



FACULTY OF JURIDICAL SCIENCES

Course : BALLB , 3rd 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 34

ARTICLE 32

Introduction

The Indian Constitution guarantees 6 fundamental rights to the citizens of India. This includes the right to equality, right to freedom, right against exploitation, right to freedom of religion and cultural and educational rights. The makers of the Constitution recognised the importance of these rights for preserving individual rights, building equitable society and establishing a welfare state.

They also observed that merely enumerating these rights in the Constitution is not enough to ensure their practical execution. Thus, to ensure that fundamental rights are not merely paper-based, they also provided for the Right to Constitutional Remedies as a fundamental right in [Article 32](#) of the Constitution.

The former chief justice of India, PB Gajendragadkar had observed that Article 32 is a “very distinguishing feature of the Constitution and serves as the cornerstone of the democratic establishment promised by the Constitution.” Clearly, the right to Constitutional remedies is a very important right granted to the citizens as it provides the citizens:

- This right allows the citizens of India to move to the Supreme Court if any of their fundamental rights are violated.
- It also empowers the higher judiciary to enforce these rights by issuing various writs.
- It has also been decided that, unless expressly provided by the Constitution, this right can only be suspended as and when the Supreme Court decides. This means unless a national emergency is declared, only the Supreme Court of India has a right to suspend this right.

The significance of this Article is such that Dr.B R Ambedkar considered it the most important Article of the Constitution without which the Constitution would be a nullity. He considered it as the soul and heart of the Constitution.

Power of Parliament to enlarge writ jurisdiction of the Supreme Court: Article 139

[Article 139](#) of the Constitution enlarges the writ jurisdiction of the Supreme Court. It increases the scope of Article 32. This is because unlike Article 32 which only allow the Supreme Court to deal with cases involving a violation of fundamental right, this Article states that the parliament can confer additional power upon the Supreme Court.

Through this article, the Supreme Court is empowered to issue different writs for enforcement of any right other than that mentioned in Article 32(2). This means, that if the parliament allows, the Supreme Court can issue writs not only for the enforcement of fundamental rights but also for other Constitutional and legal rights.

For instance, though the Right to property is not a fundamental right, under Article 139, if the parliament allows, the Supreme Court can issue writs for enforcing the violation of the right to property as well.

Articles 32 and 226: Judicial Review

The Constitution of India is considered to be the most supreme law of the land. The Supreme Court has been conferred with the power of upholding its supremacy by interpreting and protecting it.

Judicial review refers to the power of the judiciary to interpret the Constitution and to declare void any legislative order or law which is not in conformity with the Constitution. This power has been given to the Supreme Court under Article 32 and to the High Court under [Article 226](#) of the Indian Constitution.

According to these Articles, if the provisions of a law passed by the legislature go against the provisions of the Constitution, Supreme Court and High Courts have the power to declare them void to the extent of such contravention.

Features of Judicial review

- The power of judicial review can be enforced in respect of laws, orders, and ordinances passed by both Central and State Government.
- Judicial review cannot be used for interpretation of laws incorporated in the ninth schedule of the Indian Constitution which provides certain land reform laws.
- Judicial review does not apply to any political issue.
- Judicial review is not applied by the Supreme Court automatically. Rather this power is only enforced when :
 - Any law or rule is specifically challenged before the Court or,
 - The validity of a particular law is challenged before the Court during the hearing of a case.
- When a law or a part of the law gets rejected as it is unconstitutional as a result of judicial review, it ceases to operate from the date of judgement.

To understand this provision better, we must refer to some case laws.

Appointment of CVC- Quashed

In the case of [Centre for PIL v Union of India](#), a petition was filed under Article 32 of the Indian Constitution. It questioned the appointment of Shri PJ Thomas as the Central Vigilance Commissioner. He had been accused of playing a big role in the cover-up of 2 G Spectrum allocation and was thus accused under the IPC and the Prevention of corruption act, 1988. The

petition argued that the courts must exercise judicial review and remove him from the post as he was unfit for it.

The court held that the judiciary cannot try to make merit review and it must limit itself to only making judicial review. To do this the court said it would only consider the legality of the appointment. As per [Section 6, subsection 3 of the Prevention of Corruption Act](#), the CVC can be removed if he has been convicted for an offence which causes people to raise moral questions. Keeping this in view, the Supreme Court quashed the appointment of Shri PJ Thomas as the CVC.

State of W.B. v. Committee for Protection of Democratic Rights, West Bengal, AIR 2010 SC 1476

In the case of [State of West Bengal v Committee for Protection of Democratic Rights](#), the petitioners had filed a special leave of appeal in the Supreme Court against an order made by the High Court of Calcutta under Article 226. In the order, the Court allowed the Central Bureau of Investigation to take over the investigation of state police, because the state police have made no active efforts to investigate the alleged offence.

Moreover, the court had held there was an allegation made that the lack of effort by state police was because the ruling party was trying to save its image, and thus, to uphold the principles of justice the investigation should be handed over.

The question of law which arose was whether the High Court can direct CBI, which was established under [Delhi Special Police Establishment Act](#), to investigate a cognizable offence which occurred in the territorial jurisdiction of another state, without the consent of that state. The court held that in exceptional circumstances, the High Court can direct the CBI to investigate an offence which lies in the jurisdiction of the state through the power of judicial review. This is important so as to ensure that the fundamental rights of citizens are upheld and those who violate it are appropriately punished (in this case the [Article 21](#) as many lives were arbitrarily taken away), and no statutory provision curtails the court's power of judicial review.

Pratibha Ramesh Patel v. Union of India, AIR 2013 SC 1561

The case of [Pratibha Ramesh Patel v. Union of India](#) highlighted the judiciary's power to prevent the misuse of Article 32. In this case, the petitioner filed a petition to declare certain provisions of the Security Interest and Recovery Debt Laws Act, 2012 as unconstitutional as these provisions brought multistate cooperative society under SARFAESI Act. He argued that doing this was beyond the powers of parliament and encroached upon the powers of the state legislature, thereby undermining the federal structure of the Constitution.

The court observed that a similar writ petition had already been filed by the petitioner in the Bombay High Court under Article 226 of the Constitution. Further, it was also observed that though the petition was still pending under the High Court, it had given an interim order which had worked itself out.

The Supreme Court dismissed the petition and asked for compensation of Rs. 1,00,000 from the petitioner. It said that if such a remedy has been invoked in the High Court, another writ

petition on an identical set of facts cannot be filed in the Supreme Court as it results in wasting the time of the Court.

Choose the correct option

- 1. Where there is a conflict between law and equity, it is the ____ which has to prevail?**
 - A. Law
 - B. Equity
 - C. Both (A) and (B)
 - D. None of them

- 2. . Which of the following Articles of the Indian Constitution is considered as the heart of the Constitution as it confers right to life as well as right to choose?**
 - A. Article 19
 - B. Article 21
 - C. Article 14
 - D. Article 15

- 3. Under right to equality, prohibition or discrimination on grounds of religion, race, caste, sex or place of birth is the basis of which of the following Articles of the Indian Constitution?**
 - A. Article 14
 - B. Article 16
 - C. Article 15
 - D. Article 15(2)

- 4. Which of the following statements is/are found to be correct?**
 - I. Discrimination on the ground of residence will be invalid under Article 14 of the Indian Constitution where it is not founded on a reasonable classification.**
 - II. 'Residence' cannot be a ground for disqualifying a person for appointment under a state, unless Parliament so prescribes under Article 16(3).**
 - A. Only I
 - B. Only II
 - C. None of them
 - D. Both I and II

- 5. The Court can interfere if there is no principle according to which the state has classified a community as 'socially and educationally backward' or the principle adopted is arbitrary thus the court would strike down as discriminatory:**
 - I. A classification of all communities in a state other than Brahmins as socially and educationally backward.

II. A classification by which communities having a higher percentage of literacy are included as 'backward' while those having a lower percentage are excluded.

Which of the above statements is/are found to be correct?

A. I and II

B. Only I

C. Only II

D. none of them