



RAMA UNIVERSITY

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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 (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 5

5.5 Republic A democratic polity can be classified into two categories – monarchy and republic. In a monarchy, the head of the state (usually king or queen) enjoys a hereditary position (example: Britain, Japan). In a republic, the head of the state is always elected directly or indirectly for a fixed period (example: US, India) The Preamble declares that source of all authority under the Constitution is the people of India and there is no subordination to any external authority. While, Pakistan remained a British Dominion until 1956, India ceased to be a dominion and declared herself a ‘Republic’ since enacting the Constitution in 1949. We have an elected President as the Head of State and all offices including that of the President are open to all citizens.

5.6 Justice Justice, as a concept involves fair, moral, and impartial treatment of all persons. In its most general sense, it means according individuals what they actually deserve or merit, or are in some sense, entitled to. The term ‘justice’ as imbibed in the Preamble embraces three distinct forms –social, economic and political. These are secured through various provisions of Fundamental Rights and Directive Principles. Social justice denotes equal treatment of all citizens without any distinction based on caste, color, race, religion, sex and so on. It means absence of privileges to any section of the society and at the same time making provisions for the improvement of backward sections (SCs, STs and OBCs) and women. Economic justice denotes non-discrimination between people on the basis of economic factors. It involves the elimination of glaring inequalities in wealth, income and property. Political justice implies that all citizens should have equal political rights, equal access to all political offices and equal voice in the government. The ideal of justice – social, economic and political has been taken from the Russian Revolution.

5.7 Liberty The term liberty means an absence of restraints on the activities of individuals and at the same time, providing opportunities for the development of individual personalities. The Constitution secures to all citizens liberty of thought, expression, belief, faith and worship through Fundamental Rights, which are enforceable in Court of Law. However, reasonable restrictions are placed on liberty by the Constitution itself. The ideals of liberty, equality and fraternity are taken from the French Revolution.

5.8 Equality The term ‘equality’ means absence of special privileges to any section of the society and the provision of adequate opportunities for all individuals without any discrimination. The Preamble secures to all citizens equality of status and opportunity. This provision embraces three dimensions of equality – civic, political and economic.

The following Fundamental Rights ensure civic equality:

- Equality before Law (Art. 14)
- Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (Art. 15)
- Equality of Opportunity in matters of public employment (Art. 16)
- Abolition of Untouchability (Art. 17)

- Abolition of titles (Art. 18) There are two provisions in the Constitution, which seek to achieve political equality:
- No person is to be declared ineligible for inclusion in electoral rolls on the grounds of religion, race, caste or sex (Art. 325).
- Elections to the Lok Sabha and the state assemblies are to be conducted on the basis of adult suffrage (Art. 326). The Directive Principles (Art. 39) secure to men and women equal right to an adequate means of livelihood and equal pay for equal work.

5.9 Fraternity Fraternity means a sense of brotherhood. The Constitution promotes this feeling of fraternity by the system of single citizenship. Also, the Fundamental Duties (Art. 51A) say that it shall be the duty of every citizen to promote harmony and the spirit of common brotherhood amongst all people of India transcending religious, linguistic, regional and sectoral diversities. According to the Preamble, fraternity assures two things – the dignity of the individual and the integrity of the nation. The word ‘integrity’ was added by the 42nd Amendment Act, 1976. According to K.M. Munshi, the phrase ‘dignity of the individual’ signifies that the Constitution not only ensures material betterment and maintains a democratic set-up, but that it also recognizes that the personality of every individual is sacred. The phrase ‘unity and integrity of the nation’ embraces both psychological and territorial dimensions of national integration. Art. 1 of the Constitution describes India as a ‘Union of States’ to make it clear that the States have no right to secede from the Union, implying the indestructible nature of the Indian Union. It aims at overcoming hindrances to national integration like communalism, regionalism, casteism, secessionism etc.

6] Amendability of the Preamble

The issue that whether the preamble to the constitution of India can be amended or not was raised before the Supreme Court in the famous case of *Kesavananda Bharati v. State of Kerala*. An interesting argument advanced in this case has been noted by Y.V. Chandrachud, J. that the Preamble may be a part of the Constitution but is not a provision of the Constitution and therefore, we cannot amend the Constitution so as to destroy the Preamble. Discarding the submissions Chandrachud, J. held that it was impossible to accept the contention that the Preamble is not a provision of the Constitution; it is a part of the Constitution and is not outside the reach of the Constituent Assembly leaves no scope for this contention. It is transparent from the proceedings that the Preamble was put to vote and was actually voted upon to form a part of the Constitution. The Preamble records like a sunbeam certain glowing thoughts and concepts of history and the argument is that by its very nature it is unamendable because no present or future, however mighty, can assume the power to amend the true facts of past history.

Kesavananda Bharati case is a milestone and also a turning point in the constitutional history of India. D.G. Palekar, J. held that the Preamble is a part of the Constitution and, therefore, is amendable under Article 368. He termed submission that the Fundamental Rights are an elaboration of the Preamble, as “an overstatement and half- truth”. Undoubtedly, the Constitution is intended to be a vehicle by which the goals set out are hoped to be reached. In the opinion of

H.R. Khanna, J. the preamble is a part of the Constitution and walks before the Constitution”. S.D. Dwivedi, J. expressing his concurrence with the conclusion arrived at by A.N. Ray, J., held that the Preamble was a part of the Constitution because the heading “The Constitution of India” was placed above the Preamble. The Preamble cannot be a source of reading any inherent and implied limitations on the amending power. It is noteworthy that Justice Dwivedi has held the Preamble to be a part of the Constitution and then also referred to it as a provision of it.

In view of the provisions contained in Article 368 of the Constitution, Justice Beg discarded the contention that a creature of the Constitution could not possibly possess the power to create a recreate the Constitution as Article 368 expressly provides for the expansion or diminution of the scope of the powers of amendment. The amending power so as to meet the challenges of the times offered by rapidly changing social, political, economic, national and international conditions and situations was kept wide, elastic and expansible by the Constitution makers. In conclusion, Beg J. held that there was no limitation on the powers of constitutional amendment found in Article 368.

Thus, the majority of *Kesavananda Bharati* case bench has held that Preamble is the part of the constitution and it can be amended but, Parliament cannot amend the basic features of the preamble. The court observed, “The edifice of our constitution is based upon the basic element in the Preamble. If any of these elements are removed the structure will not survive and it will not be the same constitution and will not be able to maintain its identity.”

The preamble to the Indian constitution was amended by the 42nd Amendment Act, 1976 whereby the words Socialist, Secular, and Integrity were added to the preamble by the 42nd amendment Act, 1976, to ensure the economic justice and elimination of inequality in income and standard of life. Secularism implies equality of all religions and religious tolerance and does not identify any state religion. The word integrity ensures one of the major aims and objectives of the preamble ensuring the fraternity and unity of the state.

7. Enforceability of the Preamble in the Court of law

The Preamble of our constitution is part of the Constitution but is not enforceable by courts. The Preamble is non-Justifiable. This means that courts cannot pass orders against the government of India to implement the ideas in the Preamble. The courts can take recourse to the Preamble in order to explain and clarify other provisions of the constitution. This view was given by the Supreme Court in the *Berubari Union Case* and *Kesavananda Bharati Case*

Choose the correct option

1. What is the true meaning of "Secular"?

(A) All religions are equal in the eyes of the government

- (B) Special importance to a religion related to minorities
- (C) One religion is promoted by the government
- (D) None of the following

2. **What is the meaning of "social equality" in the Indian Constitution?**

- (A) Lack of opportunities
- (B) Lack of equality
- (C) Equal opportunities for all sections of the societies
- (D) None of the following

3. **. Who among the following said that the preamble of the Indian Constitution is "The Keynote of the Constitution"?**

- (A) Ernest Barker
- (B) Jawaharlal Nehru
- (C) Dr. Ambedkar
- (D) Nelson Mandela

4. **Which of the following statements is true?**

- (A) In the Berubari case the Supreme Court had said that the preamble of the Constitution is not a part of the Constitution
- (B) In the Keshavanand Bharti case, the Supreme Court had said that the preamble of the Constitution is part of the Constitution
- (C) "Preamble" of the Indian Constitution has been taken from the Constitution of Canada
- (D) None of the above

5. **"The language of Preamble" of the Indian constitution is taken from the constitution of.....**

- (A) America
- (B) Canada

(C) Australia

(D) Ireland

