

LL.B. III Term

Paper: LB – 301: Constitutional Law – I

[Principles of Federalism, Distribution of Legislative Powers between the Centre and the States, Union and State Executive; Freedom of Trade, Commerce and Intercourse; Parliament and State Legislatures, Judiciary and Emergency provisions]

Prescribed Text: The Constitution of India, 1950

Prescribed Books:

1. H.M. Seervai, *Constitutional Law of India* (4th ed., Vol 1 (1991), Vol. 2 (1993), Vol. 3 (1996))
2. M.P. Jain, *Indian Constitutional Law* (7th ed., 2014)
3. Mahendra P. Singh, V. N. Shukla's *Constitution of India* (12th ed., 2013)
4. D.D. Basu, *Shorter Constitution of India* (14th ed., 2009)

Recommended Books:

1. Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (1966)
2. Granville Austin, *Working a Democratic Constitution - A History of the Indian Experience* (1999)
3. B. Shiva Rao, *The Framing of India's Constitution – Select Documents* (1967)
4. *Report of the Commission on Centre – State Relations (Sarkaria Commission)* (1987)
5. *Report of the National Commission to Review the Working of the Constitution* (2002)
6. *Report of the Commission on Centre-State Relations (M.M. Punchhi Commission)* (2010)

Objectives

The Constitution contains the fundamental law of the land. It is the source of all powers of, and limitations on, the three organs of State, viz. the executive, legislature and judiciary. No action of the state would be valid unless it is permissible under the Constitution. Therefore, it is imperative to have a clear understanding of the nature and working of the Constitution. This course is designed to orient the students towards said understanding and develop an analytical approach through case law.

Topic 1 – General (6 Classes)

Constitution – Fundamental Law of the Land: Making of the Indian Constitution; Aims and Objectives; Essential Features of Constitution; Theory of Basic Structure; Principles of Federalism; Nature of the Indian Constitution – Federal, Unitary, Quasi-federal; Cooperative and Competitive Federalism, Scheduled and Tribal Areas.

1. *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461 1
2. *S. R. Bommai v. Union of India*, AIR 1994 SC 1918 8
3. *State of West Bengal v. Union of India*, AIR 1963 SC 1241 25
4. *Ram Jawaya Kapur v. State of Punjab*, AIR 1955 SC 549 40
5. *Kuldip Nayar v. Union of India*, AIR 2006 SC 3127
6. *State of Haryana v. State of Punjab*, AIR 2002 SC 685

Topic 2 – The Union and its Territory (4 Classes)

Power to cede Indian territory to a Foreign Nation; Power to create/extinguish a state; Alteration of name, area and boundary of existing states – Procedure (Articles 1 – 4)

7. *In re Berubari Union & Exchg. of Enclaves*, AIR 1960 SC 845 48
8. *Ram Kishore Sen v. Union of India*, AIR 1966 SC 644
9. *Union of India v. Sukumar Sengupta*, AIR 1990 SC 1692
10. *N. M. Sahib v. Chief Comnr. Pondicherry*, AIR 1962 SC 797
11. *R. C. Poudyal v. Union of India*, AIR 1993 SC 1804
12. *Babulal Parate v. State of Bombay*, AIR 1960 SC 51

Topic 3 – The Union and the State Executives (5 Classes)

- (a) The President and Vice President – Qualifications, Election, Term of Office, Powers, Impeachment (Articles 52-72); Governor – Appointment and Powers (Articles 153 – 161)
- (b) Nature, Scope and Extent of Executive Powers of the Union and States (Article 73, 162)
- (c) Union Council of Ministers – Powers and Position of the President (Articles 74-75); State Council of Ministers (Articles 163-164); Relationship of the President/Governor with the Council of Ministers; Scope and Extent of Judicial Review of Executive Actions (Articles 74, 75, 77, 78, 111, 102, 103(2), 217(3), 163)

13.	<i>U. N. R. Rao v. Indira Gandhi</i> , AIR 1971 SC 1002	56
14.	<i>S.P. Anand v. H.D. Deve Gowda</i> , AIR 1997 SC 272	59
15.	<i>Samsher Singh v. State of Punjab</i> , AIR 1974 SC 212	65
16.	<i>M.P. Spl. Police Estab. v. State of M.P.</i> , (2004) 8 SCC 788	79
17.	<i>Epuru Sudhakar v. Govt. of A.P.</i> , AIR 2006 SC 338	

Topic 4 – Parliament and State Legislatures (5 Classes)

Composition of Parliament and State legislatures; Qualification/Disqualification of Members; Legislative Procedure, Legislative Privilege (Articles 79 – 122, 168 – 212)

18.	<i>S.P. Anand v. H.D. Deve Gowda</i> , AIR 1997 SC 272	89
19.	<i>B. R. Kapur v. State of T. N.</i> AIR 2001 SC 3435	74
20.	<i>Lily Thomas v. Union of India</i> , (2013) 7 SCC 653.	85
21.	<i>Spl Ref. No. 1 of 2002</i> (Gujarat Assembly) AIR 2003 SC 87	96
22.	<i>Anil Kumar Jha v. Union of India</i> , (2005) 3 SCC 150	
23.	<i>Jaya Bachchan v. Union of India</i> , AIR 2006 SC 2119	
24.	<i>In re Keshav Singh</i> , AIR 1965 SC 745	
25.	<i>Raja Ram Pal v. Hon'ble Speaker, Lok Sabha</i> (2007) 3 SCC 184	108

Topic 5 - Legislative Power of the Executive (Ordinances) (3 Classes)

Essential conditions for promulgation of an Ordinance: 'Ordinance' under Article 13; Judicial Review; Validity of successive promulgation of the same Ordinance (Articles 123, 213)

26.	<i>D. C. Wadhwa v. State of Bihar</i> , AIR 1987 SC 579	128
27.	<i>A. K. Roy v. Union of India</i> , AIR 1982 SC 710	

Topic 6 – Union and State Judiciary (7 Classes)

Part-I Composition, Appointment, Removal and Jurisdiction

- a) The Union Judiciary: the Supreme Court of India (Articles 124-147); Composition, Appointment and Removal of Judges (Articles 124-130); Procedure (Article 145); the High Courts in the States (Articles 214-231)

28. *S. P. Gupta v. President of India*, AIR 1982 SC 149
29. *In re Special Reference No. 1 of 1998*, AIR 1999 SC 1 134
30. *SC Adv. on Record Association v. Union of India*, 2015 (11)SCALE 1 154
- b) Jurisdiction of Supreme Court: Original Exclusive (Articles 71, 131), Original Concurrent Jurisdiction of Supreme Court and High Courts (Articles 32, 226).
- c) Appellate Jurisdiction of Supreme Court: Civil, Criminal and in other matters (Articles.132-135); Enlargement of Jurisdiction (Article 138); Binding nature of the law declared by the Supreme Court, enforcement of decrees and orders, (Articles 141 and 142)
- d) Special Leave to Appeal (Article 136)
- e) Power of Review (Article 137)
31. *L. Chandra Kumar v. Union of India*, AIR 1997 SC 1125 180
32. *Madras Bar Association v. Union of India*, (2014) 10 SCC 1
- f) Advisory Jurisdiction (Article 143)
- g) Curative Petition
33. *Rupa Ashok Hurra v. Ashok Hurra*, AIR 2002 SC 1771
34. *Zakarius Lakra v. Union of India* (2005) 3 SCC 161
- h) Writs – *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*

Part-II Procedural requirements and innovations

- a) Judicial Activism and overreach/self-restraint, *Locus Standi*, Laches, Res Judicata, Exhaustion of Alternative Remedies and Public Interest Litigation- PIL (Concept of *pro bono publico*)
35. *Mohd. Arif v. The Reg. Supreme Court of India*, (2014) 9 SCC 737
36. *Daryao v. State of UP*, AIR 1961 SC 1457
37. *Trilokchand Motichand v. H.B. Munshi* , AIR 1969 SC 966
38. *Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802
- b) Power to issue appropriate orders and directions; Power to award Compensation
39. *Rudul Sah v. State of Bihar*, AIR 1983 SC 1086
40. *M.C. Mehta v. Union of India*, AIR 1987 SC 1086

Topic 7 – Distribution of Legislative Powers (14 Classes)

Articles 245 – 255, Schedule VII

a) Doctrine of Territorial Nexus (Article 245)

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| 41. | <i>State of Bihar v. Charusila Dasi</i> , AIR 1959 SC 1002 | 188 |
| 42. | <i>State of Bombay v. R. M. D. C.</i> , AIR 1957 SC 699 | |
| 43. | <i>Tata Iron & Steel Co. Ltd. v. State of Bihar</i> , AIR 1958 SC 452 | |
| 44. | <i>G.V.K. Industries v. Income Tax Officer</i> , (2011) 4 SCC 36 | 199 |

b) Subject-matter of laws made by Parliament/Legislatures of States; Position of Union Territories (Article 246)

c) Interpretation of legislative lists:

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| i) Plenary and Ancillary Power of Legislation | | |
| ii) Effect of <i>Non Obstante Clause</i> | | |
| iii) Doctrine of Harmonious Construction | | |
| 45. | <i>In Re C P & Berar Sales of Motor Spirit & Lubricants Taxation Act</i> , 1938, AIR 1939 FC 1 | 211 |
| 46. | <i>Gujarat University v. Krishna Ranganath Mudholkar</i> , AIR 1963 SC 703 | 224 |
| iv) Doctrine of Pith and Substance | | |
| 47. | <i>Prafulla Kumar v. Bank of Commerce, Khulna</i> , AIR 1947 PC 60 | 233 |
| 48. | <i>State of Karnataka v. Drive-in Enterprises</i> , AIR 2001 SC 1328 | 240 |
| 49. | <i>State of Rajasthan v. G. Chawla</i> , AIR 1959 SC 544 | 245 |
| iv) Colourable Exercise of Legislative Power | | |
| 50. | <i>K.C. Gajapati Narayan Deo v. State of Orissa</i> , AIR 1953 SC 375 | 248 |

d) Residuary Power of Legislation (Article 248)

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| 51. | <i>Union of India v. H. S. Dhillon</i> , AIR 1972 SC 1061 | 262 |
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e) Parliament's Power to Legislate in List II (State List) – (Articles 246 (4), 247, 249 – 253, 352, 356)

f) Doctrine of Repugnancy (Article 254)

52.	<i>Hoechst Pharmaceuticals Ltd. v. State of Bihar</i> , AIR 1983 SC 1019	274
53.	<i>Zaverbhai v. State of Bombay</i> , AIR 1954 SC 752	289
54.	<i>Vijay Kr Sharma v. State of Karnataka</i> , (1990) 2 SCC 562	

Topic 8 – Freedom of Trade, Commerce and Intercourse (7 Classes)

Concept of Trade and Commerce: Scope of Freedom of trade, commerce and intercourse; Fiscal measures; Direct and Immediate Restrictions; Regulatory Measures, Compensatory Taxes; Restrictions on trade, commerce and intercourse among states- Powers of Parliament and State Legislatures; State Monopoly (Articles 301 – 307)

55.	<i>Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan</i> , AIR 1962 SC 1406	295
56.	<i>Jindal Stainless Ltd. v. State of Haryana</i> , AIR 2006 SC 2550	308
57.	<i>G.K. Krishnan v. State of Tamil Nadu</i> , (1975) 1 SCC 375	
58.	<i>Shree Mahavir Oil Mills v. State of J. & K.</i> (1996) 11 SCC 39	321
59.	<i>Atiabari Tea Co. v. State of Assam</i> , AIR 1961 SC 232	

Topic 9 – Emergency Provisions (6 Classes)

(a)	Proclamation of Emergency on grounds of war, external aggression and armed rebellion (Articles 352, 358, 359)	
(b)	Power of Union Executive to issue directions (e.g. Articles 256, 257) and the effect of non-compliance (Article 365); Duty of the Union to protect the States against external aggression and internal disturbance (Article 355)	
(c)	Imposition of President’s Rule in States – Grounds, Limitations, Parliamentary Control, Judicial Review (Articles 356-357)	
(d)	Financial Emergency (Article 360)	
58.	<i>State of Rajasthan v. Union of India</i> , AIR 1977 SC 1361	
59.	<i>S. R. Bommai v. Union of India</i> , AIR 1994 SC 1918	332
60.	<i>Rameshwar Prasad v. Union of India</i> , AIR 2006 SC 980	349

IMPORTANT NOTE: 1. The topics and cases given above are not exhaustive. The teachers teaching the course shall be at liberty to add new topics/cases.

2. The students are required to study the Constitution of India as amended up-to-date and consult the latest editions of books. They are required to keep themselves familiar with the latest developments and study the entire course covered in the class.

3. The number of class lectures per topic is merely indicative.

4. The question papers (two) set for the examinations held in previous years are given below for guidance of the students.

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LL.B. III Term Examinations, December, 2011

Note: Attempt any Five questions. All questions carry equal marks.

1. "The Indian Constitution has not accepted the federal principles in absolute rigidity as it is desired for union without unity." Critically examine the above statement in the light of observations made in decided cases by Supreme Court of India.
2. "India had adopted Cabinet System of Government. In England, it has been described that term 'Crown' represents, the sum total of governmental powers and synonymous with executive." Discuss critically the power, position and influence of Indian President in the light of provisions of Constitution and various land-mark decisions.
3. (a) The Governor of State promulgated ordinance in 1988, which he re-promulgated several times. Decide the validity of exercise of this power.
(b) What is appellate jurisdiction of Supreme Court in civil, criminal and special leave to appeal.
4. (a) Discuss the concept of 'Consultation' and 'Collegiums' for the appointment of judges of Supreme Court and High Courts. Can the appointment of judge made by collegiums be challenged on any ground?
(b) Critically analyse the provision of residuary power of legislation under the Constitution of India.

5. (a) Explain the principle of 'repugnancy'. Can it apply when two legislations, one enacted by Parliament and other by a State Legislature, cover a subject in state list? What procedure has to be followed to make a state law valid, even if the same was repugnant to the parliamentary legislation?
(b) What do you mean by writ of mandamus and also give distinction between prohibition and certiorari.
6. Discuss the scope of freedom of trade, commerce and intercourse envisaged under the provisions of Constitution of India in the light of decided land-mark judicial pronouncements.
7. (a) What are the consequences of proclamation of Emergency made under Article 352?
(b) What are the principles of interpretation regarding distribution of subject-matter of legislation.
8. Write short notes on any two:
 - (a) What is power of Parliament to cede Indian territory to a Foreign Nation?
 - (b) What are guidelines for invocation of Article 356 in the light of *S.R. Bommai vs. Union of India* AIR 1994 S.C. 1918?
 - (c) Parliament's power to legislate with respect to matters contained in the State list and Centre's control over State Legislature.

LL.B. III Term Examinations, June-July, 2012

Note: Attempt any Five questions. All questions carry equal marks.

1. The drafters of the Indian Constitution expected it to be "suitable to the genius and requirements of the Indian people as a whole". To what extent do the broad features of the Constitution live up to these expectations?
2. (a) The government of India entered into an agreement with the government of Bangladesh to transfer certain areas of land on perpetual lease from India to Bangladesh. Would such a transfer require a Constitutional amendment to take effect? Examine in the light of Articles 1-4 of the Constitution and case-law.
(b) Can a writ petition filed by a party under Art, 226 of the Constitution before a High Court and dismissed, be filed before the Supreme Court under Art. 32 of the Constitution? Will your answer be different if an appeal were to be filed under Art. 136 of the Constitution.

3. Decide the following on the basis of relevant case law and Constitutional provisions.
- (a) On the expiry of five years, the Lok Sabha stood dissolved and the Prime Minister was asked to continue as the care taker Prime Minister until fresh elections were held. In this interim period the President Sanctions the prosecution of a Minister in the Union Council of Ministers despite the express refusal by the Council of Ministers, earlier, to grant sanction to prosecute under section 197 Code of Criminal Procedure, 1973 (Cr. PC). Is this action of the President acting on his own discretion valid?
 - (b) What are the necessary pre-conditions before President's rule can be imposed in a State? What is the extent of judicial review of a Proclamation issued under Article 356 of the Constitution.
4. The appointment of a permanent judge of a High Court was challenged on the ground that this was done without taking the necessary plurality of opinion required under the Constitution. The Union of India contended that consultation with the Collegium was not necessary for the appointment of an additional judge of the High Court as a permanent judge.

Decide in the light of the relevant case law.

5. State X passed a law which levies a tax on all telecom equipment brought into the State from outside through road, inland waterways or air. State X does not manufacture telecom equipment and relies on other states for its requirements. The Constitutional validity of this Act is challenged on the ground that it violates Articles 301 and 304 of the Constitutions.
6. (a) State A enacted a law prohibiting the sale of liquor. The law also laid down that the procedure and principles of evidence for trial of offences under this law would be different from those contained in the Cr.P.C. and the Indian Evidence Act, 1872, both central laws in the Concurrent List. Is this law valid? Which principle of interpretation of legislative lists will you apply?

List II, Entry 8: Intoxicating liquors, that is to say, the production, manufacture, possession transport, purchase and sale of intoxicating liquors.

List III, Entry 2: Criminal procedure, including all matter in the Code of Criminal Procedure at the commencement of this Constitution.

List III, Entry 12 : Evidence and oaths.....

- (b) What is meant by the 'residuary power of legislature list'?

7. What is repugnancy? What are the different situations when repugnancy can arise under Article 254 of the Constitution. Discuss with the help of decided cases.
8. Write Short notes on any **two**:
 - (a) Colourable Exercise of Legislative Power
 - (b) Curative petition
 - (c) Essential Conditions for promulgation of an Ordinance
 - (d) Appointment of a person who is not a member of either House of Parliament as the Prime Minister of India.



LL.B. III Term
Constitutional Law - I

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