

CONSTITUTIONAL LAW

SALIENT FEATURES OF INDIAN CONSTITUTION:-

- 1). Lengthiest Constitution.
- 2). A Sovereign, Socialist, Secular, Democratic and Republic
- 3). Quasi Federal
- 4). Parliamentary Democracy and Cabinet Form of Government
- 5). Fundamental Rights
- 6). Directive Principles of State Policy
- 7). Fundamental Duties
- 8). Adult Suffrage
- 9). Single Citizenship
- 10). Judicial Review and Independence of Judiciary and
- 11). Both Rigid and Flexible.

PREAMBLE

“The Preamble declares:

“We the people of India, havingly solemnly resolved to constitute India into a sovereign Socialist Secular Democratic Republic and to secure to all citizens”.

Justice, Social, Economic and political.

Liberty of thought, Expression, belief, faith and worship,

Equality of status and of opportunity and to promote among them all

Fraternity assuring the dignity of the individual and the unity and integrity of the nation.

Sovereign, Socialist, Secular, Democratic Republic

BERUBARI 'S CASE

Berubari is an area of 9 square miles with 12000 populations in the state of West Bengal. In 1958 India and Pakistan entered into an agreement for transfer of Berubari to Pakistan. Some Indian Citizens challenged the agreement by filing a petition against the Union of India as it is violative of Article 3 of the constitution. The petitioners contended that the parliament, even by amending the constitution has no such power to transfer the territory.

In this case The Supreme Court hence that “Preamble is not a part of the Constitution and hence it cannot be amended”

KESAVANANDA BHARATI Vs STATE OF KERALA

Preamble is a part of the Constitution and the parliament, under Article 368 can amend the preamble. However, this amending power as stated above is subject to a restriction that the basic structure of the constitution should not be destroyed.

FUNDAMENTAL RIGHTS

Part –III of the Indian Constitution containing Articles 12 to 35 deals with Fundamental Rights. It (Part-III) covers the following heads

- 1). Fundamental Rights (General)
- 2). Definition of State (Article 12)
- 3). Laws inconsistent with or in derogation of the Fundamental Rights (Articles 13)
- 4). Right to Equality (Articles 14-18)
- 5). Right to Freedom (Articles 19 -21)
- 6). Safeguard against Arbitrary Arrest (Article -22)
- 6). Right against Exploitation (Articles 23 & 24)
- 7). Right to Freedom of Religion (Articles 25 & 28)
- 8). Cultural and Educational Rights (Articles 29 & 30)
- 9). Saving of Certain laws (Article 31A, 31B & 31C) and
- 10). Right to Constitutional Remedies (Article 32-35)

RIGHT TO EQUALITY (Article.14)

Article 14 of the Indian Constitution deals with “Right to Equality”. It provides for “Equality before law and Equal protection of laws”. Equality, which is equivalent to Dicey’s Rule of law (England) and American Equal Protection of laws, is a very important fundamental Right.

PROHIBITION OF DISCRIMINATION (Article. 15)

Article 15(1). By clause (1) of Article 15 the state is prohibited to discriminate between citizens on grounds only of religion, race, caste, sex, place of birth or any of them.

Article15 (2). By Clause (2) of Article 15 provides-“No discrimination as to use or access to Public Places.

Article15 (3). By clause (3) of Article 15 special provision for women and children.

Article15 (4). By Clause (4) of Article 15 Special Provision for Back Ward Classes.

FREEDOM OF SPEECH AND EXPRESSION

(Article-19)

Article 19 of the Indian Constitution provide six freedoms as stated below.

- 1). Freedom of Speech and Expression (Article 19 (1)(a))
- 2). Freedom of Assembly (Article 19(1)(b))
- 3). Freedom of Form Association (Article 19(1)(c))
- 4). Freedom of Movement (Article 19(1)(d))
- 5). Freedom to reside and to settle (Article 19(1)(e))
- 6). Freedom of Profession, Occupation, Trade or Business(Article 19(1)(F))

Initially, there were seven freedoms. In 1979, under 44th amendment, right to property is deleted from 19(1)(f) and Article 31 now, it is a mere constitutional right under Article 300-A.

The six freedoms stated above, are not absolute, but are subject to reasonable restrictions under Article 19(2) to (6).

PROTECTION AGAINST CONVICTION OF OFFENCES

ARTICLE-20

Article 20 of Indian Constitution provides for protection in respect of conviction of offences. In other words, it lays down certain safeguards to the persons accused of crimes as stated below.

- 1). Ex post Facto law (Article 20(1))
- 2). Double Jeopardy (Article 20(2))
- 3). Self-Incrimination (Article 20(3))

PROTECTION OF LIFE AND PERSONAL LIBERTY

ARTICLE 21

Article 21 of the Indian Constitution guarantees life and personal liberty. It is the heart of the fundamental rights. It says that "No person shall be deprived of his life or personal liberty, except according to procedure established by law".

Maneka Gandhi Vs. Union Of India. Mrs. Maneka Gandhi (w/o. Late Sanjay Gandhi) was issued passport. Later she was informed that the government decided to impound her passport and she was required to surrender it, without stating the reasons. She challenged the Government's decision to impound her passport, as it violates her personal liberty guaranteed under Article.21. In this case, the Supreme Court considered the scope of Article 21 elaborately and held that the Government's action in impounding the passport, in the interest of General Public, is not violative of Article.21

FREEDOM OF RELIGION

ARTICLE-25-28

Article 25 to 28 of the Indian Constitution lay down the provisions relating to 'Freedom of Religion'. The word 'Religion' is not defined in the Indian Constitution. India is a secular state. The word 'Secular' was inserted in the Preamble of the Indian Constitution by the Constitution (42nd Amendment) Act.1976. The word 'Secularism' under the law means that "the state does not owe loyalty to any particular religion, and the state has no religion of its own". It protects all religion viz. Hindu, Muslim, Christian, Parsi etc., Everyone has a right to relate himself to God According to his own conscience.

Article 25 Freedom of conscience and the right to freely profess, practice and propagate religion.

Article 26 Right of a religious denomination to manage religious affairs

Article 27 Freedom from payment of taxes for promotion of any particular religion

Article 28 Freedom from attendance at religious instructions in certain educational institutions.

CULTURAL AND EDUCATIONAL RIGHTS OF MINORITIES **ARTICLES 29 TO 30**

Article 29. Protection of Interests of Minorities.

Article 30. Right of Minorities to establish and administer Educational Institutions.

DIRECTIVE PRINCIPLES OF STATE POLICY **Article 36 to 51**

The framers of our constitution borrowed the Directive Principles of State Policy from the Constitution of Ireland, 1937. Directive Principles are fundamental in the governance of the country. They are also known as positive rights or social rights. They impose positive obligations on the state. However, they (Directive Principles) are not enforceable.

- 1). Social Justice (Article 38)
- 2). Equal pay for Equal Work (Article 39(d))
- 3). Equal Justice and Free Legal Aid (Article 39-A)
- 4). Uniform Civil Code (Article-44)

RELATIONS BETWEEN UNION AND STATES

The Chief characteristic features of Federation is, the distribution of powers between the centre and States. In other words, the basic principle of federation is that the legislative, and executive and financial authority is divided between the Centre and the States. Therefore, the Centre- State Relations may be explained with reference to the following heads.

1). Legislative Relations (Article 254 to 255)

- a). Territorial Jurisdiction and
- b). Subject matter of legislation.

2). Administrative Relations (Article 256 -263)

- a). Direction by the Union to States
- b). Delegation of Authority
- c). All India Services
- d). Grants –in-Aid and
- e). Disputes relating to Water.

3). Financial Relations (Article 264-293)

Articles 264 to 293 of the Constitution deal with Financial Relations of the Union and the State. For smooth and successful conduct of the legislative and executive relations, there must exist financial

autonomy. In India, the scheme of distribution of sources of revenue between the Centre and State is based on the scheme laid down in the Government of India Act, 1935.

RIGHT TO CONSTITUTIONAL REMEDIES

Locus Standi and Public Interest Litigation and Constitutional Remedies.

A). Article 32 and 226

B). Writs:-

- 1). Writ of Mandamus
- 2). Writ of Certiorari
- 3). Writ of Prohibition and
- 4). Writ of Quo Warranto
- 5). Special Leave to Appeal (Article 136)

The expression 'Locus Standi' means 'Right to move the Court'. Generally, a person whose legal right is infringed alone, has a right to move the court. However, there are certain circumstances, in which any member of the public can have a right to move the court. Articles 32 and 226 of the Indian Constitution do not prescribe specifically such persons or class of persons, who have the right to move the court. Thus, the matter of 'Locus Standi' lies within the discretion of Courts.

PUBLIC INTEREST LITIGATION

- 1). In Supreme Court under Article 32 of the Constitution.
- 2). In High Court under Article 226 of the Constitution and
- 3). Under Section 133 Cr.P.C before the Court of Magistrate.