



## **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 20

1. □ Inquiry could not be regarded as a prosecution for a criminal offence. When a civil servant is dismissed from governmental service on the ground of misbehavior after a departmental inquiry, his later prosecution on the same charges on which he had been punished by dismissal would not be barred by the said article. —A.A Mulla v. State of MH (1997) : The appellants were challenged the validity of their second trial on the ground of the violation of article 20(2). □ Held : The second trial was not hit by article 20(2) as not only the ingredients of the trial were different, but the factual situation of offences were also different.
2. □ Venkataraman v. Union of India, (1954) An enquiry was made before the enquiry commissioner on the appellant under the Public Service Enquiry Act, 1960 & as a result, he was dismissed from the service. He was later on, charged for committing the offence under Indian Penal Code & the Prevention of Corruption Act. The court held that the proceeding held by the enquiry commissioner was only a mere enquiry & did not amount to a prosecution for an offence. Hence, the second prosecution did not attract the doctrine of Double Jeopardy or protection guaranteed under Fundamental Right Article 20 (2).
3. □ Leo Roy v. Superintendent District Jail, (1958) The Court held: if the offences are distinct the rule of Double Jeopardy will not apply. Thus, where a person was prosecuted and punished under sea customs act, and was later on prosecuted under the Indian Penal Code for criminal conspiracy, it was held that second prosecution was not barred since it was not for the same offence. □ Maqbool Husain v. State of Bombay (1953) : SC held that the sea customs authorities were not a court or a judicial tribunal and the adjudicating of confiscation under the sea customs act did not constitute a judgment of judicial character, which is necessary to take the plea of double jeopardy. Hence the prosecution under the Foreign Exchange Regulation Act is not barred.
4. Self – incrimination 20(3) □ No person accused of any offence shall be compelled to be a witness against himself. □ The term ‘self-incrimination’ means the act of accusing oneself of a crime for which a person can then be

prosecuted. Self- incrimination can occur either directly or indirectly: directly, by means of interrogation where information of a self-incriminatory nature is disclosed; indirectly, when information of a self-incriminatory nature is disclosed voluntarily without pressure from another person. □ Compulsion is a duress ; has to be physical act ,not mere an act of state of mind except where the mind has be so conditioned by some extraneous process as to render the making of the statement involuntary and therefore extorted. □ Based on a legal maxim : Nemo tenture prodere accusare seipsum – no man bound to accuse himself.

5. □ At the first instance it appears that the right is absolute. But as the Constitution of India prevents absolutism, it is provided under the Indian Evidence Act, 1872 that if any substance or object or material is in the possession of the accused, in the absence of which process of investigation shall not be completed, he may be put under pressure, for example, DNA sample for paternity test. □ To ensure fair trial the Act also provides that this protection is available only to the accused, not to witnesses who may be asked incriminating questions to find out the truth. □ The characteristics features of this provisions are – #That the accused is presumed to be innocent, # That it is for the prosecution to establish his guilt, and # That the accused need not make any statement against his will.
6. □ Three components 1. it is a right pertaining to a person accused of an offence 2. it is a protection against compulsion to be a witness; 3. it is a protection against such compulsion resulting in his giving evidence against himself. □ All of the three components shall be co-exist before the protection of the said article.
7. Person accused of an offence □ A person accused of an offence means a “person against whom a formal accusation relating to the commission of an offence has been levelled, which may result in prosecution”. □ Formal accusation in India can be brought by lodging of an F.I.R or a formal complaint, to a competent authority against the particular individual accusing him for the commission of the crime. □ “a person cannot claim the

protection if at the time he made the statement, he was not an accused but becomes an accused thereafter.”

8. □ Article 20 (3) does not apply to departmental inquiries into allegations against a government servant, since there is no accusation of any offence within the meaning of Article 20 (3). □ Not available for the witnesses □ Narayanlal Bansilal v. Maneck Feroz Mistry (1961) Held: sc denied that the appellant could not get immunity under article 20(3) and pointed out that the privilege was available to an accused person only and as no formal accusation was laid against him, he could not claim the privilege under this article.
9. PROTECTION AGAINST COMPULSION TO BE A WITNESS □ The protection contained in Article 20(3) is against compulsion “to be a witness” against oneself. □ In *M.P Sharma v. Satish Chandra*(1954) the Supreme Court gave a wide interpretation of the expression “to be a witness” which was inclusive of oral, documentary and testimonial evidence. The Court also held that the protection not only covered testimonial compulsion in the Court room but also included compelled testimony previously obtained from him.
10. To be a witness — Furnishing Evidence □ In *M.P Sharma’s* case it was held that, Article 20 (3) was directed against self-incrimination by the accused person. Self-incrimination must mean conveying information based upon the personal knowledge of the person giving the information and cannot include merely the mechanical process of producing documents in the Court. Exception □ It follows that giving thumb impressions, or impression of foot or palm or fingers or specimens of writings or exposing body for the purpose of identification are not covered by the expression ‘to be a witness’ under Article 20(3).
11. COMPULSION TO GIVE EVIDENCE “AGAINST HIMSELF □ The protection under Article 20(3) is available only against compulsion of the accused to give evidence against himself. Thus, if the accused voluntarily makes an oral statement or voluntarily produces documentary evidence, incriminatory in nature, Article 20(3) would not be attracted. □ The term compulsion under Article 20(3) means ‘duress’. Thus, compulsion may take

many forms. If an accused is beaten, starved, tortured, harassed etc. to extract a confession out of him/her then protection under Article 20(3) can be sought.

12.  Mohd. Dastagir v. State of Madras(1960) where the appellant went to the residence of the Deputy Superintendent of Police and handed him an envelope. On opening the envelope, the DSP found cash in it, which meant that the appellant had come to offer bribe to the officer. The DSP refused it and asked the appellant to place the envelope and the notes on the table, and he did as told, after which the cash was seized by the Police. The Supreme Court held that, the accused wasn't compelled to produce the currency notes as no duress was applied on him. Moreover the appellant wasn't even an accused at the time the currency notes were seized from him. Hence in this case the scope of Article 20(3) was not applicable.
13. Right to silence The right to silence has various facets. 1. the burden is on the State or rather the prosecution to prove that the accused is guilty. 2. an accused is presumed to be innocent till he is proved to be guilty. 3. the right of the accused against self incrimination, namely, the right to be silent and that he cannot be compelled to incriminate himself.  There are also exceptions to the rule. An accused can be compelled to submit to investigation by allowing his photographs taken, voice recorded, his blood sample tested, his hair or other bodily material used for DNA testing etc.
14.  Universal Declaration of Human Rights, 1948. Art. 11.1 "Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence."  The International Covenant on Civil and Political Rights, 1966 to which India is a party states in Art. 14(3)(g) "Not to be compelled to testify against himself or to confess guilt".  The European Convention for the Protection of Human Rights and Fundamental Freedoms states in Art. 6(1) that every person charged has a right to a 'fair' trial and Art. 6(2) thereof states:  " Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."



15. □ Nandini Sathpathy vs P.L.Dani (1978) the appellant, a former Chief Minister of Orissa was directed to appear at Vigilance Police Station, for being examined in connection to a case registered against her under the Prevention of Corruption Act, 1947 and under S. 161/165 and 120-B and 109 of The Indian Penal Code, 1860. Based on this an investigation was started against her and she was interrogated with long list of questions given to her in writing. She denied to answer and claimed protection under Article 20(3). The Supreme Court ruled that the objective of Article 20(3) is to protect the accused from unnecessary police harassment and hence it extends to the stage of police investigation apart from the trial procedure.
16. Tape Recording of statements made by the accused □ If statements recorded are made by the accused, without any duress, with or without his knowledge are not hit by Article 20(3). □ R M Malkani v. State of MH (1973), the telephonic conversation were recorded by the police officer with the permission of the one party, that case is not hit by the said article. SCIENTIFIC TESTS-INVOLUNTARY? #Narcoanalysis- a method of psychological investigation in which the conscious or unconscious unwillingness of a subject to express memories or feelings is diminished by the use of a barbiturate drug. #polygraphy -The use of a polygraph to record several physiological characteristics simultaneously; the interpretation of data from a polygraph.(Lie detector test)
17. Selvi v. State of Karnataka(2010) □ In this case the Hon'ble Chief Justice, Justice K.G Balakrishnan spoke of behalf of the Apex Court, and drew the following conclusions: □ The right against self-incrimination and personal liberty are non-derogable rights, their enforcement therefore is not suspended even during emergency. □ The right of police to investigate an offence and examine any person do not and cannot override constitutional protection in Article 20(3); □ The protection is available not only at the stage of trial but also at the stage of investigation;
18. □ That the right protects persons who have been formally accused, suspects and even witnesses who apprehend to make any statements which could expose them to criminal charges or further investigation □ The law confers

on 'any person' who is examined during an investigation, an effective choice between speaking and remaining silent. This implies that it is for the person being examined to decide whether the answer to a particular question would be inculpatory or exculpatory; □ Article 20(3) cannot be invoked by witnesses during proceedings that cannot be characterised as criminal proceedings □ Compulsory narco-analysis test amounts to 'testimonial compulsion' and attracts protection under Article 20(3);

19. □ Conducting DNA profiling is not a testimonial act, and hence protection cannot be granted under Article 20(3); □ That acts such as compulsory obtaining signatures and handwriting samples are testimonial in nature, they are not incriminating by themselves if they are used for the purpose of identification or corroboration □ That subjecting a person to polygraph test or narco-analysis test without his consent amounts to forcible interference with a person's mental processes and hence violates the right to privacy for which protection can be sought under Article 20(3); □ That courts cannot permit involuntary administration of narco-tests, unless it is necessary under public interest.

20. Conclusion □ Art. 20 provides a right of protection to a person in respect of conviction for offences against police authorities. □ Applicable only to the criminal offences. □ Applicable to both citizens and non-citizens as well as corporations. □ Article 20 also constitutes the limitation on the legislative powers of the Union and State legislatures. □ The article 20(3) also known as Protective Umbrella against the testimonial compulsion.

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**Choose the correct option**

1. 'Protection against arrest and detention in certain cases' is mentioned in which of the following Articles of the Indian Constitution?  
A. Article 21  
B. Article 21A

C. Article 22

D. Article 22A

**2. Which of the following statements is/are found to be correct?**

I. The person arrested has a right to consult a legal advisor of his own choice, ever since the moment of his arrest and also to have effective interview with the lawyer out of the hearing of the police, though it may be within their presence.

II. The right extends to any person who is arrested, whether under the general law or under a special statute.

A. Only I

B. Only II

C. I and II

D. None of them

**3. Which of the following is mentioned in clause (2) of Article 22 of the Indian Constitution?**

A. The right to consult legal practitioner

B. Right to be defended by a legal practitioner

C. Right to be produced before the nearest magistrate

D. Both (A) and (B)

**4. The right to make a representation against the order of detention is the most cherished and valuable right conferred upon a detenu under Article \_\_\_\_\_ of the Indian Constitution and if there has been any infraction of such right the detenu is entitled to be released.**

A. 22(2)

B. 22(3)

C. 22(4)

D. 22(5)

**5. Prohibition of traffic in human beings and forced labour comes under which of the following fundamental rights?**

A. Right to freedom

B. Right against exploitation

C. Right to education and culture

D. Right to constitutional remedies