

**SOS POLITICAL SCIENCE & PUBLIC ADMINISTRATION**  
**M. A POLITICAL SCIENCE IV SEM**  
**HUMAN RIGHTS IV SEM (402)**

**UNIT-IV**

**TOPIC NAME -CONSTITUTIONAL & LEGAL PROVISION**

**Introduction**

**Constitutional law** is a body of law which defines the role, powers, and structure of different entities within a state, namely, the executive, the parliament or legislature, and the judiciary; as well as the basic rights of citizens and, in federal countries such as the United States and Canada, the relationship between the central government and state, provincial, or territorial governments.

Not all nation states have codified constitutions, though all such states have a *jus commune*, or law of the land, that may consist of a variety of imperative and consensual rules. These may include customary law, conventions, statutory law, judge-made law, or international rules and norms. Constitutional law deals with the fundamental principles by which the government exercises its authority. In some instances, these principles grant specific powers to the government, such as the power to tax and spend for the welfare of the population. Other times, constitutional principles act to place limits on what the government can do, such as prohibiting the arrest of an individual without sufficient cause. In most nations, such as the United States, India, and Singapore, constitutional law is based on the text of a document ratified at the time the nation came into being. Other constitutions, notably that of the United Kingdom,<sup>[1][2]</sup> rely heavily on unwritten rules known as constitutional conventions; their status within constitutional law varies, and the terms of conventions are in some cases strongly contested.

The **Constitution of India** (IAST: *Bhāratīya Saṃvidhāna*) is the supreme law of India.<sup>[3][4]</sup> The document lays down the framework demarcating fundamental political code, structure, procedures, powers, and duties of government institutions and sets out fundamental rights, directive principles, and the duties of citizens. It is the longest written constitution of any country on earth.<sup>[b][5][6][7]</sup> B. R. Ambedkar, chairman of the drafting committee, is widely considered to be its chief architect.

**Means of provision-**

A provision is an amount that you put in aside in your accounts to cover a future liability. The purpose of a provision is to make a current year's balance more accurate,

There may be costs which could, to some extent, be accounted for in either the current or previous financial year. These costs that distinctly belong to a specific year statement could be misleading if accounted for in the future.

A provision is not a form of saving, even though it is an amount that is put aside for a future plausible cost or obligation. Provisions resulting impact is a reduction in the company's equity.

When accounting, provisions are recognized on the balance sheet and then expensed on the income statement.

process, which requires approval by both the U.S. Congress and ratification by the states.

Consider, for instance, the key provisions in the first article of the U.S. Constitution. These deal with legislative powers. Section 8, Clause 1, of the first article speaks to the right of Congress to collect taxes, duties, imports and excises. In addition, Congress is tasked with paying debts and providing for the common defence and the general welfare of the nation.

This is a key constitutional provision, and it cannot be changed or altered by a court of law unless the process outlined in the Constitution is followed. Regardless of which case law may arise that's tangential to this provision, the facts of the provision itself will never be altered. Congress will always have the right to collect taxes, pay debts and provide for the common defence.

## **PREAMBLE**

The Preamble contains the essence of the Constitution and reflects the ideals and aims of the people. The Preamble starts by saying that we, the people of India, give to ourselves the Constitution. The source of the Constitution is thus traced to the people, i.e. men and women of India, irrespective of caste, community, religion or sex. The makers of the Constitution were not satisfied with mere territorial unity and integrity.

If the unity is to be lasting, it should be based on social, economic and political justice. Such justice should be equal for all. The Preamble contains the goal of equality of status and opportunity to all citizens. This particular goal has been incorporated to give equal rights to women and men in terms of status as well as opportunity.

## **Political Rights**

Even though the fact that women participated equally in the freedom struggle and, under the Constitution and law, have equal political rights as men, enabling them to take part effectively in the administration of the country has had little effect as they are negligibly represented in politics. There were only seven women members in the Constituent Assembly and the number later decreased further. Their representation in the Lok Sabha is far below the expected numbers. This has led to the demand for reservation of 33% seats for women in the Lok Sabha and VidhanSabhas Political empowerment of women has been brought by the 73rd and 74th Amendment which

reserve seats for women in Gram Panchayats and Municipal bodies. Illiteracy, lack of political awareness, physical violence and economic dependence are a few reasons which restrain women from taking part in the political processes of the country.

## **Economic Rights**

At hand there has been series of legislation conferring equal rights for women and men. These legislations have been guided by the provisions of the fundamental right sand Directive Principles of State Policy. Here again there is a total lack of awareness regarding economic rights amongst women. Laws to improve their condition in matter serrating to wages, maternity benefits, equal remuneration and property/succession have been enacted to provide the necessary protection in these areas.

## **Social justice**

For providing social justice to women, the most important step has been codification of some of the personal laws in our country which pose the biggest challenge in this context. In the area of criminal justice, the gender neutrality of law worked to the disadvantage of a woman accused because in some of the cases it imposed a heavy burden on the prosecutor, for e.g. in cases of rape and dowry. Certain areas like domestic violence and sexual harassment of women at the workplace were untouched, unsought of. These examples of gender insensitivity we retackled by the judiciary and incorporated into binding decisional laws to provide social Although a Uniform Civil Code is still a dream in spite of various directions of the Court, the enactment of certain legislations like the Pre-Natal Diagnostic Techniques(Prevention of Misuse) Act and the Medical Termination of Pregnancy Act prevent the violation of justice and humanity right from the womb. In spite of these laws, their non-implementation, gender insensitivity and lack of legal literacy prevent the dream of the Constitution makers from becoming a reality. They prevent the fulfillment of the objective of securing to each individual dignity, irrespective of sex, community or place of birth.

## Fundamental rights

are those rights which are essential for intellectual, moral and spiritual development of individuals. As these rights are fundamental or essential for existence and all-round development of individuals, hence, it's called as 'Fundamental' rights according to Nad Chaudhary. These are enshrined in Part III (Articles 12 to 35) of the Constitution of India. These include individual rights common to most, such as, equality before the law, freedom of speech and freedom of expression Religious and cultural freedom, Freedom of assembly (peaceful assembly) Freedom of religion (freedom to practice religion), right to constitutional remedies for the protection of civil rights by means of writs such as Habeas Corpus, Mandamus, Prohibition, Certiorari and Quo Warrantor.

Fundamental rights apply universally to all citizens, irrespective of race, birthplace, religion, caste or gender. The Indian Penal Code and other laws prescribe punishments for the violation of these rights, subject to the discretion of the judiciary. Though the rights conferred by the constitution other than fundamental rights are also valid rights protected by the judiciary, in case of fundamental rights violations, the Supreme Court of India can be approached directly for ultimate justice as per Article 32. The Rights have their origins in many sources, including England's Bill of Rights, the United States Bill of Rights and France's Declaration of the Rights of Man. There are six fundamental rights recognised by the Indian constitution:

1. Right to equality (Articles. 14-18)
2. Right to Freedom (Articles. 19-22)
3. Right Against exploitation (Articles. 23-24)
4. Right to Freedom of Religion (Articles. 25-28)
5. Cultural and Educational Rights (Articles. 29-30), and
6. Right to Constitutional Remedies (Articles. 32-35)

1. The **right to equality** includes equality before the law, the prohibition of discrimination on grounds of religion, race, caste, gender or place of birth, equality of opportunity in matters of employment, the abolition of untouchability and abolition of titles.

2. The **right to freedom** includes freedom of speech and expression, assembly, association or union or cooperatives, movement, residence, and right to practice any profession or occupation.

3. The **right against exploitation** prohibits all forms of forced labour, child labour and trafficking of human beings.

4. The **right to freedom of religion** includes freedom of conscience and free profession, practice, and propagation of religion, freedom to manage religious affairs, freedom from certain taxes and freedom from religious instructions in certain educational institutes.

5. The **Cultural and educational Rights** preserve the right of any section of citizens to conserve their culture, language or script, and right of minorities to establish and administer educational institutions of their choice.

6. The **right to constitutional remedies** is present for enforcement of fundamental rights.

The *right to privacy* is an intrinsic part of Article 21 (the Right to Freedom) that protects the life and liberty of the citizens.

The right to privacy is the newest right assured by the Supreme Court of India. It assures the people's data and personal security

Fundamental rights for Indians have also been aimed at overturning the inequalities of pre-independence social practices. Specifically, they have also been used to abolish untouchability and thus prohibit discrimination on the grounds of religion, race, caste, sex, or place of birth. They also forbid trafficking of human beings and forced labour (a crime). They also protect cultural and educational rights of religious and linguistic minorities by allowing them to preserve their languages and also establish and administer their own education institutions. They are covered in Part III (Articles 12 to 35) of the Constitution of India

### **Directive principles-**

are the guidelines or 15 principles given to the federal institutes governing the state of **India**, to be kept in citation while framing laws and policies. These provisions, contained in Part IV(Article 36–51) of the Constitution of India, are not enforceable by any court, but the principles laid down there in are considered in the governance of the country, making it the duty of the State<sup>[1]</sup> to apply these principles in making laws to establish a just society in the country. The principles have been inspired by the Directive Principles given in the Constitution of Ireland which are related to social justice, economic welfare, foreign policy, and legal and administrative matters.

Directive Principles are classified under the following categories economic and socialistic, political and administrative, justice and legal, environmental, protection of monuments, peace and security.

### **IMPORTANT CONSTITUTIONAL AND LEGAL PROVISIONS FOR WOMEN IN INDIA**

The principle of gender equality is enshrined in the Indian Constitution in its Preamble, Fundamental

Rights, Fundamental Duties and Directive Principles. The Constitution not only grants equality to women, but

also empowers the State to adopt measures of positive discrimination in favour of women. Within the

framework of a democratic polity, our laws, development policies, Plans and programmes have aimed at

women's advancement in different spheres. India has also ratified various international conventions and

human rights instruments committing to secure equal rights of women. Key among them is the ratification of

the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) in 1993.

## **1. CONSTITUTIONAL PROVISIONS**

The Constitution of India not only grants equality to women but also empowers the State to adopt measures

of positive discrimination in favour of women for neutralizing the cumulative socio economic, education and

political disadvantages faced by them. Fundamental Rights, among others, ensure equality before the law

and equal protection of law; prohibits discrimination against any citizen on grounds of religion, race, caste,

sex or place of birth, and guarantee equality of opportunity to all citizens in matters relating to employment.

Articles 14, 15, 15(3), 16, 39(a), 39(b), 39(c) and 42 of the Constitution are of specific importance in this

### **Constitutional Privileges**

(i) Equality before law for women (Article 14)

(ii) The State not to discriminate against any citizen on grounds only of religion, race, caste, sex, place of

birth or any of them (Article 15 (i))

(iii) The State to make any special provision in favour of women and children (Article 15 (3))

(iv) Equality of opportunity for all citizens in matters relating to employment or appointment to any office

under the State (Article 16)

(v) The State to direct its policy towards securing for men and women equally the right to an adequate

means of livelihood (Article 39(a)); and equal pay for equal work for both men and women (Article

39(d))

(vi) To promote justice, on a basis of equal opportunity and to provide free legal aid by suitable legislation

or scheme or in any other way to ensure that opportunities for securing justice are not denied to any

citizen by reason of economic or other disabilities (Article 39 A)

(vii) The State to make provision for securing just and humane conditions of work and for maternity relief

(Article 42)

(viii) The State to promote with special care the educational and economic interests of the weaker sections

of the people and to protect them from social injustice and all forms of exploitation (Article 46)

(ix) The State to raise the level of nutrition and the standard of living of its people (Article 47)

(x) To promote harmony and the spirit of common brotherhood amongst all the people of India and to

renounce practices derogatory to the dignity of women (Article 51(A) (e))

(xi) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled

Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every

Panchayat to be reserved for women and such seats to be allotted by rotation to different

constituencies in a Panchayat (Article 243 D(3))

(xii) Not less than one- third of the total number of offices of Chairpersons in the Panchayats at each level

to be reserved for women (Article 243 D (4))

(xiii) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled

Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every

Municipality to be reserved for women and such seats to be allotted by rotation to different

constituencies in a Municipality (Article 243 T (3))

(xiv) Reservation of offices of Chairpersons in Municipalities for the Scheduled Castes, the Scheduled Tribes

and women in such manner as the legislature of a State may by law provide (Article 243 T (4))

## LABOUR RIGHTS: CHILD LABOUR AND PROTECTING WORKING CHILDREN

Not all working children perform activities that can be defined as child labour, yet there is a dominant view that all child work is somehow problematic. Children should indeed be protected from labour activities that are exploitative, harmful to their physical and mental development, and are an affront to their dignity. But in countries where it is a given that children will work, and where the economic conditions which push children to work in the first place are expected to last, is a blanket ban the best option for upholding children's interests? How can States reduce the risk of abuse and exploitation of working children? And what benefits would formalising and regulating children's labour activities have?

### point on prohibition

The case for eradicating labour performed by children is a no-brainer. Simply put, it is both a **cause and consequence of poverty**. It is most prevalent in developing countries, particularly in rural areas, where extreme poverty, lack of job opportunities for adults, and poor access to schools perpetuate the need for families to send children to work. Gender, caste and ethnicity are also factors that make child labour more common among certain population groups, as entrenched discrimination on these grounds determines education and employment opportunities. With regard to education, if children are working it is likely that this will somehow interfere with their schooling or vocational training - a means of acquiring qualifications and skills that enables upward social mobility in adulthood through employment in skilled labour. A population that is uneducated, unqualified, and low paid will not lift a country from underdevelopment; instead, it will repeat the vicious cycle of poverty.

The **abolitionist movement therefore seeks a blanket removal** of all children under the age of 15 (or 14 in developing countries) from all salaried occupations - a standard set by the International Labour



Organization (ILO). This approach is grounded not only in ensuring a country's development; but in guaranteeing children's rights are respected. Precisely from a rights-based perspective, labour performed by children affects a number of their rights, most notably the right to health and protection from abuse and exploitation when the form of labour is mentally or physically dangerous to a child, and the right to education when the work prevents them from attending school or compels them to drop out.

The **role of education in eradicating child labour** should not be underestimated. Activists suggest using the right to education and stronger domestic laws for its implementation as a way of fighting child labour. Introducing free basic education, ensuring schools are within a reasonable distance from home, and offering sufficient subsidies to families of limited resources are some of the options to encourage parents to send their children to school, rather than work.

Development practitioners generally argue that national economic development will eventually **remove the causes of child labour** (despite the contrary opinion that growth actually increases the demand for child workers). But in countries where poor economic conditions which push children to work in the first place are expected to continue, is a blanket ban the best way to advance children's interests? Prohibition should indeed target activities that affect children's health and personal development; but imposing an outright ban on all child work leaves open the possibility that children will only go back to performing the same labour activities, and **risk becoming part of the illegal economy** where abuse and exploitation are most prevalent. This consideration calls for a more nuanced approach to protecting children's rights in the context of child labour.

## **IMPORTANCE-**

The Constitution of India establishes a federal system of government. It contains all the features of the Federation.

1) Three levels of Government - The Central Government, State Governments and Urban and rural local self Governments.

2)The Power is divided between the three-tier system of Government. Schedule VII of the Constitution provides for three list Union list (on which Parliament makes laws), State List(on which state legislatures make laws) and Concurrent List(on which both the parliament and state legislatures can make laws). The State legislature Provide the Panchayats and Municipalities with such powers and authorities as may be necessary to enable them to function as self-government.

3)Though the Constitution is amenable to change some fundamental provisions of the constitution cannot be amended by either level of Government single-handedly. It requires Special Majority of the Parliament and ratification by half of the total states.

4) The Judiciary is Independent and all the disputes between states and union or interstates disputes are dealt with by the Supreme Court.

5) The central and the state government generate revenue by levying the tax which is expressly mentioned by the Constitution. There are separate consolidated funds for Center and States.

