



## **FACULTY OF JURIDICAL SCIENCES**

**Course : BALLB , 3<sup>rd</sup> Semester**

**Subject : CONSTITUTIONAL LAW I**

**Subject code : BAL304**

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## **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 30

□ ***Right to manage its own religious affairs.***

Article 25(2) (b) upholds the individual's protection from discrimination and Article 26(b) on the contrary upholds the institutional right to an organised religious practice. This apparent inconsistency was resolved by the court in Devaru's case where the court held that "matters of religion" in Article 26 includes those tenets and practices of a religion that are basic to the religion fall within its ambit. ceremonies when only members of the community are entitled to participate to the exclusion of all others.

□ ***Right to own and acquire movable and immovable property along with the right to administer it.***

The right to own and acquire property is an important right for any institution to manage its own affairs. It is not possible for a body to function effectively if it does not have the freedom to manage and administer its property. This is not an absolute right in the sense that it does not take away the power of the state to acquire the property of the religious denomination. Therefore, not only the denomination but also the state can govern the property. The restriction, however, has to be reasonable and not of nature so as to completely negate the right. Moreover, the clause (d) uses the phrase 'in accordance with the law' which entails that state can regulate the administration by means of a valid legislation. This is also the distinction between clause (b) and clause (d). The right to manage religious affairs cannot be abridged by any law.

**Religious Denomination**

A religious denomination is a subgroup within a religion that operates under a common name, tradition, and identity. The word 'religious denomination' is not defined in the constitution. The word 'denomination' came to be considered by the Supreme Court in the case of *Commissioner, Hindu Religious endowment Madras v. Shri Laxmindra Thirtha Swamiar of Shri Shirur Mutt*. In this case, the meaning of 'Denomination' was culled out from the Oxford dictionary, "A collection of individuals classed together under the same name, a religious sect or body having a common faith and organization designated by a distinctive name".

Thus if a body has a:

- Common Faith
- Common Organisation
- Distinctive Name; it categorises as a religious denomination.

**Matters of Religion**

Matter of religion includes religious practices, rituals, observances, ceremonies, mode and manner of worship, etc., regarded as the essential and integral part of the religion. In *Jagannath Ramanuj Das v State of Orissa(1954)* Court held that the expression 'matters of religion' in

Article 26 extends to acts done in pursuance of religion and covers rituals, observances, ceremonies and modes of worship.

*In Acharaj Singh v. State of Bihar (1966)* it was held that, if Bhog offered to the deity is a well-established practice of that religious institution, such a practice should be regarded as a part of that religion.

*Commissioner, Hindu Religious Endowments, Madras v. Shri Lakshmindra Tirtha Swamiar of Shri Shirur Mut (1954)*

In this case Madras Hindu Religious and Charitable Endowments Act 1951 was passed by the Madras legislature in 1951. The object of the Act, as stated in its preamble, was to amend and consolidate the law relating to the administration and governance of Hindu religious and charitable institutions and endowments in the State of Madras. The Act contained sections dealing with the powers of the State with regard to the general administration of the Hindu religious institutions, their finances and certain other miscellaneous subjects. The SC held that the Act had violated constitutional guarantees under articles 25 and 26 of the Constitution. Court observed that a law which takes away the right of administration from the hands of a religious denomination altogether and vests it in any other authority would amount to a violation of the right guaranteed under cl. (d) of Art.26.

*Durgah Committee, Ajmer v. Syed Hussain Ali (1961)*

In this case in 1955, the Parliament had passed the Durgah Khawaja Saheb Act, 37 to administer the Durgah and the endowment of the Durgah Khawaja Moinuddin Christi at Ajmer. This Durgah, which is a Muslim pilgrim centre built at the tomb of Khawaja Moinuddin Saheb who is a Christi saint, has been visited by both Muslim and Hindu pilgrims. Sections 4 and 5 of the Durgah Khawaja Saheb Act of 1955, provided for the appointment of a Durgah Committee by the Central Government to administer and manage the Durgah endowment According to the terms of sections 4 and 5 of the Act, the members of the committee nominated by the Government were to be Hanafi Muslims. Section 15 of the Act laid down the instruction that the Committee should follow the Muslim rules and tenets of the Christi saint in performing and conducting the established rites and ceremonies at the tomb of the Christi saint.

The Supreme Court found that the provisions of the said Act were not violative of the Constitutional rights guaranteed to religious communities. The Court observed that the Act regulated only the secular practices associated with religion, which were not essential or integral part of religion.

*Bramchari Sidheshwar Bhai v. State of West Bengal (1995)*

In this case, The Ram Krishna Mission wanted to declare itself as a non- Hindu minority where its members were to be treated as Hindus in the matter of marriage and inheritance but in the religious sense to be recognized as non-Hindus. This would certainly mean that they are given the status of legal Hindus but religious non- Hindus, similar to Sikhs and Buddhists. To this, the Supreme Court ruled that it cannot be claimed by the followers of Ram Krishna that they belong to the minority of the Ram Krishna Religion. Ram Krishna Religion is not distinct and separate

from the Hindu religion. It is not a minority based upon religion. Hence, it cannot claim the fundamental right under Article 30 (1) to establish and administer institutions of education by Ram Krishna Mission.

*Right to establish and maintain-institutions for religious and charitable purposes*  
*Azeez Basha v. Union of India (1967)*

In this case, certain amendments were made in the year 1951 and 1965 to the Aligarh Muslim University Act, 1920. These amendments were challenged by the petitioner on the ground that:

1. They infringe on the fundamental right under Article 30 to establish and administer educational institutions.
2. Rights of the Muslim minority under Article 25, 26, 29 were violated.

It was held by the Supreme Court that prior to 1920 there was nothing that could prevent Muslim minorities from establishing universities. The Aligarh Muslim University was established under the legislation (Aligarh Muslim University Act, 1920) and therefore cannot claim that the university was established by the Muslim Community as it was brought into existence by the central legislation and not by the Muslim minority.

*Saifuddin Saheb v. State of Bombay (1962)*

In this case, the State of Bombay passed the Bombay Prevention of Excommunication Act, 1949. Section 3 of this Act prevented the excommunication of the members of any community. The petitioner (religious head of the Dawoodi-Bohra Community) challenged the Act on the ground of violation of their fundamental rights guaranteed under Article 25 and 26.

The Court observed that the power of Excommunication by the head formed the essential affairs of the community and the Act clearly violated the fundamental right under Article 25(1) of the Constitution. The Supreme Court held that the Act was violative of Articles 25 and 26 and was therefore void.

*Bira Kishore Dev v. State of Orissa, (1964)*

In this case, the validity of the Shri Jagannath Temple Act, 1954 was challenged on the ground that the Act is discriminatory in nature and violates Article 26 (d) of the Constitution. It was contended by the petitioner (Raja of Puri) that the temple was his private property and he had the sole right over management as well as superintendence of the temple. The Act took away the sole management of the temple from the appellant and vested it with the Committee. Dismissing the appeal the Supreme Court held that there was no violation of the fundamental right of freedom of religion of the petitioner and the Act only dealt with the secular management of the institution.

In *State of Rajasthan v. Sajjanlal Panjawat (1973)* SC observed that even though the state has the power to administer or regulate the properties of a trust, but it cannot by law take away the right to administer such property and vest it in such other authority that does not even comprise

the denomination. This would certainly amount to a violation of Article 26(d) of the Constitution.

*Atheist Society of India v. Government of A.P., (1992)*

The petitioner (Atheist Society of India), in this case, prayed for the issuance of writ of Mandamus to direct the Government of Andhra Pradesh to give instruction to all the concerned departments to forbid the performance of religious practices such as breaking of coconuts, chanting mantras, etc at the State function on the ground that the performing of these practices is against secular policy of the constitution. The petitioner's prayers were rejected by the court on the grounds that it infringes upon the right to religion and if permitted it will be against the principle of secularism, which is the basic structure of our Constitution. It would lead to depriving of the right to freedom of thought, faith, worship.

*Indian Young Lawyers Association v The State of Kerala (2018)*

The most recent judgment is with regard to the entry of women in the Sabarimala temple complex. The five-judge bench in its majority opinion held that prohibition on the entry of women within the sanctum sanctorum of the temple is unconstitutional.

According to the court, Sabarimala temple is not a separate religious denomination because it does not satisfy the requirement of a distinctive name. It is controlled by the States under Article 290-A of the constitution and regulated by a statutory Board constituted under Travancore-Cochin Hindu Religious Institutions Act, 1950. Further, this cannot be saved under Article 26(b) since it is controlled by article 25. Barring of the menstruating women is violative of their right to equality (Article 14), right to freedom of religion (Article 25) and is patent discrimination on grounds of sex (Article 15(2)).

However Review Petition in the concerned case against the judgment is pending before larger Bench of SC.

***Freedom From Taxes For Promotion Of Any Particular Religion (Art. 27)***

Article 27 of the Constitution prevents a person from being compelled to pay any taxes which are meant for the payment of the costs incurred for the promotion or maintenance of any religion or religious denomination.

In the case of *Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, the Madras legislature enacted the Madras Hindu Religious and Charitable Endowment Act, 1951 and contributions were levied under the Act. It was contended by the petitioner that the contributions levied are taxes and not a fee and the state of madras is not competent to enact such a provision. It was held by the Supreme Court that though the contribution levied was tax but the object of it was for the proper administration of the religious institution.

***Prohibition Of Religious Instruction In The State-Aided Institutions (Art. 28)***

Article 28 prohibits:

- Providing religious instructions in any educational institutions that are maintained wholly out of the state funds.
  - The above shall not apply to those educational institutions administered by the states but established under endowment or trust requiring religious instruction to be imparted in such institution.
  - Any person attending state recognized or state-funded educational institution is not required to take part in religious instruction or attend any workshop conducted in such an institution or premises of such educational institution.
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**Choose the correct option**

1. In the case of *Golak Nath v. State of Punjab*, it was remarked that our 'Preamble contains in a nutshell its ideals and aspirations'. Who was the Judge:
  - A. Mathew, J.
  - B. Krishna Iyer, J.
  - C. Subba Rao, J.
  - D. H.R. Khanna, J.
  
2. The Chairman of the Constituent Assembly was:
  - A. Jawaharlal Nehru
  - B. Jai Prakash Narayan
  - C. C. Rajgopalachari
  - D. Dr. Rajendra Prasad.
  
3. The Chairman of the Drafting Committee of the Constitution was:
  - A. Dr. B.R. Ambedkar
  - B. KM. Munshi
  - C. Sir. A. Krishna Iyer
  - D. Dr. Rajendra Prasad.
  
4. 'Fraternity' means a 'sense of common brotherhood to all Indians' and is the principle which gives unity and solidarity to social life'. It was said by:
  - A. Dr. Rajendra Prasad
  - B. Dr. B.R. Ambedkar
  - C. Jawaharlal Nehru
  - D. C. Rajgopalachari.
  
5. The words 'Social Justice' in the Preamble of the Constitution, aims the primary duty of the State:
  - A. to make sure that justice was not based on caste, community, race or religion
  - B. to work for creating a fruitful environment where a reasonable attitude towards social relations strengthened



C. both (a) & (b)

D. none of the above.