



## **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 9

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**(B) Doctrine of Eclipse.** - The Doctrine of Eclipse is based on the principle that a law which violates fundamental rights, is not nullity or void ab initio but becomes, only unenforceable i.e. remains in a moribund condition. "It is over-shadowed by the fundamental rights and remains dormant, but it is not dead." Such laws are not wiped out entirely from the statute book. They exist for all post transactions and for the enforcement of the rights acquired and liabilities incurred before the commencement of the Constitution. It is only against the citizens that they remain in a dormant or moribund condition but they remain in operation as against non-citizens who are not entitled to fundamental rights.

For solving such a problem, Supreme Court formulated the doctrine of eclipse in *Bhikhaji v. State of M.P., AIR 1955 S.C. 781*. In this case the provisions of C.P. and Berar Motor Vehicles (Amendment) Act 1948 authorised the State Government to take up the entire motor transport business in the Province to the exclusion of motor transport operators. This provision though valid when enacted, but became void on the commencement of the Constitution in 1950 as they violated Article 19(1)(g) of the Constitution. However, in 1951 Clause (6) of Article 19 was amended by the Constitution (1st Amendment Act) so as to authorise the Government to monopolise any business. The Supreme Court held that the effect of the amendment was to remove the shadow and to make the impugned Act free from blemish or infirmity. It became enforceable against citizens as well as non-citizens after the constitutional impediment was removed. This law was eclipsed for the time being by the fundamental rights. As soon as the eclipse is removed, the law begins to operate from the date of such removal.

**(C) Doctrine of Waiver.** - Can a person waive his fundamental right ? A reference to the doctrine of waiver was first made in *Behram v. State of Bombay, AIR 1955 S.C. 123*. While discussing the question of legal effect of a statute being declared unconstitutional, Justice Venkatarama Aiyer gave the opinion that a law, unconstitutional by reason of its repugnancy to a fundamental right which is enacted for the benefit of individuals and not for the benefit of the general public, is not a nullity but merely enforceable and such an unconstitutionality could be waived, in which case the law becomes unenforceable for that individual e.g. the right guaranteed under Article 19(1)(f) is for the benefit of the owners of property and when a law is found to infringe that provisions, it is open to any person whose right has been infringed to waive it, and when there is a waiver there is no legal impediment to the enforcement of the law.

The question of waiver directly arose in *Bashesher Nath v. Income Tax Commissioner, AIR 1959 S.C. 149*. The petitioner whose case was referred to the Income Tax Investigation Commissioner under Section 5(1) of the Act, was found to have concealed large amount of income. He thereupon agreed at a settlement in 1954 to pay Rs. 3 lacs in monthly installments by way of arrears of tax and penalty. In 1955, the Supreme Court in other cases declared Section 5(1) ultra vires Article 14. The petitioner thereupon challenged the settlement between him and the Commissioner. The main question that arose for consideration was whether or not, the assessee had waived his fundamental right under Article 14 by entering into the settlement. In this case the Supreme Court held "A large majority of our people are economically poor, educationally backward and politically not conscious of their rights. Individually or even collectively, they cannot be pitted against the State Organisations and institutions, nor can they meet them on equal terms. In such circumstances it is the duty of the court to protect their rights against themselves." In the end, the court upheld unanimously that the petitioner could not waive his rights under Article 14 of the Constitution.

Circumstances under which Fundamental Rights can be curtailed or suspended. - The fundamental rights can be suspended or curtailed in the following circumstances :

1. The Parliament can restrict or abrogate by law the fundamental rights in their application to the members of the Armed Forces, of Forces charged with the maintenance of public order with a view to ensure proper discharge of their duties and maintenance of discipline among them. (Article 33).
2. Fundamental Rights can be curtailed or restricted when Martial Law is in force in any area (Article 34).
3. During the period in which the proclamation of emergency is in operation, the rights conferred by Article 19 are suspended (Article 358). Also where a proclamation of emergency is in operation the President may, by order, declare that the right to move any court for the enforcement of such rights conferred by Part III (except Articles 20 and 21) as may be mentioned in the order and all proceedings pending in any court for the enforcement of rights so mentioned shall remain suspended for a period during which the proclamation of emergency is in force or for such shorter period as may be specified in the order. An order made as aforesaid may extend

to the whole or any part of the territory of India. Every such order shall, as soon as be may be after it is made, be laid before each House of Parliament. (Article 359).

4. All or any of the fundamental rights can be curtailed, suspended or modified by an amendment of the Constitution itself under Article 368.

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**Choose the correct option**

**1. Under the constitution the doctrine of waiver means**

- a. the citizens cannot waive the duty of the state to uphold the fundamental rights
- b . to the post constitutional laws but only in respect of non-citizens
- c. to the post constitutional laws in respect of citizens only
- d. none of the above

**2. On whose recommendation was the Constituent Assembly formed ?**

- (a) Cabinet Mission Plan
- (b) Govt. of India Act, 1935
- (c) Mountbatten Plan
- (d) Cripp's Mission

**3. A constitution is**

- (a) A set of ordinary laws
- (b) A set of financial laws.
- (c) A set of official laws

(d) The basic structure defining the powers of the state and the rights and duties of the citizens.

**4. Which of the following rights was described by Dr. B.R. Ambedkar as The Heart and soul of the Constitution?**

- (a) Right to Equality
- (b) Right to Constitutional Remedies
- (c) Right to Freedom of Religion
- (d) Right to Property

**5. Who was the first speaker of the Lok Sabha ?**

- (a) P. Upendra
- (b) Hukam Singh
- (c) Anantha Sayanam Ayyanagar