

LL.B. IV Term (January – May 2017)

Paper : LB - 401 - Constitutional Law - II

[Fundamental Rights, Directive Principles of State Policy, Civil Servants and Amendment of the Constitution]

Prescribed Text: The Constitution of India, 1950

Prescribed Books:

1. Mahendra P. Singh, **V. N. Shukla's Constitution of India** (11th ed., 2008)
2. H.M. Seervai, **Constitutional Law of India** [4th ed., Vol. 1 (1991), Vol. 2 (1993), Vol. 3 (1996)]
3. M.P. Jain, **Indian Constitutional Law** (5th ed., 2003)
4. D.D. Basu, **Shorter Constitution of India** (14th ed., 2009)

Topic 1 : Fundamental Rights (General)

(a) 'State' under Article 12

1. *Som Prakash v. Union of India*, AIR 1981 SC 212 : (1981) 1 SCC 449
2. *Pradeep Kumar Biswas v. Indian Institute of Chemical Biology* (2002) 5 SCC 111
3. *G. Basi Reddy v. International Crops Research Institute*, JT 2003 (2) SC 180
4. *Zee Telefilms Ltd. v. Union of India* (2005) 4 SCC 649
5. *State of U.P. v. Radhey Shyam Rai*, 2009(3) SCALE 754
6. *Jatya Pal Singh v. Union of India* (2013) 6SCC 452
7. *BCCI v. Cricket Association of Bihar* (2015)3 SCC 251

(b) 'Law' under Article 13; Also Articles 31A, 31B, 31C, 368

(i) *Doctrine of Eclipse*

8. *Keshavan Madhava Menon v. State of Bombay*, AIR 1955 SC 128 : 1951 SCR 228
9. *State of Gujarat v. Sri Ambika Mills*, AIR 1974 SC 1300 : (1974) 4 SCC 656
10. *Bhikaji Narain Dhakras v. State of M. P.*, AIR 1955 SC 781
11. *Dr. Janet Jeyapaul v. SRM University* AIR 2016 SC 73.

(ii) *Waiver of Fundamental Rights*

12. *Basheshar Nath v. CIT*, AIR 1959 SC 149

(iii) *Severability*

13. *State of Bombay v. F.N. Balsara*, AIR 1951 SC 318

14. *RMDC v. Union of India*, AIR 1957 SC 628

(c) Power of Parliament to modify the fundamental rights (Article 33)

(d) Martial Law (Article 34)

Topic 2 : Right to Equality (Articles 14 – 18)

(a) Equality among Equals; Treating un-equals as equals violates equality clause

(b) Classification as such not completely prohibited: Reasonable Classification Permissible

(c) Single Person may be treated as a separate class

(d) Establishment of Special Courts

(e) Conferment and/or exercise of discretionary or arbitrary power is antithesis of right to equality

(f) Distribution of state largesse

(g) Special provisions for women and children; requirements relating to residence; requirement of a particular religion being professed by the incumbent of an office related to a religious or denominational institution

(h) Protective Discrimination - Reservations in appointments and promotions; Special provisions for socially and educationally backward classes of citizens and for Scheduled Castes and Scheduled Tribes

(i) The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995

(j) The Central Educational Institutions (Reservation in Admission) Act, 2006

15. *Chiranjit Lal Chaudhary v. Union of India*, AIR 1951 SC 41

16. *State of W. B. v. Anwar Ali Sarkar*, AIR 1952 SC 75

17. *Kathi Raning Rawat v. State of Saurashtra*, AIR 1952 SC 123

18. *Indra Sawhney v. Union of India*, AIR 1993 SC 477

19. *Ashoka Kumar Thakur v. Union of India* (2008) 6 SCC 1

20. *Indra Sawhney v. Union of India*, AIR 2000 SC 498

21. *Ashoka Kumar Thakur v. State of Bihar* (1995) 5 SCC 403
22. *Gulshan Prakash v. State of Haryana*, 2009 (14) SCALE 290 : AIR 2010 SC 2888
23. *Avinash Singh Bagri v. Registrar, IIT, Delhi* (2009) 8 SCC 220
24. *M. Nagraj v. Union of India* (2006) 8 SCC 212
25. *Rohtas Bhankar v. Union of India* (2014) 8 SCC 872
26. *Pramati Educational & Cultural Trust v. Union of India* (2014) 8 SCC 1
27. *Modern Dental College & Res. Cen v. State of Madhya Pradesh* (2016) 7 SCC 353
28. *U.P. Power Corpn. Ltd. v. Rajesh Kumar* (2012) 7 SCC 1

(k) Abolition of Untouchability (Articles 17, 35)

1. The Protection of Civil Rights Act, 1955
2. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

29. *State of Karnataka v. Appa Balu Ingale* AIR 1993 SC 1126

30. *Safai Karmachari Andolan v. Union of India*, 27 March 2014

(l) Abolition of Titles (Article 18)

31. *Balaji Raghavan v. Union of India*, AIR 1996 SC 770

Topic 3 : Right to Freedom (Articles 19 - 22)

(a) Right to Freedoms available only to citizens of India; Foreign nationals and artificial persons like bodies corporate (companies) are not citizens either under Part II of the Constitution of India or under the Citizenship Act, 1955

1. Freedom of speech and expression;
2. Freedom to assemble peaceably and without arms;
3. Freedom to form association or unions;
4. Freedom to move freely throughout the territory of India;
5. Freedom to reside and settle in any part of the territory of India;
6. Freedom to practise any profession, or to carry on any occupation, trade or business.

The freedoms are not absolute but subject to reasonable restrictions which can be imposed by law made by the state for the purposes mentioned in clauses (2) to (6) of Article 19. The term 'reasonable restriction' includes total prohibition.

The Right to Information Act, 2005

The Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Act, 2007

32. *Bennett Coleman & Co. v. Union of India*, AIR 1973 SC 106

33. *Secretary, Ministry of I & B, State of W. B v. Cricket Association*
(1995) 2 SCC 161

34. *Shreya Singhal v. Union of India* (2013)12 SCC 73

35. *People's Union for Civil Liberties (PUCL) v. Union of India*
(2003) 4 SCC 399

36. *Communist Party of India (M) v. Bharat Kumar* (1998) 1 SCC 201

37. *AIADMK v. Chief Secretary, Government of Tamil Nadu*
(2007) 1 SCALE 607

38. *Chindamanrao v. State of M.P.*, AIR 1951 SC 118

39. *Narendra Kumar v. Union of India*, AIR 1960 SC 430

40. *State of Gujarat v. Mirzapur Moti Qureshi Kasab Jamat*,
AIR 2006 SC 212 (Cow slaughter)

(b) Protection in respect of conviction for offences (Article 20)

(i) Ex-post Facto Law

(ii) Doctrine of Double Jeopardy

(iii) Right against Self Incrimination

41. *Smt. Selvi and Ors. v. State of Karnataka*, AIR 2010 SC 1974

(c) Protection of life and personal liberty (Article 21)

42. *Maneka Gandhi v. Union of India*, AIR 1978 SC 597

43. *National Legal Services Authority v Union of India*(2014)5
SCC 438

44. *Animal Welfare Board Of India vs A. Nagaraja & Ors.*(2014)7 SCC 547

45. *A K Roy v. Union of India*, AIR 1982 SC 710

d) Right to Education (Article 21A)

46. *Pramati Educational and Cultural Trust v. Union of India*,2014.

e) Protection against arrest and detention (Article 22)

47. *D.K. Basu v. State of West Bengal* (1997) 1 SCC 416
48. *People's Union for Civil Rights v. Union of India*,
2003 (10) SCALE 967

Topic 4 : Right against Exploitation (Articles 23, 24)

49. *People's Union for Democratic Rights v. Union of India*,
AIR 1982 SC 1473

Topic 5 : Right to Freedom of Religion (Articles 25 – 28)

The Madhya Pradesh Dharma Swatantraya Adhiniyam, 1968; the Orissa Freedom of Religion Act, 1967; the T.N. Prohibition of Forcible Conversion Act, 2002; the Gujarat Freedom of Religion Act, 2003

50. *Seshammal v. State of Tamil Nadu* (1972) 2 SCC 11
51. *N. Adithayan v. Travancore Devaswom Board* (2002) 8 SCC 106
52. *Adi Saiva Sivachariyargal Nala Sangam v. The Government of Tamil Nadu* (2016)2 SCC 725
52. *Commissioner of Police v. Acharya Jagadishwarananda Avadhuta* (2004) 12 SCC 770
53. *Bijoe Emmanuel v. State of Kerala* (1986) 3 SCC 615
54. *Rev. Stainislaus v. State of M.P.*, AIR 1977 SC 908

Topic 6 : Educational and Cultural Rights (Articles 29, 30)

Right to establish and administer educational institutions – rights of minorities and non-minorities; Degree of State Control in aided and non-aided educational institutions

55. *Islamic Academy of Education v. State of Karnataka*, JT 2003 (7) SC 1
56. *T.M.A. Pai Foundation v. State of Karnataka*, AIR 2003 SC 355
57. *P.A. Inamdar v. State of Maharashtra*, AIR 2005 SC 3236

Topic 7 : Right to Constitutional Remedies (Article 32)

Power of Judicial Review under Article 32 is a basic feature of the Constitution; Concurrent jurisdiction of the High Courts under Article 226 – Res judicata; Laches, Rule of *locus standi*, Public Interest Litigation; Existence of alternative remedies; Nature and scope of relief

Topic 8 : Fundamental Duties (Article 51A)

58. *Hon'ble Shri Rangnath Mishra v. Union of India*, JT 2003 (7) SC 206

Topic 9 : Directive Principles of State Policy (Articles 36 - 51)

Importance; Relationship, and the effect of inconsistency, between the Fundamental Rights and legislations aimed at implementing the Directive Principles of State Policy. Some significant legislations shall be mentioned

Topic 10 : Civil Servants (Articles 308 - 323)

Doctrine of Pleasure; Power to regulate the recruitment and conditions of service of civil servants; Constitutional Protection to Civil Servants; All India Services

59. *Union of India v. Tulsiram Patel*, AIR 1985 SC 1416 : (1985) 3 SCC 398
60. *J.P. Bansal v. State of Rajasthan*, AIR 2003 SC 1405 (2003) 5 SCC 134
61. *Managing Director, ECIL v. B. Karunakar*, AIR 1994 SC 1074
62. *T.N. Rangarajan v. Govt. of Tamil Nadu*, AIR 2003 SC 3032

Topic 11 : Amendment of the Constitution (Article 368)

Power and Procedure to amend the Constitution; Limitations on amending Power -Doctrine of Basic Feature/Structure; Judicial Review of Legislations included in the Ninth Schedule

63. *I.R. Coelho v. State of Tamil Nadu*, AIR 2007 SC 861 : (2007) 2 SCC 1
64. *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461
65. *Kihoto Hollohon v. Zachillhu*, AIR 1993 SC 4120
66. *L. Chandra Kumar v. Union of India*, AIR 1997 SC 1125
67. *Madras Bar Association v. Union of India* AIR 2015 SC 1571

IMPORTANT NOTE:

1. The topics and cases given above are not exhaustive. The teachers teaching the course shall be at liberty to add new topics/cases.
2. The students are required to study the legislations as amended up-to-date and consult the latest editions of books.
3. The question papers set for some previous years are printed below for guidance.

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LL.B. IV Term Examination, April-May, 2008

1. Attempt briefly any *four* of the following:
 - (a) Explain the doctrine of pleasure.
 - (b) Describe the nature of restrictions which can be imposed on the freedom of trade and profession.
 - (c) Explain the doctrine of “double jeopardy”.
 - (d) Describe the constitutional provisions relating to “self incrimination.”
 - (e) Explain the provisions of Article 31C of the Constitution of India.
2. In order to curb the offences such as nose-cutting, tongue cutting, leg-cutting, etc., state “S” enacts a legislation “to provide for speedier “trial of the offences” described above by curtailing some of the rights of the accused permissible under ordinary law. Under the legislation so enacted, special courts were set up. An accused prosecuted under the newly enacted legislation challenges the validity of the legislation and his prosecution.

Decide the case in the light of the right of a person guaranteed under Art. 14 of the Constitution of India.
3. Decide the validity of the following reservations in public employment:
 - (a) Reservation for physically handicapped persons = 3%
 - (b) Reservation for socially and educationally backward classes = 27%
 - (c) Reservation for S.T. without considering the factor of “efficiency of administration” = 7.5%
4. “A law establishing procedure for curtailing personal liberty of a citizen must be in consonance with the rule of justice, fairness and reasonableness. Critically examine this view. What would be your answer if such a law also violates equality clause?”
5. Explain the requirement of “reasonable opportunity of being heard” prescribed under Article 311(2) of the Constitution of India. Can such an opportunity be taken away?
6. The Parliament enacts the “Restriction on Press Act, 2008” imposing certain restrictions on page number, price, new publications and advertisements. The legislation is included in Ninth Schedule of the Constitution by an amendment.

Decide the validity of the legislation.
7. Explain the concept of “minority” under Article 30 of the Constitution of India. What is the extent of right of minorities to administer their institutions? Can minority status be conferred by legislation?

8. "The right to freedom of religion is not an absolute right but it includes right to keep silence and propagate religion without allurements and coercion."

Examine the above statement in the light of constitutional provisions and judicial pronouncements.

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LL.B. IV Term (Supplementary) Examinations, July-August, 2009

1. Attempt briefly any *four* of the following:
 - (a) "Consequential seniority" under Article 16(4-A) of the Constitution of India.
 - (b) Doctrine of eclipse with regard to pre-Constitution laws.
 - (c) Right against "self incrimination" under the Constitution of India.
 - (d) Rights of arrested persons.
 - (e) Opportunity of being heard under Article 311 of the Constitution of India.
2. (a) Explain the concept of "State" under Part III of the Constitution and its relevance for the enforcement of fundamental rights.
(b) Can the fundamental rights be claimed against the following: Decide citing case law:
 - (i) A public sector undertaking where 51% of the share capital is held by the government.
 - (ii) A private University set up under the Private Universities Act of state "X".
3. Decide the constitutional validity of the following based on constitutional provisions and decided cases:
 - (a) The state "X" through a Government Order reserves seats in the following manner for admission to the Government Medical College:
 - (i) seats for scheduled castes, scheduled tribes and other backward classes – 49%;
 - (ii) seats for children/wards of University Faculty members – 5%
 - (iii) outstanding sportsmen – 3%; and
 - (iv) persons with disabilities – 3;
 - (b) Is it constitutionally permissible for the state to relax qualifications for inducting candidates belonging to scheduled castes and scheduled tribes?
4. In order to deal with terrorist attacks, Parliament enacts a stringent anti-terror law that *inter alia* provides for a summary trial of those accused under this law and which also provides that only the Supreme Court will hear appeals from those convicted under this law. In order to safeguard this law from possible

constitutional challenge, Parliament through a constitutional amendment, places the said anti-terror law in the Ninth Schedule of the Constitution.

Discuss the constitutional validity of this amendment in the light of recent case law.

5. Discuss the inter-relationship between Articles 14, 19 and 21 of the Constitution as enunciated in *Maneka Gandhi v. Union of India* (AIR 1978 SC 597). Explain the scope of the 'direct and inevitable' test laid down for dealing with infringement of fundamental rights.
6. Elaborate on the constitutional validity of the following:
 - (a) A law that abolishes the hereditary rights of archakas (priests) and that provides for the appointment of archakas irrespective of their caste or gender.
 - (b) The extent to which freedom to profess, practice and propagate religion includes the freedom of religious conversion.
7. Discuss the following based on decided cases:
 - (a) The right to free speech under Article 19(1)(a) does not include the right to use air waves that are public property.
 - (b) Parliament passes a law placing a complete ban on media reporting of communal riots anywhere in the country on the ground that it is prejudicial to public order. Can a reasonable restriction include complete prohibition of the freedom of speech?
8. What is the nature of protection available to religious and linguistic minorities under Part III of the Constitution. What is the extent to which the State can regulate the functioning of minority educational institutions under the Constitution. Elaborate.

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LL.B. IV Term Examinations, May-June, 2010

1. Briefly answer any *four* of the following :-
 - (a) Doctrine of eclipse ;
 - (b) Constitutional validity of single person legislation;
 - (c) Constitutional prohibition of self-incrimination;
 - (d) Doctrine of pleasure;
 - (e) Constitutionality of the 'carry-forward' rule.
2. Decide the following :

- (a) The government of India dilutes its 100% shareholding in a public sector company and sells majority shares to a private company. Workers challenge this sale on the grounds of being arbitrary and in violation of principles of natural justice as they were not consulted prior to the disinvestment / sale. Will a writ petition filed by the workers in the Supreme Court against the new owners of the company be maintainable under Article 12 read with Article 32 of the Constitution ?
- (b) The Telecom Regulatory Authority of India (TRAI) has been established by law to oversee telecom providers in India. Mr. X challenges the decision of a private cellular phone (telecom) company to charge a lower rental tariff from certain categories of Consumer as being violative of the right of equality. He files a writ petition in the Supreme Court on the ground that such a private cellular phone company is 'state' under Article 12 of the Constitution as it is subject to the regulatory oversight by the TRAI. Decide the maintainability of such a petition based on decided cases.
3. Decide the Constitutional validity of the following with the help of decided cases :
- (a) Reservation of posts of Scheduled Caste (SC) and Scheduled Tribes (ST) persons in promotion with the benefit of Consequential seniority.
- (b) Reservation of seats for socially and educationally backward classes of citizens in private unaided colleges in a state.
4. The state T, through law, reserves 69% of seats in all colleges in the state for SC, ST and other backward class students. The Union Parliament amends the constitutional placing this law in the IXth Schedule. B challenges the law in Supreme Court as violating her right of equality and also challenges the constitutional amendment as violating the basic structure doctrine. Discuss the validity of the said law and constitutional amendment with the help of decided cases.
5. Answer the following citing relevant case law :
- (a) Government of State F places a ban on television channels broadcasting news scenes and stories of communal riots in the state. 'C' challenges the ban on the ground that it violates his right to information. Decide.
- (b) Government of state G imposes a limit of 10 pages on all newspapers published in the state in order to conserve newsprint and reduce the

number of trees cut down to make newsprint. A newspaper company challenges this order of the government for violating their rights under Articles 19(1)(a) and 19(1)(g). Decide.

- (c) What are the constitutional safeguards against custodial violence and torture ?
6. In the light of your study of Articles 25 and 26 of the Constitution discuss the validity of the following (Refer to relevant case law) :
- (a) State H enacts a law whereby priests in different Hindu temples in the state can be appointed irrespective of their caste, sect/denomination or sex.
- (b) State K bans the holding of any religious congregation or procession in public places on the ground that there is a high risk of spread of infectious diseases such as swine-flu.
7. The fundamental rights conferred by Part III of the constitution are not mutually exclusive and any law that lays down a procedure to deprive a person of his life and personal liberty must satisfy the requirements of Art. 14, 19 and 21.

Discuss the above in the light of decided cases.

8. (a) Explain briefly the rights of minorities to establish and administer educational institutions of their choice.
- (b) In the light of the above, examine validity of :
- (i) A state law providing for appointment of all teachers in affiliated colleges, including minority run colleges, by a selection procedure conducted by the Universities alone.
- (ii) Referring all industrial disputes pertaining to workmen employed by affiliated colleges, including minority run colleges, to labour courts/industrial tribunals set up under the Industrial Disputes Act, 1947.

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LL.B. IV Term Examinations, May-June, 2016

1. The state X seeks to enact a law dealing with all educational institutions in the state (including aided, unaided, minority or non-minority educational

institutions). Based on your study of the constitution and relevant case-law, advise the state on the validity of the following:

- (i) A provision in the proposed law that requires aided and unaided minority schools to reserve 25% of their seats for economically weaker sections of students and to provide free education for such students.
 - (ii) A provision in the proposed law that permits the state government to, on its own, appoint the principal and teaching staff of aided and unaided minority educational institutions.
2. In light of the law as laid down by the Supreme Court, discuss the following:
 - (i) Meaning and content of personal liberty in the Constitution.
 - (ii) The inter-relationship of Articles 14, 19 and 21.
 3. The Supreme Court has held that the power to amend the Constitution is not the power to destroy. In the light of the 'basic structure' doctrine laid down and developed by the Supreme Court, examine the Constitutional validity of a Constitutional amendment made after 24th April, 1973 that places any legislation in the IXth Schedule of the Constitution.
 4. Examine the Constitutional Validity of the following:
 - (i) An order issued by the government of state X to restrict the direct telecast of an operation by the police forces to control a riot situation in a state.
 - (ii) An order restricting the number of pages and the area devoted to advertisements in all newspapers published in India.
 5. Discuss the validity of the following:
 - (i) State P, through law, lays, down qualifications for appointment of archakas (Priests) in Hindu temples in the state, which stipulates that such post are open to all Hindus fulfilling the minimum qualifications, irrespective of caste or sex.
 - (ii) An executive order issued by a Tahsildar requiring all children under the age of 5 in a village to be administered and "anti-flu" vaccine as the village has several cases of "flu"(influenza).
 6. Examine the validity of the following in light of relevant Constitutional provisions and decided cases:
 - (i) The Constitutional amendments to Article 16 of the Constitution permitting the state to provide for reservation with consequential seniority in matters of promotion in classes of posts in the services under the state in favour scheduled Castes and Scheduled Tribes.
 - (ii) Horizontal and Vertical reservation.

7. A statutory corporation 'x' with 100% of its shares held by the government of India is engaged in the refining and sale of petrol and petroleum products. The government sells 51% of its holdings in the company as part of the policy of disinvestment.

A society 'Y', registered under a state-level societies Registration Act is the governing body for cricket in that particular state.

The employees of Corporation 'X' as well as Society 'Y' have been terminated, and seek your advice on whether these employees can file writ petitions challenging their termination or not?

Advise them on whether such writ petitions will lie under Article 32 or Article 226. Give separate answers of your advice to employees of Corporation 'X' and Society 'Y' citing case law.

8. Write short note on any two:
- (a) The "right against self incrimination" at the stage of investigation and the stage of trial available to an accused person.
 - (b) Constitutional and statutory provisions relating to the abolition of 'untouchability' and the duty of the state to render social justice.
 - (c) Classification doctrine and the nexus test.
 - (d) Doctrine of eclipse.