

Polity Class 18

2nd August, 2023 at 9:00 AM

REVISION OF THE PREVIOUS CLASS :(9:15 AM):

- The right to freedom of speech & expression (Article 19(1)(a)) can be reasonably restricted on grounds mentioned in Article 19 (2).
- The grounds include contempt of court, defamation, incitement of offense, etc.

Decency & Morality:

- Decency & Morality is another ground
- Decency & morality are very subjective concepts depending upon individual inclination.
- There can be large spatial(related to place) and temporal (related to time) variations related to the judgment regarding decency & morality.
- Hicklin test has been most commonly used to judge decency & morality of any content(book/film, etc.).
- It is a Victorian-era practice with two major criteria:
- I. Any piece of information in any content can be seen in isolation from its context to judge the decency & morality of the content.
- It means that a 400 pages book can be banned if 4 pages are found indecent or immoral.
- II. The perspective of the weakest mind consuming that content.
- Now we have moved to the contemporary standards test.
- The new perspective believes that decency & morality should not be judged on the static idea of decency.
- The test the applicability of the restriction, one must see the context or the background in which such content was made.

Some related court cases:

- I. Bobby Art International case 1996 :
- The case dealt with the movie "Bandit Queen", based on the life of Phoolan Devi.
- Supreme Court held that the scenes depicting nudity must not be seen in isolation, rather the message conveyed through the portrayal is of utmost importance.
- II. AVEEK SARKAR Case 2014.
- SC held that if the idea behind a particular depiction is to convey a meaningful message to society, then such an expression should not be considered obscene.
- As a result, Section 292 of IPC which criminalizes the act of publishing obscene books or content has been greatly restricted in its application.

OVER THE TOP(OTT) PLATFORMS & REGULATIONS (9:45 AM):

- OTT platforms have great penetration & reach and in the present times, they have eclipsed cable television.
- Presently there is no law in India except the rules made by the government to regulate the content on such platforms.
- These platforms are easily accessible to children and young citizens who may not be mature enough to consume such content.
- In the Divya Gontia V/s Union of India case 2018, the court attempted to regulate content displayed on such platforms.
- It was held that certain shows and web series contained nude, vulgar & obscene scenes similar to pornography.
- But there are no restrictions on them due to the absence of a law.
- The court demanded that the Ministry of Information and Broadcasting regulate such content.
- Subsequently, the government issued the IT Rules 2021 which has restrictions over such inappropriate content.
- The OTT platforms are supposed to use their own discretion to display the content online.
- It is also mandatory for the OTT platforms to provide a parental lock.
- It is the duty of every OTT platform to ensure that it is not used for promoting pornography, obscenity, or unlawful content.
- They should be careful in displaying such content which may be against a particular religion, caste, or political group, or which clearly depicts nudity & immoral content.

Article 19(1) (b): The right to assemble peacefully without arms:

- It is a very important right in a democracy as the right to protest emerges from this provision(and Article 19(1)(a)).
- It allows the citizens to assemble and express their opinions collectively.
- It is not an absolute right and can be restricted on the grounds of sovereignty and integrity of India and public order.
- The supreme court in Babulal Parate v/s State of Maharashtra 1961 upheld the constitutional validity of section 144 of the Criminal Procedure Code(CrPC).
- The section allows the authorities to restrict a gathering of five or more people in certain circumstances.
- In the Bharat Kumar V/S Union of India case 1998, SC held that the bandhs organized by political parties are unconstitutional and illegal.

- This is because they affect the right to freedom of movement, and occupation, and assemble peacefully in an unreasonable and unlawful manner.
- In another important case, the court has held that citizens can carry out peaceful protests and processions, but resorting to violence, obstructing roads, and throwing stones cannot be justified under 19(1)(b).

RIGHT TO STRIKE (10:20 AM):

- The court held that the right to strike is not a fundamental right and owes its origin to the Industrial Disputes Act of 1947.
- So right to strike is a statutory, or ordinary legal right.

Article 19(1)(c): The right to form associations or unions:

- After the 97th Amendment of 2011, the right includes the right to form cooperatives too.
- It allows the citizens to collectively express their views and opinions to the state and get a better bargaining position vis-a-vis the state.
- It provides a platform for the citizens to discuss issues that are of common interest to them.
- It allows the citizens to form political associations to take an active part in democracy.
- Like other rights, even this right is not absolute, and it may be restricted by the state on the grounds of (Article 19(4):
- I. Sovereignty & integrity of India.
- II. Public Order
- III. Morality.
- Under the UAPA 1967, the government has banned certain organizations on the grounds of threatening the sovereignty & integrity of India.

ARTICLE 19(1) (D) AND 19(1) (E)(10:55 AM):

- They provide the right to Indian citizens to move freely throughout the territory of India as well as the right to reside anywhere throughout the territory of India.
- Both of these rights are significant due to the following reasons:
- I. They promote the unity & integrity of India by treating India as one unit.
- II. They help in promoting cultural exchange and therefore expose citizens to the composite culture of India.
- III. They play an important role in promoting India as a common market and facilitating trade throughout the country.
- IV. They highlight the idea of single citizenship, which is an important part of the Indian constitution.

- They are not absolute rights and they can be restricted on the grounds of (Article 19(5):
- I. Public Interest.
- II. Protection of interest of scheduled tribes.
- The Inner-Line Permit(ILP) restrictions to enter into certain protected areas have been imposed on the grounds of protection of interest of the scheduled tribes.
- During Covid-19, restrictions were imposed on the movement of people as per the provisions of the National Disaster Management Act (NDMA) 2005 and the Epidemic Diseases Act 1897.
- These legislations and restrictions can be justified on the grounds of public interest.

Article 19(1)(g): Right to freedom of trade, profession, occupation, or business:

- It is significant because it shuns the practice of allowing certain occupations to be taken up by individuals based on birth alone.
- It is important as it allows and promotes the spirit of entrepreneurship among the citizens so that an individual can reach his/her truest potential.
- It is not an absolute right and it can be restricted by Article 19(6) on the grounds of general public interest, and a few other grounds added by the first constitutional amendment.
- The right has often come in conflict with the provisions of articles 47 and 48 of the constitution.
- Under the preconstitutional CP Berar Motor Vehicles Act 1947, for the public interest, the government can reserve certain industries for the state and state-owned corporations only.
- The act was declared unconstitutional by the Supreme Court as violative of Article 19(1)(g).
- But this created certain issues, as the government wanted to reserve certain industries for state or state-run corporations- atomic energy, defense, etc.
- The central government under the first constitutional amendment of 1951 enacted a provision that enabled the

government to either partially or completely restrict people from participating in certain industries.

- This created a constitutional question:
- If any law is declared unconstitutional and the constitution has been amended accordingly, is the government bound to bring the earlier law again or only the constitutional amendment would be enough?
- The Supreme Court used the Doctrine of Eclipse and held that there would be no need to bring the old law again.

RESTRICTIONS OVER ARTICLE 19(1)(G) (11:25 AM):

- The first constitutional amendment act added certain grounds based on which article 19(1)(g) can be restricted by the state.
- For example, the state can make a law prescribing certain technical and professional qualifications necessary for practicing a particular profession, occupation, etc.
- For example, the Medical Council Of India can lay down a qualification for a person to possess a license before practicing as a doctor.
- Similarly, under the Advocates Act 1961, a person can argue in court only if he or she possesses a certificate from the Bar Council to do so.
- Additionally, the state can make a law to exclude the citizens from particular trade or business whether completely or partially so that such an activity can be carried out by the state or a corporation owned and controlled by the state.

The Doctrine of Eclipse:

- In the Bhikaji Narain V/S State of MP case the Supreme Court Struck down the CP Berar Motor Vehicles Act 1947 on the grounds of violating article 19(1)(g).
- The court stated that the law may be made effective again by amending the constitution and making the constitution consistent with the law.
- In other words, if the fundamental rights chapter has eclipsed the law made by the legislature, the law can be made effective again by removing the restrictions imposed by the fundamental rights.
- The parliament subsequently passed the First Constitutional Amendment Act 1951 and added article 19(6)(2) allowing the state to exclude citizens from certain businesses.

- In the above case, the court stated that the doctrine of eclipse will be only applied for preconstitutional cases as such a law was not born as a stillborn(as there was no constitution earlier, older laws were not unconstitutional then).
- In the Ambika Mills case, 1974 the court stated that the doctrine of eclipse shall apply to post-constitutional laws as well.

Article 20:

- No retrospective application of criminal laws.
- This means that no one would be charged criminally for an action that was committed when the act was not a criminal offense at the time of its commission.
- This provision ensures that there is no
- Ignorance of the law is no defense against the law; the state expects its citizens to know the law.
- No law could be made to increase the maximum punishment for any offense retrospectively.
- The law could be made to decrease the maximum punishment for any offense even retrospectively.
- Civilian and tax-related laws can be amended and enforced even retrospectively.
- This is because only conviction under criminal laws results in incarceration(going to jail) and restriction of personal freedom.

The topics for the next class are the continuation of Article 20 and Article 21.