

# Constitutional Law I

The logo of Galgotias University is a circular emblem with a red outer ring and a central swirl of yellow, blue, and red colors.

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## TOPICS COVERED

- Public Law: Introduction
- Sub-branches of Public Law
- State
- Rule of Law

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## Public Law

Governs the political authority of the state and regulates functions and structures of legislative, executive and judiciary.

It governs relationship between state&citizen; state organ&state organ; state& other states.

Sub-branches of Public Law:

- Constitutional Law

- Administrative Law

- Criminal Law

- Public International Law

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## Important Concepts/Principles of Public Law

**1- State**

**2- Rule of Law**

State:

Permanent population (size not important & nationality is enough)

Defined territory

Land territory

Territory under water

Air space

Sovereignty

Supreme authority

Limitations because of int law---independence

External and internal sovereignty

Capacity to enter into relations with other states

## Rule of Law (supremacy of law)

- IPS: Permanent Independent Superior (Austin's Theory)
- Political authority or the government in a country has powers to rule that country---these powers should be limited by law otherwise the protection of fundamental rights and freedoms of individuals will not be possible.
- A political regime where there is a stable rule of law is called as “**state of law**”

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## Rule of Law (supremacy of law)

- There are some important elements which make rule of law applicable (possible) in a country (components of rule of law):
  - 1- Controlling the state power
    - Judicial control of legality of administrative acts
    - Other types of control
  - 2- Judicial control of constitutionality of legislation
  - 3- Independence of judiciary

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## Controlling the State Power

- **Judicial control of legality of administrative acts:**
  - Judicial control of legality---"**judicial review**"
  - **Each and every act of the administration in a country should be subject to judicial review**
    - Exp: expropriation and administrative courts
    - Exp: Rejection of an application
      - Arbitrary acts
      - Legality of the administration
      - Essential for the protection of human rights

## Rule of Law (supremacy of law)

- **Other Types of Control:**

- **Checks and balances:** legislative, executive and judiciary exercises different and pre-determined powers of the state
- This is generally defined by the Constitution. Each branch of the government should be independent from each other (**separation of powers**). Moreover each of these organs must control the other and balance the possible excessive exercise of power of the other----this is **checks and balances**
- Legislative controls/balances by making laws, judiciary controls/balances by decisions (annulment of laws) and executive by other ways (President--- sending back a draft law for reconsideration)



## Rule of Law (supremacy of law)

2- Judicial control of constitutionality of legislation w.r.t. India:

The Law should be in accordance with

- Legislative Competence
- Basic Structure
- FRs
- Constitutional Rights



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## Rule of Law (supremacy of law)

- **3- Independence of judiciary**
  - **Without such a qualification mere existence of judiciary is nonsense**
  - **In liberal democracy the individual is at the centre, and “Judicial independence is the hallmark of liberal democracy”.**



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## Independence of judiciary

- The rights of individuals are ensured and respected. Courts play a vital role in ensuring and respecting the rights of individuals. An independent judiciary is the cornerstone of a free society and rule of law.
- As rule of law envisages a government of laws. A government is obliged to act according to laws set by the legislature. However, if there is failure to adhere to the laws, an independent judiciary shall check such events.
- judicial independence helps judges to discharge their judicial functions without fear or favour.
- Thus maintaining the supremacy of the Constitution.

## Some General Principles of Public Law

- **“Public interest”**
- Right to property and exceptions
- Private interests of the citizens may be sacrificed for the sake of public interests.
- This is not the denial of private interest (you don't deny the right)
- **“Public service”**:
  - “To make public services more appropriate---some rules which apply to the activities of private domain do not apply to public activities---because **“public interest prevails”**”
- **“Public sovereignty”**:
  - State exercises its sovereignty through its organs-----powers are exercised in sovereign manner by them

## Regarding Public Interest

- **Article 1 , European Convention on Human Rights. Protection of property**
- Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
- **Indian Law:**
- **A. 300A:** No person shall be deprived of his property save by authority of law.
- Authority of law should be exercised in just, fair and reasonable manner

## Regarding Public Interest

- **The citizens have right to own and possess the property.** This right of individual conflicts with the right of state to acquire property. A person has a right not to be deprived of his property except through due process of law.
- These two rights i.e., the right of eminent domain of the state and right of citizen not to be deprived of his property except by due process of law exist in diametrical opposition. They have to be resolved more in favour of citizens by limiting the power of eminent domain.
- **Right to strike not available to Govt. employees (if such law is there) or police and fireman but to employees in India.**
- Also, w.r.t. Public Utility Service, there are strict guidelines before the employees go for strike.
- Latest Labour Code make it more difficult for workers to go on strike in India.

## Regarding Public Service

- **Article 11, European Convention on Human Rights. Freedom of assembly and association**
  - 1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
  - 2. No restrictions shall be placed on the exercise of these rights other than such as are **prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals** or for the protection of the rights and freedoms of others. This article **shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.**

## Regarding Public Service

- **Indian Position:**
- (1) All citizens shall have the right—
  - (a) to freedom of speech and expression
- (2) **Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India,] the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.**



## Some General Principles of Public Law

- “**Public sovereignty**”:
- State exercises its sovereignty through its organs-----powers are exercised sovereignly by them
- Sometimes public organs have the chance **to determine unilaterally conditions** of the relationship with citizens
- Citizens do not have the **right to choose provisions and terms** of their relation with the state:
  - Exp: Public contract to build a new hospital---state determines the terms beforehand and a firm can either accept and be part of the public procurement or not----but cannot bargain with the state
  - Exp: A soldier cannot bargain the conditions he would live in when he joins the army, like, food, colour of the uniforms, the Region that he will perform his duty, etc.

- <https://publiclawproject.org.uk/what-is-public-law/>
- <https://slideplayer.com/slide/8972151/>



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# School of Law

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**!!!Thanks!!!**

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