



FACULTY OF JURIDICAL SCIENCES

Course : BALLB , 3rd Semester

Subject : CONSTITUTIONAL LAW I

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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 (Act. 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 39

Directive Principles of State Policy-Part IV

The Directive Principles of the State Policy contained in Part IV (Arts. 36 to 51) of the Constitution of India set out the aims and objectives to be taken up by the States in the governance of the country. This novel feature of the Constitution is borrowed from the Constitution of Ireland which had copied it from the Spanish Constitution. The Directive Principles are designed to usher in a social and economic democracy in the country. These Principles obligate the State to take positive action in certain directions in order to promote the welfare of the people and achieve economic democracy. These Principles give directions to the legislature and the executive in India regarding the manner in which they should exercise their power. The Directive Principles are the ideals which the Union and State Governments must keep in mind while they formulate policy or pass a law. They lay down certain social, economic and political principles, suitable to peculiar conditions prevailing in India. The main object of incorporating the Directive Principles appear to have been to set the standards of achievements before the Legislature and Executive, the local and other authorities, by which their success or failure can be judged. It was also hoped that those failing to implement the directives might receive a rude awakening at the polls. It should, however, be noted that the Directive Principles do not impose any particular brand or pattern of economic or social order. They lay down the goals which may be achieved through various means and which have to be devised from time to time.

Justifiability of the Directive Principles

The Preamble, the Fundamental Rights and the Directive Principles can be characterized as the trinity of the Constitution.

The Directive Principles seek to give certain directions to the legislatures and Governments in India as to how, and in what manner and for what purpose, they are to exercise their power. But, these Principles are specifically made non-enforceable by any Court of law. Art.37 of the Constitution states: *“The provisions contained in this part shall not be enforceable by any Court, but the Principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these Principles in making laws”.*

The reason behind the non-enforceability and non-justifiability of these Principles is that they have positive obligations on the State. While taking positive action, Government functions under several restraints, the most crucial of these being that of financial resources. The Constitution makers therefore, taking a pragmatic view refrained from giving teeth to these Principles. They

believed more in an awakened public opinion, rather than in Court proceedings, as the ultimate sanction for the fulfilment of these Principles. Nevertheless the Constitution declares that the Directive Principles, though not enforceable by any Court, are 'fundamental' in governance of the country, and the State has been placed under an obligation to apply them in making laws and use its administrative machinery for the achievement of these Directive Principles.

The Courts do not however enforce a Directive Principle, as such as it does not create any justifiable right in favour of an individual. A Court will not issue an order or a writ of mandamus to the Government to fulfill a Directive Principle.

But the Courts are nevertheless, bound to evolve, affirm and adopt principles of interpretation which will further and not hinder the goal set out in the Directive Principles of State Policy. Again, the Supreme Court has observed in Workmen, Meenakshi Mills Ltd v. Meenakshi Mills Ltd(1994) that ordinarily any restriction so imposed which has the effect of promoting or effectuating a directive principle can be presumed to be a reasonable restriction in public interest.

Certain principles of policy to be followed by the State-Article 39

The State shall, in particular, direct its policy towards securing-

(a) that the citizens, men and women equally, have the right to an adequate means of livelihood;

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

(d) that there is equal pay for equal work for both men and women; (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Article 39 of the constitution describe that while framing policies, i.e., state would strive to provide adequate means of livelihood to every person including women, equal pay for equal work, which is very important as earlier women get lesser from men as it was a stereotype that women has less energy in comparison to men but state comes into the picture directly and make this moral principle in part IV of the Constitution of India, next is a resource distribution, and finally the safety of citizen, their healthy development including of children is all provision which state must take himself into consideration for making any kind of rules or policies.

Clause (f) was inserted by the Constitution (42nd Amendment) Act, 1976 with a view to emphasize the constructive role of the State with regard to children. In M.C. Mehta v. State of Tamilnadu(1991), it has been held that in view of Art. 39 the employment of children within the match factories directly connected with the manufacturing process of matches and fireworks can not be allowed as it is hazardous. Children can however be employed in the process of packing but it should be done in area away from the place of manufacturing to avoid exposure to accidents.

In an another case known as Child Labour Abolition case, M.C. Mehta v. State of Tamilandu (1997) a three judges Bench of the Supreme Court has held that children below the age of 14 years can not be employed in any hazandous industry or mines or other work. The matter was brought to the notice of the Court by public spirited lawyer M. C. Mehta through a public interest ligation under Art. 32. He told the Court about the plight of children engaged in Sivakasi Cracker Factories and how the constitutional right of these children guaranteed by Art. 24 was being grossly violated and requested the Court to issue appropriate directions to the Governments to take steps to abolish child labour. The Court issued the following directions:

i (i) The Court directed for setting up of Child Labour Rehabilitation Welfare Fund and asked the offending employers to pay for each child a compensation of Rs. 20,000/- to be deposited in the fund and suggested a number of measures to rehabilitate them

i in a phased manner.

ii (ii) The liability of the employer would not cease even if after the child is discharged from work. The Court asked the Government to ensure that an adult member of the child's family gets a job in a factory or anywhere in lieu of the child.

iii (iii) In those cases where it would not be possible to provide jobs the appropriate Government would, as its compensation, deposit Rs. 5,000/- in the fund for each child employed in a factory or mine or in any other hazasrdous employment.

The authority concerned has two options either it should ensure alternative employment for the adult whose name would be suggested by the parent or the guardian of the child concerned or it should deposit a sum of Rs. 25,000/- in the fund.

i (iv) In case of getting employment for an adult the parent or guardian shall have to withdraw his child from the job. Even if no employment would be provided, the parent shall have to see that this child is spared from the requirement of the job as an alternative source of income, interest-income from deposit of Rs. 25,000/- would become available to the child's family till he continues his study upto the age of 14 years.

ii (v) As per the Child Labour Policy of the Union Government, the Court identified some industries for priority action and the industries so identified are namely – The Match Industry in Sivakashi, Tamilnadu; Diamond Polishing Industry in Surat, Gujarat; The precious Stone Policing Industry in Jaipur, Rajasthan; The Glass Industry in Firozabad; The Brass Ware Industry, Moradabad; The Handmade Carpet Industry in Mirzapur; Bhadohi and the Lock making Industry in Aligarh, Uttar Pradesh; the State Industry in Manakpur; Andhra Pradesh and the State Industry in Mandsaur, Madhya Pradesh for priority action by the authorities concerned.

iii (vi) The employment so given in the industry where the child is employed would be a public sector undertaking and would be manual in nature inasmuch as the child in question must be engaged in doing manual work the undertaking chosen for employment shall be one which is nearest to the place of residence of the family.

iv (vii) For the purpose of collection of funds, a district could be the unit of collection so that the executive head of the district keeps watchful eye on the work of the inspectors. In the view of magnitude of the task, separate cell in the Labour Department of the appropriate Government would be created. Overall monitoring by the Ministry of Labour of the Union Government would be beneficial and worthwhile

i (viii) The Secretary of the Ministry of Labour of the Union Government is directed to file an affidavit within a month before the Court about the compliance of the directions issued in this regard.

ii (ix) Penal provisions contained in the 1986 Act will be used where employment of a child labour prohibited by the Act, is found.

In so far as the non-hazardous jobs are concerned, the Inspector shall have to see that the working hours of the child are not more than 4 to 6 hours a day and it received education at least two hours each day. The entire cost of education shall be borne by the employer.

The Court observed that the task is big, but not as to prove either unwieldy or burdensome. The financial implication would be such as to prove damper because the money after all would be used to build up a better India.

The expression 'material resources of the community' under Art. 39 (b) covers the land held by private owners also. Such private land can be acquired by Government for public purposes such as developing, constructing house, building and providing public amenities like shopping complexes, parks, roads, drains, playgrounds etc.,

In *State of Tamilnadu v. Abu Kavar Bai(1984)*, the Court upheld the validity of a law enacted for the nationalization of transport services in the State on the ground that it was for giving effect to the Directive Principles contained in Article 39 (b) and (c). A nationalization scheme meant for the purpose of distribution or preventing concentration of wealth, as in the instant case, must have sufficient *nexus* to attract the operation of Article 39 (b) and (c). The Tamilnadu Act is valid as it subserves nationalization policy.

In *Central Inland Water Transport Corporation v. Brojo Nath Ganguly, (1986)* it was held that Articles 38 and 39 embody the jurisprudential doctrine of 'distributive justice'. The Constitution permits and even directs the State to administer what may be termed as 'distributive justice'. The concept of distributive justice in the sphere of law making connote *inter-alia*, the removal of economic inequalities rectifying the injustice resulting from dealings and transactions between unequals in society.

Pursuant to Art. 39 (d), the Parliament has enacted the Equal Remuneration Act, 1976. The Directive contained in Art. 39 (d) and the Act passed thereto can be judicially enforceable by the Court. In *R.K. Ramachandran Iyer v. Union of India(1984)*, the Supreme Court held that the principle of 'equal pay for equal work' though not a fundamental right is certainly a constitutional goal and therefore, capable of enforcement through constitutional remedies under Article 32 of the Constitution. In *Daily Rated Casual Labour v. Union of India, (1988)* it was held that the doctrine of equal pay for equal works equally applicable to persons employed on a daily wage basis. They are also entitled to the same wages as other permanent employees in the department employed to do the incidental work.

However, the doctrine of 'equal pay for equal work' can not be put in a strait jacket. This right although finds place in Art. 39, is an accompaniment of equality of the Constitution. Reasonable classification, based on intelligible criteria having *nexus* with the object sought to be achieved is permissible. Accordingly, it has been held in *State of U.P. v. J.P. Chaurasia (1989)* that different scales of pay in the same cadre of persons doing similar work can be fixed if there is difference

in the nature of work done and difference as regards reliability and responsibility.

Choose the correct option

1. The Irish copied the idea of Directive Principles of State Policy from?

- a. Italian Constitution
- b. Spanish Constitution
- c. German Constitution
- d. Swedish Constitution

2. **Which of the following are Gandhian Directive Principles?**

- 1) To organize village panchayats
- 2) To secure opportunities for healthy development of children
- 3) To promote cottage industries

- a. 2, 3
- b. 1, 2
- c. 1, 3
- d. All of the above

3. **Which of the following Directive Principles were added later?**

- 1) Promote the educational and economic interests of SCs, STs, etc.
- 2) Minimize inequalities in income.
- 3) Secure the participation of workers in the management.

- a. 2, 3
- b. 1, 2
- c. 1, 3
- d. All the above

4. **Which of the following is/are true regarding Directive Principles of State Policy (DPSPs)?**

- 1) DPSPs are not automatically enforced.
- 2) Court can uphold the validity of a law on the ground that it was enacted to give effect to a DPSP

- a. Only 1
- b. Only 2
- c. Both 1 and 2
- d. All of the above

5. **Which of the following are criticisms of Directive Principles of State Policy (DPSPs)?**

- 1) Does not speak of welfare state
- 2) Illogically Arranged
- 3) Conservative
- 4) Need more principles