



FACULTY OF JURIDICAL SCIENCES

Course : BBALLB , 3rd Semester

Subject : CONSTITUTIONAL LAW I

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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 26

In *DevendraNath Gupta v. State of M.P(1983)* the Madhya Pradesh High Court held that the service required to be rendered by the teachers towards educational survey, family planning, preparation of voters list, general elections, etc. were for „public purpose“ and therefore even if no compensation was paid, that did not contravene Article 23.

Child Labour

Article 24 – Prohibition of employment of children in factories, etc

Article 24 says that “No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.” Other Constitutional Provisions on Child Labour

Article 21 A: Right to Education The State shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the State, by law, may determine.

Article 39: The State shall, in particular, direct its policy towards securing:- (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. This article mainly refers to the abolition of child labour. Employing children below the age of fourteen years in dangerous factories which may cause them physical as well as long term mental harm is strictly prohibited. It is an integral moral value of the constitution that safeguards the rights of innocent young children in our country. The parliament has even passed strict laws that incriminate the employers who violate this article and the laws that are based on this. The objective of these provisions are to ensure that the children should develop in a better environment and should also be educated.

Laws against Child Labour

The Factories Act, 1948

This was the first act passed after independence to set a minimum age limit for the employment of children in factories. The Act set a minimum age of 14 years. In 1954, this Act was amended to provide that children below the age of 17 could not be employed at night.

The Mines Act of 1952

This Act prohibits the employment of people under the age of 18 years in mines.

The Child Labor (Prohibition and Regulation) Act, 1986

The act defines a child as any person who has not completed his fourteenth year of age. Part II of the act prohibits children from working in any occupation listed in Part A of the Schedule; for example: Catering at railway establishments, construction work on the railway or anywhere near the tracks, plastics factories, automobile garages, etc. The act also prohibits children from working in places where certain processes are being undertaken, as listed in Part B of the Schedule; for example: beedi making, tanning, soap manufacture, brick kilns and roof tiles units, etc. These provisions do not apply to a workshop where the occupier is working with the help of his family or in a government recognised or aided school.

The act calls for the establishment of a Child Labour Technical Advisory Committee (CLTAC) who is responsible for advising the government about additions to the Schedule lists.

Part III of the act outlines the conditions in which children may work in occupations/processes not listed in the schedule. The number of hours of a particular kind of establishment of class of establishments is to be set and no child can work for more than those many hours in that particular establishment. Children are not permitted to work for more than three hour stretches and must receive an hour break after the three hours. Children are not permitted to work for more than six hour stretches including their break interval and can not work between the hours of 7 p.m. and 8 a.m. No child is allowed to work overtime or work in more than one place in a given day. A child must receive a holiday from work every week. The employer of the child is required to send a notification to an inspector about a child working in their establishment and keep a register of all children being employed for inspection.

If there is a dispute as to the age of the child, the inspector can submit the child for a medical exam to determine his/her age when a birth certificate is not available. Notices about prohibition of certain child labour and penalties should be posted in every railway station, port authority and workshop/establishment.

The health conditions of work being undertaken by children shall be set for each particular kind of establishment of class of establishments by the appropriate government. The rules may cover topics such as cleanliness, light, disposal of waste and effluents, drinking water, bathrooms, protection of eyes, maintenance and safety of buildings, etc.

Section IV of the act outlines various remaining aspects such as Penalties. The penalty of allowing a child to work in occupations/ processes outlined in the schedule which are prohibited is a minimum of 3 months prison time and/or a minimum of Rs. 10,000 in fines. Second time offenders are subject to jail time of minimum six months. Failure to notify an inspector, keep a register, post a sign or any other requirement is punishable by simple imprisonment and/or a fine up to Rs. 10,000. Offenders can only be tried in courts higher than a magistrate or metropolitan magistrate of the first class. Courts also have the authority to appoint people to be inspectors under this act.

Child Labour (Prohibition & Regulation) Amendment Act, 2016 Government has enacted the Child Labour (Prohibition & Regulation) Amendment Act, 2016 which came into force w.e.f. 1.9.2016. The Amendment Act completely prohibits the employment of children below 14 years. The amendment also prohibits the employment of adolescents in the age group of 14 to 18 years in hazardous occupations and processes and regulates their working conditions where they are not prohibited. The amendment also provides stricter punishment for employers for violation of the Act and making the offence of employing any child or adolescent in contravention of the Act by an employer as cognizable.

In order to achieve effective enforcement of the provisions of the Act, the amendment empowers the appropriate Government to confer such powers and impose such duties on a District Magistrate as may be necessary. Further, the State Action Plan has been circulated to all the States/UTs for ensuring effective implementation of the Act.

Child Labour (Prohibition and Regulation) Amendment Rules, 2017 Government of India has notified the amendment in the Child Labour (Prohibition and Regulation) Central Rules after extensive consultation with the stakeholders. The Rules provide broad and specific framework for prevention, prohibition, rescue and rehabilitation of child and adolescent workers. It also clarifies on issues related with help in family and family enterprises and definition of family with respect to child, specific provisions have been incorporated in rules. Further, it also provides for safeguards of artists which have been permitted to work under the Act, in terms of hours of work and working conditions. The rules provide for specific provisions incorporating duties and responsibilities of enforcement agencies in order to ensure effective implementation and compliance of the provisions of the Act.

In the case of *People's Union for Democratic Rights v. Union of India (1983)*, the petitioner observed the conditions in which the workers employed in various Asiad projects were working. It was observed that children under the age of fourteen had been employed. It was however contended that such employment was not against the Employment of Children Act, 1938 since the act did not list the construction industry as a hazardous industry.

The Court held that the construction work falls in the field of hazardous employment. Thus, children under the age of fourteen must not be employed in the construction work even though it has not been mentioned explicitly under the Employment of Children Act 1938. The Court also advised the state government to amend the schedule and change the omission to include the construction industry into the list of hazardous industries. In *Rajangam, Secretary, District Beedi Workers Union v. State of Tamil Nadu and others (1992)*

The Supreme Court observed that tobacco manufacturing was certainly an unsafe occupation to the health of children. As far as possible the children in this avocation should be banned. The employment of child labour in this industry should be closed without delay or it can be dealt in a phased manner which is to be decided by the State Government but the period should not be exceeding three years.

*In labourers working on Salal Hydro Project v. State of Jammu and Kashmir and others(1994)*the Apex Court directed that whenever the Central Government commences a construction project which is likely to last for a substantial phase of time, it should ensure that children of construction workers who are living at or near the project site are given amenities for schooling. The Court further lays down that this may be done either by the Central Government itself, or if the Central Government entrusts the project work or any part thereof to a contractor, necessary provision to this effect may be made in the contract with the contractor.

In the case of *M.C. Mehta v. State of Tamil Nadu(1997)*, Shri MC Mehta undertook to invoke Article 32, enabling the Court to look into the violation of fundamental rights of children guaranteed to them under Article 24. Sivakasi was considered as a big offender who was employing many child labourers. It was engaged in the manufacturing process of matches and

fireworks. This, the Court observed, qualified as a hazardous industry. Thus employing children under the age of 14 years in this industry is prohibited.

The Court reaffirmed that children below the age of fourteen must not be employed in any hazardous industry and it must be seen that all children are given education till the age of 14 years. The Court also considered Article 39(e) which says that the tender age of children must not be abused and they must be given opportunities to develop in a healthy manner. In light of this, the Court held that the employer Sivakasi must pay a compensation of Rs. 20000 for employing children in contravention to Child Labour (Prohibition and Regulation) Act, 1986.

The Supreme Court delivered following directions:

□ In fulfillment of the legislative intention behind the enactment of the Child Labour (Prohibition and Regulation) Act, 1986, every offending employer must be asked to pay compensation amounting to Rs.20,000/- for every child employed in contravention of the provisions of the Act.

□ As a large number of working children are engaged in such occupations, asking the respective State government to assure alternative employment to an adult would strain the resources of the states. As such, where it is not possible to provide a job to an adult member of the family, the government concerned should, as its contribution/grant of Rs.5000/- per child in the child labour Rehabilitation-cum-Welfare Fund.

□ A survey should be conducted of the type of child labour under issue which should be completed within six months.

□ In case where alternative employment cannot be made available the parent/guardian of the concerned child should be paid the income earned as interest on the corpus of Rs.25,000/- for each child every month. The employment given or payment made would cease to be operative if the child is not sent to school by the parent/guardian.

□ On discontinuation of the employment of the child, free education should be assured in a suitable institution with a view to making him a better citizen.

In another significant judgment given by the Apex Court on the basis of PIL *Bandhua Mukti Morcha v. Union of India and others* (1997) , a number of guidelines on the recognition release and rehabilitation of child labour has also been given. The Court, inter-alia, directed the Government of India to organize a meeting with the State Government to come up with the principles/policies for progressive elimination of employment of children below 14 years in all employments consistent with the design laid down in Civil Writ Petition No.465/86. These guidelines were given by the Court in the background of employment of children in the Carpet Industries in the State of Uttar Pradesh. In this case the Court issued the following directions to the Government of Uttar Pradesh:

- Examine the situation of child employment.
- Welfare directions to be issued which results into the total exclusion of child below 14 years of age from any kind of employment.
- Provides facilities for education, health, hygiene, healthy food etc. In another important case *Bachpan Bachao Andolan v. Union of India, (2006)* in this case the Supreme Court of India has taken up the issues of children working in the circus and instructed the government to prohibit the employment of children in the circus business. Until recently, the form of entertainment was exempt from the laws which state that no child under the age of 14 can be placed into labor. However, an amendment passed to bring circuses in line with other industries has been ignored by employers and now the government has been encouraged to impose a complete ban. We plan to deal with the problem of children's exploitation systematically. In this order we are limiting our directions regarding children working in the

Indian Circuses:

- Put into practice the fundamental right of the children under Article 21A is very important and the Central Government must issue suitable notifications prohibiting the employment of children in circuses within two months from today.
- The respondents are aimed to conduct synchronized raids in all the circuses to release the children and verify the contravention of fundamental rights of the children. The salvaged children are to be kept in the Care and Protective Homes till they achieve the age of 18 years.
- The respondents are also directed to speak to the parents of the children and in case they are ready to take their children back to their homes, they may be directed to do so after appropriate authentication.
- The respondents are directed to frame suitable design of rehabilitation of salvaged children from circuses.

In another case *Bachpan Bachao Andolan vs. Union of India (2009)* the Supreme Court observed directed that in the light of infrastructural constraint, the labour Department, Delhi has to commence implementing the Delhi Action Plan by accommodating for the time being about 500 children every month. The Court observed that the Delhi Action Plan lays down a detailed procedure for interim care and protection of the rescued children to be followed by Labour Department as prepared by the National Commission with the modifications mentioned in the judgment and we further direct all the authorities concerned to immediately implement the same. Article 23 and 24 under the Constitution guarantees the fundamental right against exploitation. The right is wider in application as available to every person citizen or non-citizen and against State as well as individuals also. To enforce these Articles Child Labour (Prohibition and Regulation) Act, 1986 and Bonded Labour System (Abolition) Act, 1976 was enacted

Choose the correct option

- 1. Which one of the following Acts formally introduced the principles of elections for the first time:**

 - A. Indian Councils Act, 1909
 - B. Government of India Act, 1919
 - C. Government of India Act, 1935
 - D. Indian Independence Act, 1947.

- 2. Which of the following Acts gave representation to Indians for the first time in the legislature:**

 - A. Indian Councils Act, 1909
 - B. Indian Councils Act, 1919
 - C. Government of India Act, 1935
 - D. None of the above.

- 3. The Crown took the Government of India into its own hands by:**

 - A. Charter Act, 1833
 - B. Government of India Act, 1858
 - C. Indian Council Act, 1861
 - D. Government of India Act, 1935.

- 4. In which case, it was held by the Supreme Court that 'Preamble is the basic feature of the Constitution':**

 - A. In re: Golaknath case
 - B. In re: Maneka Gandhi
 - C. In re: Swam Singh
 - D. In re: Keshwananda Bharti.

- 5. In which case the Supreme Court held that the Preamble is not the Part of the Constitution:**

 - A. A.K. Gopalan case
 - B. Berubari case
 - C. Minerva Mills case