



## **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 (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 15

2.3 The inter-relationship between Articles 14, 19, and 21 was carefully examined in *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248. Discussing this relationship, it was observed that: “6. The law, must, therefore, now be taken to be well settled that Article 21 does not exclude Article 19 and that even if there is a law prescribing a procedure for depriving a person of “personal liberty” and there is consequently no infringement of the fundamental right conferred by Article 21, such law, insofar as it abridges or takes away any fundamental right under Article 19 would have to meet the challenge of that article. This proposition can no longer be disputed after the decisions in R.C. Cooper case, Shambhu Nath Sarkar case and Haradhan Saha case Now, if a law depriving a person of “personal liberty” and prescribing a procedure for that purpose within the meaning of Article 21 has to stand the test of one or more of the fundamental rights conferred under Article 19 which may be applicable in a given situation, ex-hypothesi it must also be liable to be tested with reference to Article 14. “

2.4 In *Minerva Mills Ltd. v. Union of India*, (1980) 3 SCC 625, Chandrachud, C.J., as he then was, observed: “74. Three Articles of our Constitution, and only three, stand between the heaven of freedom into which Tagore wanted his country to awake and the abyss of unrestrained power. They are Articles 14, 19 and 21.”

This was the first mention of what was later to be termed as the Golden Triangle, i.e. Articles 14, 19, and 21. As observed in *Bachan Singh v. State of Punjab*, (1982) 3 SCC 24: “11. There are three Fundamental Rights in the Constitution which are of prime importance and which breathe vitality in the concept of the rule of law. They are Articles 14, 19 and 21 which, in the words of Chandrachud, C.J. in *Minerva Mills* case constitute a golden triangle. “

2.6 Hansaria, J. very aptly observed in *T.R. Kothandaraman v. T.N. Water Supply & Drainage Board*, (1994) 6 SCC 282 that, “The golden triangle of our Constitution is composed of Articles 14, 19 and 21. Incorporation of such a trinity in our paramount parchment is for the purpose of paving such a path for the people of India which may see them close to the trinity of liberty, equality and fraternity.”

2.7 It is apparent that the right to information was not spelt out as a separate right under Article 19. However, it is now well-settled in a catena of cases that the right

to freedom of speech and expression enshrined in Article 19(1)(a) includes the right to information.

2.8 *In State of U.P. v. Raj Narain*, (1975) 4 SCC 428, it was observed that the right to know is derived from the concept of freedom of speech. It was held that: “74. In a Government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security.”

2.9 This was further confirmed in *S.P. Gupta v. Union of India*, 1981 Supp SCC 87, where it was held that: “The concept of an open Government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under Article 19(1)(a). Therefore, disclosure of information in regard to the functioning of Government must be the rule and secrecy an exception justified only where the strictest requirement of public interest so demands.” 2.10 The law in this regard has been developed over the years, in *Union of India v. Association for Democratic Reforms*, (2002) 5 SCC 294 and in *PUCL v. Union of India*, (2003) 4 SCC 399.

2.11 In consonance with its duty, Parliament enacted the Right to Information Act in 2005. The Preamble of the Act reads as under: “An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.”

2.22 Article 20 of the Constitution is with respect to protection in respect of conviction of an offence. It imposes limitations on the powers of the State, which it otherwise possesses under Article 21, to enact and enforce criminal laws.

2.23 The case of *Kalp Nath Rai v. State*, (1997) 8 SCC 732 discussed Article 20(1) with respect to the Terrorist and Disruptive Activities Prevention Act, 1987, which was amended in 1993. By the said amendment, all ingredients would have to be satisfied against the accused for being convicted as a terrorist under Section 3(5) of the Act. It was held that: “34. Sub-section 3(5) was inserted in TADA by Act 43 of 1993 which came into force on 23-5-1993. Under Article 20(1) of the Constitution “no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence”. So it is not enough that one was member of a terrorists' gang before 23-5-1993.”

2.24 Article 20(2) is aimed at protecting an individual from being subjected to prosecution and conviction for the same offence more than once. (*See Maqbool Hussain v. State of Bombay*, AIR 1953 SC 325) 2.25 Article 20(3), which protects an individual against self-incrimination, has been termed a ‘humane’ Article. It gives protection to a person accused of an offence against compulsion to be a witness against himself. This is in consonance with the expression ‘according to procedure established by law’, enshrined in Article 21, within the ambit of which just and fair trials lie.

2.27 Article 21 of the Constitution reads as under: “21. Protection of life and personal liberty No person shall be deprived personal liberty. It is the most fundamental of human rights, and recognizes the sanctity of human life.

2.29 Initially, the approach to Article 21, as in *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27 was restricted to a rather literal interpretation of the Article. It was a circumscribed approach. The majority held that Article 22 was a self-contained code, and that the law of preventive detention did not have to satisfy the requirements of Articles 14, 19, and 21. A narrow interpretation was placed on the words “personal liberty”, to confine the protection of Article 21 to freedom of the person against unlawful detention. This judgment led to a theory wherein the freedoms under Articles 19, 21, 22, and 31 were considered to be exclusive. The basis for this was the thought process that certain Articles in the Constitution exclusively deal with specific matters and in determining if an infringement of fundamental rights had occurred, the object and form of State action alone needed to be considered, and the effect of the law on the fundamental rights of the individuals in general would be ignored.

2.30 This was overruled in, *R.C. Cooper v. Union of India*, (1970), where it was held that even where a person is detained in accordance with the procedure prescribed by law, as mandated by Article 21, the protection conferred by the various clauses of Article 19(1) does not cease to be available to him and the law authorising such detention has to satisfy the test of the applicable freedoms under Article 19(1).

2.31 The concept of “personal liberty” gradually began to be liberally interpreted by the judiciary. The Hon’ble Supreme Court of India, in *Kharak Singh v. State of UP*, AIR 1963 SC 1295, held, with respect to ‘personal liberty’, that “We feel unable to hold that the term was intended to bear only this narrow interpretation but on the other hand consider that “personal liberty” is used in the Article as a compendious term to include within itself all the varieties of rights which go to make up the “personal liberties” of man other than those dealt with in the several clauses of Article 19(1). In other words, while Article 19(1) deals with particular species or attributes of that freedom, “personal liberty” in Article 21 takes in and comprises the residue.” 2.32 In the case of *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248, the Court examined the judgments in *A.K. Gopalan’s* case, *R.C. Cooper’s* case, and *Kharak Singh’s* case in detail. It was observed that:

of his life or personal liberty except according to procedure established by law “

2.28 From the wording of the Article, it is obvious that the language is negative. However, Article 21 confers on every person the fundamental right to life and “The expression “personal liberty” in Article 21 is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have been raised to the status of distinct fundamental rights and given additional protection under Article 19.”

2.33 It was further observed that any law interfering with personal liberty of a person must satisfy a triple test: (i) it must prescribe a procedure; (ii) the procedure must withstand the test of one or more of the fundamental rights conferred under Article 19 which may be applicable in a given situation; and (iii) it must also be liable to be tested with reference to Article 14. As the test propounded by Article 14 pervades Article 21 as well, the law and procedure authorising interference with personal liberty and right of privacy must also be right and just and fair and not

arbitrary, fanciful or oppressive. If the procedure prescribed does not satisfy the requirement of Article 14 it would be no procedure at all within the meaning of Article 21.

2.34 In today's world, new needs of a person for liberty in different spheres of life can now be claimed as a part of "personal liberty", and these cannot be restricted, apart from satisfying Articles 14 and 19. 2.35 Some of the rights which could fall under the ambit of Article 21 have been clearly spelt out by the judiciary in various judgments, to be a part of Article 21: (i) Right to counsel [*M.H. Hoskot v. State of Maharashtra*, (1978) 3 SCC 544] (ii) Right of a person to not be subjected to bonded labour [*PUCL v. Union of India*, (1982) 3 SCC 235] (iii) Right to livelihood [*Olga Tellis v. Bombay Municipal Corpn*, (1985) 3 SCC 545 – also see *DTC v. DTC Mazdoor Congress*, AIR 1991 SC 101] (iv) Right to immediate medical aid [*Parmanand Katara v. Union of India*, (1989) 4 SCC 286] (v) Right to free legal aid [*State of Maharashtra v. MP Vashi*, AIR 1996 SC 1] 2.36 The right to education has also been held to be a part of Article 21. A series of decisions, including *Mohini Jain v. State of Karnataka*, (1992) 3 SCC 666, *Unnikrishnan J.P. v. State of A.P.*, AIR 1993 SC 2178, etc. culminated in an amendment to the Constitution being moved in 1997, leading to the incorporation of Article 21-A, which reads as under: "The State shall provide free and compulsory education to all children of 6 to 14 years in such manner as the State, may by law determine" 2.37 Following this, the Right of Children to Free and Compulsory Education Act, 2009 was enacted.

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**Choose the correct option**

1. **Reservation for OBCs are allowed by**
  - a. article 16 ( 1)
  - b. article 16 ( 2)
  - c. article 16 ( 3)
  - d article 16 ( 4)
2. **Articles 14, 15 and 16 from part of a string of constitutionality guaranteed rights supplementing each other " was held in which case**
  - a. M.R. balaji v state of mysore
  - b.state of kerela v n. m .thomas
  - c. triloke nath tiku v state of J&k
  - d. B.N tiwari v union of India
3. **" rule of carry forward is ultra vire" held in**



- a. M. R, Balaji v state of mysore
  - b. state of jerala v N.M Thomas
  - c. akhil bharitya socialist karmchariv UOI'
  - d. devadasan v UOI
- 4. After which one of the following decisions of the supreme court decision was the special provision for socially and educationally backward classes introduced by an amendment of the constitution**
- a. balaji v state of mysore
  - b. state of madras v champakam dorairajan
  - c. devadasan v union of India
  - d. periakaruppan v state of tamil nadu
- 5. Which one of the following statement is correct in respect of state powers of reservation in admission to educational institutions ?**
- a. caste can be the sole criteria
  - b. poverty can be the sole criteria
  - c. both the caste and poverty