



## **FACULTY OF JURIDICAL SCIENCES**

**Course : BALLB , 3<sup>rd</sup> 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 8

## **ARTICLE 13**

Article 13 of the Constitution lays down as follows :-

(1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of Part III of the Constitution shall be void to the extent of inconsistency with Part III of the Constitution.

(2) The State shall not make any law which takes away or abridges the rights conferred by Part III and any law made in contravention of this clause to the extent of the contravention shall be void.

(3) In this Article, unless the context otherwise requires :-

(a) 'law' includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having the force of law;

(b) 'law in force' includes laws passed or made by a legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

(4) Nothing in this Article shall apply to any amendment of this Constitution made under Article 368.

Effect on existing laws :- Article 13(1) is prospective in nature that is, they operate from the date of the commencement of the Constitution and not retrospectively. All pre-constitution or existing laws shall be void only if they are inconsistent with the fundamental rights enshrined in Part III of the Constitution.

In *Keshwa Madhava Menon v. State of Bombay*, AIR 1951 SC 128 proceedings had been started against the appellant for an offence punishable u/s 18 of the Indian Press Emergency Powers Act, 1934 in respect of pamphlet published in 1949. The appellant's contention was that the Act was inconsistent with fundamental rights conferred by the Constitution and therefore it had become void u/Article 19(1) after 26th January, 1950 and the proceedings against him could not be

continued. Supreme Court has held that all laws in force at the commencement of the Constitution which are inconsistent with Part-III of the Constitution, shall be void to the extent of inconsistency. Article 13(1) had no retrospective effect but only prospective in its operation.

**(A) Doctrine of Severability** It is not the whole Act which would be held invalid by being inconsistent with Part III of the Constitution but only such provisions of it which are violative of the fundamental rights, provided that the part which violates the fundamental rights is separable from that which does not isolate them. But if the valid portion is so closely mixed up with invalid portion that it cannot be separated without leaving an incomplete or more or less mingled remainder the court will declare the entire Act void. This process is known as doctrine of severability or separability.

The Supreme Court considered this doctrine in *A.K. Gopalan v. State of Madras*, A.I.R. 1950 S.C. 27 and held that the preventive detention minus section 14 was valid as the omission of the Section 14 from the Act will not change the nature and object of the Act and therefore the rest of the Act will remain valid and effective. The doctrine was applied in *D.S. Nakara v. Union of India*, AIR 1983 S.C. 130 where the Act remained valid while the invalid portion of it was declared invalid because it was severable from the rest of the Act. In *State of Bombay v. F.N. Balsara*, A.I.R. 1951 S.C. 318 it was held that the provisions of the Bombay Prohibition Act, 1949 which were declared as void did not effect the validity of the entire Act and therefore there was no necessity for declaring the entire statute as invalid.

The doctrine of severability has been elaborately considered by the Supreme Court in *R.M.D.C. v. Union of India*, AIR 1957 S.C. 628, and the following rules regarding the question of severability has been laid down:

(1) The intention of the legislature is the determining factor in determining whether the valid part of a statute are severable from the invalid parts.

(2) If the valid and invalid provisions are so inextricably mixed up that they cannot be separated from the another, then the invalidity of a portion must result in the invalidity of the Act in its entirety. On the other hand, if they are so distinct and separate that after striking out what is invalid what remains is itself a complete code independent of the rest, then it will be upheld notwithstanding that the rest had become unenforceable.

(3) Even when the provisions which are valid, are distinct and separate from those which are invalid if they form part of a single scheme which is intended to be operative as a whole, then also the invalidity of a part will result in the failure of the whole.

(4) Likewise when the valid and invalid parts of a Statute are independent and do not form part of a Scheme but what is left after omitting the invalid portion is so thin and truncated as to be in substance different from what it was when it emerged out of legislature, then also it will be rejected in its entirety.

(5) The severability of the valid and invalid provisions of a Statute does not depend on whether provisions are enacted in same section or different section, it is not the form but the substance of the matter that is material and that has to be ascertained on an examination of the Act as a whole and of the setting of the relevant provisions therein.

(6) If after the invalid portion is expunged from the Statute what remains cannot be enforced without making alterations and modifications therein, then the whole of it must be struck down as void as otherwise it will amount to judicial legislation.

(7) In determining the legislative intent on the question of severability, it will be legitimate to take into account the history of legislation, its object, the title and preamble of it.

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**Choose the correct option**

**1. Whether judiciary is part of other authorities in article 12 of the constitution ?**

- a. yes
- b.no
- c.both depends upon circumstances
- d. none of the above

**2. When an enactment of such a nature that no separation is possible between inconsistent and consistent part ;**

- a. whole act will be operative
- b. whole act will be inoperative
- c. the act will neither be operative nor inoperative
- d. none of the above

**3. A law which abridges the fundamental rights , is not a nullity but remains inoperative till the shadow of the fundamental rights falls over such rights . this is known as doctrine of**

- a. pleasure
- b. pith and substance.
- c. eclipse
- d. severability

**4. Under the constitution the doctrine of eclipse applies**

- a. only to pre constitutional laws but only inn respect of non citizens
- b . to the post constitutional laws but only in respect of non-citizens
- c. to the post constitutional laws in respect of citizens only
- d. to all laws , pre constitutional and post constitutional

**5. 'legal equality' under the Indian constitution implies to**

- a. there should be equality amongst equals and inequality among in equals
- b. everybody is equal before the law
- c. the state cannot enact different laws for different group of people
- d. there should be no special law for any category of people

