



## **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 25

## ARTICLE 23 & 24

### Right against Exploitation-Articles 23 &24

The constitution has established a democratic welfare state based on the ideals of equality, liberty and justice to those people who had been oppressed from centuries and deprived from power. The ideals enshrined in the constitution could not become reality to them despite of the fact that they have been guaranteed as Fundamental rights. Under this provision every individual has been guaranteed a right against exploitation thereby prohibiting exploitation in any form. The constitution of India under Art 23 and 24 expressly mentions its commitment to save the humans being from the scourge of exploitation.

The Right against exploitation enshrined in Article 23 and 24 of the Indian Constitution guarantees human dignity and protect people from any such exploitation. Thus, upholding the principles of human dignity and liberty upon which the Indian Constitution is based. It prohibits traffic in human being and begar and similar forms of forced labour. At the time of the adoption of the constitution there was hardly anything like slavery or widespread forced labour in any part of India. The national movement has been the rallying force against such practice. However, there were areas where such practice was prevalent. The untouchables were exploited by richer and higher classes. In pre-independence days there existed a practice under which labourers who worked for a particular landlord could not leave him to find employment anywhere without his permission. Very often this restriction was so severe and labourers dependence on the master was so absolute that he was just a slave in reality. The local laws had supported such practices.

*Article 23 – Prohibition of traffic in human beings and forced labour Article 23(1): Traffic in human beings and begar and other similar forms of forced labour a rem prohibited and any contravention of this provision shall be an offence punishable in accordance with the law.*

*Article 23(2): Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them. Clause 1 of Article 23 prohibits the trafficking of human beings, begar any similar form of forced labour. It also states that any contravention of this provision is punishable by the law. It explicitly prohibits:*

- *Human Trafficking: This refers to the sale and purchase of human beings mostly for the purpose of sexual slavery, forced prostitution or forced labour.*
- *Begar: This is a form of forced labour which refers to forcing a person to work for no remuneration.*
- *Other forms of forced labour: This includes other forms of forced labour in which the person works for a wage less than the minimum wage. This includes bonded labour wherein a person is forced to work to pay off his debt for inadequate remuneration,*

*prison labour wherein prisoners sent in for rigorous imprisonment are forced to work without even minimum remuneration etc.*

*Hence, Article 23 has a very wide scope by ensuring that a person is not forced to do anything involuntarily. For instance, It forbids a land-owner to force a landless, poor labourer to render free services. It also forbids forcing a woman or child into prostitution.*

Exploitation means misuse of services of others with the help of force. Begar means involuntary work without payment. In India, services of backward communities and weaker sections of the society were used without any payment; this was known as practice of begar. Under Art. 23, any form of exploitation is forbidden. One shall not be forced to provide labour or services against his will even if remuneration is paid. If remuneration is less than minimum wages, it also amounts to forced labour under Art. 23. Thus, the system of 'bonded labour' (debt bondage i.e. service arising out of loan/debt/advance) is unconstitutional. Equally, forcing helpless women into prostitution is a crime. The intention of the Constitution is that whatever a person does must be voluntary. There must not be any element of coercion involved behind a woman or man's action. Traffic in human beings means selling and buying men and women like goods for immoral and other purposes and generally involves traffic of women and children. Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. This provision is similar to the 13th amendment of the American Constitution which abolished slavery in USA. While, our Constitution does not explicitly forbid slavery, the scope of Article 23 has been made wider by using the term 'traffic in human beings' and 'forced labour'. Thus, it not only prohibits slavery but also any sort of traffic in women, children or crippled for immoral purposes.

Article 23 protects the individual not only against the State but also private citizens. It imposes a positive obligation on the State to take steps to abolish evils of "traffic in human beings" and begar and other similar forms of forced labour wherever they are found. Under Article 35 of the Constitution, the Parliament is authorized to make laws for punishing acts prohibited by this Article. In pursuance of this Article, the Parliament has passed the Suppression of Immoral Traffic in Women and Girls Act, 1956, for punishing acts which result in traffic in human beings. Similarly, Bonded Labour System (Abolition) Act, 1976, prohibits the system of bonded labour. Clause (2) of the Article 22, however, permits the State to impose compulsory services for public purposes. Thus, conscription (compulsory enlistment for state service, typically into the armed forces) is not unconstitutional. But in compelling people to render national service, the state must not discriminate on grounds only of religion, race, caste or class or any of them.

Article 23 is clearly designed to protect the individual not only against the state but also against other private citizens. Art. 23 is not limited in its application against the state but it prohibits "Traffic in human beings and begar and other similar forms of forced labour" practised by anyone else. The sweep of Art. 23 is wide and unlimited and it strikes at "traffic in human beings and begar and other similar forms of forced labour" wherever they are found. The reason for enacting

this provision in the chapter on Fundamental Right is to be found in the socio-economic condition of the people at the time when the Constitution came to be enacted. The constitution makers, when they set out to frame the Constitution, found that they had the enormous task before them of changing the socio-economic structure of the country and bringing about socioeconomic regeneration with a view to reaching social and economic justice to the common man .

Large masses of people, bled white by well nigh to centuries of foreign rule, were living in abject poverty and destitution, with ignorance and illiteracy accentuating their helplessness and despair. The society had degenerated into a status-oriented hierarchical society with little respect for the dignity of the individual who was in the lower rungs of the social ladder or in an economically impoverished condition. The political revolution was completed and it had succeeded in bringing freedom to the country but freedom was not an end in itself; it was only a means to an end, the end being the raising of the people to higher levels of achievement and bringing about their total advancement and welfare.

#### *Cases*

In the case of State through *Gokul Chand v Banwari and Ors.*, (1951) the appellants including 5 barbers and 2 dhobis contested against Section 3 and Section 6 of U. P. Removal of Social Disabilities Act, 1947, under which they were convicted.

Section 3 of the act laid down that no person can refuse to render any service to another person on the ground that he belongs to a scheduled caste. Provided that such service lies in the ordinary course of business. The appellants contested that this Section was violative article 23 of the Constitution. But the Court disagreed and held that making it illegal for a person to refuse service to some person just because that person belongs to scheduled cases does not equate to begar.

In *Chandra v. State of Rajasthan (1959)*," the Sarpanch of the village ordered every household to send one man, along with a spade and an iron pan, to render free service for the embankment of the village tank. The Rajasthan High Court held the order of the Sarpanch clearly against Article 23(1) which forbade begar.

In *Suraj Narayan v. State of Madhya Pradesh* (1960), it was held that non-payment of salary to a teacher for unsatisfactory work offended against the spirit of Article 23 and amounted to begar. The Rajasthan High Court held that the teacher, who was holding a civil post under the Government could be punished by no punishment except that which could be awarded to him under the Madhya Bharat Civil Services (Classification, Control and Appeal) Rules, 1956, subject to which he was holding the post.

Before independence, there was a tradition in Manipur wherein each of the house-holders had to offer one day's free labour to the headman or khullakpa of the village. In the case *Miksha v State of Manipur (1961)*, this practice was upheld as a custom which cannot be deemed to amount to

forced labour. However, the appellant disagreed to give one day's free labour. Consequently, respondent came forward and filed a suit against the appellant stating that the appellant continued to ignore the custom even after the court had given directions for it to be followed.

In the case of *Roweina Kahaosan Tangkhul v Ruiweinao Simirei Shailei Khullapka*, the Court, however, allowed the appeal and held this customary practice to be violative of Article 23 of the Constitution. It said that when a Khullakpa insists on carrying on the custom, it led to forced labour as the villagers had to do it without receiving wages for it.

the case of *D. B. M. Patnaik v. State of A. P.(1974)* the court held that a inmate does not surrender his citizenship nor does he lose his civil rights, except such rights as freedom of movement, which are necessarily lost because of the very fact of imprisonment. The consequence is that to deny a prisoner reasonable wages in return for his work will be to violate the mandate in Article 23(1) of the Constitution. Consequently the State could be directed not to deny such reasonable wages to the prisoners from whom the State takes work in its prisons.

*Peoples Union for Democratic Rights v. Union of India, (1982) also known as Asiad Workers Case* In this case the petitioner was an organisation formed for the protection of democratic rights. It undertook efforts to investigate the conditions under which the workmen employed in various Asiad projects were working. This investigation found out that various labour laws were being violated and consequently public interest litigation was initiated. In the case issues like labourers not given the minimum remuneration as mentioned in the minimum wages act, 1948 and unequal income distribution among men and women were highlighted. The Supreme Court interpreted the scope of article 23 in the case. The Court held that the word force within this article has a very wide meaning. It includes physical force, legal force and other economic factors which force a person to provide labour at a wage less than the minimum wage.

Hence, if a person is forced to provide labour for less than the minimum wage, just because of poverty, want, destitution or hunger, it would be accounted for as forced labour.

The Court also clarified the meaning of "all similar forms of forced labour" as mentioned in article 23 of the Constitution of India. It said that not only begar, but all forms of forced labour are prohibited. This means that it would not matter if a person is given remuneration or not as long as he is forced to supply labour against his will.

*Sanjit Roy v. State of Rajasthan,(1983)*

In this case the state employed a large number of workers for the construction of a road to provide them relief from drought and scarcity conditions prevailing in their area. Their employment fell under the Rajasthan Famine Relief Works Employees ( Exemption from Labour Laws) Act, 1964. The people employed for the work were paid less than the minimum wage, which was allowed in the Exemption Act.



The Court held that the Rajasthan Famine Relief Works Employees (Exemption from Labour Laws) Act, 1964 is Constitutionally invalid as to the exclusion of the minimum wages act. This means that minimum wage must be paid to all the people employed by the state for any famine relief work, regardless of whether the person is affected by drought or scarcity or not. This is essential so that the state does not take advantage of the helpless condition of the people affected by famine, drought etc and upholds that they must be paid fairly for the work into which they put in effort and sweat, and which provides benefits to the state.

In the case of *Deena @ Deena Dayal Etc. v Union of India And Others (1983)*, it was held that if a prisoner is forced to do labour without giving him any remuneration, it is deemed to be forced labour and is violative of Article 23 of the Indian Constitution. This is because the prisoners are entitled to receive reasonable wages for the labour they did.

In *Neeraja Choudhary v. State of M.P(1983)* the court reasserted its stand in the following word same view that is unkind to give benefit of the social welfare legislation through the cumbersome process of litigation involving process of trial and procedure of recording evidence. Justice Bhagwati further observed that whenever it is revealed that a labourer is providing forced labour, there will be presumption in the Court that he is required to do so in consideration of an advance received by him and is, therefore, fall within the purview bonded labourer. Unless the employer or the government rebuts this presumption, the court shall presume that the labourer is a bonded labourer entitled to the benefit of a provision of the Act. The court has, issued direction to the State government to include in the vigilance committee representatives of Social Action for identification, release and rehabilitation of bonded labourer. It also made a number of suggestions and recommendations for improving the existing state of affairs. One such suggestion related to their reorganization and activation of vigilance committees.

In the case of *Bandhua Mukti Morcha v. Union of India,(1984)* the organisation sent a letter to Justice Bhagwati and the Court treated it as a Public Interest Litigation. The letter contained its observations based on a survey it conducted of some stone quarries in the Faridabad district where it was found that these contained a large number of workers working in “inhuman and intolerable conditions”, and many of them were forced labourers.

The Court laid down guidelines for determination of bonded labourers and also provided that it is the duty of the state government to identify, release and rehabilitate the bonded labourers. It was held that any person who is employed as a bonded labour is deprived of his liberty. Such a person becomes a slave and his freedom in the matter of employment is completely taken away and forced labour is thrust upon him. It was also held that whenever it is shown that a worker is engaged in forced labour, the Court would presume he is doing so in consideration of some economic consideration and is, therefore, a bonded labour. This presumption can only be rebutted against by the employer and the state government if satisfactory evidence is provided for the same. In another important case of

*Gurdev Singh v. State Himachal Pradesh(1992)*, the court said that

Article 23 of the Constitution forbids „forced Labour“ and mandated that any breach of such prevention shall be an offence liable to be punished in accordance with law. The Court observed that all the inmates of different class in all the jails in the State are entitled to be paid reasonable wages for the work they are called upon to do in the jails and outside the jails. These wages are left to be decided by the State Government within a reasonable period i.e. one year from the date of decision of these cases. However, the prisoners will be paid the minimum wages as notified by the State Government from time to time under the Minimum Wages Act, 1948 from the date of filing of these petitions in this Court. These wages will be worked out within a period of three months from today and deposited in the account of each prisoner.

In *State of UP vs. Madhav Prasad Sharama (2011)* it was held that denial salary, on the ground of "no work no pay" cannot be treated as a penalty and therefore it would not be "begar" within the meaning of Article 23.

In *Central Electricity Supply Utility of Odisha v. Dhobei Sahoo,(2014)* the 5th respondent had held the post of the CEO in the appellant concern for some time, when he was removed from the said post by issue of quo warranto. A further order was served to him for the recovery of remuneration he had drawn while holding the office, till he was removed there from. Holding that the recovery of salary would amount to deprivation of payment while the incumbent was holding the post and had worked. Denial of pay for the service rendered was held to be tantamount to forced labour which was impermissible, the Court quashed the order of recovery of salary as amounting to forced labour prohibited by Article 23.

Compulsory service for public purposes Article 23, clause 2 of the Constitution states that this article does not prevent the state to impose compulsory services for public purposes. It also states that while doing this, the state must not make any discrimination on grounds of religion, race, caste, class or any of them. Hence, though article 23 disallow any form of forced labour, it permits the state to engage in conscription (impose compulsory services upon people for public purposes). However, while imposing services upon people for state services the state must take care to not discriminate on grounds of religion, race, caste or class.

In the case of *Dulal Samanta v. D.M., Howrah (1958)*, the petitioner was served with a notice appointing him as a special police officer for a period of three months. He complained that this violated his fundamental right as it results in “forced labour”

The Court disregarded his appeal and held that conscription for services of police cannot be considered as either:

- (i) beggar; or
- ii) traffic in human beings; or
- (iii) any similar form of forced labour.

Hence, the notice given for the appointment of a person as a special police officer is not in prohibition to Article 23. In *Acharaj Singh v. State of Bihar(1967)*, it has been held that to

compel a cultivator to bring food grains to the Government godown without remuneration for such labour, in a scheme for procurement of food grains as an essential commodity for the community, there shall be no contravention of Article 23 of the Constitution because the compulsory service is for "public purpose".

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**Choose the correct option**

**1. Under which one of the following Acts was the Communal Electorate System introduced by the British in India for the first time:**

- A. Government of India Act, 1909
- B. Government of India Act, 1919
- C. Indian Councils Act, 1861
- D. Indian Council Act, 1892.

**2. In the Federation established by the Act of 1935, residuary powers were given to:**

- A. Federal Legislature
- B. Provincial Legislature
- C. Governor General
- D. Provincial Governors.

**3. Which of the following are the principal features of Government of India Act, 1919:**

- 1. Introduction of dyarchy in the executive government of the provinces**
- 2. Introduction of separate communal electorate for Muslims**
- 3. Devolution of legislative authority by the Centre to the Provinces**
- 4. Expansion and reconstitution of Central and Provincial Legislatures**

**Codes –**

- A. 1, 2 and 3
- B. 1, 2 and 4
- C. 2, 3 and 4
- D. 1, 3 and 4.

**4. . First attempt at introducing a representative and popular element in the Governance of India was made through:**

- A. Indian Council Act, 1861
- B. Indian Council Act, 1892
- C. Indian Council Act, 1909
- D. Government of India Act, 1919.

**60. Which of the following proved to be the shortest lived of all the British constitutional experiments in India:**

- A. Government of India Act, 1919
- B. Indian Councils Act, 1909
- C. Pitt's India Act, 1784
- D. Government of India Act, 1935.