

CORE COURSE 108 CONSTITUTIONAL LAW- I

OBJECTIVES:

India is a democracy and her Constitution embodies the main principles of the democratic government – how it comes into being, what are its powers, functions, responsibilities and obligations how power is limited and distributed. Whatever might have been the original power base of the construction today it seems to have acquired legitimacy as a highest norm of public law. A good understanding of the Constitution and the law, which has developed through constitutional amendments, judicial decisions, constitutional practice and conventions is therefore, absolutely necessary for a student of law. He must also know the genesis, nature and special features and be aware of the social, political and economic influence of the Constitution.

The purpose of teaching constitutional law is to highlight its never ending growth. Constitutional interpretation is bound to be influenced by one's social, economic or political predilections. A student must, therefore, learn how various interpretations of the constitution are possible and why a particular interpretation was adopted in a particular situation. Such a critical approach is a necessary requirement in the study of constitutional law.

Judicial review is an important aspect of constitutional law. India is the only country where the judiciary has the power to review even constitutional amendments. The application of the basic structure doctrine in the evaluation of executive actions is an interesting development of Indian constitutional law. The concepts of secularism and federalism enshrined in the constitution are, and are to be interpreted progressively.

SYLLABUS:

1. Preamble of the Constitution:

- a. Preamble : purpose, objectives importance
- b. Preamble – Whether a part of the Constitution, Application of Basic Structure Theory to the Preamble
- c. Amendment made in the Preamble : Effects thereof
- d. Use of Preamble in Interpretation of Constitutional Provisions
- e. Salient Features of the Constitution of India

2. Fundamental Rights - I:

- a. Concept of “State” under Article 12 and judicial approach, Meaning of Law under Article 13
- b. Right to equality and protective discrimination, Equality of opportunity in the matter of Public Employment
- c. Freedoms guaranteed to citizens of India under Article 19 and reasonable restrictions
- d. Right against exploitation, Abolition of untouchability and Titles

- e. Right of Self-incrimination and Principle of Double Jeopardy
- f. Constitutional Remedy for the enforcement of Fundamental Rights (Writ remedies under Articles 32, Distinction from writs under Article 226)

3. Fundamental Rights - II

- 3.1 Right to life and personal liberty, due process of law (Article 21)
- 3.2 Safeguards against arbitrary Arrest and Detention
- 3.3 Right to Freedom of Religion & Secularism
- 3.4 Prohibition of Traffic in Human beings and forced labour
- 3.5 Prohibition of Employment of Children in factories etc.
- 3.6 Right to Education (Article 21 and 21-A and its developments)
- 3.7 Cultural and Educational Rights : Articles 29 & 30

4. Directive Principles of State Policy and Fundamental Duties :

- 4.1 Directive Principles : Nature, ideals, Distinction from Fundamental Rights & Inter-relationship with fundamental rights
- 4.2 Non-enforceability of Directive Principles before the court
- 4.3 Classification of Directive Principles, Uniform Civil Code
- 4.4 Reading Directive Principles into Fundamental Rights
- 4.5 Fundamental Duties

SUGGESTED READING :

1. Constitutional Law of India : D. D. Basu Introduction to the Constitution of India
D.D. Basu Shorter Constitution of India : Durga Das Basu Constitutional Law of India : V. N. Shukla Constitutional Law of India : M. P. Jain Constitution of India : J. N. Pandey
2. Constitutional Law of India (Vol. 1-3) : H. M. Seervai
3. Constitutional law of India : P. M. Baxi
4. Introduction to the Constitutional Law of India : Narendra Kumar, Allahabad Law Agency