



## **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 (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 38

These regulations help in limiting the abuse of the machinery of PIL and enable the court to only use PIL to achieve its actual purpose of ensuring justice.

#### Judicial Activism

Judicial activism is a dynamic process which allows the judiciary to depart from the existing laws and precedents to encourage the formulation of new social policies which fulfil the need of the hour.

Justice P.N. Bhagwati laid the foundation of this concept by allowing the citizens to initiate a PIL on the basis of a postcard or letter, in order to promote the socio-economic development of the society.

Though the concept of judicial activism has received criticism on account of overthrowing the principle of separation of powers and allowing the judges to rewrite policies as per their whims and fancies, its importance cannot be undermined. It allows the judiciary to correct the injustice when other branches of the government fail to do so, particularly in issues like protection of civil rights, political unfairness etc. It also allows judicial scrutiny into the working of hospitals and prisons which help in upholding basic human rights.

This can also be understood by looking at the case of [Francis Coralie v. Union Territory of Delhi](#) wherein the court interpreted the word 'life' in Article 21 (Right to life) and said it is not restricted to mere existence, but it also includes the right to live with human dignity and have the basic necessities which include adequate nutrition, clothing, shelter, freedom to move etc.

#### Power to award compensation under Art. 32

Article 32 has given a lot of power to the Supreme Court to protect the fundamental rights of the citizens of the country. In the case of [Rudul Shah v. State of Bihar](#), the question of liability of the state to pay compensation regarding unlawful detention and violation of fundamental rights was raised.

It was held that Article 21 would not truly give justice if the powers of the court were limited to only passing orders for illegal detention. This is because monetary compensation encourages future prevention of such violation.

In the case of [MC Mehta v. Union of India](#), the Supreme Court held that Article 32 of the Constitution does not limit the powers of the judiciary and allows it to provide an appropriate remedy, which can be given through providing compensation. The Court said that not enabling it to do so would render Article 32 futile.

The court held that the Supreme Court could entertain claims for damages in respect of violation of fundamental rights and has the power to award compensation in appropriate cases. It further explained that appropriate cases are those in which the infringement of fundamental rights is gross and such violation either effect a large number of people or is highly unjust and oppressive because of the economic and social backwardness of the person whose right has been violated.

There have been many case laws such as [Bhim Singh v State of Jammu and Kashmir](#) (compensation given: Rs. 50000), [Saheli v. Commissioner of police](#) (Compensation given: Rs. 75000) etc where courts have awarded compensation under Article 32. In certain cases of violation of fundamental rights, the courts have also disregarded the sovereign immunity principle and made the state liable to pay compensation as a public law remedy.

The reason given for this is that if the state is unable to protect the fundamental rights which it has promised a citizen, it must compensate him/her for breaking the promise. Also, in many cases, such violation leads to permanent loss of income and thus the citizen must be compensated, Hence, by awarding compensation in such cases, courts ensure that true values of justice prevail in the nation and no entity takes undue advantage of its authority.

#### Corruption in Public Life and PIL

In recent years, incidences of corruption have reached their peak in India. Moreover, more often than not, the Central Bureau of Investigation and other agencies have failed to investigate these cases and bring justice to those wronged. PIL has, however, empowered the citizens of the country to bring to light the corrupt practices of the officials in the country. To understand this, we shall look at some case laws:

In the case of [Common Cause, a registered society v. Union of India and others](#), the petitioners filed a writ petition against Captain Satish Sharma (who was at that time the Union minister of petroleum and natural gas) for his corrupt practices. The PIL was initiated on the basis of a news report which stated: "In Satish Sharma's reign, petrol and patronage flow together". Following this, the court asked the Solicitor General to carry out an investigation regarding the same. The investigation found out that Captain Satish Charma corruptly used his discretionary quota of allocating petrol outlets and allotted them to various officials working with him. The court cancelled all of his 15 allotments and issued a show-cause notice to him.

Another case which must be referred to is [Centre for Public Interest Litigation v. Union of India and Others](#). In this case, it was alleged that A. Raja, the former minister for Communications and IT, was following corruptive practices in issuing licenses to some favourable companies. Investigations carried out by the Comptroller and Auditor General of India, The Central Bureau of Investigation and Telecom Regulatory Authority of India observed that government had gained approximately 30 billion rupees in this allocation.

The Supreme Court cancelled all the 122 licences allotted by A. Raja. It further said that A Raja gave away important national assets and favoured some companies at the cost of public exchequer. It also held the allotment to be unconstitutional and arbitrary.

#### Effect of the existence of Alternative Remedy

While interpreting the Article 226 of the Constitution, the Courts have imposed a rule of restriction upon itself. This means that in cases where alternative remedies are available to the litigants, High Courts would not have jurisdiction to entertain the petitions under Article 226. Such alternate remedy can be in the form of either:

- Normal forums following the hierarchy of Courts, or
- A suitable forum provided in a statutory provision, or
- A suitable forum existing otherwise.

This can be better understood by looking at the case law of [U.P. State Bridge Corporation Ltd And Others. Vs. U.P. Rajya Setu Nigam S. Karamchari Sangh](#). In this case, the service of a workman was terminated since he was absent for ten continuous days on the grounds that he did not follow the order which asked for the same. The man filed a writ petition in the High Court but the petition was dismissed on the grounds that the case falls under Industrial Disputes Act, 1947 and should be taken up as an industrial dispute.

The limitation prescribed for seeking a remedy under Article 32

In the case of [Trilokchand Motichand v. H.B. Munshi](#), the petitioners had filed a writ petition under Article 226 of the Constitution in the High Court to declare Section 21(4) of the Bombay Sales Tax Act, 1953 unconstitutional. This Article allowed the sales tax officer to forfeit a given sum if the condition on which it was given is not fulfilled. However, the court dismissed the petition on the ground that the petitioners had defrauded their customers.

However, The High Court struck this section down in 1967 stating that its violative of Article 19 (1) (f), (now omitted), of the Constitution of India. The petitioners pleaded that they must be given back the money as at the time of the petition, they were unaware of the grounds of the violation. However, the court held that mistake of law is not sufficient grounds to look into the case and that they had surpassed period of limitation.

In this context, The Supreme Court laid down certain limitations for seeking a remedy. These are:

- In case the petitioner has already approached the High Court under Article 226 of the Constitution and the court have exercised its jurisdiction, the Supreme Court must refrain from acting under Article 32 of the Constitution.

In such cases, the Supreme Court must discourage the petitioners from filing a new petition and rather insist upon appeal.

- While inquiring into '*belated and stale claim*', the court must give considerable notice to petitioners neglecting their own claims for a long-time period and also the neglect of the rights of other innocent people which happened because of such neglect. This means that the court introduced the concept of a period of limitation into seeking a remedy under Article 32. However, it was also held that an ultimate limit cannot be placed as the period of limitation would differ from case to case and the Limitation Act, 1963 would not apply to such petitions.

## The distinction between Articles 32 and 226

Article 32	Article 226
It grants powers to the Supreme Court.	It grants power to the High Courts in India.
It is more restricted as it is invoked only for the enforcement of fundamental rights.	It is invoked for enforcement of other rights as well. Hence, it has wider application.
The power to issue writs given to the Supreme Court under this Article is mandatory.	The power to issue writs given to the High Courts under this Article is discretionary.
It is in itself a Fundamental Right under the Constitution of India.	It is only a Constitutional right.
It is suspended during Emergency,	It is not suspended even during the Emergency.
An order given under Article 32 supersedes an order given under Article 226	An order given under Article 226 falls behind an order given under Article 32
This Article has greater territorial jurisdiction.	The territorial jurisdiction under Article 32 is limited to the state.

### Res Judicata

The principle of Res Judicata means that once a judgement has been pronounced by a court of competent jurisdiction on a given set of facts, it is binding between the parties unless the judgment given is modified or reversed in an appeal, revision or any other procedure applicable by law.

Under Article 32, the courts have limited their own jurisdiction by applying the concept of Res Judicata. This means that a person cannot apply for successive writ petitions with the same facts for the same cause of action. Also, a person cannot move to the Supreme Court with a new writ petition on the same facts if a judgement has been given under Article 226 by the High Court.

*Illustration:* A applies for a petition challenging the validity of tax assessment for a year and an order is given on the same in the High Court. As per the principle of Res Judicata, A cannot apply for new petition in another court.

However, there is an exception to the application of this principle under Article 32. This principle does not apply to cases of Habeas Corpus. Thus, in cases of illegal detention, a person can file a successive writ petition on the basis of new facts.

### Restrictions on Fundamental Rights of Members of Armed Forces

[Article 33](#) of the Indian Constitution allows the parliament to place restrictions and modify the fundamental rights granted to the members of armed forces, police forces, members of intelligence agencies and other such services. This has been provided so that the discipline, order and efficiency can be maintained in the army.



To understand this provision better, we should look at some case laws. In the case of [Mohammad Zubair v. Union of India](#), the petitioner was a Muslim soldier who wanted to keep his beard as his faith did not allow him to cut it.

However, this was not allowed by the Air Force Policy and thus his plea was rejected by his commanding officer and he filed a writ petition in the Punjab and Haryana High Court in this regard.

The court held that this order was legal as even though Constitution recognised an individual's right to faith, Article 33 allows the parliament to restrict this right as Uniformity of personal appearance is essential to ensure discipline in the armed forces, and thus the petition was dismissed.

However, Article 33 does not signify that the parliament can deny rights to the members of armed forces as per its whims and fancies. The wordings of Article 33 clearly say that the rights of such members can only be modified for two reasons which are :

- (1) To ensure discipline and
- (2) To ensure proper discharge of their duties.

This limitation was explained in the case of [Union of India and others v. L.D. Balam Singh](#). The Court said that while Article 33 has allowed parliament to put restrictions on the fundamental rights of the members of the armed forces and forces responsible for maintaining public order, this does not mean that army personnel are denied the constitutional privileges.

Further in [Lt. Col. Prithi Pal v. Union of India](#), the court also said that the process of placing limitations on the rights of members of the armed forces should not go so far that it creates a class of citizens not entitled to the benefits of the Constitution. It is the duty of the courts to strike a balance between ensuring discipline in armed forces personnel by modifying some of their rights so that their duty to maintain the rights of others citizens is not hampered, and providing them with enough rights so that they have access to civilised life.

Hence, clearly, Article 33 helps in ensuring not only discipline and efficiency in the armed forces but also allows maintenance of the basic rights of armed forces so that their undue advantage is not taken.

#### Martial law

The Indian Constitution does not define the term martial law. The term has been borrowed from English law and in its ordinary meaning simply signifies military rule. Imposition of Martial law signifies a situation where the authority to govern a place is taken over by the military forces of the country.

These authorities impose their own rules and regulations upon the civilians. Such rules are framed outside the ordinary laws which exist in the country. Martial Law is usually imposed in a very grave situation like war, failure of government etc and till date has not been imposed in India.

Restriction of Fundamental Rights while Martial Law is in force in the area

[Article 34](#) of the Constitution of India impose restrictions of fundamental rights given to the citizens while martial law is in force in a particular area. It states that when martial law is imposed, the parliament can indemnify the men providing services to the state against any act done while such imposition, provided that the act done was for the purpose of maintaining and restoring order in that area. It also allows the parliament to validate any sentence passed under this period.

This indemnity provided cannot be challenged in the courts of India on the grounds that it violates a fundamental right. This is because, when martial law is imposed, the ordinary courts are suspended and all cases (including civil cases) are prosecuted in the military courts. Hence, the Supreme Court and the High Courts do not have any appellate jurisdiction over orders passed by the military courts in this situation.

Power to make laws regarding fundamental rights

[Article 35](#) of the Indian Constitution prohibits the legislature from making laws regarding Article 32, Article 33 and Article 34 and the Constitution, It also prohibits the legislature to make laws providing for punishment given to anyone for violating any fundamental rights. Instead, It gives this power only to the parliament.

Conclusion

The Article 32 and Article 226 of the Constitution have allowed the courts to enlarge the access to justice and have revolutionized the idea of Constitutional jurisprudence. Judicial review has proved to be a very healthy trend which has made the Constitution a dynamic document, more suitable to the society today. Also, PIL and Judicial Activism have allowed the members of the society to help each other and offer justice to the disadvantaged. They have also allowed the judiciary to take a goal oriented approach while resolving cases.

Though the judiciary has been given vast powers under these Articles, it must be ensured that judiciary acts like the lighthouse and the destination itself. While passing orders it should also be ensured that judiciary works in a self- restrained manner and is not overstepping its boundaries.

Besides these, Article 33 of the Constitution has enabled the State to ensure that the people providing services to the state, i.e., those who are members of the armed forces, police forces etc are not falling behind on their service and using fundamental rights as an excuse, by enabling the parliament to restrict some of their fundamental rights. At the same it has also not given unlimited power to the parliament for the same.

Article 34, on the other hand, goes a long way in ensuring that the state can properly recover from grievous circumstances by allowing the imposition of martial law and putting restrictions on the fundamental rights of people.

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**Choose the correct option**

**1. In the constitution of India, promotion of international peace and security is included in the**

- a) Preamble to the Constitution
- b) Directive Principles of State Policy
- c) Fundamental Duties
- d) Ninth Schedule

**2. Consider the following statements regarding the Directive Principles of State Policy:**

- 1) The principles spell out the socio-economic democracy in the country.
- 2) The provisions contained in the Principles are not enforceable by any court.

Which of the statements given above is/are correct?

- a) 1 only
- b) 2 only
- c) Both 1 and 2
- d) Neither 1 nor 2

**3. “To uphold and protect the Sovereignty, Unity and Integrity of India” is a provision made in the**

- a) Preamble of the Constitution
- b) Directive Principles of State Policy
- c) Fundamental Rights
- d) Fundamental Duties

**4. The ideal of ‘Welfare State’ in the Indian Constitution is enshrined in its**

- a) Preamble of the Constitution
- b) Directive Principles of State Policy
- c) Fundamental Rights
- d) Seventh Schedule

**5. Which of the following words inserted in the preamble to the Constitution through the 42nd Amendment Act?**

- a) Socialist
- b) Secular
- c) Integrity
- d) All of the above