



FACULTY OF JURIDICAL SCIENCES

Course : BALLB , 3rd Semester

Subject : CONSTITUTIONAL LAW I

Subject code : BAL304

Faculty Name : Ms Taruna Reni Singh

Constitutional law - I

OBJECTIVE: The objective of this paper is to provide understanding of basic concepts of Indian Constitution and various organs created by the constitution including their functions.

UNIT – I

- Salient features of the Indian Constitution.
- Preamble
- Definition of State (Art. 12)
- Doctrines of Ultra-vires, severability, eclipse, waiver (Art, 13)

UNIT-II

- Right to equality (Art. 14)
- Prohibition of discrimination, Rights to equality of opportunity (Art. 15-16)
- Right to freedom under Article 19: Freedom of association; Freedom of movement;
- Freedom of residence; Freedom of assembly; Freedom of association; Freedom of movement; Freedom of residence; Freedom of occupation, trade and business;
- Right to take out processions; Right of the State to impose reasonable restrictions

UNIT – III

- Protection in respect of Conviction under Article 20,
- Ex-post-facto law; Double jeopardy; Self-incrimination;
- Right of Life and Personal Liberty (Art. 21),
- Protection in respect of arrest and detention
- Right to freedom of religion (Articles 25-28)

UNIT – IV

- Cultural and Education Rights (Articles 29-30)
- Enforcement of Fundamental Right, Writ Jurisdiction of the Supreme Court and High Court (Article 32, 226)
- Right to property before and after the Constitution 42nd Amendment Act, 1976
- Abolition of Untouchability, Titles (Articles 17-18)
- Right against exploitation (Articles 23, 24)

Suggested Readings:

1. Austin Granville: Constitution of India: Cornerstone of a Nation; and Working A Democratic constitution
2. NarenderKumar : Constitutional Law of India.
3. Basu D. D : Shorter Constitution of India
4. Jain, M.P.: Constitutional Law of India,
5. Seervai, H.M. : Constitutional Law of India, Vols. I-III
6. Shukla, V.N. : Constitutional of India (ed. M.P.Singh)
7. B.R. Sharma : Constitutional Law and judicial Activism
8. M.C. Jain Kagzi : The constitution of India
9. B. Shiva Rao: The Framing of India's Constitution

LECTURE 10

Is Constitutional amendment a 'Law' under Article 13 (2).- The question whether the word 'law' in clause (2) of Article 13 also includes a 'Constitutional amendment' was for the first time considered by the Supreme Court in **Shankari Prasad v. Union of India**. The court held that the word 'law' in clause (2) did not include law made by Parliament under Article 368. The word 'law' under Article 13 must be taken to mean rules or regulations made in exercise of ordinary legislative power and not amendments to the Constitution made in exercise of Constitutional power and, therefore, Article 13 (2) did not affect amendments made under Article 368. This interpretation of Shankari Prasad's case was followed by the majority in **Sajjan Singh v. State of Rajasthan**. But in historic case of **Golak Nath v. State of Punjab**, was heard by a special bench of 11 judges as the validity of three constitutional amendments was challenged. The Supreme Court by a majority of 6 to 5 reversed its earlier decision and declared that parliament under article 368 has no power to take away or abridge the Fundamental Rights contained in chapter III of the constitution the court observed.

(1) Article 368 only provides a procedure to be followed regarding amendment of the constitution.

(2) Article 368 does not contain the actual power to amend the constitution. AIR 1951 SC 458 32 AIR 1965 SC 845 33 AIR 1967 SC 1643

(3) The power to amend the constitution is derived from Article 245, 246 and 248 and entry 97 of the union list.

(4) The expression 'law' as defined in Article 13 (3) includes not only the law made by the parliament in exercise of its ordinary legislative power but also an amendment of the constitution made in exercise of its constitution power. ,

(5) The amendment of the constitution being a law within the meaning of Article 13 (3) would be void under Article 13 (2) if it takes away or abridges the rights conferred by part III of the constitution.

(6) The First Amendment Act 1951, the fourth Amendment Act 1955 and the seventeenth Amendment Act, 1964 abridge the scope of Fundamental Rights and, therefore, void under Article 13 (2) of the constitution.

(7) Parliament will have no power from the days of the decision to amend any of the provisions of part III of the constitution so as to take away or abridge the Fundamental Rights enshrined there in. The validity of the Constitution (24th Amendment) Act, 1971 was considered by the Supreme Court in Kesavananda Bharati case. The court overruled the Golak Nath case and upheld the validity of the same amendment.

Choose the correct option

1. Which of the following is correct regarding the Indian Constitution ?

- (a) It is completely based on British Constitution.
- (b) It is original
- (c) It is made only on the basis of Government of India Act, 1935
- (d) It is a mixture of several Constitutions.

2. Which of the following cases cannot be filed directly in the Supreme Court ?

- (a) Cases against encroachment on Fundamental Rights
- (b) Both (a) and (b) above.
- (c) If one's property is forcefully occupied by the other
- (d) Disputes between two or more States

3. Judicial Review signifies that the Supreme Court

- (a) Can impeach the President
- (b) Can declare a state law as unconstitutional
- (c) Can review cases decided by the High Courts.
- (d) Has final authority over all cases

4. In whom are the powers of Judicial Review vested in India ?

- (a) All the courts
- (b) Supreme Court and all the High Courts
- (c) President
- (d) Parliament

5. There is no appeal except on a point of law against the decisions of the

- (a) Sub Judges
- (b) Small causes courts
- (c) Court of Munsifs
- (d) High Court