



## **FACULTY OF JURIDICAL SCIENCES**

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

**Subject : CONSTITUTIONAL LAW I**

**Subject code : BBL304**

**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 1 1

Preamble to the Constitution of India is "Declaration of Independence" statement & a brief introductory that sets out the guiding principles & purpose of the document. It is the soul of the Indian Constitution, written by the Father of Indian Constitution Dr. B. R. Ambedkar Proper function of a Preamble is to explain certain facts which are necessary to be explained before the enactments contained in the Act can be understood.<sup>1</sup>Preamble is not an integral part of the Indian constitution was once decided upon by the Supreme Court of India in the BeruBari case; therefore it is not enforceable in a court of law. However, the Supreme Court of India has, in the Kesavananda case, recognised that the preamble may be used to interpret ambiguous areas of the constitution where differing interpretations present themselves. Supreme Court held that the Preamble is an integral part of the Constitution..

The preamble described the state as a "sovereign democratic republic". In 1976 the Fortysecond Amendment explicitly enacted secular egalitarianism feature .

Meaning (PREAMBLE): A preamble is an introductory and explanatory statement in a document that explains the document's purpose and underlying philosophy. It is considered as the key to understand the constitution. When applied to the opening paragraphs of a law enacted by legislative body, it may recite historical facts pertinent to the subject of the statute. It is distinct from the long title or enacting formula of a law. The Preamble of our constitution is the introductory statement set out the guiding purpose and principal of the Constitution. It is based on the Objective Resolutions presented by Jawaharlal Nehru in the constituent assembly.

Chapter 1: Introduction The Constitution of India guarantees the Right To Equality through Art 14 to 18.In the series of Constitutional provisions from Article 14 to 18, Art 14 is the most significant. Situations not covered by Art15 to 18, the general principle of Equality is embodied in Art14 is attracted whenever discrimination is alleged. The goal set out in our Constitution regarding status & opportunity is embodied in Art14 to Art18.Right to Equality has declared as Basic Feature of Indian Constitution by Supreme Court.

---

<sup>1</sup> Adithya Singh, Preamble of Constitution of India and its significance.

The phrase 'Equality before Law' occurs in almost all written Constitution which guarantees the Right to Equality, the Constitution of United States uses the expression 'Equal protection of law'. Our Constitution, on the other hand, uses both expressions that are Equality before law and Equal protection of law. The two expressions may seem to be identical, but in fact, they mean different things. As to their origin, it may be said that 'Equality before Law', while the other expression owes its origin to the American Constitution. Preamble to the Constitution of India emphasises principle of Equality as the basic to the Constitution. Even constitutional amendment which offends basic structure of the Constitution are invalid. The mere fact that Equality which is part of the basic structure, can be excluded for a limited purpose to protect certain kinds of law, does not prevent it from being part of the basic feature of Constitution. It was held that essence of the principle behind Art.14 is part of basic structure. In fact, essence or principle of the right or nature of violation is more important than equality in the abstract or formal sense. Equality is one of the magnificent corner stone's of Indian Democracy.

The doctrine of equality before law is a corollary of Rule of law which pervades the Indian Constitution.

Neither Parliament nor any State Legislature can transgress the principle of Equality.

2 Dicey, Law of the Constitution, 10 Ed. (1959) 3 *Indira Sawhney v. Union of India*.

4 *Ashutosh Gupta v. State of Rajasthan*. 5 *Kesavananda Bharti v. State of Kerala*

**Meaning of Equality:** The state or quality of being equal; correspondence in quantity, degree, value, rank, or ability Equality basically means access or provision of equal opportunities, where individuals are protected from being discriminated against. Discrimination in equality can occur in race, sex, health, religion, family structure, age, politics, disability, culture, sexual orientation or in terms of beliefs. • Equality is the basic feature of the constitution of India and treatment of equals unequally will be violation of basic structure of the constitution of India. The ideal of equality under Indian Constitution: It has been seen that the Preamble to our constitution promises 'equality of status and opportunity to all citizens and that this is the *M.G. Badappanavar v. State of Karnataka*. ideal of equality embraces both social and political equality. So far the ideal of social

equality is concerned it is embodied in a series of Articles, of which Art.14 is the genus, and succeeding Arts. 15-18 contain particular application thereof. Our constitution is wedded to the concept of equality which is the basic feature of the constitution. Even a constitutional amendment which offends basic feature is declared as invalid. The state, its agencies and other local bodies being charged with public duty are bound to take action which must be in accordance with Art.14. The liability given to the state and its instrumentalities by the statute enacted under the constitution did not exempt them from honouring constitution itself and they continued to be ruled by Art.14. The equality clause under Art.14 of the constitution does not speak of mere formal equality before law but embodies the real concept of real and substantive equality, strikes at these inequalities<sup>7</sup>. A more positive duty of the state is to minimise inequalities in the status, income and opportunities amongst individuals. Where unequals are competing, conditions must be created by relaxation or otherwise so that unequals compete in terms of equality with others in respect of jobs and employment of the state.

(A)ARTICLE 14 provides that the State shall not deny to any person equality before law or the equal protection of the laws within the territory of India. (

B)The Right to Equality guaranteed under Art. 14 consists of two parts namely

(a) Equality before Law.

(b) Equal protection of Laws.

Every person is entitled to equality before law and equal protection laws. Article 14 bars Discrimination and prohibits Discriminatory Laws. Article 14 of the Constitution of India is a declaration of equality of civil rights for all purpose within the territory of India and basic principles of republicanism and there is no discrimination

The expression “Equality before law” and “Equal protection of law” does not mean the same thing. Meaning of these expressions has to be found and determined having regard to the context and scheme of our Constitution. The word “Law” in

the former expression is used in a genuine sense – a philosophical sense, whereas the word “Laws” in the latter expression denotes specific laws in force

The benefit of “Equality before law” and “Equal protection of law” accrues to every person in India, whether a citizen or not.”We are a country governed by Rule of Law. The concept of equality and equal protection of laws guaranteed by Art. 14 in its proper spectrum encompass social and economic justice in a political democracy

**Equality before the Law :** (a) “Equality before Law “only means that amongst the equals, the law should be equal and should be equally administered, and that the like should be treated alike. The “equality before the law” owes its origin to the English Common Law. The doctrine of equality is a dynamic and evolving concept.<sup>11</sup> It is embodied not only Arts. 15-18 as well as in Arts. 3, 39, 39 A, 41 and 46. It is a Negative concept because it implies the absence of any privilege in favour of any individual, and equal subjection of all classes to the ordinary law. It means law should be equal and should equally administered, that is like should be treated alike. In short there shall not be discrimination. It is a declaration of equality of privilege in favour of every individual<sup>13</sup>. It means that no man above the Law of the land and that every person, whatever is his rank or status is subject to ordinary law of land. The concept of equality before law does not involve the idea of absolute equality amongst all, which may be a physical impossibility. Art. 14, guarantees the similarity of treatment and not identical treatment

**(b) Rule of Law: (Prof. A.V.DICEY)** Equality before law is co-relative to the concept of Rule of Law for all round evaluation of healthy social order.

I. Basic Feature of the Rule of Law is that ‘Justice should not only be done but it must also be seen to be done’

II. Judicial review of Administration action is an essential part of Rule of Law.<sup>14</sup>

III. Independence of Judiciary.

IV. Non Arbitrariness.

“A number of distinct meanings are normally given to the provision that there should be equality before the law. One meaning is that equality before the law only connotes the equal subjection of all to a common system of law, whatever its content...A second theory asserts that equality before the law is basically a procedural concept, pertaining to the application and enforcement of laws and the operation of the legal system....A third meaning normally borne by declarations that all are equal before the law, perhaps no more than a variant of the second, is that State and individual before the law should be equal”.

---

**Choose the correct option**

1. **“Untouchability is abolished and its practice in any form is forbidden” is the essence of which of the following Articles of the Indian Constitution?**
  - A. Article 14
  - B. Article 15
  - C. Article 16
  - D. Article 17
  
2. **Article 18 of the Indian Constitution gives the provision of ‘Abolition’ of Titles’. Which of the following are the provisions under Abolition of Titles?**
  - A. No title, not being a military or academic distinction, shall be conferred by the state
  - B. No citizen of India shall accept any title from any foreign state
  - C. No person who is not a citizen of India shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign state
  - D. All of them
  
3. **Which of the following Articles of the Indian Constitution provides**



**‘Protection of certain rights regarding freedom of speech, etc.’ to Indian citizens?**

- A. Article 18 (2)
- B. Article 18 (1)
- C. Article 19
- D. Article 20

**4. Fundamental Rights under Article 19 of the Indian Constitution are conferred on:**

- A. Indian citizens
- B. All persons living within Indian Territory
- C. Foreigners also
- D. All of them

**5. Which of the following is not matched correctly?**

- (A) Right to Equality: Article 14-18
- (B) Rights against exploitation: Article 20-22
- (C) Right to Religious Freedom: Article 25-28
- (D) Right to Cultural and Education freedom: Article 29-30