



FACULTY OF JURIDICAL SCIENCES

Course : BALLB , 3rd Semester

Subject : CONSTITUTIONAL LAW I

Subject code : BAL304

Faculty name : Ms Taruna Reni Singh

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 7

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Other authorities

Now, coming to the most disputed and discussed phrase of all article 12 i.e

Other authorities It is pertinent that the evolutionary process of this concept is discussed in order to understand it better.

1. Earlier, a Restrictive interpretation was given to this term and the principle of ejusdem generis or things of like nature was applied and this meant that authorities exercising governmental or sovereign function would only be covered under other authorities. (*University of Madras v. Santa bai AIR 1954 Mad. 67*)

2. The liberal interpretation came when the Apex court in **Ujjambai v. State of U.P AIR 1962 SC 1621** rejected the interpretation on the basis of ejusdem generis and held that no restriction can be assigned to the interpretation of the term. In **Electricity Board v. Mohan lal AIR 1967 SC 1857**, it was opined that it is not necessary for an authority to be engaged in sovereign or governmental function to come under the definition and said that State Electricity Board of Rajasthan would come under definition of State *Sukhdev Singh v. Bhagatram AIR 1975 SC 1331* followed the same test and held that LIC,ONGC and IFC all come under other authorities • .

3. The breakthrough however, came **with R.D Shetty v. Airport Authority of India** which gave us the 5 Point test as propounded by Justice P.N Bhagwati. This is a test to determine whether a body is an agency or instrumentality of the state and goes as follows “

1. Financial resources of the State is the Chief funding source i.e. the entire share capital is held by the government.
2. Deep and pervasive control of the State
3. Functional character being Governmental in its essence, meaning thereby that its functions have a public importance or are of a governmental character
4. A department of Government transferred to a corporation
5. Enjoys Monopoly status which is State conferred or protected by it.

This was elucidated with the statement that the test is only illustrative and not conclusive in its

nature and is to be approached with great care and caution.

In **Ajay Hasia v. Khalid Mujib Sehravardi** AIR 1981 SC 487 ,It has been held that whether a statutory body falling within the purview of the expression other authorities is to be considered differently. In the opinion of minority, the tests laid down in this case are relevant only for the purpose of determining whether an entity is an instrumentality or agency of the State • .

Whether BCCI is a State or not?

Due to this question surfacing frequently in LLB Exams, it has to be dealt with separately. The relevant Judgement in this regard is **Zee Telefilms v. Union Of India AIR 2005 SC 2677** as BCCI isnot created by a statute, not dominated by government either financially, functionally or administratively. Hence,it cannot be called a State as under Article 12 of The Constitution.

Whether Judiciary would be included in the definition of State or not?

The Judiciary is not expressly mentioned in the Article 12 and a great amount of dissenting opinions exist on the same matter. Bringing Judiciary entirely under Article 12 causes a great deal of confusion as it comes with an attached inference that the very guardian of our fundamental rights is himself capable of infringing them. Perhaps with the help of relevant judgments this can be better understood :

However, in **Rupa Ashok Hurra v. Ashok Hurra AIR 2002 SC 1771** the Apex Court reaffirmed and ruled that no judicial proceeding could be said to violate any of the Fundamental rights and that it is a settled position of law that superior courts of justice did not fall within the ambit of state or other authorities under Article 12.

This leaves with us with the rationale that a Superior Judicial body when acting Judicially would not fall under the definition of State but when it performs any administrative or similar functions e.g conducting examination, it will fall under the definition of state • and that remedy could be sought in that context only in case of violation of fundamental rights

Choose the correct option

1. Which one the following has been wrongly listed as the feature of fundamental rights in India ?

- A. fundamental rights are subject to reasonable restriction
- b. fundamental rights are more sacrosanct than the rights granted by ordinary laws .
- c. fundamental rights are justifiable and can be enforced through supreme court
- d. fundamental rights can be waived by a person

2. Fundamental rights are based on

- a. bill of rights (USA)
- b. bill of rights USA with in-built limitations
- c. Bill of rights UK
- d. Bill of rights Canada

3. Fundamental rights secured to the citizen /individuals is protected against

- a, state action
- b. state as well as private action
- c. against individual
- d. all the above

4. Fundamental rights are

- a. restrictive rights
- b. negative rights
- c. limited rights
- d. all of the above

5. Who enjoys the right to impose reasonable restrictions on the fundamental restrictions on the fundamental rights of the Indian citizen

- a. the supreme court
- b. the parliament
- c. the president
- d. none of the above