



## **FACULTY OF JURIDICAL SCIENCES**

**Course : BALLB , 3<sup>rd</sup> 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 (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 33

1. "Is there a Fundamental Right to set up educational institutions and if so, under which provision?"
2. To what extent can private universities be regulated?
3. "In order to determine the existence of a religious minority in relation to Article 30, what is to be the unit?"

**T.M.A. Pai Foundation v. the State of Karnataka, AIR 2003 S** Facts The St Stephen's College v University of Delhi case that was previously reviewed by a 5 Judge Bench, was transferred to a 6 Judge Bench and then a massive 11 Judge Bench to decide the status of minority rights.

Issue Raised

Kirpal, CJI framed 5 main questions, those that are relevant to the article have been stated below.  
 . "To what extent can the rights of aided private minority institutions be regulated?"

Decision

1. For non-minority groups, the two rights are Article 19(1)(g) [ the right to a profession which is subjected to restrictions of Article 19(6)] and Article 26 which gives the right to "all citizens and religious denominations to establish and maintain educational institutions". For minority communities, Article 29(1) and Article 30(1) is provided by the Constitution.

The right of minority communities with regards to setting up educational institutes also includes the right to decide the method by which the students and teachers are selected. It should be fair, transparent and most importantly, based on merit. The same goes for un-aided schools.

But it is important for such authorities to abide by Article 29(2) during admission. They must not discriminate against students on the basis of sex, race, creed, etc at the time of admission, especially students from the majority community.

2. Private institutions are divided into three categories to answer this question-

- Private Unaided Non-Minority Educational Institutions- While the government can lay down rules and regulations (based on academic excellence) for affiliation, but the management of the institute should be autonomous. Private Unaided Professional Colleges- They have autonomy with regard to aspects such as fee structure and admission. But such colleges should not forgo the principle of merit and should reserve a few seats. These seats shall be reserved at the discretion of the management to those who have passed the entrance exam. The rest of the seats should go to people based on counseling by the state. For affiliation, the rules and regulations to achieve it should not be cohesive in nature.

- Private Aided Professional Institutions (non-minority)- Since the government is giving aid, they can lay down certain rules and regulations for management. They may also put guidelines for fee structure, admission for students and appointment of teachers.

- Other Aided Institutions- For such institutes, the government can lay down rules and regulations.

3. Linguistic and religious minority communities are covered by the expression

“minority” under Article 30 of the Constitution. With regards to both Central and State law, the state shall be taken as the unit to decide whether a certain community is a minority or not. What happens when a community that is a minority in the country, is a majority in a certain state was left unanswered.

4. Article 30(1) does not override the law or government regulations, keeping in mind such regulations does not destroy the character of minority educational institutions.

Laws pertaining to subjects such as health and morality still apply to them. This is despite the nature of the wording of Article 30. Regulations that ensure academic excellence and are for the welfare of teachers and students still apply. When aid is given to such institutions, it must not come with certain conditions or regulations that harm the management and nature of the institution. But if such regulations are not detrimental to its management and character, then it is not violative of Article 30.

### **Islamic Academy of Education v. the State of Karnataka(2003)**

**Facts** Several queries from the TMA Pai case were addressed. The importance of this case is that shows the various loopholes in the TMA Pai Foundation case, especially with regards to reservation of seats and autonomy of institutions with regards to management.

**Decision** Educational institutes that are not given aid by the State are entitled to autonomy should not disregard the principle of merit.

- Management of unaided non-minority institutes could reserve a certain number of seats for students who had passed the entrance exam but the rest of the students should pass through counseling regulated by the state
- These unaided colleges should also provide provisions for the underprivileged.
- The percentage of the seat should be fixed according to the locality and the needs of such an area. Different percentages can be fixed for minority and non-minority groups.
- The bench considered Article 19 as the right to manage educational institutions for nonminority communities and Article 30 (1) as the right to manage educational institutions for minority communities.
- Appropriation of seats can not be held as a ‘reasonable regulation’ or a regulation in the interests of minority communities.
- The bench also stated that they would set up committees to monitor the fee structure and admission process in private universities.

**P.A. Inamdar v. the State of Maharashtra(2004): Reservation in Private Educational Institution violative of Articles 30 and 19(1)(g)**

**Facts**

Several more queries from the T.M.A Pai verdict were addressed and the Islamic Educational Academy case was reviewed as well. This verdict goes against the Islamic Academy of Education verdict and reverts back to Pai.

**Decision**

- In correlation with the Kerala Education Bill case, Lohoti, C.J divides the amount of protection educational institutions (both minority and non-minority) can seek from Article 30 into three categories.

1. Unaided or unrecognized institutions that can enjoy protection under this Article to their “heart’s content 2. Institutions asking for affiliation or recognition from the State must abide by the

rules and regulations enforced by the government. This is only if the nature of such regulations is for the benefit of the institution.

3. Institutions receiving state aid must abide by regulations with regards to the management of funds. Article 29(2) will also apply as they would be required to admit students from non-minority communities.

- The bench also puts a stop on policies that require unaided private colleges to reserve seats for citizens from backward classes. They believe such policies will cause the ‘nationalizing’ of seats. They believe such policies violated Article 30 of minority communities to set up and manage educational institutes autonomously and violated

19(1)(g) of non-minority colleges to practice any trade or profession. Instead, they let the state control the quota of seat-sharing between management.

- Interestingly, they do allow for the reservation of seats for non-resident Indians or NRIs. The reason they give behind this is that the high fees charged from such students could help students belonging to weaker parts of society.

- In regards to admission procedure in unaided education institutes, the Bench decided that merit for admission in various levels of education is crucial but its level of importance increases with the rising level of education. Merit might not have much of a role to play in kindergarten admission but had a crucial role to play in college admission.

- The bench also decides that every institute is allowed to set up its own fee structure but it shall be subjected to regulations to prevent excessive profiteering.

- And the last, but the most controversial, the bench stated that the Islamic Academy of Education case shall not exceed TMA Pai. Committees to monitor the fee structure and admission process of private universities shall not happen.

The Jain Community is not a minority In the case of **Bal Patil v. Union of India(2005)**, it was debated whether Jains could become a minority under section 2(c) of the Minorities Act. The court rejected this claim and said it had statutory duties. They also stated Before the Central Government takes a decision on claims of Jains as a ‘minority’ under

Section 2(c) of the Act, the identification has to be done on a state basis. The power of the Central Government has to be exercised not merely on the advice and recommendation of the Commission but on consideration of the social, cultural and religious conditions of the Jain community in each state. Statistical data produced to show that a community is numerically a minority cannot be the sole criterion.”

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**Choose the correct option**

**1. Clause (4) of Article 13 of the Indian Constitution says, “Nothing in this Article shall apply to any amendment of this Constitution made under Article 368 of the Indian Constitution”. Clause (4) has been inserted by which of the following Amendment Acts?**

- A. 22nd Amendment Act
- B. 21st Amendment Act
- C. 24th Amendment Act
- D. 23rd Amendment Act

**2. Who, among the following, can challenge the constitutionality of a law?**

- I. No one but whose rights is directly affected by a law can raise the question of the constitutionality of the law.
- II. A person who is not possessed of a fundamental right cannot challenge the validity of a law on the ground that it is inconsistent with a fundamental right.
- III. A person who challenges the constitutionality of a statute must show that he is sustaining some direct injury as the result of enforcement of the statute.

- A. I and II
- B. I, II and III
- C. II and III
- D. I and III

**3. Clause (4) of Article 13 the Indian Constitution which were inserted by the 24<sup>th</sup> Amendment Act, 1971, states that a Constitution Amendment Act, passed according to Article 368, Indian Constitution is a law within the meaning of Article 13 and would, accordingly be void if it contravenes a fundamental right. This amendment was declared void in which of the following cases?**

- A. Golak Nath v. State of Punjab
- B. Edward Mills Co. Ltd. v. State of Ajmer
- C. Minerva Mills v. Union of India
- D. Ghulam Sarwar v. Union of India

**4. Which of the following equalities is/are included in the Right to Equality?**

- A. Equality before Law
- B. Equal Protection of Laws
- C. Equal Pay for equal work
- D. All of them

**5. Which of the following is an essential part of rule of law and independence of Judiciary?**

- A. Judicial Review
- B. Impartial appointment of Judges
- C. Impeachment
- D. Original Jurisdiction