concede it.

As has been explained by Bhagwati, J., in Bachan Sing v. State of Punjab, Rule of law which permeates the entire fabric of the Indian Constitution excludes arbitrariness. “Wherever we find arbitrariness or unreasonableness there is denial of rule of law.” Article 14 enacts primarily a guarantee against arbitrariness and inhibits state action, whether legislative or executive, which suffers from the vice of arbitrariness. “Every state action must be non-arbitrary and reasonable otherwise, the court would strike it sown as invalid.”

In the Constitution, Article 14 has evolved as one of the guarantee against any arbitrary, discriminatory or unequal action taken by the Administration. This principle manifests itself in the form of the following propositions:

(i) A law conferring unguided and unrestricted power on an authority is bad for arbitrary power is discriminatory.
(ii) Article 14 illegalizes discrimination in the actual exercise of any discretionary power.

(iii) Article 14 strikes at arbitrariness in administrative action and ensures fairness and equality of treatment.\(^\text{10}\)

In the Indian Constitution, **Article 14 ensures equality before law** and strikes at arbitrary and discriminatory state action…if it would permit arbitrary and capricious (quickly changeable) **exercise of power, which is the antithesis of equality before law.**” This is the central idea of liberalism in the Constitution.

There are some exceptions, but the Supreme Court of India has, on the whole, interpreted the fundamental rights in liberal manner. The Court does not allow circumscribing the Fundamental Rights if the Constitution does not so permit itself.

“The Fundamental Rights are intended not only to protect individual’s rights but they are based on high public policy. Liberty of the individual and the protection of his Fundamental Rights are the very essence of the democratic way of life adopted by the Constitution, and it is the privilege and the duty of this Court to uphold those rights. This Court would naturally refuse to circumscribe (to limit) them or to curtail them except as provided by the Constitution itself”.\(^\text{11}\)

There are some main elements of Liberalism which could be considered. And for clear understanding of Liberalism and its reflection in the Constitution of India.

**2.4 The Indian Constitution: Elements of liberalism**

Liberalism first became a distinct political movement during the Age of Enlightenment, when it became popular among philosophers and economists in the Western world. Liberalism rejected the prevailing social and political
norms of hereditary privilege, state religion, absolute monarchy and the divine right of kings.

The 17th century philosopher John Locke is often credited with founding liberalism as a distinct philosophical tradition. Locke argued that each man has a natural right to life, liberty and property, while adding that governments must not violate these rights based on the social contract. Liberals opposed traditional conservatism and sought to replace absolutism in government with representative democracy and the rule of law.

The earlier liberalism had to deal with authoritarian government in church and state. In his ‘Liberalism’ L.T. Hobhouse has explained the following elements of liberalism.

a) Civil Liberty
b) Fiscal Liberty
c) Personal Liberty
d) Social Liberty
e) Economic Liberty
f) Domestic Liberty
g) Local, Racial, and National Liberty
h) International Liberty
i) Political Liberty and Popular Sovereignty

For this research, these elements of liberalism are to find in the Constitution of India. It is necessary to comparative study of these elements and the Constitution to test the hypothesis of the research.

The Indian Constitution has given place to the elements of liberalism in it. Equality, liberty and life are preserved by the scheme of the Fundamental Rights, the Directive Principles of State Policy, and the basic structure of the Constitution. Civil liberty is one of the core elements of liberalism, which prevails in the Constitution. The idea of natural rights played a key role in providing the ideological justification for the Fundamental Rights.
The ‘Civil Liberty’ in the Constitution

L.T. Hobhouse explained, Civil liberty is one of the main elements of liberalism. This is the first liberty to be secured is the right to be dealt with in accordance with law. This is the first point to attack on the arbitrary government both historically and logically. Civil liberty is a demand for law and freedom under government. And India is one of the countries which is governed by the ‘rule of law’. The Supreme Court of India observed:

“We are a country governed by the Rule of Law. Our Constitution confers certain rights on every human-being and certain other rights on citizens. Every person is entitles to equality before the law and the equal protection to the laws”.

The liberalism demands to have a standing rule to everyone in the society. It needs of legislative power. Every man in society has to be certain rights or universal freedom. Universal restraints should be Condition for the universal freedom. Like those Fundamental Rights in Part III and Universal restraints on these are both seen in the Constitution of India Article 12 to 35.

Clauses (a) to (g) of Article 19(1) of the Indian Constitution guarantee to the citizens of India six freedoms, These are of speech and expression’, ‘peaceable assembly’ ‘association’, ‘free movement’, ‘residence’, and practicing any profession and carrying on any business’. Article 19 guarantees some to the basic, valued and natural rights inherent in a person.

Article 19(1) (a) to (g) are not absolute as no right can be. Every right is coupled with a duty. Each of these rights is liable to be controlled, curtailed and regulated to some extent by laws made by Parliament or the State Legislatures. Accordingly, clauses (2) to (6) of Art.19 lay down the grounds and the purposes for which a legislature can impose ‘reasonable restrictions’ on the rights guaranteed by Articles 19(1) (a) to (g).
The first element of liberalism is a civil liberty for a civil society. As the civil liberty, it implies the ‘rule of law’ and the idea of ‘the rule of law’ prevails in the Constitution of India. It is recognized that the ‘rule of law’ the basic feature of the Constitution.

“The limitation imposed on a freedom should not be arbitrary or excessive, or beyond what is required in the situation in the interest of the public.” And the civil liberty implies in ‘the rule of law’. And then ‘rule of law’ implies the first condition of free government of the ruler, but by fixed rules of law, to which the ruler himself is subject. So the ‘rule of law’ is an essential principle or element of the liberalism. Thus the rule of law; the element of liberalism is reflected in the Constitution of India.

Absolute liberty is a simply a utopian dream. We will make free nation from tomorrow but society will not become free from crime or criminals. And for the sake of law and order we will have to jail arrest and intern (to put in jail) people, said Alldikrishna Swami Aayyr in the Constituent Assembly. In that case we should have a provision the persons have to be informed his deprivation of liberty within twenty four hours of his detention, Said Dr. B. R. Ambedkar.

The Constituent Assembly debates provide the rationale behind every provision of the Constitution. These are also very useful to interpret the meaning of the Constitution.

The Preamble of the Constitution states its own philosophy. Liberty is one of the essential ideas for the Constitution of India. And Liberty is the essential element of liberalism than any other ideas. Liberty is one the Fundamental Rights in the Constitution. But there would not be liberty as an absolute right; there should be reasonable restriction on it. Indian Constitution fulfils this condition. Liberty can flourish only in well ordered society.

The first condition of universal freedom, that is to say, is a measure of universal restraint. Without such restraint some men may be free but others
will be unfree, it is true. One man may be able to do all his will, but the rest will have no will except that which he sees fit to allow them.

In a civil society, to put the same point from another side, the first condition of free government of the ruler, but by fixed rules of law, to which the ruler himself is subject. It can be drawn the important inference that there is no essential antithesis between liberty and law. On the contrary, law is essential to liberty. This is the argument of L.T. Hobhouse.

**In the Constitution the word ‘restriction’ includes ‘prohibition’**. Under certain circumstances, therefore, a law depriving a citizen of his Fundamental Rights may be regarded as reasonable.\(^{15}\) A restrictions to be valid must have a rational relation with the grounds for which the legislature is entitled to impose restrictions. The grounds are laid down in Arts. 19(2) to (6). Too remote connection between a restriction and the constitutionally authorized ground for restriction will render the law invalid.\(^{16}\)

The Indian Constitution accepts the ‘rule of law’. But the law should liberate the individuals from the fear of arbitrary aggression or coercion. Then the liberty will be secured. The law of course, restrains the individual; it is therefore opposed to his liberty at a given moment and in a given direction. But, equally, law restrains others from doing with him as they will. It liberates him from the fear of arbitrary aggression or coercion, and this is the only way, indeed, the only sense, in which liberty for an entire community is attainable.

This principle of liberalism is in Indian Constitution “**thus, the onus is on the state to justify that the restriction imposed** on any Fundamental Right guaranteed by Arts. 19(1) (a) to (g) is reasonable under clauses 19(2) to (6)”.\(^{17}\) Thus, the Civil liberty, the principle of liberalism is fully reflected in the Constitution of India.

In the Constitution of India there is no one law for the Government and another for its subjects, one for noble and another for commoner, one for rich and another for poor, the law guarantees liberty for all principly. Liberty in this
respect implies equality. There is need of impartial implmentation of law, this is a common logic.

**Freedom of speech**

Voltaire was an enlightenment thinker. He had the theory of “freedom of speech and expression”. He believed that people should have the rights to say, think and do whatever they wanted as long as they did not harm or involve anyone else.

In Indian Constitution ‘Freedom of speech’ Articles 19 (1) (a) is said the mother of all other liberties. “The Freedom is essential for the proper functioning of the democratic process. The freedom of speech and expression in regarded as the first condition of liberty. It occupies a preferred position in the hierarchy of liberties giving succour (help/aid) and protection to all other liberties. It has truly said that it is the mother of all other liberties.”

The Fundamental Rights are part of the basic structure of the Constitution. They cannot be contravened or abridged by any statutory or constitutional provision. They are inherent and cannot be extinguished by any constitutional or statutory provision. Any law that abrogates or abridges such rights would be violative of the doctrine of basic structure. During emergency, however, some curtailment of the Fundamental right does take place. But all these curtailments of Fundamental are of a temporary nature.

**Restrictions under Article 19(2)**

‘Freedom of speech’ Article 19(1) (a) is restricted under the Article 19(2). “While it is necessary to maintain and preserve freedom of speech and expression is a democracy, so also it is necessary to place some curbs on this freedom for the maintenance of social order. No freedom can be absolute or completely unrestricted.”
Accordingly, under Article 19(2), the state may make a law imposing ‘reasonable restrictions’ on the exercise of the right to freedom of speech and expression ‘in the interests of’ the security of the State, friendly relations with foreign States, public order, decency, morality, sovereignty and integrity of India, or ‘in relation to contempt of Court, defamation or incitement to offence’. Exercise of legislative power in this respect by the State can be subjected to judicial review, within limited ambit.21

The expression used in Art. 19(2) “in the interest of “give wide amplitude to the permissible law which can be enacted to impose reasonable restriction on the right guaranteed by Article 19 (1) (a). “The burden is on the authority to justify the restrictions imposed”.

Civil liberty the elements of liberalism implies the Law is necessary for living, Common rule of all society, Individual has to certain rights, Free government of the ruler, but by the fixed rules of law, and there is no essential antithesis between liberty and law. And these ideas of liberalism are fully reflected in the Constitution of India. Article 13: Laws inconsistent with fundamental Rights shall be the void to the extent of the inconsistency.

Article 13 (1) declares that all pre-Constitution laws shall be void to the extent of their inconsistency with the Fundamental Rights.22 The Article 13 (2) clearly prohibits the making of any law by the State which takes away or abridges rights, conferred by Part III of the Constitution. In the event of such a law being made the same shall be void to the extent of contravention.23

The power of the legislature, thus, is limited by the very fundamental restriction prescribing that it cannot enact law inconsistent with the fundamental rights of the citizens.24

The Court performs the difficult task of declaring a law unconstitutional if it infringes a Fundamental Rights. This is a power of great consequence for
the courts. The Supreme Court has figuratively characterized this role of the courts as that of a “sentinel on the qui vive” (guardian alert).  

**Liberalism demands the impartial judiciary.** For the impartial application of law, there is need of independent judiciary. Independence of the judiciary is to secure equality as between the Government and its subjects. So liberalism demands for cheap procedure and accessible courts. This demand of liberalism fulfils the Constitution of India. Under the Articles 32 and 226 the Supreme Court and High courts do the works respectively. This requirement is fulfilled by the Supreme Court and whole judiciary in India.

The Supreme Court has supported its protective role under Art. 13 (2) by laying down the proposition that judicial review is the ‘basic’ feature of the Constitution.  

“It is the function of the Judges nay their duty, to pronounce upon the validity of laws. If courts are totally deprived of that power, the fundamental rights conferred on the people will become a mere adornment because rights without remedies are as writ in water. A controlled constitution will then become uncontrolled”.  

Judicial review has thus become an integral part of our constitutional system. The power of judicial review over legislative action vested in High Courts under Art.226 and The Supreme Court under Art.32 of the Constitution is an integral and essential Feature of the Constitution.

The jurisdiction conferred on High Courts under Articles 226/227 and upon the Supreme Court under Art. 32 of the Constitution is part of the inviolable basic structure of our Constitution.”

These Court can issue various writs, orders and directions for the enforcement of these Fundamental Rights by virtue of Articles 32 and 226.

For the liberalism one essential question is what is the just relation between the individual and the state? Roughly, there are three liberal answers:
the state should have (almost) no role in individual life, the state should have a limited role, or the state should have a fairly large role. And almost ‘Fundamental Fights’ In the Indian Constitution are the indicators of the relations between the individual and the State.

In the Constitution, the “most of the Rights are claimed against the state and its instrumentalities and not against private bodies”. 31 Article 13 (2), as stated above, bars the ‘state’ from making any ‘law’ infringing a Fundamental Rights.

Fundamental Rights are claimed mostly against the ‘state’.

According to Art.12 the term ‘state’ includes-

(i) The Government and Parliament of India;
(ii) The Government and the Legislature of a State;
(iii) All local authorities; and
(iv) Other authorities within the territory of India, or under the control of the Central Government. 32

Today’s government performs a large number of functions because of the prevailing philosophy of a social welfare state. 33 “The governing power wherever located must be subject to the fundamental constitutional limitations”. The expression ‘local authority’ in Article 12 refers to a unit of local self government like a municipal committee or village panchayat. This part of the Constitution comes under the study of the liberalism.

Art.13, the validity of which can be tested on the touchstone of Fundamental Rights:

(i) a resolution passed by State Government under Fundamental Rule 44 of the State;
(ii) a government notification under the Commissions of Inquiry Act setting up a commission of inquiry;
(iii) a notification or an order under a statute;
(iv) an administrative order, but administrative instruction is not law within the meaning of Article 13;
(v) a custom or usage;
(vi) bye-bye of a municipal or a statutory body;
(vii) Regulations made by a statutory corporation like the Life Insurance Corporation.  

The validity of the above can be questioned under the Fundamental Rights.

One point needs to be emphasized. A restriction of a Fundamental Right can be imposed only through a statute, statutory rule or statutory regulation. A Fundamental Right cannot be put under restraint merely by an administrative direction. This is one of the principal ideas of the ‘liberalism’.

Then it should be study the reflection of fiscal liberty; another element of liberalism.

**Reflection of the ‘Fiscal Liberty’**

Fiscal liberty is one of the important elements of liberalism. It implies the responsible government; taxes should be fixed by law accordance with the public need, more direct and constant supervision. There are four principles to control the public finance in the Constitution of India. Parliament controls public finance which includes granting of money to the administration for expenses on public services, imposition of taxes and authorization of loans. The first principle, the executive cannot raise money by taxation, borrowing or otherwise, or spend money, without the authority of parliament.

Article 265 which states, “No tax shall be levied or collected except by authority of law”. Article 265 forbids (ban) the state from making any unlawful levy. The bar imposed by Article 265 is absolute. Article 265 protects the citizen from any unlawful levy. A tax cannot be levied (charging or imposing tax) or collected (physical realization of the tax which is levied or
imposed) merely by an executive action without there being a law to support the same.

The third principle imposes a restriction on the power of Parliament to authorize expenditure. Parliament cannot vote money for any purpose whatsoever except on demand by ministers. The fourth principle imposes a similar restriction on the power of Parliament to impose taxation. Parliament cannot impose any tax except upon the recommendation to the Executive.\textsuperscript{35} This constitutional provision applies both to the Central as well as the State spheres. Hence the point of fiscal liberty; **Taxes should be fixed by law accordance with public need, more direct and constant supervision,** reflected in the Constitution of India.

Element of Fiscal liberty says taxes should be fixed by a law applying universally and impartially year to year according to the public needs, while other laws may remain stable and unchanged for an indefinite period, taxation must, in the nature of the case, be adjustable. It is a matter, properly considered, for the Executive rather than the Legislature.

Hence the Liberty of the subject in fiscal matters means the restraint of the Executive, not merely by established and written laws, but a more direct and constant supervision. It means, in a word, responsible government, and that is why we have more often heard the cry, “No taxation without representation,” than the cry, “No legislation without representation.” Hence, from the seventeenth century onwards, fiscal liberty was seen to involve what is called political liberty.\textsuperscript{36}

**Other point of fiscal liberty is ‘Responsible Government’** could found in the Constitution of India. **Government is directly or indirectly responsible to the ‘Will of the People’**.

Next element of liberalism is personal liberty. Its reflection can be compared with the Constitution of India.

**The Constitution: Personal Liberty**
Liberalism believes that society should be organized in accordance with certain unchangeable and inviolable human rights, especially the rights to life, liberty and property. Now, it is necessary to study the reflection of the personal liberty in the Constitution, because the personal liberty is considered one of the important elements of liberalism. Personal liberty implies Right to thoughts and expression and religious liberty.

Liberty of thought implies the liberty of speech and liberty of writing, printing, and peaceable discussion. And speech becomes indistinguishable from action, there is one of the considerable points ‘the law is the first step to liberty. Without any restrictions free speech may mean the right to create disorder. This type of liberty can be imagined neither in theory nor in practice. But liberty to exchange thought is necessary to the liberty of thought.

“They lead us immediately to one of the points at which liberty and order may be in conflict, and it is with conflicts of this kind that we shall have to deal…full liberty implies full equality” Expression is free, and worship is free as far as it is the expression of personal devotion.”

The Constitution guarantees to the people certain basic human rights and freedoms such as equal protection of laws, freedom of speech and expression, freedom of worship and religion, freedom of assembly and association, freedom to move freely and settle anywhere in India, freedom to follow any occupation, trade or business. Thus, the element of liberalism ‘personal liberty’ is fully reflected in the Constitution.

**Right to freedom of the person**

In the Indian Constitution, the right to freedom of the person, it can be stated the Fundamental Rights of Personal liberty; comprises the following:

(a) Protection of life and personal liberty: Art. 21;
(b) Protection against ex-post-facto laws: Art. 20(1);
(c) Protection against Double Jeopardy: Art. 20(2);
(d) Privilege against self-incrimination: Art. 20(3);
(e) Protection in case of arrest: Art. 22(1), 22(2) and 22(3);
(f) Safeguards in case of preventive detention: Art. 22(4) to 22(7).  

The Fundamental Rights under Article 19 are conferred only on citizens. But the rights mentioned in (a) to (f) above are available to all persons whether citizens or not. In number of cases, the Supreme Court has held that foreigners are entitled to the protection of Articles 21 and 22. This is one of the most essential scheme of the Fundamental Right on the citizens of India, clearly proved the idea of ‘liberalism’ is reflected in the Indian Constitution.

Applicability of Article 21 is to non-citizens, the Supreme Court has emphasized that even those who come to India as tourists also “have the right to live, so long as they are here, human dignity, just as the State is under an obligation to protect the life of the person who are not citizens.”

Procedural Safeguard by Law

Article 21 lays down that no person shall be deprived of his life of personal liberty except according to ‘procedure established by law’.

The word ‘law’ in Article 21 does not mean merely enacted law but incorporates principles of natural justice so that a law to deprive a person of his life or personal liberty cannot be valid unless it incorporates these principles the procedure laid down by it.

The word ‘due’ in this clause is interpreted to mean just, ‘proper’ or ‘reasonable’, according to the judicial view. Therefore, the Court can pronounce whether a law affecting person’s life, liberty, or property is reasonable or not. The Court may declare a law invalid if it does not accord with its notions of what is just and fair in the circumstances.

Due process has two aspects; Substantive due process and procedural due process. The substantive due process envisages that the substantive provisions of law should be reasonable and not arbitrary. Procedural due process
envisages a reasonable procedure. i.e., the person affected should have fair right of hearing which includes four elements:

(i) notice,
(ii) opportunity to be heard,
(iii) an impartial tribunal, and
(iv) an orderly procedure.\(^{43}\)

Art.21 the expression “procedure established by law” meant the procedure as laid down in the law as enacted by the Legislature and nothing more. A person could thus be deprived of his “life” or personal liberty’ in accordance with the procedure laid down in the relevant law.

The ruling thus meant that to deprive a person of his life of personal liberty-

(i) there must be a law;
(ii) it should lay down a procedure, and
(iii) the executive should follow this procedure while depriving a person of his life or personal liberty.\(^{44}\)

Thus, the Article 21 served as a restraint upon the executive which could not proceed against an individual to curtail his personal liberty. This may call the mechanism of the liberalism.

The Concept of Natural Justice

The concept of natural justice has been applied by the Courts in a number of cases and its area of application has expanded by leaps and bounds with the lapse of time.\(^{45}\) there is not much vagueness about the essentials of procedural due process because it basically means “fair hearing” which is very well known concept.

“Article 21 served as a restraint upon the executive which could not proceed against an individual to curtail his personal liberty” save within the four corners of the law”. Violation of personal liberty by private individual
was not within the purview of Art. 21, and in such a situation remedy was to be sought under the ordinary law and not under Art. 21.46

Liberalism took care of the individual liberty. And Article 22, it lays down substantive limitations as well as procedural safeguards regarding preventive detention.

In the course of time, Article 21 has proved to be a very fruitful source of rights of the people. According to Krishana Iyer, J., “the spirit of man is at the root of article 21”, “personal liberty makes for the worth of the human person” and “travel makes liberty worthwhile “. Thus, no person can be deprived of his right to go abroad except according to procedure established by law.47 Article 21 has proved to be a very fruitful source of rights of the people. Article 21 proved the core principle of ‘liberalism’ which is reflected in the Constitution of India.

Principle of Reasonableness

Principle of the ‘reason’ prevails in the liberalism as well as in the Constitution. The procedure contemplated by Article 21, must answer the test of the reasonableness in order to conform the Article 14 in the words of Bhagwati, J., “The principle of reasonableness which legally as well as philosophically is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence” thus, the procedure in Art. 21.48

The procedure mentioned in Art. 21 must be right and just fair and not arbitrary, fanciful or oppressive. Otherwise, it would be no procedure at all to the requirement of Art. 21. It would not be satisfied. On the other hand, reasonableness and non-arbitrariness are the core principles of the ‘liberalism’. This prevails in the Indian Constitution.

According to Bhagwati, J., Article 21 “embodies a constitutional value of supreme importance in a democratic society”.49 Iyer, J., has
characterized Art. 21 as “the procedural magna carta protective of life and liberty”. Article 21 has become the source of many substantive rights and procedural safeguards to the people.

Articles 14, 19 and 21 are not mutually exclusive, but they “sustain, strengthen and nourish each other.” for long, life and personal liberty occupied a back seat in India as accent was place on property rights. but now the Fundamental Rights of life and personal liberty into prominence; it is now regarded as the heart of Fundamental Rights. To any civilized society, there can be no attributes more valuable than the life and personal liberty of its members. That is why the Supreme Court has now given pride of place to Art. 21.

The Quality Of Life

Article 21 envisages not only physical existence but the quality of life. Bhagwati, J. observed in Fracis Coralie, “We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessaries of life such a adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and mingling with fellow human beings”.

Many scholars observed as the founding father of liberalism, in "Two Treatises on Government" of 1689, John Locke established two fundamental liberal ideas:

(i) Economic liberty-meaning the right to have and use property, and

(ii) Intellectual liberty-including freedom of conscience.

His natural rights theory is "natural rights" being essentially life, liberty and property. The Indian Constitution dignified the human with the right to life. And the Constitution believes in the conscience of the human being.
Definition of ‘Life’

The Supreme Court has defined ‘life’ as follows, “the right to life with human dignity and the same does not connote continued drudgery (boring difficult work). It right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessity of life such as adequate nutrition, clothing and shelter over their head”. A person’s reputation is a facet of his right to life under Article 21 of the Constitution. “For the animal, it is the bare protection of the body, for a human being, it has to be suitable accommodation which allows him to grow in all aspects-physical, mental and intellectual”.

Personal liberty is very important for the liberalism. “Art. 21 as a compendious (concise and comprehensive) term to include within it all those variety of rights of a person which got to make up the personal liberty of man. Liberty of an individual has to be balanced with his duties and obligations towards his fellow citizens”. This idea of the Constitution is appreciated in the liberalism.

There is “no doubt the expression ‘personal liberty’ is a comprehensive one and the right to move freely is an attribute of personal liberty”. Any law interfering with personal liberty of a person must satisfy a triple test:

(i) it must prescribe a procedure;
(ii) the procedure must withstand the test of one or more of the Fundamental Rights conferred under Art.19 which may be applicable in a given situation: and
(iii) it must also be liable to be tested with reference to Art.14.

A person can claim Fundamental Rights against the State subject to the State imposing some permissible restrictions in the interests of social control. The grounds for imposing these restrictions on Fundamental Rights are expressly mentioned in the Constitution itself and, therefore, these rights can
be abridged (shorten) only to the extent laid down. The Constitution marks the area of individual freedom and liberty wherein government cannot interfere.

These fundamental rights have been conceived in a liberal spirit and seek to draw a reasonable balance between individual freedom and social control.

The Constitution provides effective machinery in Arts.32 and 226 for the enforcement of these Rights. Without due enforcement, these Rights will be of not much use. The judiciary ensures an effective and speedy enforcement of these rights. Thus the personal liberty fully reflected in the fundamental rights in the Constitution of India. Personal liberty is one of the elements of liberalism, so liberalism is prevails in the Constitution of India.

The Fundamental Rights play a role to promote rule of law in India. “The range and coverage of the fundamental Rights can go on expanding as a result of judicial interpretation of the Constitution in tune with the needs of developing socio-economic society.”

Personal liberty is the concept of human rights. It protects the individuals against the excesses of the state and it is an attempt to protect to the individual from oppression and injustice. This is one of the essential elements of liberalism; right to ‘Personal liberty’, which is reflected in the Constitution, is very essence for a free society. Next element of liberalism is ‘social liberty’.

**The Constitution: Social Liberty**

Personal liberty is one of the elements of liberalism. It has been studied its reflection in the Constitution of India in the previous point. Liberal elements have been reflected in the Fundamental Rights (Part III) of the Constitution. Now Social Liberty; one of the most important elements has to study its reflection in the Constitution of India. Social Liberty reflected in the Fundamental Rights in the Constitution.
Right to Equality in the Constitution

The Constitution of India guarantees the Right to Equality through Articles 14 to 18. “Equality is one of the magnificent corner-stones of Indian democracy”. The doctrine of ‘equality before law’ is a necessary corollary of Rule of Law which pervades the Indian Constitution.

The underlying object of Article 14 is to secure to all persons, citizens or non-citizens, the equality of status and opportunity referred to in the Preamble to our Constitution.

Article 14 outlaws discrimination in a general way and guarantees equality before law to all persons. In view of a certain amount of indefiniteness attached to the general principle of equality enunciated in Article 14, separate provisions to cover specific discriminatory situations have been made by subsequent Articles.

Principle of “Non-Discrimination”

The Principle of “non-discrimination” prevails in the Indian Constitution. The Article 15 prohibits discrimination against citizens on such specific grounds as religion, race, caste, sex of place of birth. Article 16 guarantees to the citizens of India equality of opportunity in matters of public employment. Article 17 abolishes untouchability, and 18 abolish titles, other than a military or academic distinction.

Abolition of Titles

Article 18(1) prohibits the state from conferring any ‘title’ except a military or academic distinction. “The theory of equality does not mandate that merit should not be recognized. Art. 51A of the constitution speaks of the fundamental duties to every citizen of India. In this context, we may refer to the various clauses of Art. 51A and specifically clause (1) which exhorts (to appeal strongly) every citizen “to strive towards excellence in all spheres of
individual and collective activity, so that the nation constantly rise to higher levels of endeavour and achievement”.

Thus, the Supreme Court has said that the Constitution lays down provisions both for protective discrimination as also affirmative action. Article 14 of the Constitution embodies the principle of “non-discrimination” Article 21 and 14 are the heart of the chapter on Fundamental Rights. They cover myriad features of life. The goal set out in the Preamble to the Constitution regarding status and opportunity is embodied and concretised in Articles 14 to 18.

The abolition of privileges of class was very necessary. So the Constitution of India rejected the titles. Thus the liberalism is reflected in the Constitution of India. It may be noted that the right to equality has been declared by the Supreme Court as basic to the Constitution. The Constitution is wedded to the concept of equality. The Preamble to the Constitution emphasizes upon the principle of equality as basic to the Constitution. This means that even a constitutional amendment offending the right to equality will be declared invalid. Neither Parliament nor any State Legislature can transgress the Principle of equality.

Equality as a Basic Feature

The Supreme Court declares Equality is a basic feature of the Constitution. This Principle has been recently reiterated by the Court in the following words: “Equality is a basic feature of the Constitution of India and any treatment of equals unequally or unequals as equals will be violation of basic structure of the Constitution of India” The principle of ‘equal treatment to all equals’ prevails in the Constitution. In India there is caste-based discrimination, social inequality, and economic inequality. But constitutionally the equality is the ‘basic feature’ of the Constitution.
Article 14 strikes at arbitrary state action, both administrative and legislative”. Two concepts are involved in Article 14 that is ‘equality before law’ and ‘equal protection of law’. Article 14 bars discrimination and prohibits discriminatory laws. Article 14 is now proving as a bulwark against any arbitrary or discriminatory state action. The horizons of equality as embodied in Art. 14 have been expanding as result of the judicial pronouncements and Article 14 has now come to have a “highly activist magnitude”. Article 14 of the Constitution provides for equality of opportunity. It forms the Cornerstone of our Constitution. 71

By Article 17 untouchability formally has been abolished in the Constitution of India. Fundamental Rights must not be read in isolation but along with directive principles and fundamental duties. The object has been to place citizens at a centre stage and make the State accountable. Articles 12 to 35 of the Constitution pertain to Fundamental Rights of the people. The most difficult task is to balance between individual liberty and social control.

“Liberalism has had to deal with those restraints on the individual which flow from the hierarchical organization of society, and reserve certain offices, certain forms of occupation, and perhaps the right or at least the opportunity of education generally, to people of a certain rank or class. It is more extreme form this is a caste system, and its restrictions are religious or legal as well as social… Open road for women, open road for talent, and to secure them both is of the essence of Liberalism”. 72

Social Liberty implies open road for women, open road for talent, Freedom to choose and follow an occupation, no discrimination of caste, race, sex, and class etc. In the Constitution of India discrimination against any citizen on grounds of religion, race, caste, sex or place of birth is prohibited (Art. 15).
There is freedom to choose and follow an occupation to every citizen. In the public employment, it ensures the equality of opportunities to all people with the exception to reservation.

Abolition of Untouchability

**Article 17 abolishes untouchability** and forbids it practice in any form. The main object of Art.17 is to ban the practice of untouchability in any form. To give effect to Article 17, Parliament enacted the Untouchability (Offences) Act, 1955. Prescribing punishment for practicing untouchability is various forms. In 1976, the Act was renamed as the **“Protection of Civil Rights Act, 1955”**.

To establish the social equality in India, the Constitution abolished titles which create the artificial differences among the people. Academic degrees, military titles, and *Bharat Ratna* etc. these State awards are not regards as titles in terms of Article 18(1) of the Constitution. Untouchability is abolished and now the untouchability is offence punishable in accordance with the law. Dignity of Individuals, equality before law, and equal opportunity to all, no discrimination among people with their age-old low social statues these ideas followed in the Constitution. So the Social liberty; the element of liberalism and the Fundamental Rights in India are reflected in each other. Thus the liberalism is reflected in the Constitution of India. Next element of liberalism is Economic Liberty.

**Indian Constitution: Economic Liberty**

Economic Liberty; one of the elements of liberalism is to be studied briefly. “Liberalism may be rather to protect the individual against the power of the association than to protect the right of association against the restriction of the law… the function of Liberalism is not much to maintain a general right of free association as to define the right in each case in such terms as make for the maximum of real liberty and equality”.

73 Economic Liberty implies the
freedom to contact and free association to promote the maximum and real liberty and equality.

John Locke of the liberal linker came up with the theory of life, liberty and property. He in 1689, established two fundamental liberal ideas: economic liberty meaning the right to have and use property and intellectual liberty (including freedom of conscience). In the Indian Constitution prevails the Freedom to Form Association under Articles (19) (1) (c) and 19(4).

Articles (19) (1)(c) guarantees to the citizen of India the rights to form association or unions or cooperative. Under Article 19(4), reasonable restrictions in the interests of public order or morality or sovereignty and integrity of India may be imposed on this right by law. The right to form associations is the very lifeblood of democracy. A discretion vested in a government official to prohibit formation of an association, without safeguard, has been held to be unconstitutional.

“The Court has held that even a very liberal interpretation of Art. 19(1) (c) cannot mean that the trade unions have a guaranteed right to strike. The right to strike may be controlled by appropriate industrial legislation”.

“By economic liberty is meant such liberties as the following: liberty to work or not to work, liberty to the workman to accept such conditions of work as are agreeable to him, liberty to groups of workers to agree together as to the conditions on which they will work, liberty to buy and sell within the kingdom or without, liberty to the buyer and seller to do business together on such terms as are agreeable to themselves, liberty to possess property and to use it in any way that does not conflict with the well-being of other people”.

In the Constitution of India the Fundamental Rights guarantee certain economic rights. Too much emphasis on these rights might have led to the emergence of a Laissez faire economy in India which is now an out of date concept. Accordingly, partly by judicial interpretation, and partly by constitutional amendment process, emphasis has come to be laid on social
control in economic matters leading to the emergence of a regulated economy.\textsuperscript{77}

‘Economic liberty’ implies the ‘right to property’. In the Indian Constitution, the right to property originally it was secured by Arts.19 (1) (f) and 31, courts were prone to give these provisions a broad perspective thus giving to property rights a better protection. But the Fundamental Right to property has been very much diluted.\textsuperscript{78}

Article 19 (1) (f) right to property is removed from the part of the Fundamental Rights by the 44\textsuperscript{th} Constitution Amendment in 1978. But, Art. 300 A ensures that “\textit{no person shall be deprived of his property save by authority of law}”.\textsuperscript{79}

This was the period when the Supreme Court was more solicitous to protect the right to property than the right to personal freedom, Since Art. 31(2) had been drastically amended to dilute protection to property, \textsuperscript{80} the Court now established a link between Article 19(1) (f) and Article 31(2) to provide some protection to private property

“Economic liberalism taught … to believe in the rights and greatest possible development of the individual; to \textit{regard each man as equal before the Law}, and to \textit{display toleration towards the opinions of others} whether in politics or in religion; to place \textit{the same social value on all professions}, and to respect what other nations and races hold holy”.\textsuperscript{81}

\textbf{Freedom to carry on trade and business: Article 19(1)(g) and 19(6)}

Article 19(1)(g) guarantees to citizens the right to \textit{practice any profession}, or to on any occupation, trade or business. Under Article 19(6), however, the state is not prevented from making a \textit{law imposing, in the interests of the general public}, reasonable restrictions on the exercise of the above right.
For a long India has believed in planned economy and to regulate and not in a *laissez faire* economy. A number of constitutional provisions made under the title of “*Directive Principles of State Policy*” bear testimony to this economic philosophy. According to L.T. Hobhouse, “Pursuing the economic rights of the individual we have been led to contemplate a Socialistic organization of industry. But a word like Socialism has many meanings, and it is possible that there should be a liberal Socialism…”

Reasonable restrictions’ on trade, commerce of business have to be assessed keeping this factor in mind. Consequently, the right to carry on trade is very much regulated in India and the Courts have upheld, in course of time, a good deal of social control over private enterprise. By and large it is correct to say that despite Art. 19(1) (g) the government enjoys power to regulate and order the economy in any way it pleases.

For some time now the trend has been undergoing a change. Instead of nationalization, the trend has shifted to privatization. Instead of government control over trade and commerce, the emphasis now is to relax government control. The government has come to view its role more as a facilitator, rather than as a controller, of private enterprise. From the case law, one can see that, hitherto, the orientation of the Courts has been favourable to state control. One can visualize that the present day liberal trend will manifest itself in the case-law arising in future.

The Constitution accepted the single citizenship in India. This is the toleration towards the opinions of others accepting “the Unity in Diversity”. Economic liberalism believes in the each man as equal before the Law, and The Constitution accepts the ‘equality before the law’ and ‘equal opportunity’ to all with quality.

**Economic Right** by reading Art. 21 along with the Preamble to the Constitution and several Directive Principles, the Supreme Court has ruled that social justice, right to economic justice, right to economic equality, and
economic empowerment of the weaker sections to the society constitute Fundamental Rights. The aim of social Justice is to attain substantial degree of social, economic and political equality. Social justice and equality are complementary to each other.\textsuperscript{85}

The Constitution respects to others nations and tries to establish the international peace. Indian Society lack of social equality and all professions do not same values. But the Constitution accepts “One man one Vote, and One Vote One Value”. There is not a capitalist view of society because the society should be based on “Social Justice”. Their citizens are free to choose any profession.

**The Constitution: Domestic Liberty**

Domestic Liberty is one of the elements of liberalism. L. T. Hobhouse explained, “…the authoritarian state was reflected in the authoritarian family, in which the husband was within wide limits absolute lord of the person and property of wife and children. The movement of liberation consists:

(1) In rendering the wife a fully responsible individual, capable of holding property, Suing (to bring a lawsuit; case before a court against someone) and being sued, conducting business on her own account, and enjoying full personal protection against her husband;

(2) in establishing marriage as far as the law is concerned on a purely contractual basis, and leaving the sacramental (important ceremony) aspect of marriage to the ordinances to the religion professed by the parties;

(3) in securing the physical, mental, and moral care of the children, partly by imposing definite responsibilities on the parents and punishing them for neglect, partly by elaborating a public system of education and of hygiene…” \textsuperscript{86} Indian Constitution is in favour of such feminist idea. Constitution rejected the gender discrimination, took care of women’s dignity and privacy.
The Constitution: Women’s dignity and her privacy

Answering in the reference of ‘Medical Termination of Pregnancy Act, 1971’, the Supreme Court said: “There is no doubt that a women’s right to make reproductive choices is also a dimension of “personal liberty” as understood under Article 21 of the Constitution of India. It is important to recognize that reproductive choices can be exercise to procreate as well as to abstain from procreating. The crucial consideration is that a woman’s right to privacy, dignity and bodily integrity should be respected”. The Court, however, considered that there is also a “compelling State interest” in protecting the life of the prospective child and, therefore, the termination of the pregnancy could only be permitted under the conditions specified in the 1971 Act which are to be viewed as reasonable restriction placed on the exercise of reproductive choices.

Article 14 of the Indian Constitution runs as: “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India”. This article includes two concepts; ‘equality before law’ and ‘equal protection of the laws’ this laws empowered the women. There is no major discrimination between man and woman. The Constitution does not discriminate on the ground of sex. ‘Gender equality’ is one of the basic principles of Constitution”.

No discrimination on the Grounds of religion:

Liberalism gives the importance to religious freedom. The Constitution does not discriminate among the individuals only in the name of religion. Article 15(1) specifically bars the state from discriminating against any citizen of India on the grounds only of religion, race, caste, sex, place of birth, or any of them.

Article 15(2) prohibits subjection of a citizen to any disability, liability, restriction or condition on grounds only of religion, race, caste, sex or place of birth with regard to-
(a) Access to shops, public restaurants, hotels and places of entertainment, or,
(b) The use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of state funds or dedicated to the use of general public.

Under Article 15(3), the state is not prevented from making any special provision for women and children Article 15(4) or Article 29(2) does not prevent the state from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

The Supreme Court has observed:

“Art. 15(1) prohibits discrimination on grounds of religion or caste identities so as to foster national identity which does not deny pluralism of Indian culture but rather to preserve it.” Article 15(1) is an extension of Article 14. Article 15(1) expresses a particular application of the general principle of equality embodied in Article 14. Just as the principle of classification applies to Article 14 so it does to Article 15(1) as well.

The combined effect of Articles 14 and 15 is not that the state cannot pass unequal laws, but if it does pass unequal laws, the inequality must be based on some reasonable ground (Article 14), and that, due to Article 15(1), religion, race, caste, sex, or place of birth alone is not, and cannot be, a reasonable ground for discrimination. Under Article 15(4), the State can make special provisions for certain sections of the society as stated above. But for any section of population not falling under Article 15(4), special provisions can be made if there is reasonable classification.

In N. Vasundara v. State of Mysore, the Supreme Court has sustained the constitutional validity of reservation based on the requirement of ‘residence’ within the State for the purpose of admission to medical
collages.\textsuperscript{91} A law providing for elections to municipalities on the basis of separate electorates for members of different religious communities, or delimitation of panchayat circles for purposes of election to a panchayat on the basis of castes would offend Article 15(1).\textsuperscript{92} This liberal scheme is to uplift the backward section and women and children. Reservation does not limit number of candidates from reserved category to be elected. They are eligible to contest from the unreserved seats and get elected resulting in increase of their representation in the local bodies.\textsuperscript{93}

**Personal Laws**

“In family matters, India has system of personal laws, i.e. Hindu law for the Hindus, Muslim law for the Muslims and so on”. Personal laws fall outside the scope of the Fundamental Rights. The Court desires that Parliament ought to deal with these matters in rational manner. Only to protect the individual liberty the personal law put outside the scope of the Fundamental Rights.

**Article 15(3)-women and children:**

In the Indian Constitution, Article 15(3) permits special provisions for women. “The Supreme Court agreed with the premise that ‘gender equality’ is one of the basic principles of Constitution”. Article 15(1) and 15(2) prevent the state from making any discriminatory law on the ground of gender alone. The Constitution is thus characterized by gender equality. Articles 15 and 16 do not prohibit special treatment of women. The purpose of Article 15(3) is to eliminate this socio-economic backwardness of women and to empower them in such a manner as to bring about effective equality between men and women. The object of Article 15(3) is to strengthen and improve the status of women.

“The State may make laws containing special provisions for women and children but no discrimination can be made against them on account of their
sex alone” 94 Article 15(3) includes the power to make reservation for women. Under Article 15(3), both reservation and affirmative action are permissible in connection with employment or posts under the state. Article 15 is designed to create an egalitarian society.

Article 15(4): Backward Classes

Equality of opportunity in public employment:

Article 16(1) guarantees equality of opportunity to all citizens “in matters relating to employment” or “appointment to any office” under the state. According to Article 16(2), no citizen can be discriminated against, or be ineligible for any employment of office under the state, on the grounds only of religion, race, caste, sex, descent, place of birth or residence or any of them.95 “Public employment is a facet of right to equality envisaged under Article 16 of the Constitution of India”

As under Article 14, so under Article 16, equality cannot be mathematical equality. Reasonable classification is permissible for various purposes relation to employment. Thus, differentiation made between graduate and non-graduate supervisors in the matter of promotion has been held not to be violative of Art. 16.

An incident of sexual harassment of female at the place of work amounts to violation of her Fundamental Right to gender equality under Art. 16(2) Qualifications for a particular post can be “rational differentia” within the meaning of Art. 16.

Appointments based on the hereditary principle are bad because ‘descent’ is a prohibited ground of discrimination under Article 16 (2). Abolition of hereditary posts of village officers is neither arbitrary nor unreasonable because such posts are feudalistic in character and anachronisms (out of date) in the modern age.96 The government can
formulate or change the policy regarding promotions but the policy just conform to the principle of equality.97

‘Equality’ under Article 16 means equality as between members of the same class of employees and not equality between members separate, independent classes. The doctrine of “equal pay for equal work” is implicit in the doctrine of equality enshrined in Art. 14. This would apply and it would not be open to the State to discriminate one class with the other in paying salary”. “Principle of equal pay for equal work is applicable among equals. It cannot be applied to unequals”. But it cannot be said that being a Directive Principle. It is not enforceable in a court of law because it is also a part of Art. 14. The Fundamental Rights and Directive Principles are not supposed to be exclusionary of each other; they are complimentary to each other.98

Theory of the Separation of Powers:

In France, the Baron de Montesquieu (1689 - 1755) advocated the theory of the ‘separation of the power’ and ‘balance of power’. The Constitution adopted the idea of this theory as the basic structure of the Constitution.

The Supreme Court has asserted that the “independence to the judiciary” and “separation of powers between the Legislature. Executive and the judiciary” are the two principles which constitute the “basic structure of the Constitution” and thus these principles cannot be violated by any law.99 Thus, all there are the liberal principles which prevails in the Indian Constitution.

Freedom of assemble: Article 19(1)(b) Article 19(1)(b) guarantees to the citizens of India the right to assemble peaceably and without arms. Under Article 19(3), however, the state can make any law imposing
reasonable restrictions on the exercise of this right in the interests of public order, and sovereignty and integrity if India.

It is not valid to confer uncontrolled discretion on administration officers to regulate the freedom of assembly. The rule in question gave no guidance as to the circumstances in which permission to hold a meeting could be refused and, therefore, gave arbitrary powers.\textsuperscript{100}

And in India ‘National Commission for Women, Reservation for women in Panchayat Raj, empower the women and increase the domestic liberty. Hindu Code Bill was very essential for the domestic liberty which was presented in Parliament of India by Dr. Babasaheb B. R. Ambedkar, but it could be passed. But much more protection has been got by 498 Indian Penal Code to the Indian women. Women as citizen of India, is free to practice the religion of her own choice.

**The Constitution: International Liberty**

The Preamble to the Constitution declares India to be a “Sovereign Socialist Secular Democratic Republic”. The term ‘sovereign’ denotes that India is subject to no external authority and the state has power to legislate on any subject in conformity with constitutional limitations.\textsuperscript{101}

Hence the sovereignty declares the international liberty and domestic self determination. The Constitution of India tries to promote the international peace through her foreign policy. International Liberty is one of the elements of the liberalism. It considers mainly three points as:

1. It is of the essence of Liberalism to oppose the use of force, the basis of all tyranny.

2. It is one of its practical necessities to withstand the tyranny of armaments…the military spirit eats into free institutions and absorbs the public resources which might go to the advancement of civilization.

3. In proportion as the world becomes free, the use of force becomes meaningless. There is no purpose in aggression of national subjection.\textsuperscript{102}
Articles 36 to 51 contain the Directive Principles of State Policy. It is called the Fundamental Duties of the State. Wellbeing of the people and Welfare State reflected in it. Some social, political and economic objectives and goals have been determined through the Directive Principles of State Policy. As this ‘international liberty’; the element of liberalism, article 51 of the Constitution promotes the international peace and security. It maintains the just and honorable relations between the nations. The Preamble to the Universal Declaration of Human Rights inter alia declares:

“Whereas recognition of the inherent dignity, and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”\(^\text{103}\)

For the peaceful international civilization, respect for international law and treaty obligations in the dealing of organized people with one another. To avoid war, aggression, with the understanding of ‘use of force is meaningless’ the Constitution encourages settlement of international disputes by arbitration. So, the element of liberalism; international liberty, its above mentioned three main points and the article 51 of the Constitution are reflected in each other.

**Political Liberty and Popular Sovereignty**

The idea of equality and liberty in the Constitution of India are complimentary to each other. **L. T. Hobhouse realized again and again more liberty demands more equality**, and logically it is also true.

Liberation from the tyranny and fixed law for well ordered society is liberalism. And importance is given to liberty in liberalism. Liberation from the exploitation and inequality for well ordered society is as Socialism. And importance is given to equality in socialism. Both of these ideas incorporated in the Constitution of India with the harmony to each other in the Fundamental Rights (part III) and the Directive Principles (part IV).

In Hobhouse word, “Individualism can work in harmony with socialism, and it is this partial alliance which has, in fact, laid down the lines
of later Liberal finance.” The Preamble to the Constitution propounds the ‘sovereignty’ lies in the people.

“Thus individualism, when it grapples with the facts, is driven no small distance along Socialist lines. Once again we have found that to maintain individual freedom and equality we have to extend the sphere of social control. But to carry through the real principles of Liberalism, to achieve social liberty and living equality of rights, we shall have to probe still deeper.”

Democracy is the basic feature of the Constitution. Free and fair election has to be a basic feature of the Constitution. Secularism is a basic feature of the Constitution. The Right to vote is not the gift of the Legislature but flows from the Constitution. Election Commission is not merely an advisory body but an executive body as well. The Commission acts a quasi-judicial capacity. The Court has emphasized that free and fair elections are the sine qua non (absolutely needed) of democracy which is a basic feature of the Constitution. It promotes the political liberty.

2.5 Liberalism and the Preamble

Liberalism and the Preamble of the Constitution of India comparatively need to see. “Every constructive social doctrine rests on the conception of human progress. The heart of Liberalism is the understanding that progress is not a matter of mechanical contrivance, but of the liberation of living spiritual energy. Good mechanism is that which provides the channels wherein such energy can flow unimpeded (without hindrance), unobstructed by its own exuberance (utsah) of output, vivifying (to make more lively) the social structure, expanding and ennobling the life of mind.” The Constitution is not only mechanism but also a living document for the liberation of living spiritual energy. Iyer, J., has characterized Art. 21 is as “the procedural magna carta protective of life and liberty”. The ultimate source for the validity of and sanction behind the Constitution is the will of the people; that the Constitution has not been imposed on them by any external authority; they adopted, enacted and gave themselves. According to Krishna
Iyer, J. “the spirit of man is at the root of article 21”, “personal liberty makes for the worth of the human person” and “travel makes liberty worthwhile “. Like heart of liberalism the Constitution propound the sovereignty lies in the people. It emancipates to the people from unreasonable oppressive bondage.

The Constitution made the constructive social doctrine rests on the conception of human progress. Its good mechanism provides the conditions in which to liberate living spiritual energy of the people. For creating the heart of liberalism the Constitution is developed it’s as “Basic Structure” and “Basic Features”. The Preamble of the Constitution has been given the mechanism as republic, democracy, sovereignty, Socialism, Secularism.

2.6 Individual and State: Relationships

Article 14 of the Constitution is “a guarantee against arbitrariness”. ‘The Rule of Law’ does not permit the arbitrariness of the government and administrative action. Logically arbitrariness is an unreason and it is a denial of ‘rule of law’. It goes to against the equality. It is logically and historically proved that social liberty rests on restraint. “We have seen that social liberty rests on restraint. A man can be free to direct his own life only in so far as others are prevented from molesting and interfering with him. So far there is no real departure from the strictest tenets of individualism.”

In the Indian Constitution, Article 19(1) is not absolute as no right can be. Every right is coupled with a duty. Each of these rights is liable to be controlled, curtailed and regulated to some extent by laws made by Parliament or the State Legislatures. Accordingly, clauses (2) to (6) of Article 19 lay down the grounds and the purposes for which a legislature can impose ‘reasonable restrictions’ on the rights guaranteed by Articles 19(1) (a) to (g).

Article 19 protect the six freedoms to an Indian citizen from state action, and violation of these freedom by private conduct of an individual is not within its purview. These rights have been advisedly set out in broad
terms leaving scope for their expansion and adaption, through interpretation, to the changing needs and evolving notions of free society.

A foreigner enjoys no rights under Article 19. Article 19 confers certain Fundamental Rights on the citizens and not on non-citizens of India. \(^{114}\) A foreigner can thus claim no right “to reside and settle in India”. As mentioned in Article 19(1) (e). The Government thus has an unrestricted right to expel a foreigner. A foreigner does, however, enjoy the Fundamental Right to life and personal liberty under Art. 21.\(^{115}\)

Reasonable Restrictions: Articles 19(2) to 19(6)

A legislature cannot restrict these freedoms beyond the requirements of Art. 19(2) to 19(6)

Three significant characteristics of clauses 19(2) to 19(6) may note:

(i) The restriction under them can be imposed only by or under the authority of a law: no restriction can be imposed by executive action alone without there being a law to back it up.

(ii) A restriction must be related to the purposes mentioned in Clauses 19(2) to 19(6)

There is thus a double test adjudge the validity of a restriction:

(a) Whether it is reasonable; and

(b) Whether it is for a purpose mentioned in the clause under which the restriction is being imposed?

Both these question are to be determined finally by the Courts when a law is challenged as unconstitutional. The legislative determination of what restriction to impose on a freedom is not final and conclusive as it is subject to judicial review. Thus, this clause determines the relations between the individual and the State.
Test for reasonableness

It is difficult to give an exact definition of the word “reasonable”. Each case is to be judged on its own merits, and on abstract standard, of general pattern of reasonableness is applicable uniformly to all cases. “…no abstract standard or general pattern, of reasonableness can be laid down as applicable to all cases.” The test which it would be required to satisfy for its constitutional validity is one of reasonableness”

Thus, the standard or reasonableness is to be judged with due reference to the subject-matter of the legislation in question, economic and social conditions in India and the surrounding circumstances.

The Supreme Court has emphasized in Puthumma that in interpreting the constitutional provision, the Court should keep in mind the social setting of the country so as to show a complete consciousness and deep awareness of the growing requirements of the society, the increasing needs of the nation, the burning problems of the day and the complex issues facing the people which the legislature in its wisdom through beneficial legislation seeks to solve. The judicial approach should be dynamic rather than static, pragmatic and not pedantic, and elastic rather than rigid.

The limitation imposed on a freedom should not be arbitrary or excessive, or beyond what is required in the situation in the interest of the public.

A legislation arbitrarily or excessively invading the right cannot be characterized or reasonable. A restriction should strike a proper balance between the freedom guaranteed by any to the clauses and the social control, so that the freedom is limited only to the extent necessary to protect society of which a citizen is only a part. This introduces the principle of proportionality. This means that the court would consider whether the
restriction imposed by legislation on the Fundamental Right are disproportionate to the situation and are “not least restrictive of the choices”.

The burden to show that the restriction is reasonable lies on the state. The restrictions are imposed by law on the Fundamental Rights contained in Art. 19(1) (a) to (g) and the Courts are entailed to consider the “proportionality” of these restrictions which means that the restrictions should not be “arbitrary or of an excessive” nature, beyond what is required for achieving the objects of the legislation. Legislation which arbitrarily of excessively invades the Fundamental Rights cannot be said to contain the quality of reasonableness unless it strikes a proper balance between the Fundamental Rights guaranteed and the restriction imposed thereon.”

It is clear from the above that a Court evaluating the reasonableness or restriction imposed on a Fundamental Rights guaranteed by Article 19 enjoys a lot of discretion in the matter. A law affecting a Fundamental Right may be held bad for sheer vagueness and uncertainty.

For the liberalism, “that the true distinction is not between self-regarding and other-regarding actions, but between coercive and non-coercive actions. The function of State coercion is to override individual coercion, and, of course, coercion exercised by any association of individuals within the State. It is by this means that it maintains liberty of expression, security of person and property, genuine freedom of contract, the rights of public meeting and association…”

**Arbitrary State Action:**

Article 14 out-laws arbitrary administrative action. When there is arbitrariness in state action. Art. 14 springs into action and the courts strike down such action. Arbitrary state action infringes Art.14. A very fascinating aspect of Article 14 which the courts in India have developed over time is that Article 14 embodies “a guarantee against arbitrariness” on the part of Administration.
As the Supreme Court has observed 124 “from a positivistic point of view, equality is antithetic to arbitrariness”. Any action that is arbitrary must necessarily involve the negation of equality. Abuse of power is hit by Art.14. The authority endowed with a power must free itself from political interference.125

The new orientation being given to Article 14 by the courts has been explained by Bhagwati. J., in Bachan Singh v. State of Punjab.126 Rule of law which permeates the entire fabric of the Indian Constitution excludes arbitrariness. “Wherever we find arbitrariness or unreasonableness there is denial of rule of law.” Article 14 enacts primarily a guarantee against arbitrariness and inhibits state action, whether legislative or executive, which suffers from the view of arbitrariness. “Every state must be non-arbitrary and reasonable. Otherwise the Court would strike it down as invalid.”

This new dimension of Article 14 transcends the classificatory principle. Article 14 is no longer to be equated with the principle of classification. It is primarily a guarantee against arbitrariness in state action and doctrine of classification has been evolved only as subsidiary for testing whether a particular state action arbitrary or not.127

Every action of the state must be informed by reasons and guided by public interest. Arbitrariness is the antithesis of Art. 14.128 Equality and arbitrariness are sworn (bound by an oath) enemies.

The State even in the exercise of its administrative power cannot act arbitrarily. Being the State it is obliged to act in a fair, reasonable and equitable manner.”129

“Another notable principle developed by the Supreme Court out of Article 14 is that every action of the government, or any of its instrumentalities, must be informed by reason. Any state action which is not informed by reason cannot be protected as it would be easy for the citizens to question such
an action as being arbitrary. Non arbitrariness, being a necessary concomitant of the rule of law”. 130

The government and other public authorities must act reasonably and fairly and that each action of such authorities must pass the test of reasonableness. 131 “Article 14 guarantees a right of bearing to the person adversely affected by an administrative order.”132 An order depriving a person of his civil right passed without affording him an opportunity of being heard suffers from the vice of violation of natural justice and is thus and arbitrary order. 133 Because of Art.14 “no order shall be passed at the back of person, prejudicial in nature to him, when it entails civil consequences.”

We have studied the main elements of liberalism comparatively with the Constitution of India. Liberalism is a complex European concept. It is understood that includes three basic assumptions: Individualism, Rationalism, and Universalism. Liberalism includes some basic beliefs and ideals. It should be better to study if these basic beliefs and ideals are reflected in what measure in the Constitution of India for the requirement of this study.

1. Respect for the individual's personality, dignity and creativity.
2. Supremacy of the reason and law.
3. Perfectibility of man.
4. Inevitability of human progress.
5. Civil liberties.
7. Democratic government. 134

The Preamble of the Constitution of India declares and ensures the “Dignity of the Individual or people” as well as the ‘liberalism’ gives a dignity and respect for the individual’s personality “The Supreme Court has emphasized that the words “fraternity assuring the dignity of the individual” have “a special relevance in the Indian context”
because of the social backwardness of certain sections of the community who had in the past been looked down upon’.

The Constitutional commitment to individual freedom has a history of continuous intellectual and political activities in the past independence India. Ram Mohan Roy protested against curtailment of the freedom of the press by the British Colonial State. Roy argued the state must permit unlimited liberty of publication. Rowlatt Act (arbitrary arrest) denied the basic freedom of individual. It is the past experience of Indian people. Therefore national freedom movement opposed to it and demanded the individual freedom.

In the present, the freedom of expression is an integral part of the Indian Constitution. The Constitution values individual freedom by the fundamental rights. Article 13 is as the Laws inconsistent with Fundamental Rights. The laws made by the conventions and will be made by the State which are inconsistent with the Fundamental Rights, these laws are inoperative in that extent. This article indicates the importance and the protection of the Fundamental Rights. These and other individual freedoms such as freedom of conscience are part of the liberal ideology. The argument will be strong on this basis that the Indian Constitution has a strong liberal character.

2.7 Constitutionalism and the Indian Constitution

The idea on Constitutionalism is not new. Many natural law philosophers have promoted the idea of this through their writings and speeches. The word “constitution” means, written organic instrument, under which governmental powers are both conferred (to grant) and circumscribed” (to limit), said Schwartz.

But the Constitutionalism recognizes the need for government and insists upon limitations being placed upon governmental powers. Constitutionalism ideates (to form an idea or conception of) checks and balances and putting the powers of the legislature and the executive under some restraints and not making them uncontrolled and arbitrary. Unlimited powers minimize the freedom of the individual. If the Constitution gives unrestricted power to
either the legislature or the executive, it might lead to an authoritarian, oppressive government. And the Constitutionalism is the antithesis of arbitrary powers and despotism (dictatorship). Constitutionalism is to preserve the basic freedoms of the individual, his dignity, and personality.

Indian Constitution has a strong character of the Constitutionalism because of the antithesis of arbitrary powers and despotism. The Indian Constitution preserves the basic freedoms of the individual, his dignity and personality. It can be considered as the Constitutionalism is a mechanism to establish the liberalism. And this mechanism for Constitutionalism and liberalism reflected in the Constitution through the written constitution, independent judiciary with powers of judicial review, the doctrine of rule of law and separation of powers, free elections to legislature, accountable and transparent democratic government, and Fundamental Rights of the people, federalism, and decentralization of power. And all these ideas or principles can be found in the Indian Constitution. Thus in this measure the Liberalism has been reflected in the Indian Constitution.

**Supremacy of Reason and Law**

Other belief of liberalism ‘supremacy of reason and law’ is also reflected in the Constitution of India. The Constitution is a mechanism and basic law of the country. It follows the rule of law; rule of law follows the reason, so, the Constitution follows the reason as well as the supremacy of itself. It did not apply the “Divine Theory of State,” ‘Divine theory of the State’ is based on only belief. In sight of the Constitution people are the source of the sovereign power. Constitution does not follow the blind faith, it follows the scientific view. So, belief of the liberalism, supremacy of reason and law is reflected in the Constitution of India.

In *Papnasam*, the Supreme Court has stated that following Principles and guidelines should be kept in view while considering the constitutionality of a statutory provision imposing restriction on a Fundamental Right guaranteed by
Art. 19(1(a) to (g) when challenged on the ground of unreasonableness of the restriction imposed by it:

(a) The restriction must not be arbitrary or of an excessive nature so as to go beyond the requirement of felt need of the society and object sought to be achieved.

(b) There must be direct and proximate nexus or a reasonable connection between the restriction imposed and the object sought to be achieved.

(c) No abstract or fixed principle can be laid down which may have universal application in all cases. Such consideration of the question of reasonableness, therefore, is expected to vary from case to case.

(d) In interpreting constitutional provisions, the Court should be alive to the felt need of the society and complex issues facing the people which the legislature intends to solve through effective legislation.

(e) In appreciation such problems and felt need to the society the judicial approach must necessarily be dynamic, pragmatic and elastic.

(f) It is imperative that for consideration of reasonableness of restriction imposed by a statute, the Court should examine whether the social control envisaged in Article 19 is being effectuated by the restriction imposed on the Fundamental Right.

(g) The right guaranteed to a citizen by Art. 19 do not confer any absolute or unconditional right. Each Right is subject reasonable restriction which the legislature may impose in public interest. It is therefore necessary to examine whether such restriction is meant to protect social welfare satisfying the need of prevailing social values.

(h) The reasonableness has got to be tested both from the procedural and substantive aspects. It should not be bound by procedural perniciousness or jurisprudence of remedies.

(i) A restriction imposed on a Fundamental Right guaranteed by Art. 19 must not be arbitrary, unbridled, uncanalised and excessive and also not unreasonably discriminatory. *Ex hypothesi*, (by hypothesis) therefore the
restriction to be reasonable must also be consistent with Art. 14 of the Constitution.138

(j) In judging the reasonableness of the restriction imposed under Art. 19(6), the Court has to bear in mind Directive Principles of State Policy.139

(k) Ordinarily, any restriction so imposed which has the effect of promoting or effectuation a Directive Principle can be presumed to be reasonable restriction in public interest.

It is clear from the above that a Court evaluating the reasonableness or restriction imposed on a Fundamental Rights guaranteed by Article 19 enjoys a lot of discretion in the matter. In the Indian this is the mechanism for the liberalism.

2.8 Liberalism: The Rule of law

Rule of law as mechanism in the Constitution for Liberalism. ‘Rule of law’ is a basic idea as the Constitutionalism antithesis of arbitrary powers. ‘Rule of law’ is a thought to preserve individual liberty. “Rule of law does not mean rule according to statutory law pure and simple, because such a law may it be harsh, inequitable, discriminatory or unjust.

‘Rule of law’ connotes some higher kind of law which is reasonable just and non-discriminatory. Rule of law to-day envisages not arbitrary power but controlled power. Constitutional values, such as constitutionalism, absence of arbitrary power in the government, liberty of the people, an independent judiciary, etc. are imbibed (to take in) in the concept of Rule of Law”.140

According to Dicey the three basis ideas of the ‘Rule of Law’ are:

(i) Absence of Arbitrary Power,
(ii) Equality before Law,
(iii) Individual Liberty.140a

Thus the “Rule of Law” can be considered as mechanism for Liberalism. Now it is to see the reflection of this mechanism in the Indian Constitution. “The Indian Constitution by and large seeks to promote ‘Rule of Law’ through many of its provisions. For example, Parliament and State
Legislatures are democratically elected on the basis of adult suffrage. The Constitution makes adequate provisions guaranteeing independence of the judiciary. Judicial review has been guaranteed through several constitutional provisions. The Supreme Court has characterized judicial review as “basic feature of the Constitution” Article 14 of the Constitution guarantees right to equality before law. This Constitutional provision has now assumed great significance as it is used to control administrative powers lest (for fear that) they should become arbitrary”.  

Thus two great values which emanate (to come out from a source) from the concept of rule of law in modern times are:

(i) No arbitrary government; and
(ii) Upholding individual Liberty.  

The judicial review is an essential part of Rule of Law. Judicial Review involves determination not only of the constitutionality of the law but also of the validity of administrative action. The action of the state public authorities and bureaucracy are all subject to judicial review; they are thus all accountable to the courts for the legality of their actions.  

The conclusion of this point is that the Liberalism is reflected in the ‘basic structures’ and ‘essential features’ of Indian Constitution.

**Perfectibility of man is another belief of Liberalism.** The Constitution does not say about the perfection of man. The Constitution makers had logic to prove the values in the Constitution. The Constitution is declaration of political self-determination. It believes in the human progress. Fundamental rights are the declaration of civil liberty and Parliamentary Democracy as such points are strongly based on liberal foundation. But there are some types of liberalism. The question is which type of liberalism reflected in the constitution of India. The search will take place in the following points.

**2.9 Types of Liberalism and Indian Constitution**

There can be found the various types of Liberalism. The main types of Liberalism are to be studied for more clarification of the concept.
1. ‘Reformist’ Liberalism
2. ‘Free-Market’ Liberalism
3. ‘Utopian’ Liberalism
4. ‘Democratic’ Liberalism

Reflection of the ‘Reformist’ Liberalism’

This kind of liberalism does stand for a fairly specific ideological view. Modern liberals define the social and economic problems. They look to the government as the major instrument for the solution of these problems. They do not believe in private individuals to solve these problems. And State must interfere to achieve the health, housing, education etc. There is a conflict between reformist liberalism and the free market conception of liberalism which will be considered shortly. The reformist says that the government can actually be a liberating agency. It can redistribute wealth, it can provide public services, and it can protect the weak from the depredations of the strong.

“In this way the power of the state is used to provide the conditions for achieving the good life for the vast majority of the citizens. Big government, in short, ensures the little man a freedom he did not know before: freedom from starvation, from sickness, from ignorance, from fear…This dialogue between liberal and conservative is a familiar one. And it revolves about an important conception of human freedom in our day”.

The Constitution gives obligation to the State. According to Supreme Court, “If there is an obligation upon the State to secure to the citizens an adequate means of livelihood and the right to work. It would be sheer pedantry to exclude the right to livelihood from the content of the right to life…But, any person, who is deprived of his right to except according to just and fair procedure established by law, can challenge the deprivation as offending the right to life conferred by Art.21”. Like “Reformist liberalism” there is an accountability of the State it is as liberating agency.
Reflection of the ‘Free-Market’ Liberalism’

Free market liberalism originally a radical theory. It is called for the liberation of businessmen from the restrictive regulations which governments imposed on economic activities. Indeed, it is part of this theory that the state is a coercive instrument which is bound to inflict injury whenever it undertakes to use its power. It opposes to the State in the name of liberty. It argued for minimum limited government and maximum individual liberty. But, “… the free-market idea is no longer radical; rather, it is a defense of the status quo more than anything else”.145

As described before now in the Constitution of India the Fundamental Rights guarantee certain economic rights. Too much emphasis on these rights might have led to the emergence of a Laissez faire economy in India which is now an out of date concept. Accordingly, partly by judicial interpretation, and partly by constitutional amendment process, emphasis has come to be laid on social control in economic matters leading to the emergence of a regulated economy, …

Thus, the free market liberalism is not reflected in the Constitution of India. At the starting of Indian Independence ‘mixed economy’ was applied, now economy is going to the direction of privatization and economic matters are under control of State which is leading to the emergence of a regulated economy. According to “Directive Principles of State Policy” India is Welfare State. There is not a limited government but State accountability has been increased for the wellbeing of people like the reformist liberalism.146

Reflection of the ‘Utopian’ Liberalism’

“Liberalism is a view of the individual, of the state, and of the relations between them”. Utopian liberalism is a theory of human nature and according to it human is a perfectible creature. It openly rejects the doctrine of original sin laid down by the theologians.

The Indian Constitution did not accept the doctrine of original sin laid by the theologian. The Supreme Court of India considers the preamble to the
Universal Declaration of human right. It observes, “Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”. 147

The preamble of Constitution did not accept as theologians that human is sinful by birth. Fundamental rights provide the conditions for fuller development of our people including their individual dignity. Fundamental rights are based on public policy. These are very essence of the democratic way of life which is adopted in the Constitution.

The Supreme Court observed, “The Fundamental Rights are intended not only to protect individual’s rights but they are based on Public policy. Liberty of the individual and the protection of his Fundamental Rights are the very essence of the democratic way of life adopted by the Constitutions, and it is the privilege and the duty of this Court to uphold those rights. This Court would naturally refuse to circumscribe them or to curtail them except as provided by the Constitution itself”. 148 Therefore, the Utopian liberalism reflected in some measures in the Constitution.

Utopian liberalism is individualist in orientation. The free man stands at the center of this theory: states and societies are associations he establishes for his convenience but not for ends higher than his own. The society of the Utopian liberal consist of enlightened individuals who have the freedom to pursue their own self-interest and yet who refrain from coercing each other in the course of this pursuit.

Reflection of the ‘Democratic’ Liberalism’

“The heart of democratic liberalism is the balancing of two values: democracy and individual freedom. Or, to put it another way, a society should be governed by the twin principles of majority rule, on the one hand, and minority rights, on the other…democratic liberals want a free society in which all men will know liberty. The two which stand out are, first, the free life is the prime pursuit of politics and, second, the state’s task is to
eschew (avoid) coercion and to encourage the conditions for that free life”. \(^{149}\)

“Republican Democracy” is one of the main characteristics of the Indian Constitution. And “Fundamental Rights” secure the Individuals freedom. If the heart of Democratic Liberalism is the balancing of two values: democracy and individual freedom, the Constitution passes this requirement to be the democratic liberalism.

And second point, the Constitution holds the society should be governed by the majority rule on the one hand, and minority rights on the other. Article 29 and 30 protects and guarantee certain cultural and educational rights to various cultural, religious and linguistic minorities located in India.

This idea of Democratic Liberalism gives the respect to the diversity and minority rights and it can be found in the Constitution of India. India is a land of multiple cultural communities. India is multi religious, castes, languages and communities country. Communities do not have relationship of equality among them.

According to their caste they have a hierarchical relationship with one another. Religious communities see rival to each other. It was very difficult to create a harmonious relationship among them. The Constitution makers tried under these circumstances, to make communities liberal in their approach and foster a sense of equal respect among them.

The Indian Constitution encourages equal respect between communities. It gives the respect for diversity and does not neglect them. It was important to ensure that no one community systematically dominates others.

Article 29 and 30 protects and guarantee certain cultural and educational rights. Art. 29(1) any section of the citizens residing in any part of India having a distinct language, script or culture of its own has the right “to conserve the same”. \(^{150}\) This article includes the right “to agitate for the protection of the language”. According to Article 29(2), admission is not to be
denied to any citizen into any educational institution maintained by the state, or receiving aid out of the state funds, on the ground only of religion, race, caste, language or any of them”.

Democratic Liberalism respects to the rights of minority. It can be found the respect to the minority rights in the Constitution. Thus, the democratic liberalism is reflected in the Indian Constitution.

**Minority rights as a Positive Liberalism**

It is recognized that the cultural and educational rights of minorities are as the ‘Positive Liberalism’. The Indian Constitution opens a new era of the rights of the minorities. It safeguards the freedom of every minority to practice its own religion, and to conserve its culture, language and script.

The term **minority** is used in the wide sense to include even cultural minorities which exist in a particular locality. The main idea as Dr. B. R. Ambedkar explained, “If there was a cultural minority which wanted to preserve its own language and culture the state would not by law impose upon it any other culture which might be local or otherwise.”

All minorities, religious or linguists, have been given write to establish and administer educational institutions and the state is prohibited from discriminating against any such institution in granting aid. Also no person can be denied admission to educational institutions maintained or aided by the state on grounds only of religion, caste, race or language. Thus, addition to their own, the minorities in India have all the educational facilities available to the majority. The right to education in the mother-tongue at the primary school stage has been given constitutional recognition. Indian Constitution guarantees **religious freedom to all**.

Thus, the cultural and educational rights of minorities in the Indian Constitution seem like the ‘Positive Liberalism’.

**2.10 The Objectives Resolution and the Liberalism**

In the Constituent Assembly of India Pt. Jawaharlal Nehru represented the Objective Resolution on 13th December, 1946 that is called the Objective
Resolution. In other words some liberal ideas reflected in this resolution. National liberty reflected in the “India is an independent, sovereign” and “democratic liberalism” is reflected in the “republic democracy”.

In the Utopian liberal ideal, the individual is at the central point, and in the resolution all powers and authority of sovereign and independent India and its Constitution shall flow from the people. In this resolution people are the source of sovereign power.

Liberalism in our Constitution is of the side of community and collective life values. Because of all people of India shall be guaranteed and secured social, economic and political justice; equality of status and opportunities and equality before the law.

Liberty of individual is called the heart of liberalism and the resolution declares the fundamental freedoms - of speech, expression, belief, faith, worship, vocation, and the association. Dr Rajendra Prasad stated that the Assembly in the name of people of India adopted and enacted the constitution—charter of India’s freedom. 153

Classical Liberalism always gives importance to individual than the “Social Justice” and collective life values. But the liberalism of the Indian Constitution is different from the Classical Liberalism. Liberalism of Indian Constitution is related to Social Justice, its best example is Reservation for SC, ST, and OBC. The Constitution provided adequate safeguards to the minorities, backward and tribal areas, depressed and other backward classes.

Liberalism reflects in the Constitution of India through the government by the people, for the people, and it empowers the rights of the people. The Constitution empowers the judiciary to declare a law of the union or of any state legislature unconstitutional if it contravenes Fundamental Rights or the provisions of the Constitution. This principle supports to safeguards of the Fundamental Rights and the structure of the Constitution of India, It can be considered as a liberal character of the Constitution. However, According to the Supreme Court judgment, the
parliament has no power to amend the power so as to take away or abridge the Fundamental Rights in the Constitution.

In spite of the supremacy, the Constitution has a quality to be elastic and responsive to changing conditions. The Constituent Assembly refrained from putting a seal of finality and infallibility (the quality of never making error) upon the Constitution. This indicates the importance of the free life of the society. Free life of society is one of the main ideas of liberalism.

**National as well as regional** languages have an important place in the Constitution is a liberal character of the Constitution. “Rights are the ground work of the State. These are the quality which gives the exercise of its power a moral character. And these are natural rights in the sense that these are essential for the good life” Its inclusion of the Constitution of a country makes them inviolable, commanding the respect of the people and the government alike.

The theory of the fundamental rights implies limited government. It aims at preventing government and the legislature from becoming totalitarian, and doing so it affords (gives) the individual an opportunity for self development. But these rights are not absolute; these are subject to limitations imposed by the state in order to secular rights for all individuals or to promote the greater interest in the community or the state, or to serve the end of a planned society. Consequently, the provisions regarding individual rights in the Constitution are subject to regulation by the State within certain limits.

The Indian Constitution offers all citizens individually and collectively the best fruits of democracy and those basic freedom and conditions of life which alone life make significant and productive.  

**Liberalism basically stands for the good life**, there for the idea of liberalism reflects in the Fundamental Rights of the Constitution of India. And where are the limitations on the fundamental rights for the interest of all the individuals, there the idea of socialism begins. **Restrictions on the states**
through the Fundamental Rights and empowered the free life which is the Democratic Liberalism.

“There are some Fundamental Rights for Indian citizens which impose limitations upon State action such as, equality before law, the prohibition of discrimination on certain grounds, equality of opportunity for services, the abolition of titles, right to freedom of speech and expression, the protection in the respect of conviction for offences, protection of life and personal liberty, protection against arrest or detention in certain cases. There are other rights which impose limitations upon the freedom of action privates individuals like the prohibition of discrimination with regard to access to shops or hotels or regard to use of wells, road, etc., the abolition of untouchability and the prohibition of traffic in human beings and forced labours. The distinction between two categories of rights is that in the former case of the Constitution itself has provided remedy for a breach (violation of the law) of these rights, but in case of the latter the remedy is punishment of the offence under the ordinary laws”. These all points show the liberal character of the Constitution of India.¹⁵⁵

2.11 The Constitutional Remedies

The Constitutional remedies are as the mechanism for the Liberalism. Dr. B. R. Ambedkar considers that the Constitutional Remedies are ‘the heart and soul of the whole Constitution’.

**Right to Constitutional Remedies**-Article 32 confers power on the Supreme Court to enforce the Fundamental Rights. High Courts also have a parallel power under Article 226 to enforce the Fundamental Rights. The Supreme Court has figuratively characterized this role of the judiciary as that of a “sentinel on the qui vive”.¹⁵⁶

Article 32(1) guarantees the right to move the Supreme Court, by appropriate proceedings, for the enforcement of the Fundamental Rights enumerated in the Constitution.
Article 32 (2) empowers the Supreme Court to issue appropriate orders or directions, or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto, and certiorari, whichever may be appropriate, for the enforcement of the petitioner’s Fundamental Right. A writ does not lie to create or establish a legal right but, to enforce a fundamental right that has already been established.

Article 32(3) empowers Parliament by law to empower any other Court to exercise within the limits of its territorial jurisdiction all or any of the powers exercisable by the Supreme Court under Article 32(2). This can however be done without prejudice to the Supreme Court’s powers under Articles 32(1) and (2).

According to Article 32(4), the right guaranteed by Art.32 “shall not be suspended except as otherwise provided for by the Constitution.” Art. 359 provides, during an emergence, for the suspension of the right to move any court for the enforcement of the fundamental Rights by a presidential order.157 Right of access to the Supreme Court under Art. 32 is a Fundamental Right itself.158

Art. 32(1) provides a very important safeguard for the protection of the fundamental Rights of the citizens of India. Article 32 Provides a guaranteed, quick and summary remedy for enforcing the Fundamental Rights because person can go straight to the Supreme Court without having to undergo the dilatory (causing a delay) process of proceeding from the lower to the higher Court as he has to do in other ordinary litigation. (The Court has thus been constituted into the protector and guarantor of the Fundamental Rights)

In Daryao v. State of Uttar Pradesh the Supreme Court observed:

“The Fundamental Rights are intended not only to protect individual’s rights but they are based on high public policy. Liberty of the individual and the protection of the Fundamental Rights are the very essence of the
democratic way of life adopted by the Constitution, and it is the privilege and the duty of this Court to uphold those rights. This Court would naturally refuse to circumscribe them or to curtail them except as provided by the Constitution itself.”

Underlining the significance of Article 32, the Supreme Court has characterized the jurisdiction conferred on it by Art. 32 as “an important and integral part of the basic structure of the Constitution” because it is meaningless to confer fundamental Right without providing an effective remedy for their enforcement, if and when they are violate. “A right without a remedy is a legal conundrum (difficult problem) of a most grotesque kind.” Article 32 Confers one of the ‘highly cherished rights.”

In order to enforce a fundamental Right, judicial review of administrative, legislative and governmental action or non-action is permissible. But, Art. 32 cannot be invoked simply to adjudge the validity if any legislation or and administrative action unless it adversely affects petitioner’s Fundamental Rights.

But if a tax levied without legal authority infringes a Fundamental Right, the remedy under Article 32 would be available. A final judgment of the Supreme Court cannot be assailed in an application under Article 32 by an aggrieved person, whether he was a party to the case or not. The jurisdiction of the Supreme Court under Article 32 cannot be invoked to challenge the validity of a final judgment/order passed by the Court.

By and large the Supreme Court has used its jurisdiction under Article 32 in a creative manner. In case after case coming before it under Article 32, the Court has given new dimensions, meaning and scope and purpose to many Fundamental Rights, such as, right to equality, freedom of speech, right to personal liberty and life.
**Writ can be issued**—by and large Fundamental Rights are enforceable against the state. The term ‘state’ has been defined in Article 12 which has already been discussed earlier.¹⁶⁵ There are a few Fundamental Rights, such as, under Articles 17, 21, 23 or 24. ¹⁶⁶ Those also are available against private persons. In case of violation of any such right, the Court can make appropriate orders against violation of such rights by private persons.¹⁶⁷ “The technique of public interest litigation serves to provide an effective remedy to enforce group rights and interests.”

“Every citizen has the right to move the Supreme Court for the enforcement of the fundamental rights. To this end, the Supreme Court is given the general powers to safeguard these rights as well as the power to propose particular remedies, such as the issues of **writs** in the nature of **habeas corpus, mandamus, prohibition quo warranto and certiorari**. The inclusion of these writs in the **Indian constitution guarantees the freedom of Individual**.”¹⁶⁸

The federal character of the Constitution, Supremacy of the Constitution, the existence of Supreme Court, and the distribution of powers these are the safeguards to establish a certain kind of liberal society. Thus the Indian Constitution guarantees the freedom of individual and for that the Constitutional remedies are like the habeas corpus, mandamus, prohibition quo warranto and certiorari. And such kind of the remedies can be thought that a mechanism for the liberalism.

**2.12 Democratic Transformation as Liberal Idea**

The Constitution provides the basic rules and prevents the States from turning into tyranny. The Constitution also provides peaceful, democratic means to bring about social transformation. Indian Constitution announced and embodied the real exercise of political self-determination. Democratic transformation is a liberal idea itself. The definition of democracy was given by the Drafting Committee Chairman of the Constituent Assembly; Dr. B. R.
Ambedkar, “Democracy is a form and a method of government where revolutionary changes in the economic and social life of the people are brought about without bloodshed.”

Common man is a central theme of the Constitution. The Indian Constitution was designed to break the shackles of traditional social hierarchies and to usher (guide) in a new era of freedom, equality and justice. This approach had the potential of changing the theory of the constitutional democracy altogether, according to this approach, constitutions exist not only to limit people in power but to empower those who traditionally have been deprived of it. Constitutions can give vulnerable (weak) people the power to achieve collective good. Our Constituent Assembly gave the basis of legal and political ideas even still provide the organizational principle to current practices. This is reflection of liberal ideas in the Constitution of India.

2.13 Liberalism Linked to Social Justice

Indian Constitution is liberal, but it is not liberal in the classical western sense. Classical liberalism always privileges rights of the individuals over demands of social justice and community values.

“The liberalism of the Indian Constitution differs from this version in two ways. First, it was always linked to social justice. The best example of this is the provision for reservations for Scheduled Castes and Scheduled Tribes in the Constitution. The makers of the Constitution believed that the mere granting of the right to equality was not enough to overcome age-old injustices suffered by these groups or to give real meaning to their right to vote. Special constitutional measures were required to advance their interests. Therefore the constitution makers provided a number of special measures to protect the interests of Scheduled Castes and Scheduled Tribes such as the reservation of seats in legislatures. The Constitution also made it possible for the government to reserve public sector jobs for these groups”.

Thus the Indian Constitution’s liberal character linked to the social justice.
2.14 Liberalism reflects in Secularism

India is country of religions. But the Constitution stands for secular state of India. The word ‘Secular’ was not present originally in the Preamble. It was added thereto by the 42nd Constitutional Amendment in 1976. What was implicit in the Constitution until then became explicit. Here to testify if the liberalism is reflected in the secularism in what extent.

“The Constitutional Liberalism of Fox, The Economical Liberalism of Cobden, and the new Collectivist Liberalism of Mr. Lloyd George exhibit great differences in comparison. But the three men are like in their desire to set free the individual from exiting social bonds, to procure (efforts) him liberty of growth”. 172

“The foundation of liberty is the idea of growth…Liberalism is the belief that the society can safely be founded on this self directing power of personality”. 173

The Foundation of Secularism in the Indian Constitution is the Liberalism i.e. the belief that the society can safely be founded on this self directing power of Personality. Mainly, in the western conception, secularism means “mutual exclusion” of state and religion. It means both religion and state must stay away from their internal affairs of one another. Again it means religion and state must be strictly separated. The purpose behind this strict separation was to safeguard the religious freedom and citizenship rights of individuals.

In short, states should neither help nor hinder religions. But the purpose of secularism in the Indian Constitution is to establish an intercommunity equality. Intercommunity equality is as necessary as equality between individuals in the Indian circumstances. The purpose was an absence of domination and to get dignity, self respect and freedom.

Secularism in the Indian Constitution is not strictly separation between state and religion. State can intervene in affairs of religion positively and
negatively with constitutional limits to promote liberty, equality and social justice.

“...these can also be seen as the achievements - of our Constitution. First, our Constitution reinforces and reinvents forms of liberal individualism. This is an important achievement because this is done in the backdrop of a society where community values are often indifferent or hostile (unfriendly) to individual autonomy.

Second, our Constitution upholds the principle of social justice without compromising on individual liberties...Third, against the background of inter-communal strife, the Constitution upholds its commitment to group rights (the right to the expression of cultural particularity)”.174 Hence, the Constitution reinvents forms of liberal individualism; it upholds the principle of social justice without compromising on individual liberties, thus, there is no official religion in India. This liberalism is reflected in the secularism in the Constitution.

2.15 Conclusion

Thus in the above study, it has been studied that the “Positive Liberalism” is reflected in the Constitution of India.

Article 13 in Indian Constitution, Laws inconsistent with Fundamental Rights shall be the void to the extent of the inconsistency. Article 14 has evolved as one of the guarantee against any arbitrary, discriminatory or unequal action taken by the Administration. In the Indian Constitution, Article 14 ensures equality before law and strikes at arbitrary and discriminatory state action. Arbitrary exercise of power is the antithesis of the equality before law. If the arbitrariness or unreasonableness is, there is denial of rule of law. The Rule of law’ as a mechanism prevails in the Constitution for Liberalism.

The state can make any law imposing reasonable restrictions on the exercise of this right in the interests of public order, and sovereignty and
integrity if India. A restriction on liberty to be valid must have a rational relation, the onus is on the state to justify that the restriction imposed and there is no essential antithesis between liberty and law. On the contrary, law is essential to liberty. This is one of the core principles of liberalism.

In the Constitution, Articles 19 (1)(a) is said the mother of all other liberties. The Supreme Court has figuratively characterized this role of the courts as that of a “sentinel on the qui vive” (guardian alert). Judicial review is observed as basic feature of the Constitution.

In the Indian Constitution, Article 21 lays down that no person shall be deprived of his life of personal liberty except according to ‘procedure established by law’. It basically means “fair hearing. Article 21 embodies a constitutional value of supreme importance in a democratic society. Article 21 is as the procedural Magna Carta protective of life and liberty. This may firmly call the mechanism for the liberalism.

Liberalism took care of the individual liberty. And Article 22 itself lays down substantive limitations as well as procedural safeguards regarding preventive detention.

The Fundamental Rights of life and personal liberty is now regarded as the heart of Fundamental Rights. The Supreme Court has now given pride of place to Art. 21. It right to life includes the right to live with human dignity and all that for a human being. It has to be suitable accommodation which allows him to grow in all aspects-physical, mental and intellectual. Personal liberty is very important for the liberalism.

The Constitution embodies the principle of ‘non-discrimination’. Liberty is essential for liberalism, and liberty implies equality. Practically, more liberty demands more equality. The Constitution of India guarantees the Right to Equality through Articles 14 to 18. Equality is one of the magnificent corner-stones of Indian democracy.
The Supreme Court declares **Equality is a basic feature of the Constitution.** And democracy is the most important policy of liberalism. **Equality is a basic feature of the Constitution of India and any treatment of equals unequally or unequals as equals will be violation of the basic structure of the Constitution of India.**

Two concepts are involved in **Article 14** that is ‘equality before law’ and ‘equal protection of law’. **Article 14** of the Constitution provides for equality of opportunity. It forms the **Cornerstone of the Indian Constitution.** *Article 17* abolishes *untouchability* and forbids it practice in any form.

*Articles (19) (1) (c)* guarantees to the citizen of India the rights to form *association* or unions or cooperative. *Art. 300 A* ensures that *no person shall be deprived of his property save by authority of law.*

To regard each man as equal before the Law, and to display *toleration towards the opinions of others* whether in politics or in religion; to place the *same social value on all professions* this is one of the liberal principles reflected in the Constitution.

*The right to carry on trade is very much regulated in India* and the Courts have upheld, in course of time, a good deal of *social control over private enterprise.* By and large it is correct to say that *despite Article 19(1) (g)* the government enjoys power to regulate and order the economy in any way it pleases.

Open road for women, open road for talent, and to secure them both is of the essence of Liberalism. The Supreme Court said, There is no doubt that a women’s right to make *reproductive choices is also a dimension of “personal liberty that a woman’s right to privacy, dignity and bodily integrity should be respected. ‘Gender equality’ is one of the basic principles of Constitution.* The purpose of Article 15(3) is to *eliminate this socio-economic backwardness of women* and children. **Article 15(3)**
includes the power to make reservation for women. Article 15 is designed to create an egalitarian society. As under Article 14, so under Article 16, equality cannot be mathematical equality. Reasonable classification is permissible for various purposes relation to employment.

An incident of sexual harassment of female at the place of work amounts to violation of her Fundamental Right to gender equality under Article 16(2). Qualifications for a particular post can be “rational differentia” within the meaning of Article 16.

The doctrine of ‘equal pay for equal work’ is implicit in the doctrine of equality enshrined in Article 14. This would apply and it would not be open to the State to discriminate one class with the other in paying salary”. Principle of equal pay for equal work is applicable among equals. It cannot be applied to unequals. Separation of powers between the Legislature, Executive and the judiciary are the two principles which constitute the “basic structure of the Constitution.

L. T. Hobhouse realized again and again more liberty demands more equality, and Liberalism is a mechanical contrivance for the liberation of living spiritual energy. And in the Constitution, Article 21 is as the procedural Magna Carta protective of life and liberty. The Court observed the spirit of man is at the root of article 21.

From a positivistic point of view, equality is antithetic to arbitrariness”. Rule of law which permeates the entire fabric of the Indian Constitution excludes arbitrariness. This new dimension of Article 14 transcends the classificatory principle. Article 14 is no longer to be equated with the principle of classification. Arbitrariness is the antithesis of Art. 14. Equality and arbitrariness are both enemies to each other. And the Constitutionalism is the antithesis of arbitrary powers and dictatorship.
Another **notable principle** developed by the Supreme Court out of Article 14 is that every action of the government, or any of its **instrumentalities, must be informed by reason**. Liberalism is based on the idea of reason.

This idea of **Democratic Liberalism gives the respect to the diversity** and minority rights and it can be found in the Constitution of India. Article 29 and 30 protects and guarantee certain cultural and educational rights. Art. 29(1) any section of the citizens residing in any part of India having a distinct language, script or culture of its own has the right to conserve the same. This article includes the right to agitate for the protection of the language.

Liberalism reflects in the Constitution of India through the government by the people, for the people, and it empowers the rights to the people. This principle supports to safeguards of the Fundamental Rights and the structure of the Constitution of India. It can be considered as a liberal character of the Constitution.

Not putting a seal of **finality and infallibility** (the quality of never making error) upon the Constitution. This indicates the importance of the free life of the society. **National as well as regional** languages have an important place in the Constitution is a **liberal character** of the Constitution. **Rights are the ground work of the State. These are the quality which gives the exercise of its power a moral character. And these are natural rights in the sense that these are essential for the good life.**

The Constitutional remedies can be considered as the mechanism for the Liberalism. **Dr. B. R. Ambedkar considers that the Constitutional Remedies are ‘the heart and soul of the whole Constitution’**. **Writs** are in the nature of **habeas corpus, mandamus, prohibition quo warranto and certiorari**. The inclusion of these writs in the **Indian constitution guarantees the freedom of Individual.**
Thus, it has been studied that a Democratic Liberalism is reflected in the Constitution of India. Indian Constitution tried to balance between individual liberty and social control in Indian circumstances. Through the mechanism of Rule of law, the Fundamental Rights, Sovereignty of the People, Republic Democracy, Responsible Government, the Supreme Court-independent judiciary, Constitutionalism and Federal Structure the Constitution has fully tried to establish the Positive Liberalism in India.

But the Constitution did not permit to the “Free-Market Liberalism” which upholds the Laissez faire idea mean Capitalism. Because this all mechanism ultimately to establish liberty, equality, fraternity, Social Justice, human dignity and national integrity. But the Indian economy is started emerging Regulated Economy from the Mixed economy due to its policy of Privatization. In this time the accountability of the government has been more increased to secure the Social Justice. Otherwise its result will be in economic inequality. Accordingly, the socialism is incorporated and interwoven with positive liberalism in the Constitution of India.

Then third chapter will be “Socialism in the Constitution of India: Dr. B.R. Ambedkar’s & Pandit Jawaharlal Nehru’s Reflection”
4. NCERT: *Social Change and Development in India* (p.39)
7. https://www.philosophybasics.com/branch_liberalism.html 22/03/2018
10. *Ibid*, p. 910


15. Ibid, p. 1017
16. Ibid, p. 1018
17. Ibid.
18. Ibid, p. 1019
19. Ibid, p. 850
20. Ibid, p. 1043
21. Ibid.
22. Ibid, p. 854
23. Ibid.
24. Ibid.
25. Ibid.
26. Ibid, p. 855
27. Ibid.
28. Ibid.
29. Ibid.
30. Ibid.
31. Ibid, p. 856
32. Ibid.
33. Ibid.
34. Ibid, p. 866-67
35. Ibid, p. 688

37. Ibid, p. 26-31
39. Ibid, p.1114
40. Ibid.
41. Ibid, p.1115
42. Ibid, p.1116
43. Ibid.
44. Ibid, p.1117
45. Ibid.
46. Ibid, p.1118
47. Ibid, p. 1121
48. Ibid, p. 1122
49. Ibid.
50. Ibid.
51. Ibid.
52. Ibid.
53. Ibid, p. 1123
54. Ibid, p. 1124
55. Ibid.
56. Ibid.
57. Ibid, p. 1125
58. Ibid, p. 1126
59. Ibid, p. 17
60. Ibid, p. 876
61. Ibid.
62. Ibid.
63. Ibid, p. 1010
64. Ibid, p. 877
65. Ibid.
66. Ibid.
67. Ibid.
68. Ibid.
69. Ibid.
70. Ibid.
71. Ibid, p. 878
73. Ibid, p.33-39

75. Ibid, p. 1056
78. Ibid, p.852
79. Ibid, p.1824
80. Ibid, p.1119


85. Ibid, p.1181


88. Ibid, p.932
89. Ibid, p.933
90. Ibid.
91. Ibid, p. 934
92. Ibid.
93. Ibid.
94. Ibid, p.938
95. Ibid, p.965
96. Ibid, p.970
97. Ibid, p.974
98. Ibid, p.981
99. Ibid, p.1005
100. Ibid, p.1054
101. Ibid, p.12


105. Ibid, p.100


107. Ibid, p 825
108. Ibid, p 828
109. Ibid, p 836

114. Ibid, p.1013
115. Ibid, p.1014
116. Ibid.
117. Ibid, p.1015
118. Ibid.
119. Ibid, p.1016
120. Ibid.
121. Ibid.
122. Ibid, p.1017

125. Ibid, p. 923
126. Ibid.
127. Ibid.
128. Ibid.
129. Ibid, p. 924
130. Ibid.
131. Ibid, p. 925
132. Ibid.
133. Ibid.
134. Deelip Laxam, *Contribution of Pandit Jawaharlal Nehru to Indian Politics – a Critical Study*” Thesis submitted to the Gulbarga University, Gulbarga in partial fulfillment of the requirement for the award of the Degree. 2014, p.129-130

136. Ibid, p.6
137. Ibid, p.1017
138. Ibid.
139. Ibid.
140. Ibid, p. 8
140a. Ibid, p.7
140b. Ibid, p. 8
141. Ibid, p.9
142. Ibid, p.9
145. Ibid, p.240
146. Ibid, p.238-240
148. Ibid, p.853
151. Ibid, p.1266-1267
153. Ibid, p. 8
154. Ibid, p. 20
155. Ibid, p. 21
157. Ibid, p. 1353
158. Ibid.
159. Ibid.
160. Ibid, p. 1353-1354
161. Ibid, p. 1354
162. Ibid.
163. Ibid, p. 1355
164. Ibid, p. 1359
165. Ibid, p. 1364
166. Ibid.
167. Ibid.
170. Ibid, p. ix
173. Ibid.