



PRABHAT

The Constitution of INDIA

BARE ACT
WITH SHORT NOTES

Useful for Competitive Examinations

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IAS (Retd.)

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THE CONSTITUTION OF INDIA

by Dr. P.K. Agrawal & Virag Gupta

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PREFACE

The Constitution of India came into operation on 26th January, 1950. It is one of the most voluminous constitutions of the World. It is a living document. This is an instrument which makes the polity of India work. The Constitution of India reflects the thinking and aspirations of people of India. It is the basic law of the Nation. All laws, rules and regulations within the territory of India have to conform to it. Its basic features cannot be changed. The Supreme Court is the guardian of the Constitution. The Apex Court so far has guarded its sanctity zealously. Therefore, independence of judiciary is a basic feature to protect against the misuse of the Constitution by other organs of the State. However, it is flexible as 'safety valve' to accommodate the will of people with changing times through numerous amendments during past 72 years keeping the basic structure of the Constitution as intractable. In the present scenario of lack of faith among the Indian people, the Constitution of India is the last refuse.

The Constitution of India contains a chapter on Fundamental Rights, which are basic human rights of equality, freedom and livelihood and are bulwark of democracy in India. The Directive Principles of State Policy are unique features which are guidelines for governance of the country and contain socio-economic rights of people. According to Dr. B.R. Ambedkar, political equality i.e. 'one man-one vote' will lose meaning unless it is followed by the economic equality. Only time will tell how the Constitution of India will shape the destiny of people of India.

Many books are there on the Constitution of India. Dr. P.K. Agrawal has two volumes already published in English titled as 'Commentary on the Constitution of India' and in Hindi 'BHARAT KA SAMVIDHAN'.

This work has been brought out as Bare Act with full authoritative text of the Constitution with updated amendments as published by Legislative Department, Ministry of Law and Justice, Govt. of India and on Jammu and Kashmir specially to cater to the needs of U.P.S.C. competitive examinations like civil services examinations and practicing advocates who require to frequently refer to the bare provisions of the Constitutions. However, leading decisions on most of the articles of the Constitution have been mentioned so as to make the interpretation of that provision easier and relevant as on date.

A modest attempt has been made to present the Constitution of India easily understandable. If some mistakes have crept in, the authors take full responsibility and will be corrected in the next issue. We are thankful to Miss Vanya Gupta, LL.M., Advocate of our Law Firm VAS GLOBAL who has wholeheartedly helped in making the book for use by the young generation of India.

We are sure that the present work on the Constitution of India will be more welcome than my previous two works by the students, candidates appearing in job tests, advocates, law faculty, academicians and executive functionaries of the Constitution like administrators and political executives.

New Delhi,

26th January, 2022

Dr. P.K. Agrawal
&
Virag Gupta

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PREAMBLE

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 twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

Notes

Preamble was considered as key to open the Constitution. However, in Kesavananda Bharati's case, it has been held as part of the Constitution and continues to be treated as integral part of the Constitution. It is the edifice of the Constitution and contains the grand and noble vision. It is an aid to interpreting the Constitution. Following are the basic or intractable or indestructible features of the Constitution based on various judgments of the Supreme Court of India which is the ultimate arbiter of the text or meaning of the provisions of the Constitution of India. In Kesavananda Bharati case, following features were laid down as basic structure.

Supremacy as of the Constitution. Republic and Democratic form of Government. Secular character of the Constitution. Separation of powers between the legislatures, the executive and the judiciary. Federal character of the Constitution. Later on some more features were added by the Supreme Court from time to time as basic features such as;

Power of Review by the courts, Dignity of individual and Right to livelihood.

Constitution is what the judges say it is; Supreme Court Advocate-on-Records Association v. Union of India, AIR 1994 SC 268: 1993 AIR SCW 4101.

It is absolutely imperative to abolish the caste system as expeditiously as possible for the smooth functioning of Rule of Law and Democracy in our country; State of Uttar Pradesh v. Ram Sajivan, AIR 2010 SC 1738: 2010 AIR SCW 2145: (2010) 1 SCC 529.

PART I

THE UNION AND ITS TERRITORY

Article. 1 Name and territory of the Union

- (1) India, that is Bharat, shall be a Union of States.
- (2) The States and the territories thereof shall be as specified in the First Schedule.
- (3) The territory of India shall comprise –
 - (a) The territories of the States;
 - (b) The Union territories specified in the First Schedule; and
 - (c) Such other territories as may be acquired.

Notes

Acquisition of Foreign Territory

Acquisition of foreign territory does not fall within article 1. It is governed by international law; Jose Da Costa v. BasoraSadashiva Sinai Narcornin, AIR 1975 SC 1843: (1976) 2 SCC 917, paragraph 24.

Boundaries of State

Territories of States as on commencement of Constitution i.e. 26.01.1950 was not frozen and the Constitution provided for prospective changes including alteration of boundaries; Ram Badan Rai v. Union of India, AIR 1999 SC 166: (1999) 1 SCC 705:

Reorganisation of the State of Jammu and Kashmir

The effect of the Jammu and Kashmir Reorganisation Act, 2019 on the status of the J&K will be as follows:

- (i) State of Jammu and Kashmir has become like any other State/Union Territory of India.
- (ii) State of J&K has been divided into two union territories, namely-Jammu and Kashmir a Union territory with a legislative assembly like Puducherry; and the second Union territory of Ladakh without a legislative assembly.

Article. 2 Admission or establishment of new States

Parliament may by law admit into the Union, or establish, new States on such terms and conditions as it thinks fit.

Notes

Admission of New States

The power to admit new States into the union under article 2, is no doubt, in the very nature of the power, very wide and its exercise necessarily guided by political issues of considerable complexity many of which may not be judicially manageable; R.C. Poudyal v. Union of India, AIR 1993 SC 1804: (1994) Supp 1 SCC 324.

Article. 2A Sikkim to be associated with the Union

Rep. by the Constitution (Thirty-sixth Amendment) Act, 1975, s. 5 (w.e.f. 26-4-1975).]

Article. 3 Formation of new States and alteration of areas, boundaries or names of existing States

Parliament may by law –

- (a) Form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State;
- (b) Increase the area of any State;
- (c) Diminish the area of any State;
- (d) Alter the boundaries of any State;
- (e) Alter the name of any State:

Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless, where the proposal contained in the Bill affects the area, boundaries or name of any of the States, the Bill has been referred by the President to the Legislature of that State for expressing its views thereon within such period as may be specified in the reference or within such further period as the President may allow and the period so specified or allowed has expired.

Explanation I.-In this Article, in clauses (a) to (e), "State" includes a Union territory, but in the provision, "State" does not include a Union territory.

Explanation II- The power conferred on Parliament by clause (a) includes the power to form a new State or Union territory by uniting a part of any State or Union territory to any other State or Union territory.

Notes

The phrase 'India' that is Bharat conveys the meaning that both the ancient name 'Bharat' and the modern name 'India' have been adopted. The Union presents that no State could secede from the Union nor could it suo motu vary its territory. However, Parliament has power to form new States and can also alter the boundaries or even the name of any State. While the Constitution has provided for acquisition of fresh territory, there is the

provision for cession or transfer of Indian Territory. One such transfer of territory was affected to Bangladesh by 100th Constitution Amendment Act.

Agreement between India and Bangladesh

The lease agreement in perpetuity of some area at Teen Bigha (Indian Territory) to Bangladesh did not amount to lease or surrender of sovereignty. It amounts to servitude suffered by India; Union of India v. Sukumar Sengupta, AIR 1990 SC 1692: JT 1990 (2) SC 297.

Article. 4 Laws made under Articles 2 and 3 to provide for the amendment of the First and the Fourth Schedules and supplemental, incidental and consequential matters

- (1) Any law referred to in Article 2 or Article 3 shall contain such provisions for the amendment of the First Schedule and the Fourth Schedule as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions (including provisions as to representation in Parliament and in the Legislature or Legislatures of the State or States affected by such law) as Parliament may deem necessary.
- (2) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of Article 368.

Notes

Legislative Power of State

State cannot claim to have legislative powers over water in question; Mullaperiyar Environmental Protection Forum v. Union of India, AIR 2006 SC 1428: 2006 AIR SCW 1241

PART II

CITIZENSHIP

Article. 5 Citizenship at the commencement of the Constitution

At the commencement of this Constitution, every person who has his domicile in the territory of India and –

- (a) Who was born in the territory of India; or
- (b) Either of whose parents was born in the territory of India; or
- (c) Who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement, shall be a citizen of India.

Notes

Citizenship at Commencement of Constitution

The person must have her domicile in India at the time of commencement of Constitution. Where a person was born much after commencement of Constitution i.e. in 1958, the question of his/her domicile in India at time of commencement of Constitution does not arise; Nagina Devi v. Union of India, AIR 2010 Pat 117.

One Domicile

Under the Indian Constitution, there is only one domicile viz. the domicile of the country and there is no separate domicile for a State; Pradeep Jain (Dr.) v. Union of India, AIR 1984 SC 1420.

Article. 6 Rights of citizenship of certain persons who have migrated to India from Pakistan

Notwithstanding anything in Article 5, a person who has migrated to the territory of India from the territory now included in Pakistan shall be deemed to be a citizen of India at the commencement of this Constitution if –

- (a) he or either of his parents or any of his grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted); and
- (b) (i) in the case where such person has so migrated before the nineteenth day of July, 1948, he has been ordinarily resident in the territory of India since the date of his migration, or
 - (ii) in the case where such person has so migrated on or after the nineteenth day of July, 1948, he has been registered as a citizen of India by an officer appointed in that behalf by the Government of the Dominion of India on an application made by him therefore to such officer before the commencement of this Constitution in the form and manner prescribed by that Government: Provided that no person shall be so registered unless he has been resident in the territory of India for at least six months immediately preceding the date of his application.

Notes

Catch-up Rule

Obligation of the “Catch-up” rule or insertion of the concept of Consequential Seniority Code violates the basic structure of the Equality Code enshrined in articles 14, 15 and 16 of Constitution; M. Nagaraj v. Union of India, AIR 2007 SC 71: 2006 AIR SCW 5482

Citizenship of Foreign State

Article 9 deals with cases when citizenship of foreign state has been acquired by Indian citizens prior to Constitution and means that he cannot claim citizenship of India by virtue of articles 5, 6 and 8; State of Uttar Pradesh v. Shah Muhammad, AIR 1969 SC 1234: (1969) 3 SCR 1006.

Article. 7 Rights of citizenship of certain migrants to Pakistan

Notwithstanding anything in Article s 5 and 6, a person who has after the first day of March, 1947, migrated from the territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India :

Provided that nothing in this Article shall apply to a person who, after having so migrated to the territory now included in Pakistan, has returned to the territory of India under a permit for resettlement or permanent return issued by or under the authority of any law and every such person shall for the purposes of clause (b) of Article 6 be deemed to have migrated to the territory of India after the nineteenth day of July, 1948.

Notes

Citizenship of India

Article 7 clearly overrides article 5. It is preemptory in its scope and makes no exception for a case of the wife migrating to Pakistan leaving her husband in India. Even such a wife must be deemed not to be a citizen of India unless the particular facts bring her case within proviso to article 7; State of Bihar v. Kumar Amar Singh, AIR 1955 SC 282: 1955 SCA 376

Scope of Article 7

Article 7 refers to migration taking place between 1-3-1947 to 26-01-1950; State of Madhya Pradesh v. Peer Mohd. AIR 1963 SC 645

Article. 8 Rights of citizenship of certain persons of Indian origin residing outside India

Notwithstanding anything in Article 5, any person who or either of whose parents or any of whose grand-parents was born in India as defined in the Government of India Act,

1935 (as originally enacted), and who is ordinarily residing in any country outside India as so defined shall be deemed to be a citizen of India if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country where he is for the time being residing on an application made by him therefore to such diplomatic or consular representative, whether before or after the commencement of this Constitution, in the form and manner prescribed by the Government of the Dominion of India or the Government of India.

Notes

Scope of Article 8 and Citizenship

Article 9 deals with cases when citizenship of foreign state had been acquired by Indian citizen prior to Constitution and States that he cannot claim citizenship of India by virtue of articles 5 and 6 or 8; State of Uttar Pradesh v. Shah Mohammad, AIR 1969 SC 1234: (1969) 2 SCA 539

Article. 9 Persons voluntarily acquiring citizenship of a foreign State not to be citizens

No person shall be a citizen of India by virtue of Article 5, or be deemed to be a citizen of India by virtue of Article 6 or Article 8, if he has voluntarily acquired the citizenship of any foreign State.

Notes

Migrants to Pakistan

Migration contemplated by article 9 is one before 26.01.1950 and not one thereafter, State of Andhra Pradesh v. Abdul Khuder, AIR 1961 SC 1467: (1961) 2 Cr LJ 573

Obtaining Passport

Mere proof of the fact that the person has obtained a passport from a foreign country is not sufficient to sustain an order for deportation or prosecution, unless there has been a decision of the Central Government under section 9 (2) of the Citizenship Act, 1955. The inquiry by the Central Government under section 9 (2) of the Citizenship Act is quasi-judicial. See the under mentioned decision; Government of Andhra Pradesh v. Syed Md., AIR 1962 SC 1778: (1962) Supp 2 SCR 288

Article. 10 Continuance of the rights of citizenship

Every person who is or is deemed to be a citizen of India under any of the foregoing provisions of this Part shall, subject to the provisions of any law that may be made by Parliament, continue to be such citizen.

Notes

Citizenship and Domestic Law

It is accepted rule of judicial construction that regard must be had to International Conventions and norms for construing domestic law when there is no inconsistency between them and there is a void in domestic law; Vishaka v. State of Rajasthan, AIR 1997 SC 3011: 1997 AIR SCW 3043

Article. 11 Parliament to regulate the right of citizenship by law

Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.

Notes

Question of Citizenship

The question about determination even for limited purpose of some other law has to be done by authority in light of constitutional provisions and provisions of Citizenship Act, 1955; Lal BabuHussian v. Electoral Registration Officer, AIR 1995 SC 1189: (1995) 3 SCC 100.

Scope of Article 11

The scheme of the relevant articles of Part II of constitution, which deals with citizenship clearly suggests that the status of citizenship can be adversely affected by a statute made by parliament in exercise of its legislative powers; Izhar Ahmad Khan v. Union of India, AIR 1962 SC 1052: (1962) Supp 3 SCR 235.

Notes on Articles 5 to 11

Citizenship is the legal relationship between the individual and the country under which the individual undertakes loyalty and to perform his duties to the country and the country offers its protection to the individual.

The Constitution avoids dual citizenship. There is one citizenship related to the domicile in the territory of whole of India and not a part of it. Domicile is an important criterion for citizenship of any country.

The Act has been amended from time to time. Provision has been made for maintenance of a national register of the Indian citizens and for 'overseas citizenship of India'.

Further, the Citizenship Act, 1955 has been amended by the Citizenship (Amendment) Act of 2019 by adding as follows:

Provided that persons belonging to minority communities, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan, who have been exempted by the Central Government by or under clause (c) of sub-section (2) of section 3 of the Passport (Entry into India) Act, 1920 or from the application of the provisions of the Foreigners Act, 1946 or any order made thereunder, shall not be treated as illegal migrants for the purposes of the Act;

A new section, 6B, was inserted, providing further that:

On and from the date of commencement of the [Act], any person referred to in the first proviso shall be eligible to apply for naturalisation and any proceeding pending against such person in respect of illegal migration or citizenship shall stand abated on conferment of citizenship to him.

This amendment has created uproar in the country as Muslims have not been included and is under challenge in the Supreme Court as ultra vires to the Right to Equality under Article 14 of the Constitution of India. However, this amendment is brought only for those immigrants due to religious persecution or fear of that on or before the 31st December, 2014.

A person of Indian origin, subject to certain conditions, may be registered as an overseas citizen of India (OCI) and extended some of the citizenship rights like owning property, travelling to India without visa, making investment in business etc.

This provision has been added to strengthen, emotional ties with non-resident Indians living abroad who are more than 30 million and remit or invest lot of foreign currency in India. The provision of double citizenship to overseas citizens of India has been extended so far only to Australia, France, Greece, Ireland, Israel, Italy, Netherlands, Canada, New Zealand, Portugal, Cyprus, Sweden, Switzerland, United Kingdom and United States of America. However, special protections for citizenship in Jammu and Kashmir and notified tribal areas are prescribed.

PART III**FUNDAMENTAL RIGHTS- General****Article. 12 Definition**

In this Part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

Notes

Local authorities include Panchayats, Improvement Trust etc. The definition is inclusive and includes other authority. The tests to determine 'other authority' as 'State' are substantial financial and control by government, performance of public functions and entrustment of governmental activities. All these are not essential and, in particular case one or a combination of more than one of them may suffice.

Nationalized banks like State Banks of India, Children Aid Society, Delhi Transport Corporation, were held State. However, Board of Control for Cricket in India (BCCI) is not financially, functionally or administratively dominated by Government nor it is under control of Government. Therefore, it not a State.

The bank being an instrumentality of the State cannot be permitted to make discriminations on classification of employees who have voluntarily retired under the VRS Scheme and those who have retired under the same scheme declared by other Public Sector Banks; Assistant General Manager, State Bank of India v. RadheyShyam Pandey, (2015) 12 SCC 451.

Agency outside India

An instrumentality or agency of the State having operations outside India must comply with Indian labour legislation; Lena Khan v. Union of India, AIR 1987 SC 1515: (1987) 2 SCC 402

Co-Operative Societies

The statutory regulation or restriction in the functioning of the societies is not an imprint of the State under article 12. Hence no writ will lie against a co-operative society governed by the Kerala Co-Operative Societies Act, P. Bhaskaran v. Additional Secretary, Agricultural (Co-Operation) Department, Trivandrum, AIR 1988 Ker 75

Article. 13 Laws inconsistent with or in derogation of the fundamental rights

- (1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.
- (2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.
- (3) In this Article, unless the context otherwise requires, –
 - (a) "Law" includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;
 - (b) "laws in force" includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.
- (4) Nothing in this Article shall apply to any amendment of this Constitution made under Article 368.

Notes

The existing laws which violate fundamental rights conferred by Part III of the Constitution, shall, to that extent, be void. There has to be clear Constitutional violation and not merely because of its falling into disuse or because the perception of society has changed regarding legitimacy of purpose and need of the law in question. The doctrine of basic features of the Constitution does not apply to ordinary legislation. It imposes limitation on power of Parliament to annul the Constitution.

Act of State

In State of Haryana v. Amar Nath Bansal, AIR 1997 SC 718: (1997) 10 SCC 700 it has been held that as a result of the Covenant entered into by the Rulers of the States there was the establishment of a new sovereign over the territories comprising the States of the Rulers. The Covenant is therefore, an act of the State. With regard to the act of the State, the law is settled. The residents of the territories which are acquired do not carry with them the rights which they possessed as subjects of the ex-sovereign. As subject of the new sovereign they possess only such rights as are granted or recognized by him.

Working of Act

How an Act has been worked may be looked at for assessing validity; Charan Lal Sahu v. Union of India, (1990) 1 SCC 613 (667): AIR 1990 SC 1480.

Article. 14 Equality before law

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Notes

The principle of equality is the essence of democracy, Equality before law implies the absence of any discrimination without rational basis.

It means the right to equal treatment in similar circumstances both in privileges conferred and in the liabilities imposed by the laws. It does not prohibit classification but it should not be arbitrary. The reasonable classification must be found on an intelligible differentiate which distinguishes persons or things that are grouped together from those that are left out of the group. The guarantee of equal protection includes absence of any arbitrary discrimination by the laws themselves or in the matter of their administration. The decision making process should be transparent, fair and open and non- arbitrary.

Promotion- Merit-cum-Seniority

There is a sharp distinction between merit-cum-seniority and seniority-cum-merit. In such case the merit has to be given preference over the seniority; U.B. Mahadkar v. Subhash Anand Charan, (2015) 9 SCALE 485: (2016) 1 SCC (L&S) 195

Right to Privacy

The five-judge bench was specially constituted for hearing of petitions challenging the constitutional validity of Aadhaar; in the meanwhile, had referred the limited question 'whether right to privacy is a fundamental right or not' for the consideration of a nine-judge bench, which held that it indeed is a fundamental right. Justice K.S. Puttaswamy (Retd.), and Anr v. Union of India and Ors. 2017 SCC Online SC 996

Legitimate Expectation

The doctrine of legitimate expectation cannot be applied in the cases of invalid expectation; State of Uttar Pradesh v. United Bank of India, 2015 AIR SCW 6510: 2015 SCALE 704

Concept of Equality

Concept of equality cannot be pressed to commit another wrong; KasthaNiwarak G.S.S. Maryadit, Indore v. President, Indore Development Authority, AIR 2006 SC 1142: (2006) 2 SCC 604

Article. 15 Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

- (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

- (2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to-
 - (a) Access to shops, public restaurants, hotels and places of public entertainment; or
 - (b) The use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.
- (3) Nothing in this Article shall prevent the State from making any special provision for women and children.
- (4) Nothing in this Article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.
- [5] Nothing in this Article or in sub-clause (g) of clause (1) of Article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of Article 30.]

Notes

Clause (4) of article 15 may appear to be a blanket provision, protecting any kind of beneficial discrimination for the benefit of the backward classes, Scheduled castes and the Scheduled Tribes. But reservation of an excessively high percentage of seats in technical institutions for each class would be void. Ordinarily reservation in excess of 50 percent of available seats may not be upheld. This is justified because risk cannot be taken in highly technical fields like medical, space.

Area-wise Reservation

Area-wise reservation (article 371D) prevails over reservation under article 15 (4): Devarakonda Rajesh Babu v. Nizam Institute of Medical Sciences, AIR 1998 AP 162

Constitutional 93rd Amendment 2005

Act of 2005 introducing article 15 (5) does not interfere with executive power of State and not invalid for not following procedure under article 368: Ashoka Kumar Thakur v. Union of India, (2008) 6 SCC 1: AIR 2008 SC (Supp) 1 (Para 193). K.G. Balakrishnan CJI.

Adultery provisions under IPC

The Supreme Court has struck down 158 year old Section 497 of the Indian Penal Code, which criminalizes adultery, as unconstitutional and held that “Any provision of law affecting individual dignity and equality of women invites wrath of constitution. It’s time to say that husband is not the master of wife. Legal sovereignty of one sex over other sex is wrong”. It was also observed that “Ancient notion of man being the perpetrator and woman being victim of adultery no longer holds good”. *Joseph Shine v. Union of India WP (Crl) No. 194 of 2017. Judgement on 27th September 2018.*

Article. 16 Equality of opportunity in matters of public employment

- (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.
- (2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.