

## **Polity Class 19**

**10th August, 2023 at 1:00 PM**

### **ARTICLE 20 (1): (1:07:42 PM):**

- It provides protection to an individual against retrospective application of criminal application to the disadvantage of the person in question.
- A person can be charged with an offense for committing an act that existed as an offense at the time of committing the act.
- It means that criminal law cant have retrospective application.
- Additionally, a person cannot be subject to a punishment greater than what existed at the time of committing an act.
- It protects individuals from instances of political vendetta where those in power may enact laws to declare an act as an offense retrospectively.
- Does not prohibit the retrospective application of civil and tax laws in India.

### **ARTICLE 20 (2):**

- A person can't be prosecuted twice for the same offense.
- No double jeopardy.
- A person should not be punished twice for the same offense.
- It safeguards individuals from facing successive criminal proceedings or multiple punishments for the same offense.
- Although this provision disapproves of double punishment, it does not provide immunity from proceedings before the tribunal or a quasi-judicial body.
- Therefore a public servant who has been punished for an offense in the court may be subject to a departmental inquiry for the same act.

### **ARTICLE 20 (3): (1:33:00 PM):**

- Provides a right against self-incrimination according to which a person cant be compelled to act as a witness against oneself.
- A person cannot be forced to provide testimony or to act as a witness against oneself.
- When a police officer uses force or threatens a person who is an accused in a case to give a confession against himself, the right to protection against self-incrimination kicks in.
- The person has the right to remain silent and not give any statement against himself due to any pressure.
- If a person confesses something during an investigation by their own will, it becomes important for the courts to satisfy themselves that the confession was made voluntarily without any pressure or duress.

- The provision only prohibits being a witness in a compelling manner and should not be considered as an equivalent of giving evidence.
- Therefore taking fingerprints or blood samples doesn't come under the scope of Article 20 (3).
- Also, the immunity under this provision is only limited to criminal proceedings.
- In the court in Selvi vs the state of Karnataka, Narco analysis cannot be compelled in person as it leads to a violation of mental privacy which is an intrinsic part of Article 21.

#### **ARTICLE 22: (2:03:37 PM):**

- **Article 22 (1):**
  - Punitive and preventive arrest or detention.
  - Provides protection that every arrested person must be informed of the grounds for arrest as soon as possible.
  - Not only that, he/she is entitled to consult and to be defended by a legal practitioner of his/her choice.
- **Article 22 (2):**
  - A person who has been arrested should be presented in front of the nearest magistrate within a period of 2 hours excluding the time taken to travel.
  - A person can be kept in custody beyond the period of 24 hours only with the prior approval of the magistrate.
- **Offenses under IPC:**
  - Cognizable and non-cognizable offenses.
  - Cognizable-- duty of police officer to register an FIR in case he becomes aware of a cognizable offense.
  - This information may be received suo moto or through an official complaint.
  - Non cognizable-- There is no compulsion to file an FIR.
  - One must file an FIR only after an inquiry when needed.
  - Bailable and Non-Bailable offenses.

#### **ARTICLE 22 (3) (3:12:19 PM):**

- The exception to Art 22 (1), Article 22 (2).
- As per it, safeguards under these clauses are not applicable to enemy aliens and those detained under preventive detention laws.
- **Safeguards wrt Preventive detention:**
  - **A person cant be kept in preventive detention for more than 3 months unless:**

- An advisory board consisting of judges or former judges of the High Court or persons qualified to be judges of the high court approve so.
- Functioning is to be determined by parliamentary law.
- **Without the approval of the advisory board when:**
- If Parliament by law prescribes certain circumstances or classes of cases in which detention can be extended beyond 3 months without the approval of the advisory board.
- The maximum period of detention must be determined by the parliament.
- A person arrested under PDL must be given the earliest opportunity to make a representation against his detention.
- The person may be denied disclosure of certain facts wrt to a detention order if the disclosure of such facts if the disclosure is considered against the public interest.
- **Critical analysis of preventive detention provisions:**
- India is among the few democratic countries to include provisions related to preventive detention.
- As per several experts, these laws are against the idea of principles of liberal democracy.
- As a person is detained for not committing a crime but on a mere suspicion that he may do so.
- It is only ironic that the constitution makers who were themselves victims of such laws chose to grant such powers to the executive in India.
- In Mariappan vs DC case, it was held that preventive detention provisions should not be missed to punish someone but to prevent some offenses from getting committed.
- Abdul Kareem case- Court noted that Article 25 is not merely a formality and should be followed diligently.
- The courts have repeatedly held that preventive detention laws must be restored only in exceptional circumstances.
- It has also stated that laws such as NSA 1980, should maintain the delicate balance between public interest and individual freedom.
- Government fills up an advisory board with its own people.
- Allahabad HC overturned 94 cases in which NSA was invoked by the state government.
- As per a report by Indian Express, more than 75 percent of the orders made between 2018-20, under NSA were found to be incorrect.
- The reality is that courts face a huge pendency, and hence takes several months to get a Habeas Corpus petition listed in courts.
- The ultimate purpose of political victimization is served.

- There is no doubt that National Security is of utmost importance and crimes such as Naxalism, terrorism, and insurgency require such laws.
- But there is a need to introduce stricter checks and balances.
- A balanced approach to take care of individual liberty as well as the security of the state.

**The topic for the next class-Article 21**