

CONSTITUTIONAL LAW, CYBER LAW, IP LAW AND PROFESSIONAL ETHICS

Unit-1: Introduction to Constitution of India.



- **Article 25- Right to Religion**
- (1) Subject to public order, morality and health and to the **other provisions of this Part**, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

- **Article 25 (2)(a)**
- Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—
- (a) regulating or restricting any **economic, financial, political or other secular activity** which may be associated with religious practice;
- Economic, political, commercial activities associated by the religion can be regulated by the state.
- Jehovah's Witness opposing war- National security Regulation.

- Article 25 (2)(b)
- (b) providing for social welfare and reform **or** the throwing open of **Hindu religious institutions of a public character** to all **classes** and **sections** of **Hindus**.
- Throwing open
- Hindu religious institutions of public character
- To all sections of Hindus
- By law
- For social welfare and social reform

- **Article 26-** Freedom to manage religious affairs
- Religious denominations or any section thereof
- Subject to public order, morality and health
 - a. to establish and maintain institutions **for** religious and charitable purposes;
 - b. to manage its own affairs in **matters of religion**;
 - c. to own and acquire movable and immovable property; and
 - d. to administer such property in accordance with law

- **Art. 27**
- No person shall be compelled to pay any **taxes**, the proceeds of which are specifically appropriated in payment of expenses **for the promotion or maintenance of any particular religion** or religious denomination.
- No person shall compelled
- Taxes
- List I & II of VII Schedule
- Not fees etc.
- Specifically appropriated for maintenance of a religion

- Art. 28
- Religious instruction in Educational institutions
 - (1) No religious instruction shall be provided in any educational institution **wholly maintained out of State funds.**
 - (2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.

(3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

- **Art. 28**
- Religious instruction in Educational institutions
 1. Wholly maintained by the state- No religious instruction
 2. Administered by the state but has been established under any endowment/ trust- can have religious instruction if the trust so desires
 3. Recognized by the state and receiving state aid – can have religious instruction
 4. No compulsion for the student to attend it

- (1) Any section of the **citizens** residing in the territory of India or any part thereof having a **distinct language, script or culture of its own** shall have the right to conserve the same.
- (2) No **citizen** shall be denied admission into **any educational institution** maintained by the State or receiving aid out of State funds on **grounds only of religion, race, caste, language or any of them**.

- Sec 29 (1)
- Citizens
- Residing in the territory of India.
 - Illegal migrants
- Distinct language, script or culture of its own
- Right to conserve
 - May be by educational institutions

- Art 30(1)
- All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.
- Only to minorities
- Only to religious or linguistic
- Educational institutions
- Any levels
- Minorities

- Establish and administer
- Read together- Can administer if established.
- Cannot have unusual Govt. control over minority educational institutions if established.
- Any law which interfere the rights of minorities to administer the educational institutions which they have established is unconstitutional

(1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether

- (1) The right to move the Supreme Court by **appropriate proceedings** for the enforcement of the rights conferred by this Part is guaranteed.
- (2) The Supreme Court shall have power to issue **directions or orders or writs**, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

- (3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).
- (4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

- **Writs**
- Certiorari
- Prohibition
- Mandamus
- Quo Warrento
- Habeas Corpus

- Laissiz faire
- India- no political democracy without economic democracy.
- Welfare state
- Borrowed from Irish Constitution
- Art 36 – 51
- Art 36- state
- Art 37

- Art 37
- The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

- **No enforceability**
- Fundamental in the governance of the country
- Duty of the state to make laws to give effect to those principles.
- **Justiciability of FR**
 - Not enforceable
 - Directions
 - Positive obligation
 - Financial crunch- reason from the side of the Govt.
 - Makers never intended to enforce DPSP
 - No mandamus to implement DPSP

- Court to bound to evolve, affirm and adopt principles of interpretation which will further and not hinder the goals set out in DPSP.
- **DPSP and FR**
- If any conflict?
- Initially- strict interpretation
- Dpsp is not enforceable
- Law made to give effect to dpsp also should comply constitutionality.
- **State of Madras V. Champakam Dorairajan**
- Order of madras Govt fixing quota for different communities

- Art 46 promoting interests of sc/st
- Dpsp is subsidiary
- Criticism – equal importance
- **B.R Ambedkar on DPSP**
- Object of framing constitution
 1. Laydown the form of political democracy
 2. To laydown the ideals of economic democracy and insist the Govt to strive these ideals of economic democracy.
- **Nehru**
- Both are important, F.R represent something static, but DPSP is dynamic.

- **Golak Nath V. State of Punjab.**
 - Both are in integral form
- **Keshavanantha Bharathi V. State of Kerala**
- Fundamental Rights case
- Art 31 C Amendment
- Saving of laws giving effect to certain directive principles
Notwithstanding anything contained in Article 13, no law giving effect to the policy of the State towards securing all or any of the principles laid down in Part IV shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14 or Article 19 and

- no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy: Provided that where such law is made by the Legislature of a State, the provisions of this Article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent Right to Constitutional Remedies

- Art 38
 - (1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.
 - (2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

- 19(1)d, 21 and 38 (2)
- Taxation- not only to raise revenue also to reduce inequality.
- **Art 39**
 - (A) Means of livelihood with 21
 - NAREGA 2005
 - (B) & (C) Distributive economic system
 - Socialistic approach
 - Taking from one and distributing is not the only mode.
 - Taking over the ownership of sick industry.
 - Nationalization

(D) Equal pay for equal work.

- Equal Remuneration Act 1976
- Immoral Traffic (Prevention), Act. Juvenile Justice Act

- **Art. 39A Free legal aid**
- Art 21
- Kerala Court fees and suit valuation Act- legal service fund
- Kerala extra court fee in case of appeal
- Legal Services Authorities Act
- **Art 40- Village panchayats**
- Democracy at the grassroots
- Local self governments
- Panchayat Raj Act

- **Art. 41 social services**
- Right to work, to education and to public assistance in case of unemployment, old age, sickness and disablement.
- Art 42- Conditions of work
- Factories Act
- Maternity Benefit Act
- Art 43- Living wage
- Art 43A Participation of workers in the management
- Art 43B- Promotion of co-operative societies
- Art 44 – Uniform Civil Code

- Right to property
- 44th Amendment 1978
- Abolition of right to property as a F.R
- Before 1978
- Art 19 (1)f and 31
- Natural law
- US Constitution V Amendment
- India- socialist impact
- Abolition of Zamindari system
- Urban planning- clearing slums

- Nationalization
- Eminent Domain
- Private property for public use, without consent of the owner, with just compensation
- 19 (1)f- Right acquire, hold and dispose property
- 19 (5)- public interest and scheduled tribe

It shall be the duty of every citizen of India—

- (a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
- (b) to cherish and follow the noble ideals which inspired our national struggle for freedom;
- c) to uphold and protect the sovereignty, unity and integrity of India;
- (d) to defend the country and render national service when called upon to do so;

(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;

(f) to value and preserve the rich heritage of our composite culture;

(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;

(i) to safeguard public property and to abjure violence;

(j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement;

(k) who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.