Nature and characteristic of the Rule of Law: The rule of law, which forms a fundamental principle of the English Constitution, has three meanings of may be regarded from three different points of view.

According to Dicey, the Rule of Law means three things:

Firstly, it means that "no man is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of law established in the ordinary Courts of the land. In this sense the rule of law is contrasted with every system of Government based on the exercise by persons in authority of wide, arbitrary or discretionary powers of constraint. This principle implies that no one in England can be punished arbitrarily. All persons accused of an offence should be tried in an ordinary Court of law in the ordinary legal manner and no one is to be arbitrarily deprived of his life, liberty and property. Cases are to be tried in an open Court and the accused has the right to be represented and defended by a counsel of his own choice. Judgment is to be delivered in an open Court and the accused has a right to appeal to higher Courts. These rules of judicial procedure reduce the possibility of executive arbitrariness and guarantee the British people a security of their life, liberty and property.

Secondly, rule of law means equality before law. Dicey observes, "Not only with us is no man above the law, but (what is different thing) here every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals". This is a very important principle of the rule of law. It implies that in England every citizen, rich or poor, high or low, is subject to the same law and the same Courts of law. If any public official does any wrong to an individual or exceeds the power vested in him by law, he can be sued in an ordinary Court and tired in the ordinary manner. In other words, the English law does not make any distinction between acts of Government and those of ordinary citizens. In this respect the practice in Britain differs from that in France where Administrative Law is in vogue under which the public officers are not amenable to the ordinary law for their public acts. There is no separate law for the public officials. They are subject to the same law which applies to ordinary citizens. The people who form the Government should exercise their powers in accordance with the laws of the Parliament. Dicey remarks, "With us every official, from the Prime Minster to a constable or collector of taxes, is under the same responsibility for every acts done without legal justification as any other citizen".

Thirdly, and finally, rule of law means that with English, "the general principles of the Constitution are...the result of judicial decisions determining the rights of private persons in private persons in particular cases brought before the Courts". This principle has emphasized the contribution of the judiciary in the protection of the liberties and rights of British people. In England rights of the citizens do not flow from the Constitution, but form judicial decisions. Prof. Dicey was a liberal of the nineteenth century and it was natural for him to pay his tributes

to these liberal- minded judges who contributed greatly to the protection of the liberties of English people in the past.

The rule of law is the product of centuries of struggle of the British people for the recognition of their fundamental rights. In Britain what is supreme is law. Every act of the Government must be authorized by law, either by statute law passed by parliament or by common law which has been recognized for many hundreds of years. In England, unlike in the United States of America or France, there is no written law or Constitution which incorporates the rights of man. These rights are secured to them by the rule of law. Parliamentary supremacy is subject to rule of law. In England nobility does not enjoy special privileges and cannot disregard the ordinary law. In short, rule of law affords the ordinary citizen adequate guarantees against undue interferences with his rights by any other person or any Government servant.

Exceptions to the principle of equality of all before the law: Following are the exceptions to the principle of equality of all before the law:

Crown: 'The King can do no wrong', and a petition of right cannot be maintained against the Crown to recover damages for any tort.

(2) Public Officers are not liable for:

(a) the wrongful acts of their subordinates;

(b) contracts made by them on behalf of the public in performance of their duties;

(c) acts done in performance of their public duties, unless they are made liable by a Statue; and

(d) torts ; for torts, the are not liable in their official capacity, though they may be liable in their personal or individual capacity.

(3) Judges of the Court are not liable for any acts done in their judicial capacity.

(4) Justice of the peace are not liable for any act if the act is not wrongful and malicious.

General rules of Constitutional law are the result of ordinary law of the and: The third meaning of the expression "Rule of Law" is that the rules of the Constitution are the result of judicial decisions determining the right of private person in particular cases brought before the Courts.

The Rule of Law in this third sense means that the laws of the Constitution re not the source but the consequence of the rights of individuals as defined and nforced by the Courts. In other countries, for example in Belgium, the rights of ndividuals are secured by general principles and deduced from them; the security iven to the rights of the individuals flows form the general articles of the onstitution. In England, the rights of the individuals are secured by the decisions of e Courts. And the principles of the Constitution are generalizations based upon rticular decision pronounced by the Courts as to the rights of given individuals. he law of the Constitution is the result, not the source of the rights of individuals. he general public has certain rights because it was decided by the Courts that A, B, or D had them in similar circumstances; the general rule rests of the cases from hich it is deduced.

Actual Legislation: Acts have been passed recently, e.g. the Factory Acts, the Education Acts, giving judicial or quasi-judicial powers to officials and diminishing thereby the authority of the Law Courts. The cases arising under these Acts are taken out of the jurisdiction of the ordinary Courts and the sphere of the Rule of Law is thereby curtailed. e.g. the Speaker's certificate under the new Parliament Act cannot be gone behind, even when given from partisanship or to promote personal ends.

Delegated legislation: This term Delegated Legislation means the conferring of legislative powers on minister to implement Parliamentary legislation by statutory regulations. This has to some extent affected Parliamentary Sovereignty. Under these regulations, various Departmental Tribunals have been set up which have ousted the jurisdiction of ordinary Courts in disputes between individuals and the Departments. The statutory powers of the Department to make rules is considered as an encroachment on the Sovereignty of Parliament. The term 'Delegated Legislation' also means all the statutory rules made by various authorities which are empowered to legislate under Parliamentary Acts, like the Railways Act. This conferring of legislative powers on Ministers and other departments (whether public or private) is known as 'delegated legislation'.

Lawlessness: The tendency to use lawless methods, for the attainment of social or political ends has grown in importance in recent years. Such law-barkers, who are properly known as passive resisters or conscientious objectors, justify their lawless actions by the nobleness of the aims they strive to achieve. A popular belief has grown up in England during the last forty years that the attempts of passive resisters or conscientious objectors are not only allowable but they are praiseworthy also, if the persons doing so are moved by higher ideals. The idea that a breach of law is per se an act of immorality and worthy to be condemned by all good and law-abiding citizens has long since been exploded.

Criticism of Dicey's conception of Rule of law: For Dicey, the Rule of Law meant, *first*, the absolute predominance of ordinary law as against arbitrary power or even wide discretionary authority--a man may be punished for a breach of law, but for nothing else, secondly, it meant equality of all mean before the law, as administered, by the ordinary Courts; and thirdly that the constitution was the result of the ordinary law, in other words, that the rights and freedom of the individual depended on the principles of the common law.

This conception has been criticized as not wholly accurate even in Dicey's time, and out of accord with the facts to day. Thus, to take the first meaning, a man may be deprived of his property by the exercise of discretionary authority on the part of a Minister who both sets in motion the compulsory purchase order and hears any appeal against it. And many classes of person are subject to bodies outside the ordinary Courts which exercised judicial, and even legislative functions, such as the watch committed of a borough, the General Medical Council or the Milk Marketing Board. Secondly, "equality before the law, is not borne out by a situation in which, perhaps inevitably, the individual is still subject to certain disadvantages in litigation with the Crown, and in which there is a growing tendency to take questions involving public policy, and affecting private rights, out of the hands of the Courts, and to subject them to tribunals not bound by the ordinary law. Finally, it is only in part true that the rights of the individual are based on the ordinary rule of private and

criminal law; many of them are controlled by special enactments, such as the public Order Act, 1936. It is, however, still true of the fundamental freedoms of speech, persons and association that they mainly depend on the principles of the ordinary law, such as the law relating to defamation, assault, false imprisonment and so forth. And it may well be that these principles contribute a more effective protection than guarantees contained in a written Constitution which maybe suspended in an emergency.

Parliamentary Sovereignty and the Rule of Law: As stated above Parliamentary Sovereignty and the Rule of law, are the fundamental principles of the English Constitution. The are not opposed to each other, but each favours the other.

Firstly, Parliamentary Sovereignty favours the supremacy of the Rule of Law. This is due to the peculiarities which distinguish the English parliament from other sovereign powers. The King, the House of Lords and the House of Common together constitute parliament. The commands of Parliament can be uttered only through the combined action of its three constituent parts. The always take the shape of formal and deliberate legislation. For, the will of Parliament can be expressed only through an Act of Parliament; and this Act becomes subject to judicial interpretation. The judges interpret Acts only by reference to the words of the enactment. They do not take into consideration the history of Acts or discussion on Bills during their passage through the legislature. This contributes greatly to the authority of the Judges and to the fixity of the law. A despotic monarch on the other hand can be promulgating ordinances, and decrees invade the domain of the law of the land.

Moreover, the English Parliament has never exercised direct executive power or appointed the officials of the executive Government except at periods of revolution. Though the Ministers of the Cabinet are in practice appointed by Parliament, they are in theory, the servants of the Crown. Besides, as these Ministers are to be chosen from a party that has been returned to Parliament by the electors in a majority the electors play a prominent part in respect of the appointment of these Ministers. Thus Parliament is never able to interfere with the regular course of law. Parliament looks with jealously and disfavour on all exemptions of official from the jurisdiction of ordinary Courts. In England there is no administrative law. Parliamentary Sovereignty has been fatal to the growth of administrative law. To secure independence to the Judges they are made irremovable, except on an address of both Houses.

Secondly, in another sense also, the Rule of Law favours Parliamentary Sovereignty. The rigidity of the law constantly hampers the action of the executive. Under certain circumstances the executive acquires the right to exercise discretionary power. Under the ordinary law of the land discretionary authority is denied to the executive. The Courts are denied by discretionary authority is denied to the executive. The Courts are denied by government of any sort of discretionary power. There are times of tumult or invasion when Parliament is called upon to exercise its sovereign power by granting the executive discretionary authority by means of an emergency of temporary legislation; or when for the sake of legality itself, the rules of law must be broken. The Ministry must, in such cases, break the law and trust for protection to an Act of indemnity. This Act, which Legalises illegalities is the last and supermen exercise of the Parliamentary Sovereignty. An Act of Indemnity

affords a practical solution of the problem how to combine the maintenance of law with the free exercise of discretionary power or prerogative, which must be wielded by the executive of every civilized country, at critical junctures. This does not mean that the despotic powers of the Crown are transferred to parliament, because, as we have seen, Parliament has external and internal limitations and it cannot afford to be despotic. Further, the executive acting under its authority cannot be despotic. The most arbitrary powers of the executive, even when armed with the widest, must always be exercised under the strict supervision of the Court. It is the Courts who interpret the extent to which the executive is empowered to go.

Thus, the supremacy of the Rule of Law calls forth the exertion of Parliamentary Sovereignty and leads to its being exercised in a spirit of legality.

Instances of Rule of Law: The following are the seven salient instances of the Rule of Law :-

(1) **Right to Personal Freedom--What is means:** In England the Security for personal freedom does not depend upon or originate in any written document. The enactment like the Magana Carta and the Petition of Rights are rather records of the existence of the right than Statutes which confer it. Unlike in Belgium, freedom of person is not a special privilege, but the outcome of the ordinary law of the land enforced by the Courts. In England individual rights are the basis and not the result of the Law of the Constitution.

In England the right of personal freedom means, in substance a person's right not to be subjected to imprisonment, arrest, or other physical coercion in any manner that does not admit of legal justification. Physical restraint on any person is illegal, and can be justified only on the ground--

(a) that a person restrained is accused of some offence and he must be brought before the Court to stand his trail; or

(b) that he has been duly convicted of some offence and must suffer punishment for it.

Remedies for wrongful deprivation of liberty: The principle of the English Law is that no man can be arrested or imprisoned except in due course of law. There are two adequate methods by which this principle is enforced: (1) Redress, and (2) Deliverance from unlawful imprisonment by writ of *habeas corpus*.

Redress: Redress for wrongful arrest or imprisonment may be by means of (1) prosecution or (2) action.

(1) **Prosecution:** The aggrieved person may secure the conviction for assault against the wrong-doer. Ever wrong-doer is individually responsible for every wrongful act in which he takes part. Where the act is unlawful, it is not a good defence to plead that it was done under the orders of his master or superior, or for a good or praiseworthy motive.

(2) **Action (suit) :** Instead of proceeding against the wrong-doer in a Criminal Court the aggrieved party may bring in a Civil Court an action of trespass for damages sustained. This action would be against every person in the real (except the King, personally, and foreign sovereigns or their representatives). The Courts give relief for the infringement of a right whether the injury done is great or small.

Deliverance from unlawful imprisonment by writ of 'habeas corpus': The second remedy for wrongful deprivation of liberty is deliverance from unlawful imprisonment by means of the writ of habeas corpus. Liberty is not secured unless the law in addition to punishing every kind of interference with a man's lawful freedom, provides adequate security that everyone who, without legal justification, is placed is confinement, shall be able to get free. This security is provided by the Writ of Habeas Corpus Act.

Writ of 'habeas corpus'--Its nature: It is an order issued by a competent court, calling upon a person by whom a person is alleged to be kept in confinement, to bring such prisoner--"to have his body" (whence the name habeas corpus), before the Court to let the Court know on what ground the prisoner is confined, and thus to let the Court know on what ground the prisoner is confined, and thus to give the Court an opportunity of dealing with the prisoner as the law may require.

When issued: It is not issued as a matter of course some ground must be shown for supposing that a cause of illegal arrest exists; hence the description of habeas corpus as a prerogative writ, i.e., an extraordinary remedy. But it is granted as a matter of right. The court will always issue it if prima facie ground is shown for supposing that the person on whose behalf it is asked is unlawfully deprived of his liberty.

On whose application: The write can be issued on the application either of the prisoner himself, or of any person on his behalf, or (supposing the prisoner cannot act), on the application of any person who believes him to be unlawfully imprisoned.

To whom is application made: The application may be made to the Lord Chancellor or to any of the Judges (whether in vacation or in term time), and the Court or Judge shall and will always cause it to be issued on being satisfied by affidavit that there is reason to suppose a prisoner to be wrongfully deprived of his liberty. It has recently been decided that successive applications for the writ may be made by an applicant to every Judge having jurisdiction. An applicant can thus take his case before every Judge of the High Court until he has exhausted reference to all the Judges.

Effect of disobedience: The writ order can be addressed to any person whatever, be he an official or a private individual, who has or is supposed to have the prisoner in his custody. Any disobedience to the writ exposes the offender to summary punishment for contempt of Court.

Return to the writ: The answer to the writ is called the return to the writ, and upon its receipt the court determines the legality of the detention. The right to this writ existed at Common Law long before the passing in 1679 of the Habeas Corpus Act, which made the right statutory.

Summary : A writ of habeas corpus is an order issued by a King's Bench Judge as servant of the Crown, calling upon a person by whom a prisoner is alleged to be kept in confinement to bring such prisoner before the Court, at a given time and place, together with the cause of his detention, and give the Court an opportunity of dealing with the person confined, as the law may require.

Deliverance from unlawful imprisonment by writ of 'habeas corpus': The second remedy for wrongful deprivation of liberty is deliverance from unlawful imprisonment by means of the writ of habeas corpus. Liberty is not secured unless the law in addition to punishing every kind of interference with a man's lawful freedom, provides adequate security that everyone who, without legal justification, is placed is confinement, shall be able to get free. This security is provided by the Writ of Habeas Corpus Act.

Writ of 'habeas corpus'--Its nature: It is an order issued by a competent court, calling upon a person by whom a person is alleged to be kept in confinement, to bring such prisoner--"to have his body" (whence the name habeas corpus), before the Court to let the Court know on what ground the prisoner is confined, and thus to let the Court know on what ground the prisoner is confined, and thus to give the Court an opportunity of dealing with the prisoner as the law may require.

When issued: It is not issued as a matter of course some ground must be shown for supposing that a cause of illegal arrest exists; hence the description of habeas corpus as a prerogative writ, i.e., an extraordinary remedy. But it is granted as a matter of right. The court will always issue it if prima facie ground is shown for supposing that the person on whose behalf it is asked is unlawfully deprived of his liberty.

On whose application: The write can be issued on the application either of the prisoner himself, or of any person on his behalf, or (supposing the prisoner cannot act), on the application of any person who believes him to be unlawfully imprisoned.

To whom is application made: The application may be made to the Lord Chancellor or to any of the Judges (whether in vacation or in term time), and the Court or Judge shall and will always cause it to be issued on being satisfied by affidavit that there is reason to suppose a prisoner to be wrongfully deprived of his liberty. It has recently been decided that successive applications for the writ may be made by an applicant to every Judge having jurisdiction. An applicant can thus take his case before every Judge of the High Court until he has exhausted reference to all the Judges.

Effect of disobedience: The writ order can be addressed to any person whatever, be he an official or a private individual, who has or is supposed to have the prisoner in his custody. Any disobedience to the writ exposes the offender to summary punishment for contempt of Court.

Return to the writ: The answer to the writ is called the return to the writ, and upon its receipt the court determines the legality of the detention. The right to this writ existed at Common Law long before the passing in 1679 of the Habeas Corpus Act, which made the right statutory.

Summary : A writ of habeas corpus is an order issued by a King's Bench Judge as servant of the Crown, calling upon a person by whom a prisoner is alleged to be kept in confinement to bring such prisoner before the Court, at a given time and place, together with the cause of his detention, and give the Court an opportunity of dealing with the person confined, as the law may require.

The writ is issued by the Court on being satisfied by affidavit (statement on oath) that there is prima facie reason to suppose that a prisoner has wrongly been deprived of his liberty. It can be issued to any person, official or private individual, who is supposed to have the prisoner in his custody. Disobedience to the writ amounts to contempt of Court.

Every person detained and any person interested in him, shall have a right to apply for the issue of such a writ, and have it decided whether the detention is, or is not, illegal.

Habeas Corpus Acts: There are two Habeas Corpus Acts. One of 1679 and the other of 1816. These two acts are really the basis on which rests an Englishmen's security for the enjoyment of his personal freedom.

The aim of the Act of 1679 was to meet all the devises by which the effect of the writ can be evaded either on the part of the Judges or on the part of the gaoler. This Act applied to persons imprisoned on a charge of crime. While the Act was in force, no person committed to prison on charge of crime could be kept long in confinement, for he has the legal means of insisting upon either being let out upon bail or else being brought to a speedy trial.

Their effect: Both the above Habeas Corpus Acts aim at the improving of the legal mechanism by means of which the acknowledged right to personal freedom may be enforced. These Acts invest the Judges with the means of hampering or supervising the whole administrative action of the Government and of putting a veto upon any proceeding not authorized by the letter of the law. The very knowledge of the existence of this power of the Judges governs the conduct of the administration. The actual or possible intervention of the Courts confines the action of the Government within the strict letter of the law.

How the Habeas Corpus Acts secure personal freedom: According to Dicey, the whole history of the writ of Habeas corpus illustration the predominant attention paid under the English Constitution to remedies (i.e., to modes of procedure by which to turn a merely nominal right into an effective or real right), and not to a solemn declaration of rights. Thus, while the real right to personal freedom is, in foreign countries, declared in the constitutional documents together with other individual rights, in England there is no such constitutional guarantee to the right to personal freedom. It is based primarily on Common Law and it has accordingly been observed that "in England the liberties of the subject stand primarily upon the foot of Common Law".

What them, is the function of the Habeas Corpus Act ? They are essentially the Procedure Acts, and simply aim at improving the legal mechanism by means of which the acknowledged right to personal freedom may be enforced. They are intended simply to meet actual and experienced difficulties. Hence, the Habeas Corpus Act of 1670 was an imperfect or very restricted piece of legislative work, and Englishmen waited nearly a century and-a-half (1679-1816) before the procedure for securing the right to discharge for unlawful confinement was made complete.

There is no difficulty in declaring the existence of a right to personal freedom. The true difficulty is to secure its enforcement. The Habeas Corpus Acts have achieved this end, and have therefore done for the liberty of Englishmen more than could have been achieved by any declaration of

Suspension of Habeas Corpus Acts: During the periods of political excitement, the power or duty of the Courts to issue a writ of habeas corpus and thereby compel the speedy trial or release of person charged with crime, has been found an inconvenient or dangerous limitation on the authority of the executive Government. Hence has arisen the occasion for statutes which are popularly called the Habeas Corpus Suspension Acts, popularly called, because if we take any one of such enactments, we shall see that it hardly corresponds with its recognized name. All that such statute does is to give temporary and exceptional validity to a particular return or reply to the writ. In other words, the effect of such Act is to make it impossible for any person imprisoned under a warrant signed by a Secretary of State on a change or suspicion of high treason to insit upon being either discharged or put on bail. No doubt this is a great diminution in the securities for personal freedom provided by the Habeas Corpus Acts, but it falls far short of anything like general suspension of the right to writ of habeas corpus; it in no way, affects the privileges of any person not imprisoned on a charge of high treason so that the ordinary liberty of ordinary citizens is left untouched. It does not legalize any arrest or imprisonment which was not lawful before the Suspension act was passed; it does not in any way touch the claim to writ of habeas corpus possessed by every one, man, woman, or child, who is held in confinement otherwise than on a charge of crime.

Every habeas Corpus suspension Act is an annual Act, and must, therefore, if it is to continue in force, be renewed form year to year. The sole result of the suspending statute is, therefore, nothing more than this that the Government may, for the period during which the Suspension Act continues in force, constantly defer the trail of persons imprisoned on the charge of treasonable practices.

Their effect: The sole, immediate and direct result of suspending the Habeas Corpus Acts is this. The Ministry may for the period during which the Suspension Act continues in force, constantly defer the trial of persons imprisoned on a charge of treasonable practices.

Other incidental remedies: Other incidental remedies are—

(1) Acts of indemnity: I have already told you above that the Suspension Act does not legalize any arrest or imprisonment which was not lawful before the Suspension Act was passed, but merely prevents the Judges from taking action so long as that Act remains in force. Any official who has committed any act that cannot be justified in law, during the period of suspension, is exposed to liability, civil as well as criminal as soon as the Suspension Act expires. This very fact necessitates the passing of an Act of Indemnity, and the expiration of a Habeas Corpus Suspension Act is almost invariably followed by an Act of Indemnity which is a retrospective statute freeing from all liability persons who may have committed illegal acts under the cover of the Suspension Act.

Acts of Indemnity are retrospective statues. They make free, persons who have broken the law, form responsibility for its breach and thus make lawful acts which, when they were committed, were unlawful. The Suspension Act does not free any person form civil or criminal liability for a violation of the law.

The unavowed object of the Habeas Corpus Suspension Act is to enable the Government to do acts, which though politically expedient, may not be strictly legal. Under this Act the rights of individuals are postponed to considerations of State.

Unless officials felt assured that they would be protected from penalties for conduct which, though it might be technically a breach of law was nothing more than a free exertion for the public good, they will not make use of that discretionary power which the Suspension Act was intended to confer upon the executive; and the Act will fail of its main object. This assurance is derived from the expectation that the Parliament wold pass an Act of Indemnity, protecting the persons who have bona fide acted under the Suspension Act. This Act, coupled with the prospect of an Indemnity Act, arms the executive with arbitrary powers.

Their limitations: But the executive has to use these arbitrary powers with some limitations because,--

(1) The relief to be obtained from the Act of Indemnity is prospective and uncertain;

(2) The protection to be derived from the Act depends on the terms of the Act which may be either narrow or wide; and

(3) Though it is the legalization of illegality, it is itself a law.

It is very different from the proclamation of martial law or the establishment of a state of siege, or any other proceeding by which the executive Government, by its own will, suspends the law of the land.

(2) Writ of certiorari: Certiorari issues to remove a suit from an inferior Court into the High Court (King's Bench Division). It may be used before a trial is completed (i) to secure a fairer trial than can be obtained before a trial is completed (1) to secure of fairer trial than can be obtained before an inferior Court; (ii) to prevent an excess of jurisdiction. It is invoked also after trial to quash an order which has been made without jurisdiction or in defiance of the rules of natural justice. Originally, it was invoked against a Court of justice only but now it can be directed against public bodies to prevent them from doing things which they are for bidden (by statute) to do.

The Crown has an absolute right to the writ of certiorari, since it is a prerogative one. If in a criminal case the Attorney-General makes an application, the writ is granted as a matter of course, so that the Attorney-General may, for example, always obtain a change of venue for the trial and private prosecutors must show sufficient grounds, such as the impossibility or improbability of obtaining a fair trial in the local Court. In the type of civil case in which the writ is commonly invoked against a public body the applicant must show a special grievance over and above that suffered by the public at large.

(3) Writ for prohibition: The writ of prohibition issues out of a higher Court (King's bench Division) primarily to prevent a lower Court from exceeding its jurisdiction, or acting contrary to the rules of natural justice, e.g., to restrain the Judge from hearing a case in which he is personally interested. But for many years past it has also been granted against Ministers of the crown and public or semi-public bodies of a non-judicial character to control the exercise of judicial or quasi-judicial functions.

The writ cannot be issued (i) against private bodies such as a social club, e.g., in relation to the expulsion of a member, (ii) against public bodies to prevent them from exercising power vested in them by a statue.

Right of self-defence: Very much akin to the right of personal freedom is the right of self-defence. Now, it is a current notion that a man may lawfully use any amount of force which is necessary, and not more than necessary, for the protection of his legal right. This notion, however popular, is erroneous. It would at the times justify the shooting of trespassers and it would make it legal for a weak schoolboy, to stab his stronger class chum, if the latter tries to pull ears. Captain Moir after fair warning shot a trespasser in the arm. The trespasser was nursed at the expense of the Captain, but unexpectedly died of the wound. The Captain was tried for murder and was convicted of murder by the jury.

2. Right to freedom of discussion: The second instance of Rule of Law is the liberty of the Press. The principle for freedom of discussion or that form of it called the liberty of the press is not recognized by the English law. It is only a Common law right and not a specific right or liberty specifically recognized by the statute law of England. The right to freedom of thought and discussion and to the liberty of the press is the result of the application of the principle of the Rule of law that no man is punishable except for a distinct breach of the peace. Any man, therefore, may say or write or publish whatever he likes, subject to the risk of punishment if he makes a bad use of this liberty. If his speech is slanderous or his writing libellous, the person slandered or libelled may bring an action for damages against him. Again if the speech or writing is likely to incline men to treasonable or immoral acts, the offender can be tried for misdemeanour.

Its Features: For the last two hundred years the relations between the Government and the press have been asked by all those characteristics which make up to the Rule of law. The present position for the English Press is marked by two features: --

There is no censorship of the press: No licence to print a newspaper or conduct a press is necessary. This is quite in keeping with the principle of the law that no man is to be punished or interfered with unless he commits an obvious breach of law. The newspaper press is subject only to the ordinary law of the land. The writer of a newspaper stands on the same level with the writer of a letter. There is no check upon the press either from any special rules as to the press offences nor is there any official control upon the press.

Press offences are tried by ordinary Courts: There are no special tribunals. The press offences are tried by a Judge and a jury. The jury consists of twelve 'Shopkeepers' meaning thereby, any twelve men from the general public. Whether a given act in a given case amounts to a libel is a question of fact, and is referred to the jury. Nothing has contributed to free the periodical press from control than trial of press offences by jury. The determination of the question whether a publication is libellous or not being entirely in the hands of the jury, the Crown or the Ministry cannot exercise any stringent control over writings in the press. The liberty of the exercise any stringent control over writings in the press. The liberty of the press is thus the result of the universal predominance of the law of the land.

The law of England is not specially favourable to free speech or free writing in the rules which it has made as to the statements a man has legal right to make. It recognizes no special privileges on behalf of the press. Nothing like 'Press Law' is known to England. What is sometimes called the 'press law' is not a substantive

body of law ; it is merely a part of the law of libel. Any man can by word of mouth or in writing, express any of his thoughts. But he has no right to (i) defame others, or (ii) to spread sedition or blasphemy.

Its Limitations: There are three limitations on the freedom of speech or the liberty of the press. The speech or writing as the case may be must not be (1) Libellous, (2) Seditious, or (3) Blasphemous.

Libel : It is a libel to circulate any untrue statement about another which is calculated to injure his interest, character or reputation. One who publishes, i.e., makes known such a statement, gives currency to a libel, and is liable to an action for damages. The maker, the writer, the printer, the publisher and the vendor of a defamatory statement are all guilty of publication and may be sued for damages. The gist of the offence is not writing of the libel, but making it public. Honest and reasonable belief on the part of the libeller is not a valid defence. Neither is the mere truth of the statement a good defence, unless it can be proved in addition that it was published for the public benefit.

Sedition: Seditious intention is an intention to (i) bring into hatred or contempt, or (ii) excite disaffection against the King or the Government and Constitution of the United Kingdom as by law established, or either House of Parliament, or the administration of justice, or (iii) excite British subjects to attempt otherwise than by lawful means, the alteration of any matter in Church or State by law established, or (iv) to promote feelings of ill-will or hostility between different classes.

Any one who publishes, verbally or in writing with a seditious intention is guilty of misdemeanour.

Blasphemy : A man commits the misdemeanour of publishing a blasphemous libel, if, (i) He publishes, decently or indecently, a denial of the truth of Christianity or the existence of God, or (ii) Publishes matter relating to God, Jesus Christ or the Book of Common Prayer, intended to wound the feelings of mankinds, or to excite contempt against the Church by law established, or to promote immorality.

Law of the Press in England : The Law of England recognizes in general no special privilege on behalf of the "Press". In truth there is little in the Statute Book which can be called a "Press Law". The law of the Press as it exists is merely part of the Law of Libel, and it would be useful if we trace out the restrictions imposed by the law of libel on the "Freedom of Press" by which expression is meant a person's right to make any statement he likes in books or newspapers.

As to libels on individuals : The publication of an untrue statement about any body, which is calculated to injure his interest, character, or reputation, is a libel. So much about the personal libels. But there are libels even against the Government. Let us now observe the way in which the Law of libel restricts the right to criticize the conduct of the Government.

As to libels on Government: Every person commits a misdemeanour who publishes (orally or otherwise) any words or document with a seditious intention. Now a seditious intention means an intention (i) to bring into hatred or contempt or to excite disaffection against the King or the Government and Constitution of the

United Kingdom as by law established, or either House of Parliament, or the Administration of Justice, or (ii) to excite British subject to attempt otherwise than by lawful means the alteration of any matter in Church or State by law established, or (iii) to promote feelings of ill-will and hostility between different classes. And if the matter published is contained in a written or printed document, the publisher is guilty of publishing a seditious libel.

(3) **Right to public meeting:** The third instance of the Rule of Law is the right to public meeting. The British Constitution does not specifically recognize the right of public meeting. It is nothing more than the view taken by the Courts as to the (i) individual liberty of person and (ii) individual liberty of speech. If two or more persons can legally go to a certain lace and legally speak a certain thing, they have a right to go there and speak it, i.e., they have a right to hold a meeting. But in this exercise of the right of assembling the assembly should not be unlawful.

What is 'Unlawful; assembly: An assembly may be unlawful on account of (i) its purpose or (ii) its manner. A meeting of three or more person becomes unlawful assembly if the persons assemble--

(1) to commit a crime by open force;

(2) for any purpose, lawful, or unlawful, in such a manner as to give average persons in the neighbourhood of the assembly reasonable cause to fear a breach of the peace, as a result of the assembly;

(3) to commit a breach of the peace; or

(4) with the intent to incite disaffection among the Crown's subjects, to bring the Constitution of the country into contempt and to carry out or prepare to carry out, an unlawful conspiracy.

Limitations to the right of public meeting: A public meeting which from the conduct of those engaged in it, or through their intention to excite a breach of the peace on the part of the opponents, fills peaceable citizen with reasonable fear that the peace will be broken, is an unlawful assembly. But a meeting which is otherwise legal does not become an unlawful assembly, because it will excite unlawful opposition and thus may indirectly lead to a breach of the reason being that one's right to do a lawful act cannot be diminished by another's threat to do an unlawful act. Hence such a meeting cannot be dispersed or broken up by a Magistrate simply because it may probably lead to a breach of the peace on the part of wrong-doers. To this there are exceptions founded on the absolute necessity for preserving the King's peace. In other words an assembly which is otherwise lawful may become unlawful in the following two cases:

(1) If owing to the character of the meeting and of the locality where it is proposed to be held, there is a clear probability that a breach of the peace will be provoked.

(2) When the meeting is lawful but there is actually a breach of the peace and it is impossible to preserve or restore the peace by any other means than dispersing the meeting, then the Magistrate can order the meeting to disperse. If the meeting does not disperese, it becomes an unlawful assembly.

A lawful assembly is not rendered an unlawful assembly simply because ruffians try to break it up. If men meet lawfully, for lawful purpose, the meeting does not become unlawful, because it may provoke their opponents to break the peace or otherwise to conduct themselves in an unlawful manner. A man cannot be convicted for doing a lawful act, if he knows that his doing it, may cause another to do unlawful act.

The 'Riot Act' : This Act provides that if 12 rioters continue together for an hour after the Magistrate has made a proclamation to them in terms of the Act (wrongly called reading of the Riot Act) ordering them to disperse, he may command the troops to fire upon the rioters or charge them sword in hand. This does not mean that the troops cannot be called or cannot fire unless and until the conditions imposed by the statute are fulfilled. The later notion is erroneous. The occasion on which force can be employed, and the kind and degree of force, which it is lawful to use in order to put down a riot, are determined by nothing else than the necessities of the case.