



RAMA UNIVERSITY

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FACULTY OF JURIDICAL SCIENCES

Course : BALLB , 3rd Semester

Subject : CONSTITUTIONAL LAW I

Subject code : BAL304

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Constitutional law - I

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 6

DEFINITION OF STATE (ART. 12)

About Part III

Part III of our constitution consists of a long list of fundamental rights, it starts right from article 12 to article 35. This chapter has been very well described as the Magna carta of India, for magna carta was not merely a document signed by King John but a symbol of assertion of individual rights. It reflects the awakening of the people in face of oppressive systems like monarchy and tells us that individuals when fortified with rights and freedoms can bring about a great change. The purpose behind having our fundamental rights, rests in the need for having a just society i.e a nation ruled by law and not by a tyrant. Rule of one man only leads to eventual resentment amongst the citizenry as maker, executor and interpreter of law is the same man. Moreover, in case of a infringement of human rights of an individual by the abuse of state power, he will have no option but to suffer because there is just no hope for relief in a tyranny. This is the rationale which led to Montesquieu developing the theory of separation of powers and the same is imbibed in our constitution by virtue of Article 50. So, lets delve deeper into the shield which protects us from abuse of powers by the state itself.

The Concept of State and Article 12 of the Constitution of India

The law dictionary defines State as :-

A body politic, or society of men united together for the purpose of promoting their mutual safety and advantage, by the joint efforts of their combined strength. Individuals need constitutional protection from the acts of the state itself. Fundamental rights protection is available against the state only as ordinary laws are sufficient enough to protect infringement of rights by individuals. With great powers comes a greater risk of abuse and in order to safeguard rights and freedom of individuals so that men in power do not trample upon them. However, in order to delve deeper into the concept it is firstly imperative to explore the definition of State

Article 12 defines state in the following manner:

In this part unless the context otherwise requires, State includes

1. The Government and Parliament of India
2. The Government and Legislature of each of States

3. Local Authorities or

4. Other Authorities

Within the territory of India or under the control of Government of India.

The Government and Parliament of India

The term points to Union executive and legislature. This phrase can be understood by simple observation, whenever Parliament passes a bill and it gets the assent and is brought into force as an Act it is a function of the central legislature. Whenever any State whether as a whole or in part infringes upon fundamental rights of an Individual, it is challenged before the Judiciary and then the same is left to Judicial scrutiny. As we have seen in the celebrated case of *Shreya Singhal v. Union of India AIR 2015 SC 1523*, Section 66A was challenged before the Hon'ble Apex Court as being in violation of Article 19 and on the same basis was struck down and declared ultra vires. Now, Information Technology Act, 2000 is a Central Law passed by Union legislature and therefore being a State it could not be allowed to violate fundamental rights.

Government and Legislature of the States

This phrase indicates that acts of State legislature or Executive will also not be beyond reproach and any State act, order, rule etc. which leads to infringement of rights of an individual shall be safeguarded.

Local authorities

Authorities like Municipality, District Boards etc. all come under the scope of local authorities and remedy against them can be sought by an individual. The bye-laws that a Municipal committee makes are all under the definition of Law under Article 13 and can be challenged on basis of violation of a fundamental right. The reference to local authorities has been given in the General Clauses act, 1897 and it would be pertinent to analyse the same briefly.

A proper and careful scrutiny of Section 3(31) suggests that an authority in order to be a local authority, must be of like nature and character as a municipal committee, District Board or Body

of Port commissioners, possessing therefore, many, if not all, of the distinctive attributes and characteristics of those bodies, but possessing one essential feature namely, that it is legally entitled to or entrusted by the government with the control and management of a local fund.

Choose the correct option

- 1. Which article defines “state”**
 - a. article 13
 - b article 14
 - c .article 12
 - d. article 14

- 2. Who described the part III of the Indian constitution as “ most criticized part of the constitution .**
 - a. jawahar lal Nehru
 - b. B. R ambedkar
 - c. Dr. rajendra Prasad
 - d. B.N .Rau

- 3. The original constitution divided fundamental rights into seven categories but now**
 - a. there are six
 - b. there are five
 - c. there are eight
 - d.they have been regrouped into three categories : social, economic, and political

- 4. Right to property in India is a**
 - a. legal right
 - b constitutional right
 - c. fundamental right
 - d. none of the above

- 5. ‘right to property has been taken away from the fundamental rights and placed in article 300 A through:**
 - a. 24th amendment
 - b. 42nd amendment
 - c. 39th amendment
 - d. 44th amendment

