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FACULTY OF JURIDICAL SCIENCES

Course : BBALLB , 3rd 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 (Act. 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 32

Who is a minority?

Article 30 of the Constitution talks about two types of minority communities – Linguistic and Religious. But while it defines the categories of minority communities, there is no official definition of the word by the government.

One can derive certain pointers from the various articles in our Constitution and reports from the government. Article 29(1) that safeguards the rights of minority communities states that anyone with "a distinct language, script or culture of its own" has the right to conserve it.

In terms of religious minority communities, Section 2(c) of the Minorities Act recognizes 5 religions as minority communities namely Muslims, Sikhs, Christians, Buddhists, and Zoroastrians (NCMA).

S.P. Mittal v. Union of India, (1983) Sri Aurobindo was not only an excellent academist and administrator, but he was also engaged in political work. Later on, he gave it all up for a life of meditation and moved to Pondicherry, Tamil Nadu. It was there where he met Madam M. Alfassa, who would, later on, be known as Mother, who became his disciple. Later on, his disciples and the Mother established The Sri Aurobindo Society to propagate and practice the ideals and beliefs of Sri Aurobindo. Through this society, the founding president, the Mother, set up a township called Auroville which was meant for people to come and engage in various pursuits. Later on, The United Nations Education, Scientific, and Cultural Organization (UNESCO) took it upon themselves to fund provisions to help with the development of Auroville. When the mother passed away, many problems such as mismanagement of the project and misuse of the funds cropped up which made it impossible for the townships functioning and growth. Thus, keeping in mind the international character of Auroville due to the agreement with UNESCO, the government of Tamil Nadu took management in their own hands and filed a presidential ordinance which later on became The Auroville (Emergency Provisions) Act, 1980. Seeing that the government took control of a 'religious' enterprise, the Constitutional validity of the Act was challenged on 4 grounds. One of the grounds was that it was violative of Article 29 and 30.

It was held by the bench that the forsaid Act does not violate Article 29 and 30. The court held that it, in no way curtailed their right or prevented any citizen from conserving its own language, script or culture and thus was not violative of Article 29.

Also in this case, in order to seek protection under Article 30, one must prove that they are a linguistic or religious minority and the institution in question was established by them. Considering that Auroville was not religious and was founded on the ideology of Sri Aurobindo, they could not seek protection under these articles.

Rights of Minorities

Certain rights are laid down to safeguard the right of minority communities. Article 29 ensures that anyone residing in India has the right to preserve a distinct language, script or culture and no State educational institute or any institute receiving aid from the state shall discriminate against anyone based on race, caste, creed, etc. Article 30 ensures the right of minority communities in educational institutions and prohibits discrimination against them.
With regard to the reservation and special provisions for minority communities, many have brought up the argument that such provisions are 'cushioning'.

But in the case of The Ahmedabad St. Xaviers College vs State Of Gujarat & Anr, Khanna J. stated that such provisions are necessary so that "none might have the feeling that any section of the population consisted of first-class citizens and the other of second class citizens". He also stated that a majority of the Fundamental Rights of the Constitution protect majority rights as it protects minority rights.
In the T.M.A.Pai Foundation & Ors vs State Of Karnataka (2002)the judge considered the opinion of the Permanent Court of International Justice in the case of Minority Schools in
Albania, advisory opinion was that there is a need for provisions that help minority groups preserve the uniqueness of their distinct culture and script and minority religions to uphold the uniqueness of their culture. Khana J. stated that "the object of protection is to enable minority communities to preserve the characteristics which distinguish themselves from the minority".

In the Kerala Education Bill case, with regards to institutions handled by minority communities, Hidayatullah C.J stated that while Article 30 (1) might be general protection over distinct languages and scripts, it is also right to establish educational questions of choice. Thus this Act is not diminished if the institution's primary function is not protecting minority culture,
its also for institutions that are established and managed by minority communities and they accept other students as well.

Right Of Minorities To Establish And Manage Educational Institutions
Under Article 30, the Constitution provides provisions for minority communities to establish and manage educational institutions and protect themselves from discrimination of granting aid by the government. Article 29 (1) gives any citizen the right to conserve a distinct language, script or culture of its own. While Article 29(2) also protects them, it is more for every citizen and is not specially tailored for minority groups.
One of the biggest debates in judicial history has been whether minority communities have the right to have autonomy while managing these institutions. Such questions gave birth to the famous T.M.A. Pai Foundation v. State of Karnataka case which had a massive 11 Judge Bench. In present times, the common consensus is that governments are allowed to regulate such institutes so long as such regulation is in pursuit of ensuring academic excellence and it does not harm the character of the minority institute.
The Constitutional (44th Amendment) Act, 1978

The Constitutional (44th Amendment) Act removed the right to property as a Fundamental Right under Article 19. However, it ensured that "the removal of property from the list of Fundamental rights would not affect the right of minority communities to establish and administer educational institutions of their choice".

Relationship between Articles 29(1) and 30(1)

Article 29(1) states protect the rights of members of communities who have distinct language, culture, and script.

Article 30(1) protects minority rights with regard to establishing and managing educational institutions.

Thus both Acts facilitate minority rights to establish and manage their own educational institutions. The only difference is that 29(1) makes an attempt to define who minority communities are. Due to the articles being almost identical, many might believe that when seeking protection, you can only seek protection under one. But in St. Xaviers College v. the State of Gujarat, it was stated that Article 29(1) and 30(1) were not mutually exclusive.

St. Xaviers College v. the State of Gujarat, (1974)

Facts

St. Xaviers College, a religious denomination affiliated under the Gujarat University Act, 1949, provided education to not only Christians but students of other religions and creeds. They had challenged sections 35-A, 40, 41, 51-A and 52-A of the Gujarat University Act, 1972 which dealt with the appointment of teachers and students of minority communities. They stated that the Act encroached on the autonomy of the universities.

Contention of the Parties

- Article 29 (1) of the Constitution safeguards a citizen's right to preserve his or her own language, script or culture, and Article 30 (1) states that minority communities have the right to establish and manage their own institutions.

- Article 30(2) also states that the government should not discriminate against any institution under minority management.
- Under Article 32, they had a right to not only establish and administer institutes of their choice but they also had the right to affiliation(to operate independently, but also has a formal collaborative agreement with the state).

The opposition stated that Article 29 and 30 were mutually exclusive and protection under these Acts can not be brought up at the same time. They also stated that affiliation was not a Fundamental Right and that a minority institution must abide by the provision if they wished to be affiliated. Another argument was unless the law was an absolute violation of minority rights under Article 30(1), then there was no reason for the Act to be struck down. They pleaded that the court wait until statutes and ordinances are issued in pursuit of the disputed sections.

Issue Raised

・ Are Article 29 and 30 mutually exclusive?

・ Is affiliation a Fundamental Right?

Does section 35-A, 40, 41, 51-A, and 52-A of the Act tamper with the institutes Fundamental Right?

It was held that ・ Article 29 and 30 were not mutually exclusive.

・ While affiliation is not a Fundamental Right, it is necessary for the meaningful management and establishment of such institutes

・ Section 35-A, 40, 41, 51-A and 52-A of the Act would not apply to minority institutions as they tamper with their Fundamental Right to establish and manage educational institutions of their choice.

Re Kerala Education Bill, (1958)

The President under Article 143 of the Constitution approached the Supreme Court regarding the Kerala Education Act 1958. Out of many of his inquiries, the President questioned Sub-Clause (5) of Clause 3 which stated 'any new school or any higher class opened in any private school that did not live up to the standards of government regulation would not be recognized by the Government'.

The President's question was whether giving such power to the government would be violative of Art 30 as minority communities had the right to manage and establish their own institutions.

Issues Raised

While minority communities had the right to administer, do they have the right to maladminister?

Decision

It was held that minority groups did not have the right to maladminister. Das, C.J. stated, "Reasonable regulations may certainly be imposed by the state as a condition for aid or even for recognition".

It also stated that while opening up educational institutes was essential for minority communities to exercise their right under Article 30, all educational institutes are subjected to Article 29(2) which states that all citizens in state or state-aided institutions must not be discriminated during the time of admission on the basis of race, sex, creed, etc.

Choose the correct option

1. **Every person who is or is deemed to be a citizen of India under any of the foregoing provisions of this Part shall, subject to the provisions of any law that may be made by Parliament, continue to be such citizen. 'Continuance of the rights of Citizenship' is the content of which of the following Articles of the Indian Constitution?**

A. Article 10

B. Article 11
C. Article 9
D. Article 9(2)

2. **Part I of the Indian Constitution deals with which of the following?**

A. The Union and its territory
B. Union of States
C. Preamble
D. Amendments

3. **Ans. A Part III of the Indian Constitution deals with which of the following terms?**

A. Citizenship
B. Union Government
C. Fundamental Duties
D. Fundamental Rights

4. **Which of the following statements is/are found to be correct?**

I. The fundamental rights cannot be taken away by any legislation.
II. Legislation can only impose reasonable restrictions on the exercise of the right.
A. Only I
B. Only II
C. Both I and II
D. None of above

5. **Which of the following statements is/are found to be correct?**

I. All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this part, shall to the extent of such inconsistency, be void. (Article 13(1) Indian Constitution)
II. The state shall not make any law which takes away or abridges the rights conferred by this part and any law made in contravention of this clause shall, to the extent of the contravention, be void.
A. I and II
B. both are incorrect
C. only I
D. only II
Ans. A