



## **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 19

## **ARTICLE 20**

The Article 20 is one of the pillars of fundamental rights guaranteed by the Constitution of India. It mainly deals with protection of certain rights in case of conviction for offences. When an individual as well as corporations are accused of crimes, the provisions of Article 20 safeguard their rights. The striking feature of the Article 20 is that it can't be suspended during an emergency period. The Article has set certain limitations on the legislative powers of the Union and State legislatures.

### **Ex Post Facto Legislation**

The clause (1) of Article 20 protects individuals against ex post facto legislation, which means no individual can be convicted for actions that were committed before the enactment of the law.

In other words, when a legislature declares an act to be an offence or provides a penalty for an offence, it can't make the law retroactive so as to prejudicially affect the individuals who have committed such acts prior to the enactment of that law.

### **Immunity from Double Punishment**

The Constitution of India prohibits double punishment for the same offence. That is reflected in the clause (2) of Article 20, which safeguards an individual from facing multiple punishments or successive criminal proceedings for the same crime. According to this clause, no person shall be prosecuted and punished for the same offence more than once.

If someone has been put on trial and punished in a previous proceeding of an offence, he can't be prosecuted and punished for the same proceedings of an offence again in subsequent proceeding. If any law provides for the double punishment, it will be considered void.

Although Article 20 disapproves of the doctrine of 'Double Jeopardy', it does not give immunity from proceedings before a court of law or tribunal. Hence, a public servant who has been punished for an offence in a court of law may yet be subjected to departmental proceedings for the same offence.

It is to be noted that Article 20 provides protection against double punishment only when the accused has been 'prosecuted' and 'punished' once. Also, the Article does not prevent subsequent trial and conviction for another offence even if the two offences have some common aspects.

### **Immunity from Self-Incrimination**

The immunity from self-incrimination is conferred in the Article 20(3) of the constitution which states that the accused can never be compelled to be a witness against himself. In short, no individual can be forced to accuse himself.

The scope of this immunity has, prima facie, been widened by the Supreme Court by interpreting the word 'witness' as inclusive of both oral and documentary evidence. Hence, no person can be compelled to furnish any kind of evidence, which is reasonably likely to support a prosecution against him. This 'Right to Silence' is not called upon in case any object or document is searched and seized from the possession of the accused. For the same reason, the clause does not bar the medical examination of the accused or the obtaining of thumb-impression or specimen signature from him.

This immunity is only limited to criminal proceedings.

The Article 20 (3) can be rightfully used as an anchor only by those accused of an offence and against whom an FIR has been lodged, which in normal course would result in prosecution.



1. Article 20: Protection in respect of conviction for offences . □ (1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the Act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. □ (2) No person shall be prosecuted and punished for the same offence more than once. □ (3) No person accused of any offence shall be compelled to be a witness against himself.

2. Article 20 □ Safeguards to a person accused of a crimes (only criminal offences). □ Both substantive (1) and procedural parts (2)&(3) □ Incorporates 3 prohibition: Self incriminat- ion Double Jeopardy Ex-post-facto Law
3. Protection against Ex-Post facto law θA law which imposes penalties retrospectively i.e. upon the acts which already done or which increases the penalties for the past acts. θArticle 20(1) imposes a limitation on the law making power of the legislature . θPart 1 : No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the Act charged as an offence. θNot applicable in the case of trial.
4. □ Union of India v. Sukumar (1966) Held: a law which retrospectively changes the venue of the trial of an offence from a criminal court to an administrative tribunal is not hit by Art.20(1). □ Sec304B of IPC was enacted on19/11/1986 making dowry death as a punishable offence. Because of art20(1) , this section would not be applicable to the dowry death cases which took place prior to this enactment □ Chief Inspector of Mines v. Karam Chand Thapar (1983) :A law was made in 1923,and certain rules were made thereunder. The act was replaced in 1952 by another act, but the old rules were deemed to be the rules under the new act . Held : as these rules had been operative all along and did not constitute retrospective legislation, if any offence committed in 1955 could be punishable under them as these rules were factually existed at the date of the commission of the offence.
5. □ Part II : no person shall be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. □ Kedar Nath v. State of west Bengal (1953) : an accused committed an offence in 1947 , under the act , the offence was punishable by imprisonment or fine or both. Amendment in act in 1949 which enhanced the punishment for the same offence. Held that the enhanced punishment could not be applicable to the act committed by accused in 1947. □ Shiv Dutt Rai Fateh chand v. UOI (1984):it was held that

imposing or increasing a penalty with retrospective effect for a violation of a taxing statute does not infringe article 20(1).

6. Rule of Beneficial Construction *Rattan Lal v. State of Punjab* (1965) □ an ex post fact law which only mollifies the rigorous of criminal law is not within the prohibition of the 20(1). □ If a particular law makes a provision to that effect, though retrospective in operation, it will be valid. □ Sc under the rule of the benefit construction, reduced the punishment of the young offender.
  7. Double Jeopardy 20(2) □ Meaning of Jeopardy The word Jeopardy refers to the “danger” of loss, harm or conviction. □ No person shall be prosecuted and punished for the same offence more than once. □ objective :to avoid harassment, which must be caused for successive criminal proceedings, where the person has committed only one crime. □ *Nemo debet bis vexari* : a man must not be put twice in peril for the same offence.
  8. Constitution bars double punishment for the same offence. The conviction for such offence does not bar for subsequent trial and conviction for another offence and it does not matter the some ingredients of these two offences are common. □ Two aspects of Doctrine of Jeopardy : 1. *Autrefois convict* means that the person has been previously convicted in respect of the same offence. 2. The *Autrefois acquit* means that the person has been acquitted on a same charge on which he is being prosecuted. But under Art. 20(2) this principle is not incorporated as the article may be invoked when there has been prosecution and punishment at the instance
  9. Essentials : 1. Prosecuted and punished : The prosecution and punishment should co-exist for Art.20(2) to be operative. A prosecution without punishment would not bring the case under the said article. 2. Before a court of law or tribunal: though not specifically found in the article, have nevertheless been read there in. 3. An accused must be prosecuted and punished in the previous proceedings. 4. The offence must be the same for which he was prosecuted and punished in the previous proceedings.
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**Choose the correct option**

1. **Which of the following statements regarding protection of personal liberty is/are found to be correct?**
  - I. The object of Article 21 of the Indian Constitution is to prevent encroachment upon personal liberty by the Executive save in accordance with law and in conformity with the provisions thereof.
  - II. Before a person is deprived of his life or personal liberty the procedure established by law must be strictly followed and must not be departed from to the disadvantage of the person affected.
  - A. I and II
  - B. Only I
  - C. Only II
  - D. None of above
2. **The protection of the Article 21 extends to which of the following?**
  - A. Citizens
  - B. All persons
  - C. Foreigners
  - D. Persons under imprisonment
3. **Which of the following can be included in Right to life under Article 21 of the Indian Constitution?**
  - I. Right of a person not to be subjected to bonded labour or to unfair conditions of labour.
  - II. Right of a bonded labourer to rehabilitation after release.
  - III. Right to a decent environment and a reasonable accommodation.
  - A. I, II and III
  - B. I and II
  - C. II and III
  - D. I and III
4. **In which of the cases, domiciliary visit by the Police without the authority of a law, was held to be violative of Article 21 of the Indian Constitution assuming that a right of privacy was a fundamental right derived from the freedom of movement guaranteed by Article 19 (1) D of the Indian Constitutional as well as personal liberty guaranteed by Article 21?**
  - A. Dr. Sudesh Jale v. State of Haryana
  - B. Kharak Singh v. State of U.P
  - C. Govind v. State of M.P



D. Neera Mathur v. L.I.C

5. **Which of the following statements regarding reasonableness of a penal law is/are found to be correct?**

I. A procedure which was 'arbitrary, oppressive or fanciful' was no 'procedure' at all.

II. A procedure which was unreasonable could not be said to be in conformity with Article 14, because the concept of reasonableness permeated that Article in toto.

A. I and II

B. Only I

C. Only II

D. None of them