



## **FACULTY OF JURIDICAL SCIENCES**

**Course : BBALLB , 3<sup>rd</sup> Semester**

**Subject : CONSTITUTIONAL LAW I**

**Subject code : BBL304**

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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 1

# **SALIENT FEATURE OF INDIAN CONSTITUTION**

1. The Preamble
2. Fundamental Rights and Duties
3. Directive Principles
4. Parliamentary System and Amendment Procedures
5. Judicial Review and Basic Structure doctrine

The Constitution of India is considered as a distinctive constitution around the globe. It is the largest written liberal democratic constitution of the world. It offers for a mixture of federalism and Unitarianism, and flexibility and with rigidity.

The Constitution of India was outlined by a Constituent Assembly. This Assembly was an indirectly chosen body. It had laid down certain ideals to be included in the Constitution. These ideals included commitment to democracy, guarantee to all the people of India, Justice, equality and freedom. It had also proclaimed that India will be a Democratic Republic.

Reports suggested that the Constituent Assembly held its first sitting on the 9th December, 1946. It reassembled on the 14th August, 1947, as the sovereign Constituent Assembly for the Dominion of India. Constitution of India is the supreme law of India. It lays down the framework defining fundamental political principles, establishing the structure, procedures, powers and duties, of the government and spells out the fundamental rights, directive principles and duties of citizens. Passed by the Constituent Assembly on 26 November 1949, it came into effect on 26 January 1950. The date 26 January was chosen to commemorate the declaration of independence of 1930. Since its inauguration on 26th January 1950, the Constitution India has been efficaciously guiding the path and development of India.

With the help of Article 368, Parliament can amend the constitution. Every part of constitution can be modified by the Parliament except “basic structure” of the constitution as held by the Supreme Court. Any law which violates the basic structure of the constitution is declared unconstitutional & invalid by the court.

Indian Constitution can be said as the hugely written constitution in the world because of its contents. In its innovative form, it consisted of 395 Articles and 8 Schedules to which additions have been made through subsequent amendments. At present, it contains 395 Articles and 12 Schedules, and more than 80 amendments. There are many factors responsible for the long size of the constitution. One major factors was that the framers of the constitution copied provisions form several sources and several other constitutions of the world. They have followed and reproduced the Government of India Act 1935 in providing matters of administrative detail. It was needed to make provisions for a typical problems of India like scheduled castes, Scheduled Tribes and backward regions. In Indian constitution, provisions were made for elaborate centre-

state relations in all aspects of their administrative and other activities. The size of the constitution became large, as provisions regarding the state administration were also included. Additionally, a detail list of individual rights, directive principles of state policy and the details of administration procedure were laid down to make the Constitution clear and unambiguous for the ordinary citizen. Therefore, the Constitution of India became an exhaustive and lengthy one. India has implemented the Parliamentary system as established in Britain. In this system, the executive is responsible to the legislature, and remains in power only as long as it enjoys the confidence of the legislature. The president of India, who remains in office for five years is the nominal, titular or constitutional head. The Union Council of Ministers with the Prime Minister as its head is drawn from the legislature. It is jointly responsible to the House of People (Lok Sabha), and has to resign as soon as it loses the confidence of that house. The President, the nominal executive shall exercise his powers according to the advice of the Union Council of Ministers, the real executive. In the states also, the government is Parliamentary in nature. The Constitution of India identifies only single citizenship. In the United States, there is provision of dual citizenship. In India, people are citizens of India only, not of the respective states to which they belong. This provision would help to promote harmony and integrity of the nation.

India is a secular state, because it does not discriminate between individuals on the basis of religion. Neither it encourages nor discourages any religion. In contrast, right to freedom of religion is ensured in the Constitution and people belonging to any religious group have the right to acknowledge, practice or propagate any religion they like.

The salient features of the Constitution of India are as under:

1. Preamble of the Constitution: The Constitution of India initiates with a Preamble. The Preamble consists of the ideals, objectives and basic principles of the Constitution. The salient features of the Constitution have developed directly and indirectly from these objectives which flow from the Preamble. The Preamble is described as an introduction or preface of a book. As an overview, it is not a part of the contents but it explains the purposes and objectives with which the document has been written. So is the case with the 'Preamble' to the Indian Constitution. As such the 'Preamble' provides the guide lines of the Constitution. Basically, it is a brief introductory statement that sets out the guiding purpose and principles of the document, and it indicates the source from which derives its authority, meaning, and the people.

The Preamble describes the objectives of the Constitution in two ways: one, is about the structure of the governance and secondly, it explains the ideals to be achieved in independent India. It is because of this, the Preamble is considered to be the major element of the Constitution.

The objectives, which are laid down in the Preamble, are:

1. Description of Indian State as Sovereign, Socialist, Secular, Democratic Republic. (Socialist, Secular added by [42nd Amendment, 1976](#)).
2. Provision to all the citizens of India i.e.
  - a. Justice social, economic and political.

- b. Liberty of thought, expression, belief, faith and worship.
- c. Equality of status and opportunity.
- d. Fraternity assuring dignity of the individual and unity and integrity of the nation.

The Preamble to the Constitution of India is a well drafted document which signifies the values of the constitution. It asserts India to be a Sovereign Socialist Secular Democratic Republic and a welfare state committed to secure justice, liberty and equality for the people and for promoting fraternity, dignity the individual, and unity and integrity of the nation. The Preamble is the nature of Indian state and the objectives it is committed to secure for the people.

## 2. Fundamental Rights and duties:

The Constitution of India grants and guarantees Fundamental Rights to its citizens. It is called the Indian Bill of Rights. Initially, seven Fundamental Rights were granted but after the deletion of the Right to Property from the list of Fundamental Rights (44th Amendment Act 1979) their number came down to six.

Prof. H.J. Laski stated that "A state is known by the rights it maintains". The constitution of India confirms the basic principle that every individual is permitted to enjoy certain basic rights and part III of the Constitution deals with those rights which are known as fundamental right.

The Six Fundamental Rights are under:

1. Right to Equality: It provides for Equality before Law, End of Discrimination, Equality of Opportunity, Abolition of untouchability and Abolition of Titles.
2. Right to Freedom: It incorporates six fundamental freedoms that include freedoms of speech and expression, freedom to form associations, freedom to assemble peaceably without arms, freedom to move freely in India, freedom of residence in any part, and freedom of adopting any profession or trade or occupation. It safeguards personal freedom and protection in respect of conviction for certain offences. The Constitution lays down that the freedom of life and liberty cannot be limited or denied except in accordance with the procedure established by law. Now under Art 21A Right to Education for the children between the ages of 6-14 years has been granted. Art. 22 guarantees protection against arbitrary arrest and detention.
3. Right against Exploitation: This Fundamental Right forbids sale and purchase of human beings, forced labour (begaar) and employment of children in hazardous jobs and factories.
4. Right to Freedom of Religion: The objectives of this right include the freedom of conscience, religion and worship. Any person can follow any religion. It gives to all religions freedom to establish and maintain their religious institutions. Citizens cannot be compelled to pay any tax for the propagation of any religion. The state cannot levy a tax for any religion and constitution prohibits the imparting of religious instructions in schools and colleges.
5. Cultural and Educational Rights: In this right, the Constitution guarantees the rights of the minorities to maintain and develop their languages and cultures. It also confers upon them the right to establish, maintain and administer their educational institutions.

6. Right to Constitutional Remedies (Art. 32): This fundamental right is the key of the entire Bill of Rights. It provides for the enforcement and protection of Fundamental Rights by the courts. It empowers the Supreme Court and High Courts to issue writs for the enforcement of these rights.

It is stated that these fundamental rights are justiciable and the individual can move to the higher judiciary that is the Supreme Court or the High Courts, if there is an encroachment on any of these rights. The right to move to the Supreme Court straight for the enforcement of fundamental rights has been guaranteed under Article 32 (Right to Constitutional Remedies). However, fundamental rights in India are not absolute. Reasonable constraints can be imposed keeping in view the security-requirements of the state.

It is further added by political scientist that fundamental rights for Indians have also been intended to overturn the inequalities of pre-independence social practices. Precisely, they have also been used to abolish untouchability and thus prohibit discrimination on the basis of religion, race, caste, sex, or place of birth. They also prohibit trafficking of human beings and forced labour. They also protect cultural and educational rights of ethnic and religious minorities by allowing them to preserve their languages and also establish and administer their own education institutions. They are covered under articles 14 to 32 of the Indian constitution.

Fundamental Duties of constitution are as under:

A new part IV (A) after the Directive Principles of State Policy was combined in the constitution by the 42nd Amendment, 1976 for fundamental duties. These duties are mentioned below:

1. To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem.
2. To apprise and follow the noble ideals, which inspired our national struggle for freedom.
3. To sustain and protect the sovereignty, unity and integrity of India.
4. To defend the country and render national service when called upon to do so.
5. To promote coordination and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic, regional or sectional diversities, to renounce practices derogatory to the dignity of woman.
6. To value and preserve the rich heritage of our composite culture.
7. To protect and improve the natural environments including forests, lakes, rivers and wild life and to have compassion for living creatures.
8. To develop scientific temper, humanism and the spirit of inquiry and reform.
9. To defend public property and to abjure violence.
10. To endeavour towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of Endeavour and achievement.

The main aim of integrating these duties in the Constitution is to remind the people that while enjoying their right as citizens, should also perform their duties as rights and duties are correlative.

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**Choose the correct option**

1. **Constitution is generally defined as**
  - a. law of the land
  - b . Fundamental law of the land
  - c. administrative law of the land
  - d. constitutional law of the land
  
2. **Which of the following has been considered supreme as a source of power ?**
  - a. supreme court of India
  - b. parliament of India
  - c. president of India
  - d. constitution of India
  
3. **What is the chief source of political power in India**
  - a. the people
  - b the constitution
  - c. parliament of India
  - d. the parliament and state legislature
  
4. **Who is the source of legal authority or sovereignty in India ?**
  - a. people of India
  - b.constitution of India
  - c.parliament of India
  - d. president of India
  
5. **Ultimate sovereignty lies in**
  - a. parliament
  - b. president
  - c. supreme court
  - d. people