



## **FACULTY OF JURIDICAL SCIENCES**

**Course : BALLB , 3<sup>rd</sup> Semester**

**Subject : CONSTITUTIONAL LAW I**

**Subject code : BAL304**

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## **Constitutional law - I**

**OBJECTIVE:** The objective of this paper is to provide understanding of basic concepts of Indian Constitution and various organs created by the constitution including their functions.

### **UNIT – I**

- **Salient features of the Indian Constitution.**
- **Preamble**
- **Definition of State (Art. 12)**
- **Doctrines of Ultra-vires, severability, eclipse, waiver (Art, 13)**

### **UNIT-II**

- **Right to equality (Art. 14)**
- **Prohibition of discrimination, Rights to equality of opportunity (Art. 15-16)**
- **Right to freedom under Article 19: Freedom of association; Freedom of movement;**
- **Freedom of residence; Freedom of assembly; Freedom of association; Freedom of**
- **movement; Freedom of residence; Freedom of occupation, trade and business;**
- **Right to take out processions; Right of the State to impose reasonable restrictions**

### **UNIT – III**

- **Protection in respect of Conviction under Article 20,**
- **Ex-post-facto law; Double jeopardy; Self-incrimination;**
- **Right of Life and Personal Liberty (Art. 21),**
- **Protection in respect of arrest and detention**
- **Right to freedom of religion (Articles 25-28)**

### **UNIT – IV**

- **Cultural and Education Rights (Articles 29-30)**
- **Enforcement of Fundamental Right, Writ Jurisdiction of the Supreme Court and**
- **High Court (Article 32, 226)**
- **Right to property before and after the Constitution 42nd Amendment Act, 1976**
- **Abolition of Untouchability, Titles (Articles 17-18)**
- **Right against exploitation (Articles 23, 24)**

### **Suggested Readings:**

1. **Austin Granville: Constitution of India: Cornerstone of a Nation; and Working A Democratic constitution**
2. **NarenderKumar : Constitutional Law of India.**
3. **Basu D. D : Shorter Constitution of India**
4. **Jain, M.P.: Constitutional Law of India,**
5. **Seervai, H.M. : Constitutional Law of India, Vols. I-III**
6. **Shukla, V.N. : Constitutional of India (ed. M.P.Singh)**
7. **B.R. Sharma : Constitutional Law and judicial Activism**
8. **M.C. Jain Kagzi : The constitution of India**
9. **B. Shiva Rao: The Framing of India's Constitution**

# LECTURE 16

## Importance of Freedom of Speech

Freedom of Speech is the bulwark of democratic government. This freedom is essential for the proper functioning of the democratic process. Freedom of speech and liberty is regarded as the first condition of liberty. It occupies a preferred position in the hierarchy liberties giving succor and protection to all other liberties. It is the mother of all liberties.<sup>1</sup>

In a democracy, freedom of speech & expression opens up channels of free discussion of issues. Freedom of speech plays a crucial role in the formation of public opinion on social, economic & political matters. It embraces within its scope the freedom of propagation and interchange of ideas, dissemination of information which would help the formation of one's opinion & viewpoint & debates on matters of public concern. So long as the expression is confined to nationalism, patriotism & love for the motherland, the use of National flag by the way of expression of those sentiments would be a Fundamental Right.

In *Maneka Gandhi v. Union of India*, [vii] **BHAGWATI J.**, has emphasized on the significance of the freedom of speech & expression in these words:

*“Democracy is based essentially on free debate and open discussion, for that is the only corrective of government action in a democratic set up. If democracy means government of the people by the people, it is obvious that every citizen must be entitled to participate in the democratic process and in order to enable him to intelligently exercise his rights of making a choice, free & general discussion of public matters is absolutely essential.”*

This aspect of the right to freedom of speech and expression extending the concept of citizenship to include socio-political participation of a person is critical in the process of determining the scope of right to life of a citizen under **Article 21** of the **Constitution**. **It is important to note that the scope of the “freedom of speech and expression” in Article 19(1)(a) of the Constitution has been expanded to include the right to receive and disseminate information. It includes the right to communicate and circulate information through any**

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<sup>1</sup> Report of the Second Press Comm., Vol. I, 34-35

**medium including print media, audio, television broadcast or electronic media.**

The judiciary has time and again opined that the right to receive information is another facet of the right to freedom of speech and expression and the right to communicate and receive information without interference is a crucial aspect of this right. This is because, a person cannot form an informed opinion or make an informed choice and effectively participate socially, politically or culturally without receipt of adequate information. The Supreme Court in *State of Uttar Pradesh v. Raj Narain*<sup>31</sup> has held that **Article 19(1)(a)** of the Constitution guarantees the freedom of speech and expression to all citizens in addition to protecting the rights of the citizens to know the right to receive information regarding matters of public concern.

This position was reiterated by the Court in *Secretary, Ministry of Information and Broadcasting, Govt. of India v. Cricket Association of Bengal*<sup>32</sup> wherein it was held that **Article 19(1)(a)** includes the right to acquire and disseminate information. The Supreme Court, while opining on the right to freedom of information, further noted in *Dinesh Trivedi, M.P. and Ors v. Union of India*<sup>33</sup> that “in modern constitutional democracies, it is axiomatic that citizens have a right to know about the affairs of the government which, having been elected by them, seek to formulate sound policies of governance aimed at their welfare.”

The print medium is a powerful tool for dissemination and receipt of information for any citizen. Thus, access to printed material is crucial for satisfaction of a person’s right to freedom of speech and expression guaranteed to him under the Constitution. Persons with print impairment have no access to printed material in their normal format. Failure on part of the State to make legislative provision for enabling access to persons with print impairment of material in alternative accessible formats would constitute a deprivation of their right to freedom of speech and expression and such inaction on the part of the State falls foul of the Constitution. In view of the same, it is an obligation on part of the State to ensure that adequate provisions are made in the law enabling persons with print impairment to access printed material in accessible formats.

Under the Freedom of Speech and Expression, there is no separate guarantee of freedom of the press and the same is included in the freedom of expression, which is conferred on all citizens (*Virender Vs. State of Punjab*, A. 1958, SC. 986 and *Sakal Papers Vs. Union of India* A.1962 S.C. 305). It has also been by this judgment that freedom of the press under the Indian Constitution is not higher than the freedom of an ordinary citizen.

### **Need to Protect Freedom of Speech and Expression**

Freedom of speech offers human being to express his feelings to other, but this is not the only reason; purpose to protect the freedom of speech. There could be more reasons to protect these essential liberties. There are four important justifications for freedom of speech –

- For the discovery of truth by open discussion – According to it, if restrictions on speech are tolerated, society prevents the ascertainment and publication of accurate facts and valuable opinion. That is to say, it assists in the discovery of truth.
- Free speech as an aspect of self- fulfillment and development – freedom of speech is an integral aspect of each individual's right to self-development and self-fulfillment. Restriction on what we are allowed to say and write or to hear and read will hamper our personality and its growth. It helps an individual to attain self-fulfillment.
- For expressing belief and political attitudes – freedom of speech provides opportunity to express one's belief and show political attitudes. It ultimately results in the welfare of the society and state. Thus, freedom of speech provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change.
- For active participation in democracy – democracy is most important feature of today's world. Freedom of speech is there to protect the right of all citizens to understand political issues so that they can participate in smooth working of democracy. That is to say, freedom of speech strengthens the capacity of an individual in participating in decision-making.

Thus we find that protection of freedom of speech is very much essential. Protection of freedom of speech is important for the discovery of truth by open discussion, for self- fulfillment and development, for expressing belief and political attitudes, and for active participation in democracy.

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**Choose the correct option**

1. **Which of the following articles cannot be null during the National Emergency?**

(A) Article 14 to 18

(B) Article 19

(C) Article 20,21

(D) Article 29,30

2. **Article 19 of the Indian Constitution refers to what are known as natural or common law rights as distinguished from rights which are created by a statute and must be exercised subject to conditions imposed by it.**

**III. Article 19 of the Indian Constitution does not include the right to life.**

A. I and II

B. II and III

C. I and III

D. I, II and III

3. **Which of the following principles and guidelines should be kept in mind for considering the constitutionality of a statutory provision upon a challenge on the alleged vice of unreasonableness of the restriction imposed by it?**

A. The restriction sought to be imposed on the Fundamental Rights guaranteed by Article 19 of the Indian Constitution must not be arbitrary or of an excessive nature so as to go beyond the requirement of felt need of the society and object sought to be achieved

B. There must be a direct and proximate nexus or a reasonable connection between the restriction imposed and the object sought to be achieved

C. No abstract or fixed principle can be laid down which may have universal application in all cases

D. All of them

4. **Which of the following statements regarding Freedom of the Press is/are found to be correct?**

I. This freedom cannot be claimed by a newspaper or other publication run by a non-citizen.

II. The freedom of Press, under our Constitution, is not higher than the freedom of an ordinary citizen is subject to the same limitations as are imposed by Article 19(2) of the Indian Constitution and to those limitations only.

A. Both are correct

B. Both are incorrect

C. Only I

D. Only II

5. **Which of the following Amendment Acts empowers the Court to adjudge the reasonableness of a restriction imposed even on the right guaranteed by Article 19(1) A of the Indian Constitution?**

A. First Amendment Act

B. Second Amendment Act

C. Third Amendment Act

D. Fourth Amendment Act



