



## **FACULTY OF JURIDICAL SCIENCES**

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

**Subject : CONSTITUTIONAL LAW I**

**Subject code : BBL304**

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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 17

## **Indian Perspective**

In India under **Article 19(1)(a)** of the **Constitution** of India, “all citizens shall have the right to freedom of speech and expression”. In the Preamble to the Constitution of India the people of India declared their solemn resolve to secure to all its citizens liberty of thought and expression. The Supreme Court of India held that the freedom of speech and expression includes freedom to propagate ideas which is ensured by freedom of circulation of a publication, as publication is of little value without circulation.

**Article 19(2)** of the **Constitution** of India provides that this right is not absolute and ‘reasonable restrictions’ may be imposed on the exercise of this right for certain purposes. The right to freedom of speech would include both artistic and commercial speech which is required to be protected. Freedom of speech and expression would include artistic speech as it includes the right to paint, sign, dance, write poetry, literature and is covered by **Article 19(1)(a)** of the **Constitution** because the common basic characteristic of all these activities is freedom of speech and expression.

Under the Constitution of India an individual as well as corporation can invoke freedom of speech and their fundamental rights. Freedom of Speech is not only protected from unwarranted governmental interference but also when a private party calls upon a Court to enforce rules of law whose effect would be to restrict or penalize expression. Much would depend on the issue as to whether the reference to the trademark involved has been used in the trademark sense, for example, as envisaged in **Section 2(2) (a), (b) and (c)** of the **Trade Marks Act, 1999**. There is dearth of case law of how free speech interests are involved in trademark litigation. In a given case a party could challenge an act or omission on the part of the Registrar of Trade Marks on the ground that it infringes the fundamental right of a citizen.

For example: Freedom of speech and expression; or Registrar has acted in a manner which is against all norms of natural justice. A party could also in a given

case challenge the vires of a provision in the **Trade Marks Act, 1999** or the Rules framed thereunder – if it would violate the right to freedom of speech and expression.

Under the Trade Marks Act, 1999 there is no specific reference in crystal clear terms to criticism of another's mark. However reference is invited to **Section 29 (8) & (9)** of the **Trade Marks Act, 1999** as follows:–

*“Section 29(8) A registered trade mark is infringed by any advertising of that trade mark if such advertising*

- *takes unfair advantage of and is contrary to honest practices in industrial or commercial matters; or*
- *is detrimental to its distinctive character; or*
- *is against the reputation of the trade mark.”*

Infringement by oral use is provided for in subsection 9 of **Section 29**:

*“(9) Where the distinctive elements of a registered trade mark consist of or include words, the trade mark may be infringed by the spoken use of those words as well as by their visual representation and reference in this section to the use of a mark shall be construed accordingly.”*

The position of law is that a tradesman is entitled to declare that his goods are the best in the world even if the statement is untrue, but he may not in any circumstances say that his competitor's goods are bad or criticize his competitors goods. If he makes such a statement, it would amount to slander.

There is no 'fair use' clause or an 'open end' clause in Indian Trade Mark law. In India, there is dearth of cases on trademark infringement where the defendant has invoked freedom of speech as a defense. Joke articles in India are treated like any other and the author has not entitled to any additional immunity for the reason that the article is a humorous one.

**Freedom of speech enjoys special position as far India is concerned. The importance of freedom of expression and speech can be easily understand by the fact that preamble of constitution itself ensures to all citizens inter alia,**

**liberty of thought, expression, belief, faith and worship.** The constitutional significance of the freedom of speech consists in the Preamble of Constitution and is transformed as fundamental and human right in **Article 19(1)(a)** as “freedom of speech and expression”.

Explaining the scope of freedom of speech and expression Supreme Court has said that the words “freedom of speech and expression” must be broadly constructed to include the freedom to circulate one’s views by words of mouth or in writing or through audiovisual instrumentalities. Freedom of Speech and expression means the right to express one’s own convictions and opinions freely by words of mouth, writing, printing, pictures or any other mode. It thus includes the expression of one’s idea through any communicable medium or visible representation.

Moreover, it is important to note that liberty of one must not offend the liberty of others. Patanjali Shastri, J. in **A.K. Gopalan** case, observed, “*man as a rational being desires to do many things, but in a civil society his desires will have to be controlled with the exercise of similar desires by other individuals*”.

It therefore includes the right to propagate one’s views through the print media or through any other communication channel e.g. the radio and the television. Every citizen of this country therefore has the right to air his or their views through the printing and or the electronic media subject of course to permissible restrictions imposed under Article 19(2) of the Constitution. In sum, the fundamental principle involved here is the people’s right to know. Freedom of speech and expression should, therefore, receive generous support from all those who believe in the participation of people in the administration.

**We can see the guarantee of freedom of speech under the following heads:**

Freedom of Press

Although **Article 19** does not express provision for freedom of press but the fundamental right of the freedom of press implicit in the right the freedom of speech and expression. In the famous case ***Express Newspapers (Bombay) (P) Ltd. v. Union of India*** court observed the importance of press very aptly. Court held in this case that “In today’s free world freedom of press is the heart of social and political intercourse. The press has now assumed the role of the public educator

making formal and non-formal education possible in a large scale particularly in the developing world, where television and other kinds of modern communication are not still available for all sections of society. The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate [Government] cannot make responsible judgments. Newspapers being purveyors of news and views having a bearing on public administration very often carry material which would not be palatable to Governments and other authorities.”

The above statement of the Supreme Court illustrates that the freedom of the press is essential for the proper functioning of the democratic process. Democracy means Government of the people, by the people and for 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 right of making a choice, free and general discussion of public matters is absolutely essential. This explains the constitutional viewpoint of the freedom of press in India.

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**Choose the correct option**

1. **Clause (1) B. of Article 19 of the Indian Constitution guarantees the freedom of citizens to meet with each other in any number provided the assembly is**
  - A. Peaceable
  - B. Unarmed
  - C. Large
  - D. Both (A) and (B)
  
2. **Which of the following statements regarding Freedom of Association is/are found to be correct?**
  - I. The right guaranteed by 19 (1) C is an ordinary right which is enjoyed by all citizens to form associations.
  - II. It has no reference to a right which is conferred by a particular statute to act as a member of a body which is the creation of the statute itself.

A. I and II

- B. Only I
  - C. Only II
  - D. Neither I nor II
3. **Which of the following restrictions on Freedom of Association is/are considered to be unreasonable?**
- A. Government cannot make it obligatory for every employee to become a member of an association sponsored by the Government
  - B. A restriction on this freedom which may remain in force for an indefinite period at the pleasure of the executive authorities is an unreasonable restriction
  - C. Where those who have a right to form an association will be kept away and the society shall be run by a group of persons nominated by the Government, there is a virtual deprivation of the right to association
  - D. All of them
4. **By which of the following clauses, the right to Freedom of movement is granted to Indian citizens?**
- A. Article 19(1) C
  - B. Article 19(1) B
  - C. Article 19(1) A
  - D. Article 19(1) D
5. **Surveillance is needed for the legitimate purpose of prevention of crime and its process must necessarily be confidential. In which of the following situations the court may interfere in the police surveillance?**
- I. Where it is sought to be used for a purpose other than the detection of crime.
  - II. Where the surveillance is as excessive as to squeeze out the fundamental freedoms of all citizens or to offend the dignity of the individual.
- A. Only I
  - B. Only II
  - C. I and II
  - D. Neither I nor II