

LL.B. IV Term

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

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| 1. <i>Som Prakash v. Union of India</i> , AIR 1981 SC 212 : (1981) 1 SCC 449 | 1 |
| 2. <i>Pradeep Kumar Biswas v. Indian Institute of Chemical Biology</i> (2002) 5 SCC 111 | 17 |
| 3. <i>G. Basi Reddy v. International Crops Research Institute</i> , JT 2003 (2) SC 180 | 32 |
| 4. <i>Zee Telefilms Ltd. v. Union of India</i> (2005) 4 SCC 649 | 35 |

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

(i) Doctrine of Eclipse

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| 5. <i>State of U.P. v. Radhey Shyam Rai</i> , 2009 (3) SCALE 754 | 46 |
| 6. <i>Keshavan Madhava Menon v. State of Bombay</i> , AIR 1955 SC 128 : 1951 SCR 228 | 52 |
| 7. <i>State of Gujarat v. Sri Ambika Mills</i> , AIR 1974 SC 1300 : (1974) 4 SCC 656 | 55 |
| 8. <i>Bhikaji Narain Dhakras v. State of M. P.</i> , AIR 1955 SC 781 | 73 |

(ii) Waiver of Fundamental Rights

9. *Bashesher Nath v. CIT*, AIR 1959 SC 149

(iii) Severability

10. *State of Bombay v. F.N. Balsara*, AIR 1951 SC 318
11. *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
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| 12. <i>Chiranjit Lal Chaudhary v. Union of India</i> , AIR 1951 SC 41 | |
| 13. <i>State of W. B. v. Anwar Ali Sarkar</i> , AIR 1952 SC 75 | |
| 14. <i>Kathi Raning Rawat v. State of Saurashtra</i> , AIR 1952 SC 123 | 79 |
| 15. <i>Indra Sawhney v. Union of India</i> , AIR 1993 SC 477 | 88 |
| 16. <i>Ashoka Kumar Thakur v. Union of India</i> (2008) 6 SCC 1 | 139 |
| 17. <i>Indra Sawhney v. Union of India</i> , AIR 2000 SC 498 | |
| 18. <i>Ashoka Kumar Thakur v. State of Bihar</i> (1995) 5 SCC 403 | |
| 19. <i>Gulshan Prakash v. State of Haryana</i> , 2009 (14) SCALE 290 : AIR 2010 SC 2888 | 189 |
| 20. <i>Avinash Singh Bagri v. Registrar, IIT, Delhi</i> (2009) 8 SCC 220 | |
| 21. <i>M. Nagraj v. Union of India</i> (2006) 8 SCC 212 | 197 |
- (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
 - (l) Abolition of Titles (Article 18)
 - 22. *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

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| 23. | <i>Bennett Coleman & Co. v. Union of India</i> , AIR 1973 SC 106 | 222 |
| 24. | <i>Secretary, Ministry of I & B, State of W. B v. Cricket Association</i> (1995) 2 SCC 161 | 237 |
| 25. | <i>People's Union for Civil Liberties (PUCL) v. Union of India</i> (2003) 4 SCC 399 | |
| 26. | <i>Bharat Kumar K. Paticha v. State of Kerala</i> , AIR 1997 Ker. 291 (FB) | |
| 27. | <i>Communist Party of India (M) v. Bharat Kumar</i> (1998) 1 SCC 201 | |
| 28. | <i>AIADMK v. Chief Secretary, Government of Tamil Nadu</i> (2007) 1 SCALE 607 | |
| 29. | <i>Chindamanrao v. State of M.P.</i> , AIR 1951 SC 118 | |
| 30. | <i>Narendra Kumar v. Union of India</i> , AIR 1960 SC 430 | |
| 31. | <i>State of Gujarat v. Mirzapur Moti Qureshi Kasab Jamat</i> , 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

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

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| 32. | <i>Maneka Gandhi v. Union of India</i> , AIR 1978 SC 597 | 254 |
| 33. | <i>A K Roy v. Union of India</i> , AIR 1982 SC 710 | |

d) Right to Education (Article 21A)

e) Protection against arrest and detention (Article 22)

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| 34. | <i>D.K. Basu v. State of West Bengal</i> (1997) 1 SCC 416 | 272 |
| 35. | <i>People's Union for Civil Rights v. Union of India</i> , | |

2003 (10) SCALE 967

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

36. *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

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| 37. <i>Seshammal v. State of Tamil Nadu</i> (1972) 2 SCC 11 | 284 |
| 38. <i>N. Adithayan v. Travancore Devaswom Board</i> (2002) 8 SCC 106 | 297 |
| 39. <i>Commissioner of Police v. Acharya Jagadishwarananda Avadhuta</i>
(2004) 12 SCC 770 | 308 |
| 40. <i>Bijoe Emmanuel v. State of Kerala</i> (1986) 3 SCC 615 | 313 |
| 41. <i>Rev. Stainislaus v. State of M.P.</i> , 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

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| 42. <i>Islamic Academy of Education v. State of Karnataka</i> , JT 2003 (7) SC 1 | 319 |
| 43. <i>T.M.A. Pai Foundation v. State of Karnataka</i> , AIR 2003 SC 355 | |
| 44. <i>P.A. Inamdar v. State of Maharashtra</i> , 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)

45. *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

46. *Union of India v. Tulsiram Patel*, AIR 1985 SC 1416 : (1985) 3 SCC 398 329
47. *J.P. Bansal v. State of Rajasthan*, AIR 2003 SC 1405 (2003) 5 SCC 134
48. *Managing Director, ECIL v. B. Karunakar*, AIR 1994 SC 1074
49. *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

50. *I.R. Coelho v. State of Tamil Nadu*, AIR 2007 SC 861 : (2007) 2 SCC 1 349
51. *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461
52. *Kihoto Hollohon v. Zachillhu*, AIR 1993 SC 4120
53. *L. Chandra Kumar v. Union of India*, AIR 1997 SC 1125

IMPORTANT NOTE:

1. The students are advised to read only the books prescribed above along with legislations and cases.
2. The topics and cases given above are not exhaustive. The teachers teaching the course shall be at liberty to add new topics/cases.
3. The students are required to study the legislations as amended up-to-date and consult the latest editions of books.
4. The Question Paper shall include one compulsory question consisting of five parts out of which four parts will be required to be attempted. The question papers set for the academic years 2008 to 2010 are printed below for guidance.

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