



## **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 29

*In **Ratilal Panchand Gandhi v. State of Bombay(1954)** Justice Mukherjea provided the definition of religion as Religious practices or performance of acts in pursuance of religious belief are as much a part of religion as faith or belief in particular doctrine. This Justice has stated that doctrines of religions are essential part of religion. The performance any religious rite or practice of any belief is a part and parcel of religion. Justice Mukahrjea also provided another observation of religion “A religion may not lay down a code” of conduct of ethical rules for its followers to accept, it might prescribe rituals and observations ceremonies and modes of worship which are regarded as integral parts of religion and these forms and observation might extend even to matters of food and dress. This is the impact of religion over the behavior of individual’s life in society. In **Mohammad Hanif Qureshi v. State of Bihar(1958)** cow slaughter on the day of Bakr-Id was claimed as fundamental right under Islam. There were various laws passed by the state legislatures to prohibit cow slaughter. Appellants in this claimed that scarifies of cow is practice and custom under Islam and further it is claimed that this right is enjoyed by all Muslims on the day of Bakr-Id. The question before the judiciary was that what is the importance of Bakr-Id under Islam. SC held held that slaughter of cow is not essential part or integral part of Islam hence the applicants cannot claim it as a matter of fundamental right guaranteed under Article 25 of Indian constitution.*

### **Restrictions on Freedom of Religion**

*Right to religion can be restricted on following grounds:*

- Health, morality, or public order.*
- Social reform.*
- Social welfare.*
- Remaining provisions of part 3 of the Constitution*

*Freedom of religion, like any other freedom, cannot be absolute. Perhaps, the complete protection of all religious beliefs might result in the disappearance of organized and orderly society. It might also interfere with social reforms aimed at eradicating objectionable practices perpetuated in the name of religion. The Constitution of India itself imposes drastic-limitations on the freedom of religion guaranteed by Article 25. This Article contains six grounds for restricting religious freedom.*

### **Restriction on Grounds of Public order, Morality and Health**

*(a)**Public order:** No freedom can retains in a state of disorder, therefore, it is the duty of the State of maintain peace and order so that people can enjoy the rights given by the Constitution. “Public order” is an expression of wide connotation. It signifies a state of tranquility which prevails among the members of a political society.*

*Restriction on this ground implies that the State could pass a law to regulate religious meetings or processions in public places like roads, streets and parks. Under Article 19 (1) (c) all citizens have freedom to assemble for any purposes. This freedom also includes resembling for religious*

*purposes. However, this right is subject to a number of conditions viz. the Assembly must be peaceful, it must be unarmed and it must be held subject to the requirement of public order.*

*Sections 295 to 298 of the Indian Penal Code, 1860 decree certain acts to be an offence if they tend to wound the religious feelings of any class of persons. Section 153 A of the code also makes it an offence to promote, on grounds of religion, race, language, caste or community, disunity between different religious, racial or language groups. This section also declared an act to be a criminal offence if it is prejudicial to the maintenance of harmony between different religious groups or is likely to disturb public tranquility. These sections are protected under the restrictive head of “public order”.*

*The cow-protection legislation and laws prohibiting propagation of religion for the purposes of conversion, by force, fraud, inducement or allurement, have been made with the objectives to maintain public order in the State.*

*(b) **Morality:** On the ground of Morality State legislation can validly prohibit immoral practices, although they may be approved by religion. The Hindu religion has sanctioned certain practices which would appear to be immoral. In South India many orthodox Hindus held belief that religious merit could be attained by dedicating girls to temples. Such girls were called devadasis (i.e. servants of the God). However, in the course of time, this led to temple prostitution. The practice of Sati (whereby a widow burnt herself to death on the funeral pyre of her husband) was also considered to have a basis in religion.*

*(c) **Public Health:** It is the paramount duty of a civilized State to furnish legal armor to protect individual's life and to maintain good health of the human being. However, this life saving objective of the State may run counter to certain religious beliefs and practices. Death by starvation or by self-inflicted torture to attain spiritual ends is also an offence under the Indian Penal Code. The law, therefore, forbids suicide even if the act is motivated by religious intention.*

***In Rama Chandra v. State, the validity of the Ganga Sagar Mela or dinance of 1975** which was promulgated to enable the State of West Bengal to take measures for safeguarding the health, safety and welfare of pilgrims attending the Ganga Sagar Mela (fair) was attacked. However, the court observed that the ordinance come within the scope of restrictions permitted by Article 25.*

### ***Restrictions Imposed by Part III***

Clause (1) of Article 25 of the Indian Constitution declares that the exercise of religious freedom is subject to other Fundamental Rights guaranteed in part III of the Constitution. This requires a balancing of rights in the area of religion with other rights. Since the freedom under Article 25 has been made specifically subject to the provision of Part III if there is any conflict between the two, provisions of part III will prevail over Article 25. The limitation “subject to the other provisions of this part” occurs only in clause (1) of Article 25 and not in clause (2). Clause (1) declares the rights of all persons to freedom of conscience and the right freely to profess, practice

and propagate religion. It is this right that is subject to the other provisions in the Fundamental Rights chapter one of the provisions to which the right declared in Article 25 (1) is subject to Article 25 (2). A law, therefore, which falls within Article 25 (2) will control the right conferred by Article 25 (1) and the limitation in Article 25 (1) does not apply to that law.

### ***Regulation of Economic, Financial, Political or other Secular Activities associated with Religion***

Article 25 (2) (a) empowered the State to regulate financial, political and secular activities associated with religion. The religious activities as such are not covered under the regulatory power of the State. It is not always easy to find out whether an activity will be covered under religious practice or under financial, political or secular activity associated with religion. Certain activities even if involve expenditure or employment of servants and priests or uses of marketable commodities cannot be said to be secular activities under Article 25(2).

### ***Social Reform and Throwing Open of Temples***

Clause (2) (b) of Article 25 deals with two exceptions: (1) laws providing for social welfare and social reforms, and (2) the throwing open of all “Hindu religious institutions of a public character” to “all classes and sections of Hindus.”

The freedom of religion under Article 25(1) is, therefore, subject to the power of the State to make laws for social welfare and social reforms. Thus, the banning of bigamous marriage was upheld as a measure of social reforms. Likewise, the provisions of the Hindu Marriage Act, 1955 are protected under Article 25 (2) (b). On the same basis the prohibition of evil of Sati or system of „devdasi“ was upheld. The right protected by Article 25 (2) (b) is a right to enter into a temple for purposes of worship and it should be construed literally in favor of public. But it does not follow from this that the right is absolute and unlimited in character. In *Venkataraman Devaru v. State of Mysore*, (1958) it was held that no member of the Hindu Public could, for example, claim as the rights protected by Article 25 (2) that a temple must be kept open for worship at all hours of the day and night or that he should personally perform those services which the acharyas alone could perform.

### ***Explanations to Article 25***

Explanation 1 to Article 25 of the Constitution recognizes the rights of the followers of the Sikh religion to wear Kripans as an emblem of their religion. Kripan means a Sword, but its size and shape has not been prescribed by the Sikh religion. It may, therefore, be a sword of any size or shape. But a Sikh cannot carry any number of Kripans or swords. He is not allowed to possess an extra sword without license.

Explanation II to Article 25 declares that the expression “Hindu” shall be constructed as including persons professing the Sikh, Jaina or Buddhist religion. The explanation is only for the purposes of Article 25 (2) (b) and for no other. Various statutes accord legislative recognition to the fact that even though Jains may not be Hindus by religion they are to be governed by the same laws as Hindus and cannot claim to be a separate religious minority

The Supreme Court in *In re, Noise Pollution case(2005)*, has given certain directions to be followed to control noise pollution in the name of religion:

- Firecrackers: A complete ban on sound-emitting firecrackers from 10 pm to 6 am.
- Loudspeakers: Restriction on the beating of drums, tom-tom, blowing of trumpets, or any use of any sound amplifier between 10 pm to 6 am except in public emergencies.
- Generally: A provision shall be made by the State to confiscate and seize loudspeakers and such other sound amplifiers or equipment that create noise beyond the limit prescribed.

Thus, subject to the restrictions which this Article imposes, every person has a fundamental right under our Constitution not merely to entertain such religious belief as may be approved of by his judgment or conscience but to exhibit his belief and ideas in such overt acts as are enjoined or sanctioned by his religion and further to propagate his religious views for the edification of others.

### **Freedom to Manage Religious Affairs (Article 26)**

Article 26 provides (subject to public order, morality, and health) confers a right on every religious denomination or any section of such religious denomination of:

- Establishing and maintaining institutions for religious and charitable purposes;
- Managing its affair with regard to religion;
- Owning and acquiring property (movable and immovable);
- Administering the property in accordance with the law.

Article 26 is the main article that provides the corporate freedom of religion governing the relation between the State and Subject to public order, morality and health every religious denomination or any section thereof shall have the right, (a) to establish and maintain institutions for religious and charitable purposes; (b) to manage its own affairs in matters of religion; (c) to own and acquire movable and immovable property; and (d) to administer such property in accordance with law. Clause (b) of article 26 guarantees to every religious denomination or any section thereof the right to manage its own affairs in matters of religion and clause (d) gives them the right to administer their property (institutions) in accordance with laws passed by the State. It is obvious from the language of the clauses (b) and (d) of article 26 that there is an essential difference between the right of a denomination to manage its religious affairs and its right to manage its property.

This means that a religious denomination's right to manage its religious affairs is a fundamental right protected by the Constitution. No legislation can violate it except for health, morality and public order. But the right to administer property associated with religion can be exercised only "in accordance with law". In other words, the State can regulate the administration of religious property by way of validly enacted laws.

Under Article 26 (b), therefore, a religious denomination or organization enjoys complete autonomy in the matter of deciding as to what rites and ceremonies are essential according to the tenets of the religion they hold and no outside authority has any jurisdiction to interfere with their decision in such matters.

### ***Rights Guaranteed Under Article 26***

- ***Right to establish and maintain institutions for religious and charitable purpose.***

The constitution makers believed that for the establishment of religious and charitable institutions it is vital to have the right to freely manage and administer thereof. For a religious denomination to maintain the religious institution, it has to be first established by the denomination claiming such right.

***Right to manage its own religious affairs.***

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**Choose the correct option**

**1. The solemn resolution in the Preamble of our Constitution is made in the name of:**

- A. People of India
- B. Constituent Assembly of free India
- C. Constitution of India
- D. Indian Independence Act, 1947.

**2. The Preamble to our Constitution proclaims that ‘We, the People of India have established:**

- A. a Sovereign, Socialist, Secular, Democratic, Republic
- B. a Sovereign, Democratic Republic
- C. a Sovereign, Secular, Democratic, Socialist, Republic.
- D. a Secular, Socialist, Democratic, Sovereign, Republic.

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

- A. the Preamble enumerates the purpose and objectives that the legislation intended to achieve
- B. Preamble reflects the intention of the members of the Constituent Assembly
- C. the Preamble codifies the regular measures to the citizens
- D. envisages only liberty in all spheres.

**4. The word ‘Socialist’ in Preamble, aims to:**

- A. eliminate inequality in economic and political status
- B. eliminate inequality in political and religious affairs
- C. eliminate inequality in income and status and standards of life
- D. eliminate class based society.

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

- A. the Constitution gives more importance to the society as a whole
- B. the Constitution is individual centric or individual oriented
- C. the Constitution is social-economic pattern of the society but ignores the individual
- D. the Constitution has not ignored individual but has endeavoured to harmonise the individual interest with permanent interest of the community.