



FACULTY OF JURIDICAL SCIENCES

Course : BALLB , 3rd Semester

Subject : CONSTITUTIONAL LAW I

Subject code : BAL304

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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 27

Articles 25-28

Right to freedom of religion

Fundamental Right to Religion- Articles 25-28

India has been the birth place of quite number of religions and also it is acknowledged as the country which is the land of spiritual beliefs, culture and philosophical thinking. Various fundamental rights are provided as well as guaranteed by our Indian Constitution under Part III.

Amongst them, freedom of religion is also the one provided which is given under Article 25-28 of the Indian Constitution. India, being a secular nation gives every citizen the right to follow the religion he believes in. Religion is a matter of belief or faith. The constitution of India recognizes the fact, how important religion is in the life of people of India and hence, provides for the right to freedom of religion under Articles 25 to Article 28. The Constitution of India envisages a secular model and provides that every person has the right and freedom to choose and practice his or her religion. In a number of cases, the Apex Court has held that secularism is the basic structure of the Constitution. People in India mainly practice Islam, Hinduism, Jainism, Buddhism, Sikhism and, Christianity. In India, there are religion-specific laws and Goa is the only state to have a Uniform Civil Code known as the Goa Civil Code. The Constitution supports religious harmony which means the people of India show love and affection to different religions of the country.

Secularism

Secularism means developing, understanding and respect for different religions. It is believed that the word 'Secularism' has its origin in late medieval Europe. In 1948, during the constituent assembly debate, a demand was made by the KT Shah to include the word 'Secular' in the Preamble to the Constitution. The members of the assembly though agreed to the secular nature of the constitution but it was not incorporated in the Preamble. Later, in 1976 the Indira Gandhi government enacted the 42nd Amendment Act and the word 'Secular' was added to the Preamble. When comes to Secularism, our Constitution has high regard and utmost importance is given to this concept. Secularism is often seen as high regard and enjoys dignified recognition in the eyes of law. According to the Constitution, the allocation of this right is to provide an occasion to every person to declare in open and that too without any hesitation the religion he believes or he wants to profess. In *S. R. Bommai v. Union of India*, (1994) the 9 judge bench of SC ruled that Secularism is the basic feature of the Constitution of India. It also observed that religion and politics cannot be mixed together. If the State follows unsecular policies or courses of action then it acts contrary to the constitutional mandate. In a State, all are equal and should be treated equally. Religion has no place in the matters of State. Freedom of religion as a fundamental right is guaranteed to all persons in India but from the point of view of the State, religion, faith, and belief are immaterial.

Constitutional Provisions relating to Right of Religion

- Article 25: Freedom of conscience and free profession, practice and propagation of religion.
- Article 26: Freedom to manage religious affairs.
- Article 27: Freedom as to payment of taxes for promotion of any particular religion.
- Article 28: Freedom as to attendance at religious instruction or religious worship in certain educational institutions.

Freedom of Religion (Art. 25)

Article 25 (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law— (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice; (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I.—The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II.—In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

Analysis of Article 25

Article 25 of Indian Constitution gives the citizens of our country the freedom to choose or follow any religion. The word freedom to conscience simply means to follow any beliefs in regards to religion or others. Article 19 of Indian Constitution gave the right to freedom of speech and expression, it also drew a picture to the freedom of religion in India. This was due to the fact that even after the partition and creation of Pakistan, Muslims and people of different religions were scattered in different parts of our country. That's why the constituent assembly made the right to choose one's own religion very clear by incorporating a separate group of articles. They felt it necessary to do so after numerous points were made by the Advisory Committee on fundamental rights, leaders of minorities and tribes. The word secular, meaning, not connected with religious or spiritual matters, only appears in Article 25 of Indian Constitution.

Article 25 of Indian Constitution grants freedom to every citizen of India to profess, practice and propagate his own religion. The constitution, in the preamble professes to secure to all its citizen's liberty of belief, faith and worship.

Profess, Practice And Propagate

To "profess" a religion means to declare freely and openly ones faith and belief. The constitutional right to profess religion means a right to exhibit one's religion in such overt acts as teaching, practicing and observing religious precepts and ideals in which there is no explicit intention of propagation involved. Taking out religious processions, worship in public places, putting on specific garments include within the ambit of profession of religion. The right to take out religious processions and to have religious gatherings in the public places fall under the right to profess religion as guaranteed in article 25 (1). The exercise of this right is, however, subject to public order and morality.

To 'practice' religion is to perform the prescribed religious duties, rights and rituals, and to exhibit his religious belief and ideas by such acts as prescribed by religious order in which he believes.

To 'propagate ' means to spread and publicize his religious view for the edification of others. But the word "propagation" only indicates persuasion and exposition without any element of coercion.

In nut shell Freedom of 'profession' means the right of the believer to state his creed in public whereas freedom of 'practice' means his right to give expression in forms of private and public worship. The right to propagate one's religion means the right to communicate a person's beliefs to another person or to expose the tenets of that faith, but shall not include the right to 'convert' another person to the former's faith.

In *the Commissioner Hindu Religious Endowments Madras v. Sri L T Swamiar of Sri Shriur Matt* (1954), the Court held that 'profess' means 'right to freely declare of one's faith'.

Religion

In India the need to define religion was raised for the first time by Dr.B.R. Ambedkar when the matter pertaining to personal law and its relation to religion came for discussion in the Constituent Assembly. He pointed out: The religious conceptions in this country are so vast that they cover every aspect of life from birth to death. There is nothing which is not religion and if personal law is to be saved I am sure about it that in social matters we will come to a standstill...There is nothing extraordinary in saying that we ought to strive hereafter to limit the definition of religion in such a manner that we shall not extend it beyond beliefs and such rituals as may be connected with ceremonials which are essentially religious. It is not necessary that the sort of laws, for instance, laws relating to tenancy or laws relating to succession should be governed by religion...I personally do not understand why religion should be given this vast expansive jurisdiction so as to cover the whole of life and to prevent the legislature from encroaching upon that field.

The expression "religion" has not been characterized in the Constitution and it is not helpless of any unbending definition. The Supreme Court has characterized it in several cases. A religion is positively a matter of confidence and is not really mystical. Religion has its premise in "an arrangement of the convictions or conventions which are respected by the individuals who

pronounce that religion as helpful for their profound prosperity”, however, it would not be right to state that religion is nothing else except for a teaching or conviction. A religion may not just set out a code of moral principles for its devotees to acknowledge, it may endorse customs and observances, services and methods of love which are viewed as a fundamental piece of religion and these structures and observances may degree even to issues of sustenance and dress. Subject to specific confinements, Article 25 presents a major ideal for everyone, not only to engage such religious convictions as might be affirmed by his judgment or soul yet, in addition, display his convictions and thoughts by such unmistakable acts and practices which are authorized by his religion.

Choose the correct option

1. Preambleless statute is a rare occurrence. But there are some statutes which do not have a Preamble. Which of the following statutes has no Preamble:
 - A. Government of India Act, 1935
 - B. Government of India Act, 1919
 - C. The British North America Act
 - D. Constitution of Switzerland.

2. Sovereignty under Constitution belongs to:
 - A. the President
 - B. the Parliament
 - C. the People
 - D. the Executant, Judiciary and Legislature.

3. The Indian Constitution was adopted by the Constituent Assembly on:
 - A. 25 August, 1949
 - B. 26 November, 1949
 - C. 26 January, 1950
 - D. 15 August, 1947.

4. The Preamble of the Constitution of India envisages that:
 - A. it shall stand part of the Constitution
 - B. it could be abrogated or wiped out from the Constitution
 - C. it does not acknowledge, recognise or proclaim anything about the Constitution
 - D. it has a separate entity in the Constitution.

5. In the Preamble of the Constitution equality of status and opportunity refers to:
 - A. public services and public matters only
 - B. social, political and economic affairs only
 - C. social and economic affairs only
 - D. both (a) and (b).

