

CONSTITUTIONAL PROVISIONS RELATING TO SERVICE MATTERS

BASIC STRUCTURE OF CONSTITUTION

AND

Definition of State

Ingredients of State:

- Territory
- Population
- Sovereignty
- Government

Organs of State

- i. Legislature
- ii. Judiciary
- iii. Executive

Definition of Law

- Salmond – “ The Law may be defined as the body of Principles recognized and applied by the State in the administration of Justice. In other words, the law consists of rules recognized and acted on by Courts of Justice”
- Holland – “ Law is a general rule of external human action enforced by a sovereign political authority”
- Austin – “ Law is a command of the sovereign”
- Oxford Dictionary – “ The body of rules, whether proceeding from formal enactment or from custom, which a particular state or community recognizes as binding upon its members or subjects”

Types of Law:

a. Public Law:

- i. Constitutional Law
- ii. Admn Law
- iii. Criminal Law

b. Private Law:

- i. Law of persons
- ii. Law of property
- iii. Law of obligations
 - a) Contract
 - b) Quasi-Contract
 - c) Tort
- iv. Substantive Law vs. Procedural Law

DEFINITION OF CONSTITUTIONAL LAW

- ✘ Constitutional law is a body of laws, which defines the role, powers, and structure of different entities within a State, namely, the Executive, the Parliament, the Legislature, and the Judiciary; as well as the basic rights of citizens and, in federal countries, the relationship between the central govt. and state, provincial, and territorial govts.

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- ✘ All nations and states, have written constitutions.
 - ✘ The Constitution of India is the most voluminous constitution in the world.
 - ✘ It not only defines the relationship between the organs of the State, but also it has laid down the Fundamental Rights of the citizens, the Directive Principles of the State Policy, the Fundamental Duties, the hierarchy of the courts and their powers, relations between Centre and States, etc.

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- ✘ It also deals with the appointment of Comptroller and Auditor General of India, appointment of the Advocate General for the States, powers of the Governor of a State. It also deals with the State Legislature, the State Judiciary, and Subordinate Courts, the Union Territories, the Panchayats, the Municipalities, etc.

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- ✘ It also laid down in detail the relationship between the Union and the State, including the legislative relation and administrative relation.
 - ✘ It also deals with finance, property, contracts, and suits, by and against the States.

PREAMBLE TO THE CONSTITUTION

- ✘ The Constitution of India has a glorious Preamble, which reads as follows:
- ✘ **WE, THE PEOPLE OF INDIA**, having solemnly resolved to constitute India into a **SOVEREIGN ,SOCIALIST, SECULAR, DEMOCRATIC, REPUBLIC** and to secure to all its citizens:
- ✘ **JUSTICE**, social, economic and political;
- ✘ **LIBERTY** of thought, expression, belief, faith and worship;
- ✘ **EQUALITY** of status and of opportunity; and to promote among them all;
- ✘ **FRATERNITY** assuring the dignity of the individual and the unity and integrity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this 26th day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

BASIC STRUCTURE OF THE CONSTITUTION

- ✘ The objectives specified in the Preamble constitute the basic structure of our constitution, which cannot be amended in exercise of the power under Article 368.
- ✘ The concept of basic structure, although enshrined in the Preamble, yet it was explicitly declared to be the basic structure in the following cases:
 - i. Keshav Anand Bharati v State of Kerala, 1973
 - ii. Indira Gandhi v Raj Narayan, 1975.
 - iii. Minerva Mills v UOI, 1980

COMPONENTS OF BASIC STRUCTURE

1. Socialism
2. Secularism and freedom of conscience and religion.
3. Republican Democracy/Sovereign Democratic Republic
4. Pluralism
5. Federal Structure
6. Judicial Review and Independence of Judiciary (Minerva Mills case).
7. Preamble as Basic Structure (Keshav Anand Bharati v State of Kerala: Excelwear vs. Union of India, 1979)

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8. Parliamentary form of Govt.
 9. The six freedoms of:
 10. Speech and expression, assembly, to form associations, freedom of movement, freedom to reside and settle, and freedom of profession, occupation, trade, and business, can however, be subjected to reasonable restrictions under clauses 2-6 of Article 19.

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11. Supremacy of the constitution.
 12. Separation of powers between the legislature, executive, and the judiciary.
 13. The mandate to build a welfare state.
 14. Unity and integrity of the nation.
 15. Sovereignty of India.

16. Fundamental Rights (minority view of 6 judges in Keshavanand Bharati).

17. Equality of status and opportunity of individuals.

18. Rule of Law.

- ✘ In essence, parliament's power to amend the constitution is not absolute and the Supreme Court is the final arbiter over and interpreter of all constitutional amendments.
- ✘ Laws that transgress the basic structure are likely to be struck down by the Supreme Court.

CONSTITUTIONAL PROVISIONS RELATING TO PUBLIC SERVICES

- ✘ “With the independence of our country, the responsibilities of the services have become onerous. They may make or mar the efficiency of the machinery of administration so vital for the peace and progress of the country. A country without an efficient civil services cannot progress inspite of the earnestness of the people at the helm of affairs in the country. Whatever democratic institutions exist, experience has shown, that it is essential to protect the public service as far as possible from political and personal influence.”
- ✘ P.P. Subbaraya – Constituent Assembly Debates, 962

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- ✘ “Have you read the history? (the history of safeguards for the Indian Civil Services) or you do not care for recent history after you began to make history. If you do that, then I tell you we have a dark future. Learn to stand on your pledged word; and, also as a man of experience. I tell you do not quarrel with the instruments with which you want to work. Have morals no place in the new Parliament?... Today, my Secretary can write a note opposed to my views. I have given that freedom to all my Secretaries. I have told them if you do not give your honest opinion for fear that it will displease your Minister, please then you had better go. I will bring another Secretary. I will never be displeased over a frank expression of opinion. That is what the Britishers were doing with the Britishers. We are now sharing the responsibility. You have agreed to share responsibility. Many of them with whom I have worked, I have no hesitation in saying that they are patriotic, as loyal and as sincere as myself.?”
 - ✘ Sardar Vallabhai Patel CAD Vol X, P 150

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- ✘ The above quotations take us to one conclusion, namely, that if a Civil Service is to command the confidence of the people, it must be a non-political Civil Service discharging its duty fearlessly, no matter which political party is in power for the time being.
 - ✘ The biggest test of a Civil Service efficiency and utility lies in the fact as to how people feel about it.

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- ✘ Prof. Finer in his book on “**Comparative Govt.** “ records that two American political scientists observed that in the UK “Four-Fifths of the respondents believed that the Civil Servants would treat them fairly.”
 - ✘ There can be no greater praise for a Civil Service than to have this said about it.

RECRUITMENT AND REGULATION OF CONDITIONS OF SERVICE – ARTICLE 309

- ✘ Article 309 empowers parliament and the State Legislature to regulate the recruitment and the conditions of service of the persons appointed to public services and posts under the Union and the States, respectively.
- ✘ **Rule Making Power:** Until provision in that behalf is made by an appropriate legislature under Article 309, the President and the Governors may make rules for regulating the recruitment and conditions of service of persons appointed to such services and posts.

SERVICES UNDER THE UNION AND THE STATES

- ✘ The Constitution has made specific provisions governing the Services under the Union and the States.
- ✘ Before we go into the provisions of the COI, we had better remember that the **Doctrine of Pleasure** as it was evolved in UK governs the Services under the Union and the States.
- ✘ The **Doctrine of Pleasure** codified in Article 310(I) of the COI is a legacy of the English.

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- ✘ It means that a servant of the Crown holds office during the pleasure of the sovereign.
- ✘ But in order to protect the Civil Servants against the political interferences, Article 311 introduces certain safeguards.
- ✘ Moreover, a specific contract can override the **Doctrine of Pleasure.**
- ✘ Where this doctrine applies there are no limitations other than those flowing from the Constitution or from rules or orders from the Constitution.

RESTRICTIONS ON DOCTRINE OF PLEASURE

1. The pleasure of the President or Governor is controlled by provisions of Article 311, so the field covered by Article 311 is excluded from the operation of the Doctrine of Pleasure. The pleasure must be exercised in accordance with the procedural safeguards provided by Article 311.
2. Constitutional posts like Supreme Court/High Court Judges, Auditor General of India/Chairman and Member of Public Service Commissions are exempt.
3. The Doctrine of Pleasure is submit to the Fundamental Right.

Article 311

CONSTITUTIONAL SAFEGUARDS TO CIVIL SERVANTS

ARTICLE 311 – PRINCIPLES OF NATURAL JUSTICE

- ✦ Article 311 provides the following safeguards to civil servants against any arbitrary dismissal from their posts:
 1. No person holding a civil post under the Union or the State shall be dismissed or removed by authority subordinate to that by which he was appointed [Art. 311 (1)].
 2. No such person shall be “dismissed”, “removed” or “reduced” in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

ARTICLE 311 AND CIVIL POST

- ✘ Article 311 is applicable to only one class of public officers, i.e., those who hold a civil post under the Union or the States. Those safeguards are not available to defence personnel or even a civilian employee in defence service. They can be dismissed from service without assigning any reason. The protection of Article 311 is not available to military personnel who are governed by the Army Act.

NATURAL JUSTICE – REASONABLE OPPORTUNITY – ART. 311(2)

- ✘ In cases of “dismissal,” “removal,” or “reduction in rank,” there has to be a reasonable opportunity. The Supreme Court held that the reasonable opportunity includes:
 1. An opportunity to deny his guilt and establish his innocence, which can be only done if he is told what the charges against him are and the allegation on which such charges are based;

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2. An opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence, and also;
3. An opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do so if the competent authority, after the enquiry is over and after applying his mind to the gravity of the charges, tentatively proposes, to inflict one of the three major punishments and communicates the same to the Govt. Servant.
 - ✘ (Khemchand vs. UOI – AIR 1958 SC 300.)
 - ✘ However, as per the 42nd amendment, the opportunity given after the punishment is proposed has been taken away. Now, they have only one opportunity, i.e., at the stage of enquiry.

EXCEPTIONS TO RULE OF REASONABLE OPPORTUNITY

1. Where a person is dismissed or reduced in rank on the ground of misconduct, which has led to conviction or criminal charges;
 2. Where it is impracticable to give the civil servant an opportunity to defend himself, but the authority taking action against him shall record the reasons for such action;
 3. Where in the interest of the security of State, it is not expedient to give such an opportunity to the civil servant.
- ✘ [Union of India vs Tulsiram Patel (1985) 3 SCC 398.]

ARTICLE 311 - PUNISHMENT

- ✘ The protection of Art. 311 is available only when the “dismissal, removal, or reduction in rank is by way of punishment”. The main question thereof, is to determine as to when an order for termination of service or reduction in rank amounts to punishment. In *Purshottam Lal Dhingra v. Union of India*, the Supreme Court has laid down two tests to determine whether the termination is by way of punishment -:
 1. Whether the servant had a right to hold the post or the rank;
 2. Whether he has been visited with evil consequences.

ALL INDIA SERVICES – ARTICLE 312

- ✘ Article 312 empowers Parliament to create new All India Services common to the Union and the States. Parliament can create such services if the Rajya Sabha by a resolution supported by not less than two-thirds of the members present and voting declares that it is necessary and expedient in the national interest to create such service.

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- ✘ At the commencement of the constitution, there were two All India Services, viz, the Indian Civil Service and the Indian Police, which were deemed to have been created by the COI by renaming them as:
 1. Indian Administrative Service.
 2. Indian Police Service.
- ✘ In 1966, one more service, i.e., the Indian Forest Service, was created as All India Service.

THANK YOU

ANY QUESTIONS PLEASE