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CONSTITUTION OF INDIA

Sample : Articles 12 - 18

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CONSTITUTION OF INDIA [Articles 12 - 18]

INTRODUCTION

Part III, containing the Fundamental Rights, is undoubtedly the most significant provision of our Constitution. Of them, the Right to Constitutional Remedies, contained in Article 32, was termed by Dr. B R Ambedkar as the “heart and soul” of the Constitution.

INSPIRATION

Fundamental Rights, as incorporated in Part III of our Constitution, were inspired by the Bill of Rights of the US Constitution, as also by the Universal Declaration of Human Rights as declared by the United National General Assembly on Dec 10, 1948.

APPLICABILITY

While some Fundamental Rights are available only to Indian *citizens*, others are available to all ‘*persons*’, including corporations and foreign nationals.

- Only for citizens: Articles 15, 16, 19, 29, 30
- For all persons: Articles 14, 20, 21, 25, 32

PROTECTION AND SANCTITY

Article 13 of our Constitution specifically protects Fundamental Rights from legislative and executive encroachment.

Legislative and executive action in violation of Fundamental Rights is declared *null and void* by this Article by the following provisions:

Clause (1)

- All existing laws shall be void
 - to the extent they are inconsistent with this Part

Clause (2)

- **State shall not make any law**
 - **which takes away or abridges rights conferred by this Part**



- If any such law is made
 - it shall be void
 - to the extent it takes away or abridges these rights

Clause (3)

- Law in this Article includes
 - ordinance, order, by-law, rule, regulation, notification

Clause (4)

- This article shall not apply
 - to amendments under article 368

Note:

- This last clause was added
 - by the 24th Amendment Act in 1971

Landmark Case law on Article 13:

Case 1: [Shankari Prasad v. Union of India \[1951 SC\]](#)

Question:

- Whether the Constitution (First Amendment) Act 1951, which was passed by the provisional Parliament to insert articles 31A and 31B, is ultra vires and unconstitutional?

Judgment:

- "Although "law" must ordinarily include constitutional law, there is a clear demarcation between ordinary law, which is made in exercise of legislative power, and constitutional law, which is made in exercise of constituent power."
- "The terms of article 368 are perfectly general and empower Parliament to amend the Constitution, without any exception whatever. Had it been intended to save the fundamental rights from the operation of that provision, it would have been perfectly easy to make that intention clear by adding a proviso to that effect. In short, *we have here two articles each of which is widely phrased, but conflicts in its operation with the other. Harmonious construction requires that one should be read as controlled and qualified by the other.*"



- "In the context of article 13, "law" must be taken to mean rules or regulations made in exercise of ordinary legislative power and not amendments to the Constitution made in exercise of constituent power, with the result that article 13(2) does not affect amendments made under article 368."

Case 2: **Golaknath v. State of Punjab** [1967 SC]

Questions:

- Whether Amendment is a "law" within the meaning of Article 13(2)?
- Whether Fundamental Rights can be amended by Parliament?

Decision:

- The Supreme Court overruled its decision in *Shankari Prasad v. Union of India*.
- By a thin majority of 6:5, it held that a constitutional amendment under Article 368 of the Constitution was an ordinary 'law' within the meaning of Article 13(2). The majority did not believe there was any difference between ordinary legislative power of the parliament and the inherent constituent power of parliament to amend the Constitution. The majority did not agree with the view that Article 368 of the Constitution contained "power and procedure" to amend, but instead believed that the text of Article 368 only explained the procedure to amend the constitution, the power being derived from entry 97 of the List I of the VII Schedule.
- Since according to Article 13(3), Parliament could not make any law that abridges the Rights contained in Part III, a constitutional amendment, also being an ordinary law within the meaning of Article 13, could not be in violation of the fundamental rights. Therefore, all constitutional amendments thus far which were in contravention or which had made an exception to fundamental rights were said to be void.

Case 3: **Keshavanand Bharti v. State of Kerala** [1973 SC]

- The Supreme Court overruled its decision in *Golaknath v. State of Punjab*.
- By a thin majority of 7:6, it held that Parliament could amend any provision of Part III of the Constitution.
- However, it was hedged with the doctrine of Basic Structure. The Court held that any feature of the Basic Structure of the Constitution could not be altered by Parliament even under its Constituent Power.



PROTECTION AGAINST WHOM?

Article 13 protects Fundamental Rights from violative actions by the “State”.

But what is ‘State’? This term is defined in Article 12 to mean the Legislature as well as the Executive:

DEFINITION OF ‘STATE’:

- In this Part, **State** includes:
 - Government of India
 - Parliament of India
 - Government of each State
 - Legislature of each State
 - All local authorities in India
 - Other authorities in India or under control of GoI

Scope of this term “State” has been continuously expanded by the Supreme Court since 1967 through its judgments.

Chronological Development of Law on Article 12 in Supreme Court:

Case 1: 1967: [Rajasthan SEB v. Mohan Lal](#)

Question:

- Whether the Electricity Board, which was a corporation constituted under a statute primarily for the purpose of carrying on commercial activities, could come within the definition of “State” in Article 12?

Decision

- Yes. “The expression ‘other authorities’ in Article 12 will include all constitutional or statutory authorities on whom powers are conferred by law. It is not at all material that some of the powers conferred may be for the purpose of carrying on commercial activities.”

Case 2: 1975: [Sukhdev Singh v. Bhagatram Raghuvanshi](#)

Question:

- Whether the Oil and Natural Gas Commission, the Industrial Finance Corporation and the Life Insurance Corporation, each of which were public corporations set up by statutes, were authorities and therefore within the definition of State in Article 12?



Decision:

- Yes. The concept would include a public authority which “is a body which has public or statutory duties to perform and which performs those duties and carries out its transactions for benefit of the public and not for private profit. Such an authority is not precluded from making a profit for public benefit”.

Case 3: 1981: [Ajay Hasia](#) v. [Khalid Mujib Sehrawardi](#)

Question:

- Whether a college established and administered by a **society** registered under the Jammu and Kashmir Registration of Societies Act, a State?

Decision:

- Yes. The Society was an authority falling within the definition of “State” in Article 12.

Case 4: 1981: [Som Prakash Rekhi](#) v. [Union of India](#)

Question:

- Whether Bharat Petroleum Corporation was a “State” under article 12?

Decision

- Bharat Petroleum Corporation was held to be a “State” within the “enlarged meaning of Article 12”.

Case 5: 1983: [B.S. Minhas](#) v. [Indian Statistical Institute](#)

Decision:

- The Indian Statistical Institute, a registered society is an instrumentality of the Central Government and as such is an “authority” within the meaning of Article 12 of the Constitution.



Case 6: 1984: P.K. Ramachandra Iyer v. Union of India

Decision:

- Both the Indian Council of Agricultural Research (ICAR) and its affiliate, the Indian Veterinary Research Institute, were bodies as would be comprehended in the expression “other authority” in Article 12 of the Constitution.

Case 7: 1991: Chander Mohan Khanna v. NCERT

Question

- Whether the National Council of Educational Research (NCERT) was a “State” as defined under Article 12 of the Constitution.

Reasoning

- No. Since NCERT was largely an autonomous body and the activities of NCERT were not wholly related to governmental functions and that the government control was confined only to the proper utilisation of the grant and since its funding was not entirely from government resources, the case did not satisfy the requirements of the State under Article 12 of the Constitution.

Case 8: 2002: Mysore Paper Mills v. Mysore Paper Mills Officers’ Assn

Decision:

- Yes. A company substantially financed and financially controlled by the Government, managed by a Board of Directors nominated and removable at the instance of the Government and carrying on important functions of public interest under the control of the Government is “an authority” within the meaning of Article 12.

Case 9: 2002: Pradeep Kumar Biswas v. Indian Institute of Chemical Biology

Question:

- Is CSIR a State within the meaning of Article 12 of the Constitution and if it is, should this Court reverse a decision which has stood for over a quarter of a century?



Decision:

- Yes. Control of the Government in CSIR is ubiquitous. Given the fact that President of CSIR is the Prime Minister, subjugation of the Governing Body to the will of the Central Government is complete. Non-governmental contributions are a pittance compared to the massive governmental input.

Case 10: 2005: Zee Telefilms v. Union of India

Question:

- Whether BCCI a State within the meaning of Article 12 of the Constitution ?

Decision:

- No.

THE FIRST FUNDAMENTAL RIGHT: RIGHT TO EQUALITY

EQUALITY BEFORE LAW

Article 14

- State shall not deny to any **person**
 - equality before law
- State shall not deny to any **person**
 - equal protection of laws within the territory of India

SCOPE OF ARTICLE 14

- Article 14 guarantees
 - **equal treatment to persons who are equally situated**
- Unequals are not only permitted to be treated unequally
 - but also they have to be so treated
- Equal treatment to unequals
 - is nothing but inequality



- Article 14 **allows reasonable classification**
 - on an objective basis having nexus with the object to be achieved

Case Law 1: [M Nagaraj v. Union of India \[2006 SC\]](#)

- The gravamen of Article 14 is equality of treatment. Article 14 confers a personal right by enacting a prohibition which is absolute. By judicial decisions, **the doctrine of classification** is read into Article 14. The basic principle underlying Article 14 is that the law must operate equally on all persons under like circumstances. Every discretionary power is not necessarily discriminatory.
- Equality is not violated by mere conferment of discretionary power. It is violated by arbitrary exercise by those on whom it is conferred.
- Equality before the law, guaranteed by the first part of Article 14, is a negative concept while the second part is a positive concept which is enough to validate equalizing measures depending upon the fact situation.

Case Law 2: [Maneka Gandhi v. Union of India \[1978 SC\]](#)

- Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits. Article 14 strikes at arbitrariness in State action and ensures fairness and equality of-treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence.

Case Law 3: [E.P. Royappa v. State of Tamil Nadu \[1974 SC\]](#)

- From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic, while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14.



PROHIBITION OF DISCRIMINATION

Article 15(1)

- State shall not discriminate against any **citizen**
 - on grounds **only** of
 - Religion
 - Race
 - Caste
 - Sex
 - Place of birth

Clause (2)

- No citizen shall be subjected to
 - any disability, liability or restriction on these grounds only

Affirmative Action in favour of Women and Children:

Clause (3)

- This Article does not prevent the State
 - from making any *special provision*
 - *for women and children*

Affirmative Action in favour of SCs, STs and SEBCs: Introduced by the 1st Amendment Act in 1951:

Clause (4)

- This Article does not prevent the State
 - from making any special provision for
 - socially or educationally backward class of citizens
 - Scheduled Castes
 - Scheduled Tribes



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Special Provision for admission to educational institutions: Introduced by the 93rd Amendment Act in 2005:

Clause (5)

- This Article does not prevent the State
 - from making any special provision, **by law**, for any
 - socially or educationally backward class of citizens
 - Scheduled Castes
 - Scheduled Tribes
 - for their admission to educational institutions
 - including private institutions
 - whether aided or unaided by State

Exception:

- Minority educational institutions under Article 30(1)

DLA Notes on Clause (5)

- Implementation of article 15(5):
 - Central Educational Institutions (Reservation in Admission) Act, 2006

Constitutional Validity of the 93rd Amendment: [Ashok Kumar Thakur v. Union of India \[2008 SC\]](#)

Issue 1

Whether the Ninety-Third Amendment of the Constitution is against the “basic structure” of the Constitution?

Decision

The Constitution (Ninety-Third Amendment) Act, 2005 does not violate the “basic structure” of the Constitution so far as it relates to the state maintained institutions and aided educational institutions. Question whether the Constitution (Ninety-Third Amendment) Act, 2005 would be constitutionally valid or not so far as “private unaided” educational institutions are concerned, is left open to be decided in an appropriate case.



Issue 2

Whether exclusion of minority educational institutions from Article 15(5) is violative of Article 14 of Constitution?

Decision

Exclusion of minority educational institutions from Article 15(5) is not violative of Article 14 of the Constitution as the minority educational institutions, by themselves, are a separate class and their rights are protected by other constitutional provisions.

Issue 3

Whether “Creamy Layer” is to be excluded from SEBCs?

Decision

“Creamy Layer” is to be excluded from SEBCs. The identification of SEBCs will not be complete and without the exclusion of “creamy layer” such identification may not be valid under Article 15(1) of the Constitution.

Issue 4

Whether the “creamy layer” principle is applicable to Scheduled Tribes and Scheduled Castes?

Decision

“Creamy Layer” principle is not applicable to Scheduled Castes and Scheduled Tribes.

NEW PROVISION: CLAUSE (6): Introduced by the 103rd Amendment Act of 2019

- This article or articles 19(1)(g) or 29(2) do not prevent the State
- (a)
- from making any special provision



- for advancement of any **economically weaker sections of citizens**
- other than classes mentioned in clauses (4) and (5)

(b)

- from making any special provision
 - for advancement of economically weaker sections of citizens other than classes mentioned in clauses (4) and (5)
 - for their admission to educational institutions
 - including private educational institutions
 - whether aided or unaided by State
 - other than minority educational institutions referred in article 30(1)
- which in case of reservation
 - would be in addition to the existing reservations and
 - **subject to a maximum of 10% of total seats in each category**

Explanation

- "economically weaker sections"
 - shall be such as may be notified by the State
 - on the basis of family income and other indicators of economic disadvantage

DLA Notes on Clause (6)

Note 1

- Clause (6) was inserted
 - by the **103rd Amendment Act in 2019**

Note 2

- The Constitution 103rd Amendment Act 2019
 - enables reservation in educational institutions to economically weaker sections of citizens



Note 3

- This amendment
 - received assent of the President on 12 January 2019 and
 - **came into force on 14 January 2019**

EQUALITY OF OPPORTUNITY IN APPOINTMENTS AND PROMOTIONS:

Article 16(1)

- There shall be equality of opportunity for all **citizens**
 - in matters of employment or appointment
 - to any office under State

Article 16(2)

- No citizen shall be discriminated against
 - in employment or office under State on grounds **only** of
 - Religion
 - Race
 - Caste
 - Sex
 - Descent
 - Place of birth
 - Place of residence

Article 16(3)

- Parliament may by law
 - make **residence** within a State/UT
 - a condition for employment or appointment
 - to an office under govt of that State/UT

RESERVATIONS IN INITIAL APPOINTMENTS:

Article 16(4)

- This Article does not prevent the State
 - from making a provision for **reservation of appointment**
 - in favour of a **backward class** of citizens



- which is **not adequately represented** in services under State

Supreme Court on Article 16(4): [Indra Sawhney v. Union of India \[1992\]](#)

Issue 1

- Whether clause (4) of Article 16 is an exception to clause (1)?

Decision

- Clause (4) of Article 16 is not an exception to clause (1). It is an instance and an illustration of the classification inherent in clause (1).

Issue 2

- Whether Article 16(4) is exhaustive of the concept of reservations in favour of backward classes?

Decision

- Article 16(4) is exhaustive of the subject of reservation in favour of backward class of citizens, as explained in this judgment.

Issue 3

- Whether Article 16(4) is exhaustive of the very concept of reservations? Whether clause (1) of Article 16 does not permit any reservations?

Decision

- Reservations can also be provided under clause (1) of Article 16. It is not confined to extending of preferences, concessions or exemptions alone. These reservations, if any, made under clause (1) have to be so adjusted and implemented as not to exceed the level of representation prescribed for 'backward class of citizens' – as explained in this Judgment.

Issue 4



- Meaning of the expression “backward class of citizens” in Article 16(4).

Answer

- A caste can be and quite often is a social class in India. If it is backward socially, it would be a backward class for the purposes of Article 16(4). Among non- Hindus, there are several occupational groups, sects and denominations, which for historical reasons, are socially backward. They too represent backward social collectivities for the purposes of Article 16(4).

Issue 5

- ‘Means-test’ and ‘creamy layer’?

Answer

- ‘Creamy layer’ can be, and must be excluded.

Issue 6

- To what extent can the reservation be made? Whether the 50% rule enunciated in Balaji a binding rule or only a rule of caution or rule of prudence?

Decision

- The reservations contemplated in clause (4) of Article 16 should not exceed 50%. While 50% shall be the rule, it is necessary not to put out of consideration certain extraordinary situations inherent in the great diversity of this country and the people.

Issue 7

- Whether clause (4) of Article 16 provides reservation only in the matter of initial appointments/direct recruitment or does it contemplate and provide for reservations being made in the matter of promotion as well?

Decision

- **Article 16(4) does not permit provision for reservations in the matter of promotion.** This rule shall, however, have only prospective operation and shall not affect the promotions already made.



Issue 8

- Desirability of a Permanent Statutory Body to Examine Complaints of Over-inclusion/ Under-inclusion

Decision

- The Government of India and the State Governments have the power to, and ought to, create a permanent mechanism - in the nature of a Commission - for examining requests of inclusion and complaints of over-inclusion or non-inclusion in the list of OBCs and to advise the Govt, which advice shall ordinarily be binding upon the Govt.

RESERVATIONS IN PROMOTIONS: Introduced by the 77th Amendment Act of 1995

Article 16(4A)

- This Article does not prevent the State
 - from making a provision for **reservation in matters of promotion**
 - with consequential seniority
 - in favour of **SCs and STs**
 - which are **not adequately represented** in services under State

Note:

- Clause (4A) was inserted
 - by the **77th Amendment Act in 1995**

Reserved Unfilled Vacancies as Separate Class of Vacancies: Introduced by the 81st Amendment Act of 2000

Article 16(4B)

- This Article does not prevent the State
 - from considering any reserved unfilled vacancies of a year
 - as separate class of vacancies for subsequent years
- Such vacancies are not to be considered
 - for determining ceiling of 50% reservation
 - for those subsequent years



Supreme Court on Articles 16(4A) and 16(4B): [M. Nagaraj v. Union of India \[2006\]](#)

- The constitutional amendments by which Articles 16(4-A) and 16(4-B) have been inserted flow from Article 16(4). They do not alter the structure of Article 16(4).
- They retain the controlling factors or the compelling reasons, namely, backwardness and inadequacy of representation which enables the States to provide for reservation keeping in mind the overall efficiency of the State administration under Article 335.
- They do not obliterate any of the constitutional requirements, namely, ceiling limit of 50% (quantitative limitation), the concept of creamy layer (qualitative exclusion), the sub-classification between OBCs on one hand and SCs and STs on the other hand , the concept of post-based roster with inbuilt concept of replacement.
- *The State concerned will have to show in each case existence of the compelling reasons, namely, backwardness, inadequacy of representation and overall administrative efficiency before making provision for reservation.*
- The impugned provision is an enabling provision. The State is not bound to make reservation for SCs/STs in matters of promotions. However, if they wish to exercise their discretion and make such provision, *the State has to collect quantifiable data showing backwardness of the class and inadequacy of representation of that class in public employment in addition to compliance with Article 335.*
- It is made clear that even if the State has compelling reasons, the State will have to see that its reservation provision does not lead to excessiveness so as to breach the ceiling limit of 50% or obliterate the creamy layer or extend the reservation indefinitely.

RESERVATION FOR ECONOMICALLY WEAKER SECTIONS OF CITIZENS:

NEW PROVISION : ARTICLE 16(6): **Introduced by the 103rd Amendment Act of 2019**

- This article does not prevent the State
 - from making reservation of appointments
 - in favour of economically weaker sections of citizens other than classes mentioned in clause (4)
 - in addition to existing reservation and subject to a maximum of 10% of posts in each category



Note 1

- Clause (6) was inserted
 - by the 103rd Amendment Act in 2019

Note 2

- The Constitution 103rd Amendment Act 2019
 - enables reservation in public appointments to economically weaker sections of citizens

ABOLITION OF UNTOUCHABILITY

Article 17

- Untouchability is abolished
 - Its practice in any form is forbidden
- Enforcement of any disability arising out of untouchability
 - shall be an offence, punishable by law

Enactments under article 17:

- [Protection of Civil Rights Act 1955](#)
- SCs and STs (Prevention of Atrocities) Act 1989

ABOLITION OF TITLES

Article 18

- State shall not confer any title
 - except for military or academic distinction
- No citizen of India shall accept
 - any title from any foreign State

Note:

- Bharat Ratna, Padma Vibhushan etc. are National Awards and not Titles
- These should not be prefixed and suffixed

Source: [Balaji Raghavan v. Union of India \[1996 SC\]](#)
