



## **FACULTY OF JURIDICAL SCIENCES**

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

**Subject : CONSTITUTIONAL LAW I**

**Subject code : BBL304**

**Faculty Name : Ms Taruna Reni Singh**

## **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 28

In *A.S. Narayan v. State of Andhra Pradesh*,(1996) Justice Hansaria observed that “*our constitution makers had used the word “religion” in these two articles (Articles 25 and 26) in the sense conveyed by the word ‘dharma’.*” He further explained the difference between religion and dharma as “religion is enriched by visionary methodology and theology, whereas dharma blooms in the realm of direct experience. Religion contributes to the changing phases of a culture; dharma enhances the beauty of spirituality. Religion may inspire one to build a fragile, mortal home for God; dharma helps one to recognize the immortal shrine in the heart.”

### ***Freedom of Conscience***

Freedom of 'conscience' is absolute inter freedom of the citizen to mould his own relation with god in whatever manner he like. The Courts have defined freedom of conscience as the freedom of a person to entertain any belief or doctrine concerning matters, which are regarded by him or her to be conducive to his or her spiritual well being. The wording of article 25 of the Indian Constitution, however, seems to suggest that the individual's right to hold such belief is subject to public order, morality and health and to the other provisions of part III of the Constitution.

### ***Doctrine or Belief***

In *Hasan Ali v. Mansoor Ali*(1947) the Bombay High Court held that Articles 25 and Article 26 not only prevents doctrines or beliefs of religion but also the acts done in pursuance of religion. It thus guarantees ceremonies, modes of worship, rituals, observances, etc which are an integral part of religion. What is the essential or integral part of a religion has to be determined in the light of the doctrines and practices that are regarded by the community as a part of their religion and also must be included in them.

The Supreme Court in *Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*(1954) ruled that there is no doubt that religion finds its basis in the system of doctrines regarded by those who profess that religion, but it will not be correct to say religion is nothing but a doctrine or belief.

In the case of *SP Mittal v. Union of India*,(1983) the court held that Religion need not be theistic.

It is not merely an opinion, doctrine or belief but has an outward expression in the act as well.

In *Sardar Suedna Taiiir Saifiiddin v State of Bombay* (1962) SC observed Articles 25-30 embody the principles of religious tolerance that has been the characteristic feature of Indian civilization from the start of history. They serve to emphasize the secular nature of Indian democracy which the founding fathers considered should be the very basis of the Constitution

In *Ratilal Panachand Gandhi v State of Bombay*(1954) Court held Freedom of conscience connotes a person's right to entertain beliefs and doctrines concerning matters which are regarded by him to be conducive to his spiritual well being. Court further observed religious

practices or performances of acts in pursuance of religious beliefs are as much a part of religion as faith or belief in particular doctrines

*Bijoe Emmanuel v. State of Kerala (1986)* It is also known as National Anthem Case. The facts of this case were that three children belonging to a sect (Jehovah's witness) worshipped only Jehovah (the creator) and refused to sing the national anthem "Jana Gana Mana". According to these, children singing Jana Gana Mana was against the tenets of their religious faith which did not allow them to sing the national anthem. These children stood up respectfully in silence daily for the national anthem but refused to sing because of their honest belief. A Commission was appointed to enquire about the matter.

In the report, the Commission stated that these children were 'law-abiding' and did not show any disrespect. However, the headmistress under the instruction of the Dy. Inspector of Schools expelled the students.

The Supreme Court held that the action of the headmistress of expelling the children from school for not singing the national anthem was violative of their freedom of religion. The fundamental rights guaranteed under Article 19(1)(a) and Article 25(1) has been infringed. It further held that there is no provision of law which compels or obligates anyone to sing the national anthem, it is also not disrespectful if a person respectfully stands but does not sing the national anthem.

In another case of the Supreme Court, *Shyam Narayan Chouksey v. Union of India (2018)* It was averred in the petition filed before the Supreme Court that every person must show respect to the national anthem. The Supreme Court held that every citizen or persons are bound to show respect to the National Anthem of India, whenever played or sung on specific occasions the only exemption is granted to disabled people. It further held that playing of the national anthem in cinema halls is not mandatory but optional and directory.

Article 51A also recognizes the duty of every citizen to show respect to our national anthem. It states that every citizen of India is duty-bound to respect its ideals, institutions, National flag, National anthem, etc.

*Ramesh v. Union of India, (1988)*

In this case the serial 'Tamas' was based upon a book that already screened four episodes that portray the communal violence between Hindu-Muslim and Sikh-Muslim and the tension, killing and looting that took place. A writ petition was filed under Article 32 of the Constitution for the issuance of the writ of prohibition or other appropriate writ or order restraining the further screening of the serial 'Tamas' and enforcing the fundamental rights of the petitioner under Article 21 and Article 25 and to declare the screening of Tamas as violative of Section 5B of the Cinematograph Act, 1952.

The Court while dismissing the petition held that there is no violation of Article 21 and 25 and the respondent has not acted improperly. The author tries to bring attention to the past history of our country and to emphasize the wish of the people to live in harmony and rise above religious

barriers. It further held that when the serial is viewed in its entirety it creates an impression of peace and co-existence and that the people are not likely to be carried away by the violence shown in it.

*Appointment of Non-Brahmins as Pujari N. Aditya v. Travancore Devaswom Board(2002)*

The issue, in this case, was whether the appointment of a non-Malayala Brahmin as 'Santhikaran' (Priest or Pujari) of the Kongorpilly Neerikode Siva Temple at Kerala is violative of the provisions of the constitution.

The court held as long as a person is well versed, properly qualified and trained to perform the puja in an appropriate manner for the worship of the deity, such a person can be appointed as 'Santhikaran' despite his caste. In the present case, it was also observed that the temple is not a denomination where there is a specific form of worship is required.

*Bhuri v. State of J. & K., (1997)*

In this case, the issue related to the constitutional validity of the Jammu and Kashmir Mata Vaishno Devi Shrine Act, 1988 which abolished the right of performing Pooja. The Act took over the administration, governance, management of the shrine fund and vested it with the Board constituted under the Act (Shri Mata Vaishno Devi Shrine Board). The Supreme Court upheld the Act as constitutionally valid and observed that right to pooja is a customary right and the state by enacting a legislation can abolish it. The rights under Article 26 is not absolute but is subject to certain limitation.

*Acquisition of place of worship by State* The Supreme Court in the case of *M Ismail Faruqi v. Union of India (1994)* held that the mosque is not an essential part of Islam. Namaz (Prayer) can be offered by the Muslims anywhere, in the open as well and it is not necessary to be offered only in a mosque.

In *M Siddiq (D) Thr. Lrs v. Mahant Suresh Das (2019)* Supreme Court held that the State has the sovereign or prerogative power to acquire the property. The state also has the power to acquire places of worship such as mosque, church, temple, etc and the acquisition of places of worship per se is not violative of Articles 25 and 26. However, the acquisition of place of worship which is significant and essential for the religion and if the extinction of such place breaches their (persons belonging to that religion) right to practice religion then the acquisition of such places cannot be permitted.

*Shifting of property connected with religion*

In the case of *Gulam Abbas v. State of UP(1981)*, there was a dispute between the Shias and Sunnis regarding the performing of the religious rites by the Shias on a certain plot of land of mohalla Doshipura in Varanasi. In order to avoid clashes between these communities and to find a permanent solution to this problem, the Supreme Court appointed a 7 member committee with Divisional Commission as the Chairman and 3 members of the Shia sect and 3 members of the

Sunni sect. The committee made a recommendation of shifting of the graves of Shias to separate the places of worship of the Shia and Sunni sect. The Sunni sect challenged these recommendations as violative of their fundamental right of freedom of religion under Article 25 and 26. The Court rejected these contentions.

The Supreme Court held that the fundamental right guaranteed under Article 25 and 26 is not absolute and is subject to public order and if the court is of the opinion that shifting of graves is in the interest of the public then the consent of the parties is irrelevant even though the Muslim personal law is against shifting of graves. Triple Talaq: *Shayara Bano v. Union of India*(2017) Talaq-e-biddat known as triple talaq, a kind of divorce through which a Muslim man could divorce his wife by uttering the words talaq talaq talaq. A 5 judges bench of the Supreme Court heard the controversial Triple Talaq case. The main issue, in this case, was whether the practice of Talaq-e-biddat (triple talaq) is a matter of faith to the Muslims and whether it is constituent to their personal law. By a 3:2 majority, the court ruled that the practice of Talaq-e-biddat is illegal and unconstitutional. The court also held that, an injunction would continue to bar the Muslim male from practicing triple talaq till a legislation is enacted for that purpose.

Noise pollution The Supreme Court in *Church of God (Full Gospel) v. K.K.R. Majestic Colony Welfare Association*(2000) held that nowhere in any religion, it is mentioned that prayers should be performed through the beating of drums or through voice amplifiers which disturbs the peace and tranquility of others. If there is any such practice, it should be done without adversely affecting the rights of others as well as that of not being disturbed in their activities.

In the case of *Maulana Mufti v.State of West Bengal*(1998) restrictions were placed on the use of microphones before 7 am. It was held by the Calcutta High Court that Azan is an integral and necessary part of the religion but certainly not the use of microphones. It violates the basic human and fundamental right of the citizens to sleep and leisure.

### ***Essential/Integral Part of Religion***

*What is protected under article 25 is the belief and faith that are integral part of religion. In deciding the question as to whether a given religious practice is an integral part of the religion or not, the test always would be whether it is regarded as such by the community following the religion or not. This question will always have to be decided by the court and in doing so, the court may have to enquire whether the practice in question is religious in character and if it is, whether it can be regarded as an integral or essential part of the religion, and the finding of the court on such an issue will always depend upon the evidence adduced before it as to the conscience of the community and the tenets of its religion.*

---

### **Choose the correct option**

1. **Expression ‘socialist’ in the Preamble has been added by taking the views of:**
  - A. Marx and Laski
  - B. Marx and Gandhi
  - C. Rousseau and Gandhi

D. Gandhi and Hegel.

**Ans. B**

**2. Which of the following statement is incorrect:**

- A. Preamble is a key to the understanding of the mind of founding fathers
- B. Preamble embodies the ideals, hopes, faith and aspirations of the people
- C. Preamble embodies the intentions of the founding fathers and objectives of the Constitution
- D. Preamble of the Constitution has no importance. It is no more than an introduction to the Constitution.

**3. The word 'socialist secular' and 'unity and integrity of the Nation' were made to our Constitution by:**

- A. 42nd Amendment of the Constitution
- B. 44th Amendment of the Constitution
- C. 46th Amendment of the Constitution
- D. None of the above.

**4. Which one of the following statements is correct:**

- A. Preamble of the Constitution is the part of the Constitution and can be amended under Article 368
- B. Preamble of the Constitution is not a part of the Constitution and cannot be amended
- C. Preamble is the part of the Constitution and can be amended only if no change in the basic structure is made
- D. Preamble can be amended by Parliament simply by an objective resolution.

**5. The Preamble of our Constitution is solemnly resolved to secure to its people:**

- A. Justice, social, economic and political; liberty of thought, expression, belief, faith and worship and equality of status and opportunity
- B. Fundamental Rights and Duties
- C. Civil, Political and Economic fundamental rights
- D. Parliamentary form of Government.