



## **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 12

**Equal Protection of Law: a)** The phrase “Equal Protection of the Law” owes its origin to the American Constitution. This is Positive Concept as it implies equality of treatment in equal circumstances both in privileges conferred and liabilities imposed. So all the persons must be treated alike on reasonable classification. Among equals law should be equal and equally administered. The guarantee of equal protection applies against substantive as well as procedural laws.

b) Limitation of the Doctrine of Equal Protection: i. Every law cannot be made universally applicable. There are different class of persons who require special treatment. ii. State has power to classify persons for legitimate purpose. Every classification is likely to produce some inequality and mere production of equality is no enough.<sup>16</sup> — International Covenant: Article 26- All persons are equal before the law and are entitled without any discrimination to the equal protection of law. Article 26 of the International Covenant on Civil and Political Rights, 1966, not only uses both the expressions but also adds explanatory words, prohibiting discrimination.

**Cook Islands & Western Samoa:** Article 64(a) of Cook Islands and Article 15(1) of the Constitution of Western Samoa<sup>17</sup> combine the concept of equality and equal protection in the following words; “The right of the individual to equality before the law and to the protection of the law” —

**Japan:** Article 14 of the Japanese Constitution, 1946 also combines the two concepts of legal equality and non-discrimination. Article 14 provides that “All of the people are equal under the and there shall be no discrimination in political, economic or social relations because of caste, creed, sex, social status, or family origin.”

Once it is conceded that the phrase “equality before law” has a separate content than “equal protection of law”, the question arises, what would be the effect of incorporating the doctrine of equality before law in a written guarantee of fundamental rights and, in particular, along with the analogous guarantee of equal protection.

The guarantee of equal protection would be satisfied if there is some reasonable basis for differential treatment. But even though a person may be differently circumstanced, e.g., if he is under a sentence of imprisonment, he may still be entitled to some basic human rights which may be deduced from the right of equality before the law, e.g.-

(a) Right to recognition as a human being before the law.

(b) Right of access to courts of law.

(c) Right to a fair and public hearing by an independent and impartial tribunal established by law. The contents of “Equality before Law” are indeed much wider today than in the days of Dicey.

**Object of Article 14:** The aim or the object of this Article to ensure that invidious distinction or arbitrary discrimination shall not be made by the state between a citizen and a citizen who answers the same description and the differences which may obtain between them are of no relevance for the purpose of applying a particular law reasonable classification is permissible. Article 14 provides that the state shall not deny to any person whether citizen or not, equality before the law and equal protection of law. It does not mean that same law must be applicable to all but the law should deal alike with all in one class; there shall be equality of treatment under Equal circumstances. So the object is that “equals should be treated unlike and unlike should not be treated alike. Likes should be treated alike. The object of Art. 14 is wider and is to ensure fairness and equality of treatment

**(A) Test Of Reasonable Classification :** If all men are treated equal and remained equal throughout their lives, then the same laws would apply to all of them. But we know that men are unequal. Equality does not mean that all men are protected by the same laws. It is here the Doctrine of classification steps in. All persons are not equal by nature or circumstances, the varying needs of different classes or sections of people require different treatment. This leads to classification among different groups of persons or class. For the purpose of this Article, even a single institution can form a class by itself and while deciding the question of violation of Article 14, it is to be seen whether there are any reasonable basis on which a single or

group of persons are left out of the group. Though discrimination is prohibited, that cannot be applied to nullify a discrimination recognised by the Constitution itself.

Art.14 prohibits class legislation and not classification for purpose of legislation. A classification would be justified unless it is patently arbitrary. If there is any Reasonable basis for classification, the legislature would be entitled to make a different legislation. The legislature is competent to make classification. It is upon the legislature to identify the class of the people to be given protection and on what basis such protection is given. Court cannot interfere. Art.14 does not require that the Legislative classification should be scientifically or logically perfect. Classification for the purpose of legislation cannot be done with mathematical precision. The concept of equality permits rational or discriminating discrimination. Conformity of special benefits or rights or protection to a particular class of citizens is envisaged under Art.14 and is implicit in the concept of equality. Art.14 proceeds on the premise that equality of treatment is required to be given to persons who are equally circumstanced. None should be favoured or should be placed under any disadvantage, in circumstances that do not admit of any reasonable justification for a different.

a. The two tests of classification are as follows:

1. Ineligible Differentia: The classification must be founded on an intelligible differentia which distinguishes those that are grouped together from other, and

2. Rational Relation: That differentia must have a rational relation to the object sought to be achieved by the Act.

- Where the law is challenged as offending against the guarantee in Art 14, the first duty of the court is to examine the purpose and policy of the Act and then to discover whether the classification made by the law has a reasonable relation to the object which the Legislature seeks to obtain. The object of the Act is to found in its Title, Preamble and Provisions.

It is not possible to exhaust the circumstances or criteria which may accord a reasonable basis for classification in all cases. It depends on the object of the legislature. In order to be 'Reasonable', a classification must not be arbitrary but must be rational. b. Basis of Classification:

1. The basis of classification may be geographical.
2. The classification may be according to difference in time.
3. The classification may be based on the difference in nature of trade, calling or occupation, which is sought to be regulated by the legislation.

c. Classification Authorised by the other provisions of the Constitution

: 1. Any law making special provision for Women (or Children) under Article 15 (3) cannot be challenged on the ground of contravention of Art. 1425.

2. Where the Constitution itself makes a classification, the charge of discrimination cannot be levelled against such separate treatment REASONABLENESS and FAIRNESS is the Heart and Soul of Article 14 Arbitrariness as a test under Art.14:

- a) While the American interpretation of the 'Equal protection of Law' as well as earlier decision of our Supreme Court took the view that the test of violation of Art.14 was the absence of a reasonable classification, while under Art 19, a restriction was to be considered unreasonable if it was arbitrary or not founded on any rational principle, in recent cases, the Supreme Court appears to have mingled up the two concepts in broadening the sweep of Art. 14, thus setting up a dynamic concept of equality .An arbitrary action may not be always be mala fide.
- b) Even if arbitrariness is not found ex facie, the same can be gathered on wholesome reading of the statute and rule, regulations, orders or notifications issued there under. An Act which is discriminatory is liable to be labelled as arbitrary.
- c) Where the classification is not reasonable, the impugned legislative or executive action would be held arbitrary and violative of Art. 14; but the

content of and reach of Art.14 must not be confused with the doctrine of classification

- i. Extending a benefit to one class of establishment and denying to the other class enumerating in the same para of the Act was held to be arbitrary and bad.
  - ii. The refusal by university to grant an educational institution permission to start a new law college on the ground that a law college already existed in that district is unreasonable and arbitrary as the factor to considered is whether the population requires another such college for the purpose or not.
  - iii. A statute creating no right of appeal or only illusory right of appeal is not violative of Art. 14
- d) For deciding whether a particular decision was arbitrary or reasonable, the existing circumstances at the time of taking the decision had to be examined and not those prior to the decision. It has held that right to equality now means not only right to be not discriminated, but also protection against arbitrary act of State.
- e) Equality is not violated by the mere conferment of discretionary power; it is violated by arbitrary exercise of these on whom conferred.
- f) Due to spreading of arbitrariness there is requirement to state reasons in an order or decision. The recording of reasons in a decision would shield it from attack on the ground of arbitrariness or unfairness in the decision making process.

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**Choose the correct option**

1. While interpreting the phrase “ equality before of law “ contained in article 14 of the constitution the supreme court constantly maintained
- a. absolute equality amongst human beings
  - b. equal treatment of all



c. equality of status in the preamble of the constitution

d among equals, the law should be equal and should be equally administered

2. **Which of the following statements is true with respect to 42nd Constitutional Amendment Act?**

1. Fundamental Duties were incorporated into the Constitution of India by the 42nd Constitutional Amendment Act, 1976

2. Ten Fundamental Duties were included by this Amendment

3. The 11th Fundamental Duty was incorporated by the 86<sup>th</sup> Constitutional Amendment Act, 2002

**Select the correct answer using the code given below.**

(a) 1 and 2 only

(b) 1 and 3 only

(c) 2 and 3 only

(d) 1, 2 and 3

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

(A) Part I: Union and its Territories

(B) Part II: Citizenship

(C) Part III: Directive Principle and State Policy

(D) Part VI: State Governments

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

(A) Article **312**: The functions of Public Service Commissions

(B) Article **110**: Definition of Money Bill

(C) Article **112**: Budget

(D) Article **51A**: Fundamental Duties

5. **The idea of 'concurrent list' in the Indian constitution is taken from the Constitution of .....?**

(A) Ireland

(B) Canada

(C) Australia

(D) Japan

