



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 4

5 Key Words in the Preamble

5.1 Sovereign The term Sovereignty refers to the independent authority of a State. It means that the State has the power to legislate on any subject; and that it is not subject to the control of any State or external power. Consequently, the term Sovereign in the Preamble of India implies that India is neither a dependency nor a dominion of any other nation, but an independent state. There is no authority above it, and it is free to conduct its own affairs, both internal and external. India's declaration to continue her full membership of the Commonwealth of Nations in 1949 does not affect India's sovereignty in any manner. This declaration is extra-legal and there is no mention of it in the Constitution. It is a voluntary declaration and indicates a free association and no obligation. This association was an honorable association between independent states. It accepts the crown of England only as a symbolic head of the Commonwealth, and having no claim to the allegiance of citizens of India. As Pandit Jawaharlal Nehru explained: "It is an agreement by free will, to be terminated by free will"

5.1.1 Sovereignty and Globalization India has always been a supporter of international institutions. It is a founding member of the United Nations. It has also actively participated in evolution of international law. Does this compromise sovereignty of our nation? It has to be realized that sovereignty is a legal fiction. In practice, it is often compromised. However, the view that globalization dilutes sovereignty needs to be revisited. Globalization is not a dilution of sovereignty, but a modification of the manner in which sovereignty is exercised. Globalization requires a more responsible use of sovereignty. The Government of India continues to ensure its strategic autonomy in international sphere and is vigilant in protecting the interests of the people of India. The recent debate in WTO with regards to the food subsidy is a case in point.

5.2 Socialist The Constitution had a socialist content in the form of certain Directive Principles of State Policy (esp. Arts. 39(b) and 39(c)), even before the term was added in 1976. However, the 'socialism' envisaged by the Indian Constitution is not the usual scheme of State socialism, which involves 'nationalisation' of all means of production, and the abolition of private property. Instead, Indian Socialism is 'democratic Socialism', influenced by Fabianism. It is a peaceful gradual transformation of the society in participation with the state and not against the state. Though the word 'Socialism' may seem to be vague, our Supreme Court has observed that its principal aim is to eliminate inequality of income and status and standards of life, and to provide a decent standard of life to the working people. The Indian Constitution, therefore, does not seek to abolish private property altogether but seeks to put it under restraints so that it may be used in the interests of the nation, which includes the upliftment of the poor. Instead of a total nationalization of all property and industry, it envisages a 'mixed economy', but aims at offering 'equal opportunity' to all, and the abolition of 'vested interests'. However, some have argued that the Indian state is

deviating from its path of Socialism. The following have been cited as reasons behind this line of argument:

- Adoption of neo-liberal economic policy: The new economic policy (1991) of liberalization, privatization and globalization has diluted the socialist credentials of the Indian state.
- From 1991 onwards, the trend has been away from socialism to privatization. Investment in many public enterprises has been divested in favour of private persons and many industries and services, which were reserved for the government sector have been thrown open for private enterprise.
- Growth, which happened after the reforms of 1990s exacerbated inter-state and intrastate disparities. Further, this growth has been without any meaningful job creation. (Jobless growth)
- The Indian state has failed to end mass poverty However, it should be noted that these developments have been in keeping with the worldwide trend after the collapse of socialism in the USSR and East European countries. Also, the constitutional obligation to pay compensation to the private owner for State acquisition has been taken away by repealing Art. 31 by the Constitution (44th Amendment) Act, 1978. Further, the limitations of the neo-liberal economic model are being realized and the ideal of inclusive growth has been brought back into the fold of policy making.

5.3 Secular The unity and fraternity of the people of India, professing numerous faiths, has been sought to be achieved by enshrining the ideal of a ‘secular state’. A secular state, in the context of India, means that the State protects all religions equally and does not uphold any religion as the State religion. The term “secular” was added by the **42nd Amendment Act, 1976**. This is one of the glowing achievements of Indian democracy given that her neighbors such as Pakistan, Bangladesh, Sri Lanka and Burma, uphold particular religions as State religions. The reasons for the necessity of secularism in India are as follows:

- India is a heterogeneous society.
- The idea of India as a secular state has been challenged by states like Pakistan
- We may be subjected to international propaganda (terrorism and related problems).

: 5.3.1 Constitutional Provisions regarding Secularism

- The Indian state has no religion.
- All citizens are equal in the eyes of the law. Articles 14, 15 and 27 establish the secular nature of the state. Article 15 is a specific instruction that the state shall not discriminate among the citizens only on the grounds of religion, race, caste, sex or place of birth. Affirmative action is allowed, but not on the grounds of religion only.
- Fundamental Rights mentioned in Arts. 25–28 guarantee to all individuals, the freedom to profess, practice and propagate their religion, and assure strict impartiality on the part of the state and its institutions towards all religions.

- Religion is subordinate to the state rather than the state being subordinate to the religion. It also implies that the state can interfere in religious affairs for the purpose of social reforms.
- A special feature of Indian secularism emerging from historical context is that special protection is granted to the minorities with respect to the conservation of their culture and traditions.

5.3.2 Communal Violence Bill In order to strengthen the secular credentials of the state, the Government recently presented the Communal Violence Bill' in the Parliament. If this act can provide a mechanism to safeguard the wellbeing of minorities, it will help in achieving the ideal of secularism enshrined in the Preamble.

Key Provisions of the Communal Violence Bill

- Rigorous imprisonment for life as well as fine for those who have been convicted for committing organized violence.
- Offence of hate propaganda will be punishable with imprisonment up to 3 years or fine or both.
- Those who are found guilty of aiding communal violence financially and materially will also be given same punishment.
- Public servant guilty of dereliction of duty shall be punished with imprisonment up to 2 years and may be extended to 5 years.
- Punishment for threatening a witness is imprisonment for three years or fine.
- If there is a chance that the trial cannot be conducted fairly in a particular state, the trial can be conducted outside the state.
- In case of organized violence, the state Government shall establish relief camps at safe locations. Such camps should not be closed till all the internally displaced persons are rehabilitated.
- It authorizes NHRC to receive information with respect to any build-up of communal violence.
- Earlier the Bill was dealing only with minorities. Now, it has been made community neutral.
- The minimum compensation in case of death and sexual violence is 15 Lakhs and 5 Lakhs respectively.
- The definition of sexual violence has now been broadened by including both genders: male as well as female
- Any act, which can be considered to be derogatory to the sexual dignity of a person will be treated as sexual offence.
- Communal violence is defined as anything, which destroys the secular fabric of the country

14. According to the critics, only the term 'reparation' has been used and it has not been dealt with properly. They demand for measurement of 'loss and damage' and public apology for the act. However, there has been a highly politicized debate on this issue. A few arguments related to this issue are mentioned below: Arguments against such a Bill:

- Similar provisions already exist under various sections of IPC.
- The problem is not of lack of laws, but poor implementation of existing laws.
- Communalism is linked to the prejudices against a particular community in a society. Such laws may further strengthen such prejudices. Hence, the solution lies not in framing a new law, but elsewhere (politics, social reform, cultural development). Arguments in favor of such a Bill:
 - Law is not a guarantee, but it does provide some form of deterrence.
 - This Bill includes many offences, which are not a part of the IPC like hate propaganda and sexual abuse.
 - Existing laws may require modification and new laws dealing with relief and rehabilitation are needed.
 - The morphology of communal rights in the country has changed. They have become more organized and it has been observed that certain sections of society suffer on account of their religion at the hands of the police, bureaucracy and the judicial system. Some Steps taken recently to strengthen the secular credentials of the country:
 - Constitution of National Commission on Minorities.
 - Prime Minister's 15 Point Program for educational and economic empowerment of minorities (On the basis of Ranganath Mishra Committee and Sachar Committee)

5.4 Democratic The 'democratic republic', which the Preamble envisages is democratic not only from a political standpoint but also from a social standpoint. Thus, it envisages not only a democratic form of government but also a democratic society, infused with the spirit of 'justice, equality and fraternity'. The form of government envisaged by our Constitution is a representative democracy. The people of India are to exercise sovereignty through the Parliament at the Centre and Legislature in each State, which are elected on the basis of universal adult franchise. The real Executive, namely the Council of Ministers, shall be responsible to the Parliament. Though there shall be an elected President at the head of the Union and a Governor nominated by the President at the head of each state, neither of them can exercise any political function without the advice of Council of Ministers. The Council of Ministers is collectively responsible to the people's representatives in the respective Legislatures (excepting the functions which the Governor is authorized by the Constitution itself to discharge in his discretion or on his individual responsibility). In essence, Parliamentary democracy envisages the following:

- Representation of People
- Responsible Government
- Accountability of the Council of Ministers to the