



FACULTY OF JURIDICAL SCIENCES

Course : BALLB , 3rd Semester

Subject : CONSTITUTIONAL LAW I

Subject code : BAL304

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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 3 1

Articles 29 &30

Cultural and Educational Right

Cultural and educational rights of sections of society are protected under Article 29 and Article 30 of the Indian Constitution. They both vary in the extent and nuances of their protection. Both are aimed at minority rights protection, although the meaning of “minority” varies in both the sections as we shall see hereunder. In certain points, these two provisions also seem like an extension of the Right to Equality provisions.

Article 29

Cultural and Educational Rights

Cultural and Educational Rights protect the rights of religious, cultural and linguistic minorities, by facilitating them to preserve their heritage and culture. Educational rights are for ensuring education for everyone without any discrimination.

- This fundamental right intends to preserve the culture of all minority groups in India.
- Indian society is a composite heterogeneous one and its diversity is one of its strengths.
- The Constitution guarantees these rights to minorities so that the diversity of this country is preserved and provides avenues for all groups including marginalised ones to protect, preserve and propagate their culture. Cultural and educational rights provide the rights to all section of society and it saves their culture script or language. The image of Indian society comes in our minds as a society full of diversity. In such a society with vast diversity, our Constitution believes that diversity is our strength. Thus one of the fundamental rights is the right of the minorities to save their culture. Minorities are groups which have common language or religion and live in a particular part of the country.

These communities have a culture, language and a script of their own, and have the right to preserve and develop these.

All minorities, religious or linguistic, can establish their own educational institutions also. In this way, they can preserve and develop their own culture. As we know democracy is the rule of the majority of people. But on the other hand, minorities are also important for its successful working.

Thus, the protection of language, culture, and religion of minorities becomes important. There is a need for this so that minorities may not feel neglected or undermined under the rule of the majority. Though people take pride in their own culture and language, a special right that is Cultural and Educational Right is available in our constitution.

Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same. The application of this Article is upon person having a distinct language, script or culture of its own and it takes into the consideration two types of minority one linguistic and other religious minority. If they have the same can be protect it. This right includes the rights to agitate for the protection of the

language. It also not subject to any reasonable restriction like other fundamental rights and hence it is an absolute right. Under Article 29(1) any school or university can promote education in regional language as far as it is done for minor and language of the minor.

In *D.A.V school, Jullundur v. state of Punjab(1971)* the above provision was challenged on the ground that the college administered by the religious minority i.e. Arya Samaj and affiliated university would be compelled to study the religious teaching of the Guru Nanak and this would mount to violation of the Article 29. Supreme court declined the view and said that there is no mandate in the provision for compelling affiliated colleges either to study religious teaching of the Guru Nanak, or to adopt in any way the culture of the Sikh. If the university includes the teaching and life of the saint for the research and philosophical it can not be said that the affiliated colleges are being required to compulsorily study his life and teaching.

The provision meant that for the promotion of the majority language minority should not be stifled. If anybody does it will be trespass on the rights of the sections of the citizens who have distinct language or script and which they have a right to conserve through their own educational institutions. So the minority institution affiliated to the Guru Nanak University to teach in the Punjabi language, or in any way impeding their rights to conserve their language, script or culture.

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

This Article is wide and unqualified. It confers a special right not on the minority but to the majority also for the admission in the state maintained or aided educational institution. If it would be only limited to the minority it would mean that majority has no right for the admission in the state maintained or aided educational institution. This it is very clear through these provision that in any case no one can discriminate on the ground of the language, caste or religion. Whether it is state maintained education institute or private aided institution. Now it is important to know the application of the above Article. Dispute of its application was firstly arisen in *State of Maharashtra v. Champakam . Communal G.O. of the state of Madras* allotted seats in medical and engineering college in the proportionately to the several communities. A Brahmin candidate who could not be admitted to the engineering college challenged the G.O. as being inconsistent with the Article 29(2).

Supreme Court held that the classification on the ground of the caste was inconsistent with the provision of the Article. Even though petitioner has got much higher marks than those who secured by non Brahmin who were admitted in the seats allotted to them, he could not be admitted in any institution. The reason was that he was Brahmin. In another case Supreme Court denied the view that intake of students on the ground language is violating of the fundamental rights.

In instant case *Bombay Government* by an order banned the admission of those whose language is not English to a school using English as a mode of instruction. Argument advanced by the state was that by doing it is trying to promote national language. Court said that the view is right

but could not be upheld as it is violating of the fundamental rights. So there should not be any discrimination on ground of language in matter of admission which has been clearly stated by the Hon'ble Supreme Court of the India.

Dividing sates in two regions and then allocating seats for medical and engineering college in the state between these regions does not violate Article 29(2). Refusal of admission on grounds of not possessing requisite academic qualification or because any one was expelled for the indiscipline. Reservation for rural student passing class out of VIII was held bad decision in *Suneel Jitley v. State of Haryana*. Supreme Court said that basis of reservation was irrational As student from the rural area can study in urban area still he would have been preferred. While a student of urban area could have been studied in rural area and could have become entitled for reservation. Also the education up to VIII standard does not make any difference to medical education. Hence there was no nexus between the classification and object sought to achieve.

Relation between Article 29(2) with article 15(1) and 15(4)

Article 15(1) prohibits discrimination on grounds of religion, race, sex, caste or place of birth. Still there is significant differences between these two articles, 15(1) protects all citizen against discrimination by the state where as Article 29(2) extends protection against the state, or any body who denies the right conferred. Article 15(1) is much broader than the 29(2) as it covers numerous conditions where as article 29(2) only deal with the protection against only one wrong namely denial of admission in state aided or maintained educational institute. Article 15(1) broader than 29(2), whenever second one is not applicable the first one is apply. Article 15(4) was added by first amendment of the constitution. It was introduced for the advancement of the socially and educationally backward classes of citizen or of SC and ST. Rights guaranteed under Article 29(2) is limited by the Article 15(4) as it has provision of reservation in an educational institute for some section of the Indian citizen. If state prescribe a some percentage of reservation in any educational institute for a certain section of the people under Article 15(4), but not increases more than the prescribed limited than reservation of the rest can not be set aside as it would be violating of the fundamental right under article 29(2). Any reservation of seats in an educational institute seats not justified under Article 15(4) cannot be valid.

Article 30 of the Indian Constitution

Right of minorities to establish and administer educational institutions –

(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

(1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.

(2) The State shall not, in granting aid to educational institutions discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language

Choose the correct option

1. The words 'Socialist' and 'Secular' were inserted in the Preamble by:

- (a) 15th Amendment of the Constitution
- (b) 39th Amendment of the Constitution
- (c) 42nd Amendment of the Constitution
- (d) 44th Amendment of the Constitution.

2. The Constitution of India (100th Amendment) Act, 2015 deals with:

- A. Land Boundary Agreement between India and Bangladesh
- B. Right to fair compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement
- C. Goods and Service Tax
- D. Reservation in promotion to SC/STs.

3. Though the major part of the Constitution of India came into force on January 26, 1950, the provision relating to citizenship, elections, provisional Parliament, and temporary and transitional provisions came into force with immediate effect, from:

- A. 15 August, 1949
- B. 30 June, 1948
- C. 26 November, 1949
- D. 26 June, 1950.

4. 'Preamble of our Constitution is of extreme importance and the Constitution should be read and interpreted in the light of the grand and noble vision expressed in the Preamble.' Justice Sikri expressed the above opinion in the case of:

- A. In re: Beru Bari Union
- B. Keshvananda Bharti v. State of Kerela
- C. A.K. Gopalan v. State of Madras
- D. In re: Kerala Education Bill.

5. In accordance with the text of the Constitution, a reasonable restriction in the interest of 'sovereignty and integrity' of India can be imposed on the right to:

- A. freedom of speech and expression
- B. move freely throughout the territory of India
- C. reside and settle in any part of territory of India
- D. carry on any occupation, trade or business.