



FACULTY OF JURIDICAL SCIENCES

Course : LLB , 1st Semester

Subject : CONSTITUTIONAL LAW I

Subject code :LLB 101

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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 14

1. EQUALITY RIGHTS (ARTICLES 14 – 18)

1.1 Article 14 of the Constitution of India reads as under:

“The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”

1.2 The said Article is clearly in two parts – while it commands the State not to deny to any person ‘equality before law’, it also commands the State not to deny the ‘equal protection of the laws’. Equality before law prohibits discrimination. It is a negative concept. The concept of ‘equal protection of the laws’ requires the State to give special treatment to persons in different situations in order to establish equality amongst all. It is positive in character. Therefore, the necessary corollary to this would be that equals would be treated equally, whilst un-equals would have to be treated unequally

Article 15 secures the citizens from every sort of discrimination by the State, on the grounds of religion, race, caste, sex or place of birth or any of them. However, this Article does not prevent the State from making any special provisions for women or children. Further, it also allows the State to extend special provisions for socially and economically backward classes for their advancement. It applies to the Scheduled Castes (SC) and Scheduled Tribes (ST) as well.

Article 16 assures equality of opportunity in matters of public employment and prevents the State from any sort of discrimination on the grounds of religion, race, caste, sex, descent, place of birth, residence or any of them. This Article also provides the autonomy to the State to grant special provisions for the backward classes, under-represented States, SC & ST for posts under the State. Local candidates may also be given preference in certain posts. Reservation of posts for people of a certain religion or denomination in a religious or denominational institution will not be

deemed illegal.

1.3 Articles 14, 15 and 16 form part of a scheme of the Constitutional Right to Equality. Article 15 and 16 are incidents of guarantees of Equality, and give effect to Article 14. However, initially, Articles 15(4) and 16(4) were considered *exceptions* to Articles 15(1) and 16(1).

1.4 The Hon'ble Supreme Court, in *G.M. Southern Railways v. Rangachari*, AIR 1962 SC 36 held Article 15(4) of the Constitution of India to be an exception to Article 15(1). The relevant portion is reproduced hereunder: "Article 15(4) which provides, inter alia, for an exception to the prohibition of discrimination on grounds specified in Article 15(1) lays down that nothing contained in the said Article shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes"

1.5 It was further held that Article 16(4) is an exception to Article 16(1): "I have already said that it is implicit in the Article that reservation cannot be of all appointments or even of a majority of them, for that would completely destroy the fundamental right enshrined in Article 16(1) to which Article 16(4) is in the nature of a proviso or an exception or at any rate make it practically illusory."

1.6 In *M.R. Balaji v. State of Mysore*, AIR 1963 SC 649, this view was followed, and it was held that: "Thus, there is no doubt that Article 15(4) has to be read as a proviso or an exception to Articles 15(1) and 29(2)."

1.7 This view, that Articles 15(4) and 16(4) were exceptions to Articles 15(1) and 16(1), was again reiterated in *Triloki Nath v. State of Jammu and Kashmir*, AIR 1969 SC 1, and in *State of A.P. v. U.S.V. Balram*, (1972) 1 SCC 660.

1.8 The majority of a 7-Judge Bench of the Hon'ble Supreme Court, in *State of Kerala v. N.M. Thomas*, (1976) 2 SCC 310, introduced a change in the concept of equality. It held that Articles 14, 15, and 16 are all equality rights, and that the scheme of equality sought to achieve real equality. It was held that Articles 15(4) and Article 16(4) are not exceptions to Articles 15(1) and 16(1) respectively. The relevant portions of the majority judgments are reproduced hereunder:

Ray, C.J. 37. Article 16(4) clarifies and explains that classification on the basis of backwardness does not fall within Article 16(2) and is legitimate for the purposes of Article 16(1). If preference shall be given to a particular under-represented community other than a backward class or underrepresented State in an all-India service such a rule will contravene Article 16(2). A similar rule giving preference to an under-represented backward community is valid and will not contravene Articles 14, 16(1) and 16(2). Article 16(4) removes any doubt in this respect

. Mathew, J 78. I agree that Article 16(4) is capable of being interpreted as an exception to Article 16(1) if the equality of opportunity visualized in Article 16(1) is a sterile one, geared to the concept of numerical equality which takes no account of the social, economic, educational background of the members of Scheduled Castes and scheduled tribes. If equality of opportunity guaranteed under Article 16(1) means effective material equality, then Article 16(4) is not an exception to Article 16(1). It is only an emphatic way of putting the extent to which equality of opportunity could be carried viz., even up to the point of making reservation

. Krishna Iyer, J

“136. The next hurdle in the appellant’s path relates to Article 16(4). To my mind, this sub-article serves not as an exception but as an emphatic statement, one mode of reconciling the claims of backward people and the opportunity for free competition the forward sections are ordinarily entitled to... Fazal Ali, J 184. ... Clause (4) of Article 16 of the Constitution cannot be read in isolation but has to be read as part and parcel of Article 16(1) and (2). ...That is to say clause (4) of Article 16 is not an exception to Article 14 in the sense that whatever classification can be made can be done only through clause (4) of Article 16. Clause (4) of Article 16, however, is an explanation containing an exhaustive and exclusive provision regarding reservation which is one of the forms of classification. ...It is true that there are some authorities of this Court that clause (4) is an exception to Article 16(1) but with due respect I am not in a position to subscribe to this view for the reasons that I shall give hereafter. 1.9 A 9-Judge Bench of the Hon’ble Supreme Court settled this issue in *Indra Sawhney v. Union of India*, 1992 (Supp) 3 SCC 217, where the majority upheld the principle laid down in Thomas’ case that Articles 15(4) and 16(4) were not exceptions to Articles 15(1) and 16(1), but were an emphatic statement of equality.

1.10 Therefore, equality, as guaranteed in our Constitution, not only conceives of providing formal equality but also to provide for real and absolute equality. Articles 14 and 15(1) enable and contemplate classification to achieve the Constitutional Objective of real equality. Articles 15(4) and 16(4) flow out of Articles 15(1) and 16(1) respectively, and can never be considered as exceptions to Article 15(1) and Article 16(1).

1.11 Once this is established, that Article 15(4) and 16(4) are not exceptions to the mandate of equality but are concrete measures to bring about the mandate of equality enshrined in Article 14, the effect of this is that the State is obliged to remove inequalities and backwardness. This obligation of the State has its source in the mandate of equality itself under Article 14.

1.12 In Thomas' case, it was held that Government has an affirmative duty to eliminate inequalities and to provide opportunities for the exercise of human rights and claims Fundamental rights as enacted in Part III of the Constitution are, by and large, essentially negative in character. In Indira Sawhney's case, Sawant, J concurring with the majority observed that to bring about equality between the unequals, it was necessary to adopt positive measures to abolish inequality. The equalising measures would have to use the same tools by which inequality was introduced and perpetuated. Otherwise, equalisation will not be of the unequals. These equalising measures would be validated by Article 14 which guarantees equality before law.

1.13 Article 15 is an instance and particular application of the right of equality provided for in Article 14. While Article 14 guarantees the general right, Articles 15 and 16 are instances of the same right in favour of citizens in some special circumstances. (*Dasaratha v. State of A.P.*, AIR 1961 SC 564).

1.14 Therefore, the equality contemplated by Article 14 and other cognate Articles like 15(1), 16(1), 29(2), and 38(2) are secured not only by treating equals equally, but also by treating un-equals unequally. This empowers positive discrimination in favour of the disadvantaged, particularly the SCs and STs.

1.15 In *E.V. Chinnaiah v. State of A.P.*, (2005) 1 SCC 394, it was held that a legislation may not be amenable to challenge on the ground of violation of Article

14 if its intention is to give effect to Articles 15 and 16 or when the differentiation is not unreasonable or arbitrary.

1.16 Articles 15 and 16 prohibit discriminatory treatment, but not preferential treatment of women, which is a positive measure in their favour. Affirmative action including by way of reservation is enabled by the equality clause in the Constitution.

1.17 In *Preeti Srivastava (Dr) v. State of M.P.*, (1999) 7 SCC 120, it was observed as under: “12. Article 15(4), which was added by the Constitution First Amendment of 1951, enables the State to make special provisions for the advancement, inter alia, of Scheduled Castes and Scheduled Tribes, notwithstanding Articles 15(1) and 29(2). The wording of Article 15(4) is similar to that of Article 15(3). Article 15(3) was there from the inception. It enables special provisions being made for women and children notwithstanding Article 15(1) which imposes the mandate of non-discrimination on the ground (among others) of sex. This was envisaged as a method of protective discrimination. This same protective discrimination was extended by Article 15(4) to (among others) Scheduled Castes and Scheduled Tribes. As a result of the combined operation of these articles, an array of programmes of compensatory or protective discrimination have been pursued by the various States and the Union Government...” 13. Since every such policy makes a departure from the equality norm, though in a permissible manner, for the benefit of the backward, it has to be designed and worked in a manner conducive to the ultimate building up of an egalitarian non-discriminating society. That is its final constitutional justification. Therefore, programmes and policies of compensatory discrimination under Article 15(4) have to be designed and pursued to achieve this ultimate national interest. At the same time, the programmes and policies cannot be unreasonable or arbitrary, nor can they be executed in a manner which undermines other vital public interests or the general good of all. All public policies, therefore, in this area have to be tested on the anvil of reasonableness and ultimate public good. In the case of Article 16(4) the Constitution-makers explicitly spelt out in Article 335 one such public good which cannot be sacrificed, namely, the necessity of maintaining efficiency in administration. Article 15(4) also must be used and policies under it framed in a reasonable manner consistently with the ultimate public interests.

1.18 It has been held, in *Govt. of A.P. v. P.B. Vijayakumar*, (1995) 4 SCC 520, that: 8. What then is meant by “any special provision for women” in Article 15(3)? This “special provision”, which the State may make to improve women's participation in all activities under the supervision and control of the State can be in the form of either affirmative action or reservation.

1.19 In the *Thomas* case, it was held: 74. The concept of equality of opportunity in matters of employment is wide enough to include within it compensatory measures to put the members of the Scheduled Castes and scheduled tribes on par with the members of other communities which would enable them to get their share of representation in public service. How can any member of the so-called forward communities complain of a compensatory measure made by the Government to ensure the members of Scheduled Castes and scheduled tribes their due share of representation in public services? 75. It is said that Article 16(4) specifically provides for reservation of posts in favour of Backward Classes which according to the decision of this Court would include the power of the State to make reservation at the stage of promotion also and therefore Article 16(1) cannot include within its compass the power to give any adventitious aids by legislation or otherwise to the Backward Classes which would derogate from strict numerical equality. If reservation is necessary either at the initial stage or at the stage of promotion or at both to ensure for the members of the Scheduled Castes and scheduled tribes equality of opportunity in the matter of employment, I see no reason why that is not permissible under Article 16(1) as that alone might put them on a parity with the forward communities in the matter of achieving the result which equality of opportunity would produce. Whether there is equality of opportunity can be gauged only by the equality attained in the result. Formal equality of opportunity simply enables people with more education and intelligence to capture all the posts and to win over the less fortunate in education and talent even when the competition is fair. Equality of result is the test of equality of opportunity.

1.20 Article 17 of the Constitution abolishes the practice of untouchability. Practice of untouchability is an offense and anyone doing so is punishable by law. The Untouchability Offences Act of 1955 (renamed the Protection of Civil Rights Act in 1976) provided penalties for preventing a person from entering a place of worship or from taking water from a tank or well.^{1.21} This is a self-operating

Article, and read with Article 39(a)(ii), it becomes clear that untouchability has been abolished and its practice forbidden.

1.22 This Article is levelled more against private conduct, than against conduct of the State. The chances of the State promoting or supporting untouchability is rare.

2. FREEDOM RIGHTS (ARTICLES 19 – 22)

2.1 Article 19(1) of the Constitution reads as under: “19. Protection of certain rights regarding freedom of speech etc (1) All citizens shall have the right (a) to freedom of speech and expression; (b) to assemble peaceably and without arms; (c) to form associations or unions; (d) to move freely throughout the territory of India; (e) to reside and settle in any part of the territory of India; and (f) omitted (g) to practise any profession, or to carry on any occupation, trade or business “

2.2 Articles 19(2) to 19(6) contain reasonable restrictions on the rights enshrined under Article 19(1).

Choose the correct option

1. **Classification between officials who come through direct recruitment and who come through promotion**
 - a. is valid because reasonable
 - b. is valid because permissible
 - c. is invalid as no rational relation to the object sought in classification
 - d. none of the above
2. **Article 15 prohibits discrimination on ground only of :**
 - a. religion, race , caste, sex, place of birth, residence or any of them
 - b. religion, race , caste, sex, place of birth
 - c. religion, race , caste, sex, place of birth or any of them
 - d. none of the above
3. **Prohibition against discrimination under article 15 is for**
 - a. persons
 - b. citizens
 - c. citizens as well as non-citizens
 - d. none of the above

4. Reservation of seats in educational institutions in favour of SCs/STs is governed by
 - a. Article 14
 - b. article 15
 - c. article 16
 - d. article 17
5. Article 16 provides equality of the opportunity in matter of public employment for :
 - a. backward class of citizen
 - b. SC/STs
 - c. economically backward
 - d. socially and educationally backward class of citizens