



FACULTY OF JURIDICAL SCIENCES

Course : BBALLB , 3rd Semester

Subject : CONSTITUTIONAL LAW I

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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 (Act. 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 18

Obscenity

Freedom of speech, though guaranteed, is not absolute in India. Unlike the U.S. Constitution, the text of India's Constitution clearly sets out restrictions on free speech. The freedom of speech guaranteed under **Article 19(1)(a)** can be subject to reasonable state restriction in the interest of decency or morality. Obscenity in India is defined as "offensive to modesty or decency; lewd, filthy and repulsive." It stated that the test of obscenity is whether the publication, read as a whole, has a tendency to deprave and corrupt those whose minds are open to such immoral influences, and therefore each work must be examined by itself .

With respect to art and obscenity, the Court held that "the art must be so preponderating as to throw obscenity into a shadow or the obscenity so trivial and insignificant that it can have no effect and may be overlooked ." The Court concluded that the test to adopt in India, emphasizing community mores, is that obscenity without a preponderating social purpose or profit cannot have the constitutional protection of free speech.

Right to Information

Right to know, to information is other facet of freedom of speech. The right to know, to receive and to impart information has been recognized within the right to freedom of speech and expression. A citizen has a fundamental right to use the best means of imparting and receiving information and as such to have an access to telecasting for the purpose. The right to know has, however, not yet extended to the extent of invalidating **Section 5** of the **Official Secrets Act, 1923** which prohibits disclosure of certain official documents. Even, **Right to Information Act 2005**, which specially talks about peoples' right to ask information from Government official, prohibits disclosure of certain documents under u/s 8 of the Act. These exceptions are generally the grounds of reasonable restrictions over freedom of speech and expression under **Article 19(1)** of **Constitution** of India. One can conclude that 'right to information is nothing but one small limb of right of speech and expression.

Voters Have Right to Know About their Candidates

In a landmark judgment in *Union of India v. Association for Democratic Reforms*⁴, a three-judge bench held that the amended Electoral Reforms Law passed by Parliament is unconstitutional as being violative of citizen's right to know under **Art. 19(1)(g)**.

The 'Freedom of Speech and Expression' Is Indeed A Very High One

In recent judgment of the Supreme Court in *Khushboo v. Kanniammal*⁶ upholds the right to freedom of speech and expression. Khushboo's right to freedom of speech was violated by the institution of multiple criminal cases against her in various courts across the country and consequent harassment that she suffered.

Grounds of Restrictions

It is necessary to maintain and preserve freedom of speech and expression in a democracy, so also it is necessary to place some restrictions on this freedom for the maintenance of social order because no freedom can be absolute or completely unrestricted. Accordingly, under **Article 19(2)** of the Constitution of India, the State may make a law imposing "reasonable restrictions" on the exercise of the right to freedom of speech and expression "in the interest of" the public on the following grounds: Clause (2) of **Article 19** of the Indian constitution contains the grounds on which restrictions on the freedom of speech and expression can be imposed:-

1) Security of State: Security of state is of vital importance and a government must have the power to impose a restriction on the activity affecting it. Under Article 19(2) reasonable restrictions can be imposed on freedom of speech and expression in the interest of the security of State. However, the term "security" is a very crucial one. The term "security of the state" refers only to serious and aggravated forms of public order e.g. rebellion, waging war against the State, insurrection and not ordinary breaches of public order and public safety, e.g. unlawful assembly, riot, affray. Thus speeches or expression on the part of an individual, which incite to or encourage the commission of violent crimes, such as, murder are matters, which would undermine the security of State.

2) Friendly relations with foreign states: In the present global world, a country has to maintain a good and friendly relationship with other countries.

Something which has the potential to affect such relationship should be checked by the government. Keeping this thing in mind, this ground was added by the constitution (First Amendment) Act, 1951. The object behind the provision is to prohibit unrestrained malicious propaganda against a foreign friendly state, which may jeopardize the maintenance of good relations between India and that state.

3) No similar provision is present in any other Constitution of the world: In India, the Foreign Relations Act, (XII of 1932) provides punishment for libel by Indian citizens against foreign dignitaries. Interest of friendly relations with foreign States, would not justify the suppression of fair criticism of foreign policy of the Government. However, it is interesting to note that member of the commonwealth including Pakistan is not a “foreign state” for the purposes of this Constitution. The result is that freedom of speech and expression cannot be restricted on the ground that the matter is adverse to Pakistan.

4) Public Order: Next restriction prescribed by constitution is to maintain public order: This ground was added by the Constitution (First Amendment) Act. ‘Public order’ is an expression of wide connotation and signifies “that state of tranquility which prevails among the members of political society as a result of internal regulations enforced by the Government which they have established.”

Here it is pertinent to look into meaning of the word “Public order. Public order is something more than ordinary maintenance of law and order. ‘Public order’ is synonymous with public peace, safety and tranquility. Anything that disturbs public tranquility or public peace disturbs public order. Thus communal disturbances and strikes promoted with the sole object of accusing unrest among workmen are offences against public order. Public order thus implies absence of violence and an orderly state of affairs in which citizens can peacefully pursue their normal avocation of life. Public order also includes public safety. Thus creating internal disorder or rebellion would affect public order and public safety. But mere criticism of government does not necessarily disturb public order.

The words ‘in the interest of public order’ includes not only such utterances as are directly intended to lead to disorder but also those that have the tendency to lead to disorder. Thus a law punishing utterances made with the deliberate intention to hurt the religious feelings of any class of persons is valid because it imposes a

restriction on the right of free speech in the interest of public order since such speech or writing has the tendency to create public disorder even if in some case those activities may not actually lead to a breach of peace. But there must be reasonable and proper nexus or relationship between the restrictions and the achievements of public order.

5) Decency or morality: The way to express something or to say something should be a decent one. It should not affect the morality of society adversely. Our constitution has taken care of this view and inserted decency and morality as a ground. The words ‘morality or decency’ are words of wide meaning. **Sections 292 to 294** of the **Indian Penal Code** provide instances of restrictions on the freedom of speech and expression in the interest of decency or morality. These sections prohibit the sale or distribution or exhibition of obscene words, etc. in public places. No fix standard is laid down till now as to what is moral and indecent. The standard of morality varies from time to time and from place to place.

6) Contempt of Court: In a democratic country Judiciary plays a very important role. In such situation, it becomes essential to respect such an institution and its order. Thus, restriction on the freedom of speech and expression can be imposed if it exceeds the reasonable and fair limit and amounts to contempt of court. According to **Section 2** ‘Contempt of court’ may be either ‘civil contempt’ or ‘criminal contempt.’ But now, Indian contempt law was amended in 2006 to make “truth” a defense.

However, even after such amendment, a person can be punished for the statement unless they were made in public interest. Again in *Indirect Tax Practitioners Assn. vs R.K.Jain*, it was held by court that, “Truth based on the facts should be allowed as a valid defense if courts are asked to decide contempt proceedings relating to contempt proceeding relating to a speech or an editorial or article”. The qualification is that such defense should not cover-up to escape from the consequences of a deliberate effort to scandalize the court.

7) Defamation: One’s freedom, be it of any type, must not affect the reputation or status of another person. A person is known by his reputation more than his wealth or anything else. Constitution considers it as ground to put restriction on

freedom of speech. Basically, a statement, which injures a man's reputation, amounts to defamation. Defamation consists in exposing a man to hatred, ridicule, or contempt. The civil law relating to defamation is still uncodified in India and subject to certain exceptions.

8) Incitement to an offense: This ground was also added by the **Constitution (First Amendment) Act, 1951**. Obviously, freedom of speech and expression cannot confer a right to incite people to commit offense. The word 'offense' is defined as any act or omission made punishable by law for the time being in force.

9) Sovereignty and integrity of India: To maintain the sovereignty and integrity of a state is the prime duty of government. Taking into it into account, freedom of speech and expression can be restricted so as not to permit anyone to challenge sovereignty or to permit anyone to preach something which will result in threat to integrity of the country.

From above analysis, it is evident that Grounds contained in **Article 19(2)** show that they are all concerned with the national interest or in the interest of the society. The first set of grounds i.e. the sovereignty and integrity of India, the security of the State, friendly relations with foreign States and public order are all grounds referable to national interest, whereas, the second set of grounds i.e. decency, morality, contempt of court, defamation and incitement to an offence are all concerned with the interest of the society.

Conclusion

Expression through speech is one of the basic guarantees provided by civil society. However in modern world Right to freedom of speech and expression is not limited to express ones' view through words but it also includes circulating one's views in writing or through audiovisual instrumentalities, through advertisements and through any other communication channel. It also comprises of right to information, freedom of press etc. It is a right to express and self realization.

Two big democracies of world i.e. America and India have remarkably protected this right. As far as India is concerned, this important right is mentioned in **Article 19(1) (a)**, which falls in fundamental right category. Indian

courts have always placed a broad interpretation on the value and content of **Article 19(1) (a)**, making it subjective only to the restrictions permissible under **Article 19(2)**.

The words ‘in the interest of public order’, as used in the **Article 19** include not only utterances as are directly intended to lead to disorder but also those that have the tendency to lead to disorder. There should be reasonable and proper nexus or relationship between the restriction and achievement of public order.

Freedom of speech and expression is the bulwark of democratic government. This freedom is essential for the proper functioning of democratic process and is regarded as the first condition of liberty. It occupies a preferred position in the hierarchy of liberties giving protection to all other liberties. It has been truly said that it is the mother of all other liberties. That liberty include the right to acquire information and disseminate the same. It includes the right to communicate it through available media without interference to as large a population of the country, as well as abroad, as is possible to reach. Right to know is the basis right of the citizens of a free country and **Art. 19(1)(a)** protects that right. Right to receive information springs from **Art 19(1)(a)**.

Choose the correct option

1. **Which of the following statements regarding Freedom of Residence is/are found to be correct?**
 - I. Since the rights under Article 19 of the Indian Constitution are available only to a citizen, a person cannot complain of the infringement of his right under the sub clause (1) (e) if his citizenship has been terminated by a law made by Parliament, under Article 11.
 - II. It is not available to a foreigner.
- A. Neither I nor II
 - B. I and II
 - C. Only I
 - D. Only II

2. **Which of the following expression is/are employed under Article 19(1) (g) of the Indian Constitution?**
- A. Profession
 - B. Occupation
 - C. Trade and Business
 - D. All of them
3. **Which of the following clauses is/are covered under Article 20 of the Indian Constitution?**
- I. 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.
 - II. No person shall be prosecuted and punished (of the same offence more than once.
 - III. No person accused of any offence shall be compelled to be a witness against himself.
- A. Only I
 - B. II and III
 - C. I and III
 - D. I, II and III
4. **Article 20(3) of the Indian Constitution is about “accused’s immunity from being compelled to be a witness against himself”. This clause gives protection:**
- A. To a person accused of an offence
 - B. Against compulsion to be a witness
 - C. Against himself
 - D. All of them
5. **Which of the following is/are an essential ingredient of the clause (3) of Article 20 of the Indian Constitution?**
- A. Compulsion
 - B. Confession
 - C. Prohibition
 - D. Both (A) and (B)