



# MOHANLAL SUKHADIA UNIVERSITY, UDAIPUR

FACULTY OF LAW

## FIRST YEAR BACHELOR OF LAWS

(Effective from Session 2019-20)

PAPER – VII (PAPER CODE - 6006)

(PAPER NAME – CONSTITUTIONAL LAW OF INDIA)

Max. Marks: 100

Min. Marks: 36

**Note:** A. In order to ensure that students do not leave out important portions of the syllabus, examiners shall be free to repeat the questions set in the previous examination.

B. Leading cases prescribed under this paper may be read whenever they are relevant.

1. **Introductory:** Salient features of the constitution; Federalism: Preamble, Citizenship & State; Fundamental rights, directives principles and fundamental duties.
2. **Union and State Executive:** President, Governor - Election, appointment, powers, position, Prime Minister and Chief Minister and Council of ministers,
3. **Union and State Judiciary** - Supreme Court & High Court, Composition, Jurisdiction & Powers:
  - (I) Writs
  - (II) Judicial Independence
  - (III) Judicial Activism
  - (IV) Public Interest litigation
4. **Union - State Legislature** - Parliamentary system of Government, Lok Sabha, Rajya Sabha, Vidhan Sabha & Vidhan Parishad - Composition; Speaker, Chairman, Privileges, Legislative procedure.  
**Legislative Relationship** - Distribution of Legislative Powers; Administrative & Financial Relationship, Importance of VII Schedule
5. **Services under the Union and the States** - Constitutional protection of civil servants (Article 311); Constitutional Bodies - Public Service Commission of the Union & States (Article 315 to 323)
6. (a) State Liability in contracts and torts, Suits by and against the State (Article 299-300)  
(b) **Article 300-A - Property Rights**  
(b) Freedom of trade, Commerce and Inter-course (Article 301 – 307)
7. **Constitutional Bodies in India**- Public Service Commissions (as above), Election Commission (u/a 324), Finance Commission (u/a 280), National Commission for Scheduled Castes (u/a 338), National Commission for Scheduled Tribes (u/a 388-A), Special officer for Linguistic Minorities (u/a 350-B), Comptroller and Auditor General of India (u/a 148), Attorney General of India (u/a 76), Advocate General of States (u/a 165)
8. **The Panchayats and the Municipalities** – 73<sup>rd</sup> and 74<sup>th</sup> Amendments- brief introduction
9. **Emergency provisions-**
  - (I) National Emergency
  - (II) State Emergency
  - (III) Financial Emergency
10. **Amendment of the Constitution –**
  - (I) Constitutionality of ordinary law and amendment laws,
  - (II) Judicial review of amendment and Basic Structure of Constitution
  - (III) Major amendments and their constitutional values.

Omitted

Omitted

**LEADING CASES FOR EXAMINATION:**

1. Menaka Gandhi v Union of India, AIR 1978 SC 597
2. Keshvanand Bharti v. State of Kerala, AIR 1973 SC 1461
3. Indira Sawheny v.UOI, AIR 1993 SC 1789
4. K. S. Puttaswamy (Retd.) v. UOI, W.P. (Civil) No. 494 of 2012
5. Common Cause (A Regd. Society) v. UOI, W.P. (Civil) 215 of 2005

**CASES FOR READING:**

1. S.R. Bommai v. UOI, AIR 1994 SC 1918
2. People Union Civil Liberties v. UOI, 2007 (12) SCC 135
3. Unnikrishnan v. UOI, AIR 1993 SC 2178
4. Air India v. Nargesh Mirza, AIR 1981 SC 1829
5. I.R. Coelho (Dead) Through L.Rs v. State of Tamil Nadu & ors, AIR 2007 SC 137
6. Supreme Court Advocates-on-Record Association and another v. Union of India, (2016) 5 SCC 1

**BOOKS FOR STUDY:**

1. Dayal : Constitutional Law of India
2. H. M. Seervai : Constitutional Law of India
3. D.D. Basu : An Introduction to the Constitution of India
4. M.P. Jain : Constitutional Law of India
5. Shukla, V.N. : Constitution of India
6. Paras Diwan : Constitution of India
7. M.C.J. Kagzi : Constitution of India (Hindi English) Constitution of India as Amended Up to date.
8. B.K. Sharma : Introduction of Constitution of India
9. B.K. Sharma : भारत का संविधान एक परिचय
10. गंगा सहाय शर्मा - भारत का संविधान
11. जय नारायण पांडे – भारत की संवेधानिक विधि

## Constitution Law

(AD)

Act (statute)

Code → IPC, Cr. PC, CPCL  
(exhaustive)

Not exhaustive (not)  
on the subject

exhaustive on the  
subject on which it is  
made.

Law → enforced by the State (Art 12)

Parliament & Legislative assembly.

Codified Law → has sections. e.g. Hindu law.

Uncodified Law → has no sections. e.g. Law of torts,  
Muslim Law

Constitutional Law vs. Law.

<sup>Imp.</sup> Salient features  
(all remaining features)

<sup>Imp.</sup> Basic features  
(spirit of the Indian Constitution)

## Chapter - 3

### Article - 12: Fundamental Rights

Exam Tips

① Ramamma. D. Shetty ← 5-6 points

vs.  
International Airport Authority  
of India

Only the name  
of case matters.

② Ajay Hasia vs Khalid Mujib

Leading Cases

Max 2 case law

Indian Constitution  
IPC this book  
should be with  
us

Why:

⇒ Definition of State given in Article 12.

### Article - 13:

- No such law can be made which violate fundamental rights, if it does it will be violate.
- Check mechanism of Law (current laws)

Art 15, 16, 19(2)  
only for Indian citizen  
& remaining all other  
fundamental right  
Applicable for everyone  
who comes to India.

Art - 13 has 4 parts:

- 1) Existing Law → Doctrine of Severability  
→ Doctrine of Eclipse  
→ Doctrine of Writs.
- 2) State New Law
- 3) Def Law
- 4) Amendment.

- Any law which is being made is prospective not retrospective.

Retrospective :- Anything which goes in favour of accused.

The Law is official Applicable on the date when it is published or gazetted.

Krishna Madhav Menon vs State of Kerala.

A. K. Gopalan vs State of Madras.

## Doctrine of Severability:

(AD)

## Doctrine of Eclipse:

Law goes into Hibernation due to Art. 13.

Bikaji Narayan Bakras v/s State of MP.

Pvt. Buses Operator

12 March 2021

### Article - 14

Right to Equality → negative because it treats everyone equal.

Equal Protection of Laws. → Positive alike should be treated as like

↳ financial Laws It gives equal opportunities to everyone to grow.

Invalid discrimination done on basis of:-

Article - 15 → ① Religion ② Race ③ Caste ④ Sex ⑤ Place of Birth

Article - 16, 19, 20, 21 V. Imp.

V. Ind. case

Indira Gandhi case.

vs

UOI

(monday committee)

Article - 16: Related to employment & appointment.

- deals very important questions of reservations.

• Clauses

(1) Scope (2) 7 Grounds (3) Residence (4) Backward Class (4A) Promotion  
(4B) Unfilled Vacancies (5) Religious Institutions

- Reservations are compensatory benefits as said by Dr. B. R. Ambedkar.

- Only available for citizens.

16(1)(2) - 7 Grounds: Article 15 + Descent + Residence

• No discrimination can be made on the bases of these 7 grounds.

16(3) - Exemption of 16(2)

- Parliament has power to reservation based on residence.  
• 2 reasons

- Backward areas of state

(a) Accelerate development

(b) Equal opportunity to different areas of states

16(4) - State has power to reserve some posts for BC (SC/ST)

↓  
Not Adequately Represented  
(proportional participation)

- Applying when?

• 2 conditions

① Backward Class (Socially + Educationally)

② Adequate representation in services under state

[Devdasan vs UOI AIR 1964 SC 179]

[Also known as carry forward rule case]

- Before this case; the reserved seats ~~which was vacant~~ was carry forwarded to next year's opening.
- Govt. reserved 17% for SC/ST and in 1961 the total opening was 45 and there were 29 reserved seats (~~for~~ current year + previous year's carry forwarded seats). And here now the reservation % goes becomes 64%.
- In this case it was said that any reservation > 50% is invalid, means carry forward rule became invalid.

Very Imp.

[Indra Sawhney vs UOI AIR 1993 SC 477]

Mandal Case

1979 : PM Morarji Desai setup a commission whose chairperson was BP Mandal

- To investigate socially & educationally BC in India.

1980 : report was submitted; which says 3743 casts = SEBC

- Committee recommended 27% reservations in govt jobs.

1990 : PM VP Singh implemented this recommendation and 27% state has been reserved for BC.

[This was the issue which was discussed in the Indra Sawhney case]

$$9 = 6 : 3 \rightarrow 12 \text{ principles}$$

3 important principles

① 27% R = SEBC ✓

② Consigned to Appointment ✓ Promotions X

③ Reservation 50% ↑ X [except extra-ordinary circumstances]

Parliament realises that Indra Sawhney Judgment is wrong & they bought

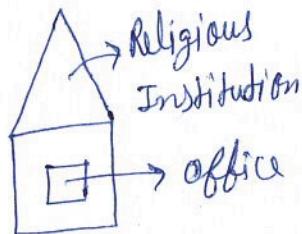
16(4A) 77th Amend Act

↳ allows reservations in promotions for SC/ST  
and secondly they bought 16(4B) 81st Amend Act

Ended 50% ceiling limit on reservations for ST & SC. (Backlog Vacancy)

## 16(5) - Reservation in religious institutions

(A3)



- office → requirement (to become a member) → Particular religion  
ex: WAAF Board
- It is not violative as per 6(1) & (2)

Recap Article 16:

- (1) - Scope → Equality of Opportunity → In matters of Employment & Appointment.
- (2) - 7 Ground → Desiridication is prohibited on the basis of these grounds.
- (3) - Reservation based on Residence
- (4) - State has power → Reservation for BC → if adequate representation is not there.
- (4A) - Promotion → reservation allowed
- (4B) - Unfilled Vacancy → 50% ↑ allowed.
- (5) - Religious institutions → reservation allowed based on religion.

13 March 2021

Article 16

Residence → to smooth workflow.  
Reservation  
Religion

Residence :- smooth workflow, language,

Article 19:

Q: Freedom of Speech & Expression (19(1)(a))

Q: Explain Article 19

## Saient feature of the constitution

1. The lengthiest constitution in the world -
  - Consist of 1,46,385 words
  - 1<sup>st</sup> constitution was written with the 395 articles; 22 parts & 8 schedule.
  
2. Establishment of sovereign, socialist, secular, Democratic Republic -
  - Secular & socialist : - 42<sup>nd</sup> Amend. 1976
  
3. Parliamentary form of govt.
  - 2 types - a) Presid. Presidential
  - b) Parliamentary
  - We follow parliamentary form.
  
4. Unique blend of rigidity & flexibility.
  - Article 368 - Amend. can be taken place & procedure.  
[Difficult constitution of the world → USA; very less amend. took place. It is a rigid constitution only 7 articles and 27 amend.]
  - In Indian constitution 104 amend.
  
5. Independent Judiciary
  - We have hierachical system : SC → HC → Lower court.
  - Judicial review [any bill which violate human right it can revoke or remove that bill]
  
6. Fundamental Right
  - Part 3 of constitution
  - 12 - 35 articles

Smallest constitution  
-State of Monaco  
-Consist of 3814 words

## Article 4:

7. Directive principles of the state policy
  - part 4 of constitution
  - In this it is said that all policies are made for welfare purpose.
  - 36 - 51 articles.
8. Fundamental Duties
  - Part IV (a)
  - 11 fundamental Duties
  - On the recommendation of Swarn Singh committee
9. Adult Suffrage
  - Part 15
  - Article 326
  - Amendment 61 by Rajeev Gandhi  
[America gave right to vote to women in 1920]
10. Single Citizenship
  - Article 5-11
  - Part II
11. Some Independent Public Agencies:
  - Election commission, UPSC etc.
12. Federation with strong centre tendency.

### Federalism

- Out of 193, 28 adopted federalism
- India is federal.
- Division of rule & power.

### Unitary

- Out of 193, 163 countries adopted unitary.
- All state's power + central power is with central govt.

## (2)

# Features / Essential elements of Federalism:-

- 1) Distribution of Powers [245-255 article]  
[In 7<sup>th</sup> schedule we have 3 list central, state & concurrent list]
- 2) Supremacy of Constitution  
[main source of make rules & regulation or power is constitution]
- 3) Written Constitution [2 type of constitution :- a) Codified b) Uncodified → [In Britain, Israel, UAE]]
- 4) Rigid Constitution (Quasi federal)
  - [• We can't modify basic structure of constitution.
  - Not easy to amend - USA] [378- Article for amend]
- 5) Supremacy & Independence of Judiciary
  - [America - Federal Court] [In SC - Supreme power]

## Provision which modify the federalism:-

- 1) Exclusive of union to legislate on matters contain in union & concurrent list.  
[Apprx 213 subject out of which 152 subject central can make rule on them] [61 state, 52 concurrent list]
- 2) Parliament Powers to legislate on the subject of state list.  
[245-255] schedule 7
  - a) Power to legislate on state list in nation interest.  
[If Rajya Sabha with majority 2/3 pass state list subject then central govt. power to make rules on it, so it will be inclusive in central list.]
  - b) Power to legislate on state list in during emergency [Article 250]
  - c) Power to legislate for state by consent  
[Article 252 : If state by mutual consent & state in written asked central govt to make rule on them]
- 3) Provision relating to proclamation of emergency & its effect
  - # [Article 352 - Nation Emergency
  - Article 356 - President's Rule
  - Article 360 - Financial Emergency]

[Best example of Article 356 is J&K]

4. Provisions which operate in the absence of law made by the parliament.  
[Ordinance → When very imp topic arise & parliament session is not going on, without informing state rules can make/made - Article 123]
5. Provision regarding amend of constitution
6. Appointment of governor. [Article 155-158]  
[Appointed by central govt.]
7. Single Citizenship  
[Article 5-11]
8. Basic unity for national unity.  
[Administrative division are govern by central govt., including ~~judiciary~~ judiciary of state is also govern by central]
9. Power of parliament for the decision of new state including area's of current state borders or change the name [Article 3]

## Preamble

उत्तराधिकार / 3 दृश्य

I<sup>st</sup> meeting 9 Dec 1946 → Sacchidanand Sinha was first president

II<sup>nd</sup> meeting 11 Dec 1946 → Dr. Rajendra Prasad (permanent president)

13 Dec 1946 → Pt. Jawahar Lal Nehru presents / Explain the mode of constitution.

22 Jan 1947 → ~~Decided~~ The mode of P. presented by Pt Nehru was accepted as Preamble of constitution.

Significance of Preamble →

Imp cases

In re Berubari Case - 1960

Keshvanand Bharti case - 1973

1976 - 42<sup>nd</sup> Amendment.

Ranbir Singh V/s UOI - 1982

↑  
[Art 14, 16 & 39]

Objects of the preamble :

- 1) Sources of constitution.
- 2) Adoption of the constitution. → [19 Nov 1949  
26 Jan 1950]
- 3) It declares the great rights & freedom.

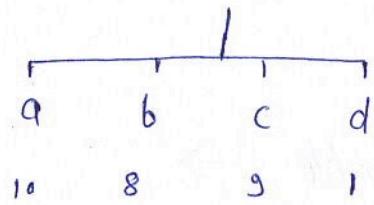
## Amendment of Preamble:

Cases of Significance of Preamble should be used here.

### Union of State : —

[Article 1 to 4] part I —

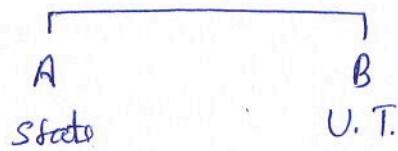
- India shall be union of States.  
↓  
taken from North America.
- State list mention in Schedule - I



Pakistan object  
for the name  
India gave up  
to USA & then two  
decided that the  
name India will  
remain same for  
Bharat

1956 7th Amendment

Schedule I



### Article 1:

- Bharat that is India shall be ~~a~~ Union of States.
- Territory of India (Schedule I)
  - a) the territories of the States
  - b) Union territories.
  - c) acquired territories

### Article 2:

- Establishment or Admission of new States.

### Article 3:

- Formation of new States and Alteration of boundaries and name of ~~any~~ states.

In re Berubari Case - 1960

## Article 4:

(4)

Citizenship :-

6 March 2021

- Constitution part 2
- Article 5 to 11

Benefits of  
citizenship is rights.  
(संविधान)

~~Article 5~~ → Citizenship at the commencement of the constitution:

Article 5 —

- Citizenship on the basis of domicile.

[UOI vs Karan Ali]

Article 6 —

- Persons who migrated to India from Pakistan.
  - [19 July 1948]
  - Permit system after this date.
  - Permit was checked on border.
  - Those who came <sup>before date</sup> were eligible to apply citizenship.
  - The person who come on some date or after date has to prove that they have intention to leave in India.

Art 7 —

- Citizenship of migrant from India to Pak.

- [1 march 1947] (goes to Pak)

- If someone left India<sup>1</sup> of this date or after that date; the citizenship became void.
- he has to apply again.

Art 8 —

- Citizenship of the persons of Indian origin residing out of India.

Art 9 —

- Persons acquiring citizenship of a foreign state not to be a citizen.

Art 10 -

- Continuance of the rights of citizenship.

Art 11 -

- Parliament to regulate the right of citizenship by law.

There is a difference b/w  
being citizen &  
being Indian