

## Polity Class 16

25th July, 2023 at 9:00 AM

### REVISION OF THE PREVIOUS CLASS (9:09 AM):

#### Article 18:

- The article aimed to remove the British practice of awarding titles to Indian citizens for their services to the British government.
- Such a practice was believed to create a class of Indians, deemed more privileged than rest Indians.
- Article 18 can be divided into four parts:
- I. Indian state shall not confer a title (Rai Bahadur, Sir, Khan Bahadur, etc.) on anyone.
- II. No Indian citizen can accept a title from any foreign state.
- III. No person who is not a citizen of India shall accept a title from any foreign state without the consent of the President while holding any office of profit in India.
- Office of Profit is any office under the government that accords remuneration or monetary benefits to the holder of the office.
- IV. No person, either a citizen or a foreigner cannot accept any gift or emolument if he is working in an office of profit or trust under the state without the consent of The President.

#### Civilian Awards & Article 18:

- The question of whether civilian awards like Padma Awards, Bharat Ratna, etc. are "titles" under Article 18 was dealt with in the **Balaji Raghavan Case 1994**.
- SC held that Bharat Ratna & Padma awards do not constitute titles under Article 18.
- The titles are provided for recognition of exceptional service made to the nation.
- These awards also motivate the citizens to strive for excellence and fulfill the fundamental duty under **Article 51 (A)(j)**.
- The court also stated that these awards should not be used as prefixes or suffixes to one's name, otherwise, the defaulter may be asked to forfeit his award.
- The court laid down certain guidelines for the selection of awardees so that the abuse of these awards can be kept in check.
- The court observed that presently there is no limitation on the number of awards given by the government.
- This has reduced the value of its awards.
- Objective criteria must be evolved to restore the glory of these awards.
- The court state that a committee under the Prime Minister should decide the recipients of the awards objectively.

## EQUALITY IN INDIA & USA (9:35 AM):

- India has taken the concept of equal protection of the law from the USA, but there are some differences.

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Indian Idea of Equality	American Idea of Equality
	The right to equality
The right to equality was a part of the original draft of the Indian constitution.	became a part of the American Constitution after its 14th amendment.
India gave women the right to vote(suffrage) at the same time as men.	The USA gave women the right to vote (in 1920) more than 120 years after men had suffrage.
Untouchability and discrimination were strictly and explicitly prohibited in the Indian constitution.	The USA practiced slavery and other forms of legal discrimination till the Civil rights movement in the 1950s and 1960s.
India has an explicit mention of equality before the law.	The USA has no such mention.
USA practices affirmative action for the redressal of marginalized communities.	The Indian practice of giving reservations is to address historical injustice, which was missing in the USA.
India gave special emphasis on removing untouchability, which was not a part of the USA's history.	The USA lacks such a mention because of its different social history.
India had a special provision against	Such a provision was missing in the

titles (Article 18), as USA constitution,  
a result of colonial history. due to different  
colonial experiences.

Indian constitution emphasizes the  
idea of egalitarian justice. Such an idea is one  
step ahead of the American idea of  
equality.

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**Overall Strategy:**

- There is no way to predict the questions that are going to come in the examination.
- Neither there is an exhaustive list of sources that will cover all the questions.
- Regardless of how much or how many times we have studied any number of sources, we must expect unexpected questions in the examination.
- Our common sense and maturity as a serious aspirant will keep us in a better position to attempt unpredictable questions.
- We must not get into self-demeaning thoughts like only I am facing difficulty in understanding/ retaining concepts and all other aspirants just read something and never have to read it again.

- The examination demands persistence much more than genius-level intellect.
- Students must understand that almost all the students giving the exam are as sharp or slow as they are.
- How far and for how long anyone can work hard will make all the difference.
- Students must identify whether they are seeking motivation or validation, and allocate(save) time accordingly.

#### **Right to Freedom (Articles 19-22):**

- **Article 19:**
- Certain freedoms are provided to citizens of India( and not to foreigners).
- The freedoms under Article 19(1) are not absolute and can be restricted as per the grounds mentioned in 19(2) to 19(6).
- The grounds for restriction are very specific for each freedom.
- **For example-** Contempt of court can be used to restrict the freedom of speech but not the freedom of movement.

#### **ARTICLE 19(1)(A) (10:10 AM):**

- Freedom of Speech and expression.

#### **Historical background:**

- India and many other civilizational states have many scriptures which have records of people engaging in debates with kings or even gods.
- Freedom of speech has been very important for innovation and new discoveries.
- Freedom of expression has also challenged the prevailing social conscience many times which has also resulted in unpleasant actions like the execution of **Socrates in 399 BC**
- The **Magna Carta** of **1215** of the UK held that even the King and his government were not above the law.
- The **1689 Declaration of Rights** held that British parliamentarians must have full freedom of speech in the parliament, including the right to criticize the king.

- The above two cases talked about freedom of speech, but only for an elite section.
- Citizens got freedom of speech and expression by the **1st Amendment to the USA constitution in 1791**.
- The **Universal Declaration of Human Rights in 1948** by the UNO held that freedom of expression is a part of human rights.

#### **Indian experience with freedom of speech:**

- In India, the courts have given a liberal interpretation of this right and have stated that the freedom of speech and expression is not limited only to words limited and spoken.
- Freedom of speech and expression refers to the right of the individual to express himself or herself through various forms.
- They also include signs, symbols, gestures, etc.
- It includes expressions through various art forms such as music, drama, painting, etc.
- The court has stated that the right implicitly includes **freedom of the press**.
- **Related cases:**
  - I. Sakal papers v/s Union of India in 1961.
  - II. Indian Express v/s Union of India in 1984.
  - III. Bennet Coleman v/s Union of India in 1972.
- The government cannot restrict the number of pages printed in the newspapers, as it could restrict the advertisement revenue of the newspaper.
- In the **Naveen Jindal V/s Union of India case in 2004**, SC held that under 19(1)(a) includes the right to hoist the national flag to express love for the motherland.
- Before this case, Indians could hoist the national flag only for three days of the year- 26 January, 15 August, and 2nd October.
- The flag must be hoisted as per the **Flag Code of India**.

#### **RIGHT TO REMAIN SILENT (10:40 AM):**

##### **Bijoe Emmanuel v/s State Of Kerala /Jehovah Witness case 1986**

- The Jehovah Witness sect of Christianity had a core belief that they must not sing the praise of anyone or anything other than Jesus Christ.
- In many countries of the world, they have fought for their right to not sing the national anthem.
- SC held that as long as they are not disrespecting the national anthem, creating a ruckus, or disrupting others from singing the national anthem, staying silent when the national anthem is being played/sung lies within their right to freedom of speech.
- Forcing them to sing the national anthem will go against their core religious values, which are protected under **Article 25**.

- The Supreme Court held that the Right to remain silent is also an inherent right under Article 19(1)(a).

#### **People's Union for Civil Liberties v. Union of India (2013) case:**

- The court stated that voting is also implicitly a part of freedom of speech and expression in a democracy.
- - The right to vote still flows from **Article 326**.
  - Voting is just another mode of expression.
- The right of a citizen to vote for **None Of The Above (NOTA)** is included in this freedom.
- Earlier, if any voter wished to not vote for any of the available candidates, he can ask for filling out form 49-O as per **Conduct of Election Rules, 1961**.
- But this provision compromised the anonymity and privacy of the voter.
- The voter was in a way forced to vote for any one of the candidates, against his wish.

#### **Association for Democratic Reforms Case 2002:**

- The SC held that the elector, a citizen of the country has a fundamental right to receive the information regarding the criminal activities of a candidate to the Lok Sabha or Legislative Assembly.
- This information is crucial for making an informed judgment.
- Without knowing the criminal antecedents of the candidate, a citizen cannot exercise his right to vote and thus freedom of speech and expression in an uninhibited manner.

#### **SHREYA SINGHAL CASE 2015 (11:15 AM):**

- In the Shreya Singhal v/s Union of India case, the Supreme Court struck down section 66(A) of the IT Act 2000 as being violative of Article 19(1) (a) of the constitution.
- The restriction was held to be excessive and unreasonable on the freedom of speech.
- Because of the use of terms like annoyance, inconvenience, etc. which are vague and prone to misuse.
- Also, these grounds have not been mentioned under Article 19(2).
- The court held that the section has a chilling effect on the freedom of speech and expression for everyone else.
- The right to express oneself also includes the expression done through modern means of communication like telephone, and internet.
- Even after being struck down, there have been many cases of people being booked under Section 66(A) of the IT Act.

**Importance of freedom of speech and expression in a democracy:**

- Freedom is at the basis of democracy as democracy is all about the expression of opinions of the citizens.
- It allows the citizens to question the actions of the state and therefore establish accountability for those in power.
- It plays a crucial role in providing feedback to the government about its policies so that they can be improved continuously.
- It prevents the state from becoming autocratic in nature.
- Any individual can reach his/her true potential only when he has the freedom of speech and expression.

**Article 19(2):**

- The original grounds for restricting the freedom of speech did not have:
  - I. Public order.
  - II. Sovereignty & integrity of India.
  - III. Incitement to an offense.
  - IV. Friendly relations with foreign nations.
- 1st, 3rd, and 4th grounds were added by the first constitutional amendment act 1951.
- 2nd ground was added by the 16th constitutional amendment act 1963.

**ROMESH THAPAR CASE 1950(11:35 AM):**

- **Background:**
- The government restricted the circulation of certain magazines(Crossroads, Blitz) run by communist journalist Romesh Thapar in Madras state.
- Madras government gave the reason behind the step that the magazines had the potential to disrupt public order.
- Romesh Thapar challenged the decision in the Madras High Court, and the high court upheld the government decision.
- His main contention was that "public order " was not a ground mentioned in Article 19(2).
- Madras government replied that article 19(2) mentioned "security of the state" which could get affected.
- The decision was further challenged in the Supreme Court.
- The SC held that public order cannot be a ground for imposing restrictions on the freedom of speech and restriction as it is not mentioned in 19(2).
- Public order cannot be equated with the security of the state.

- Not everything that affects law & order will affect the security of the state.
- **For example-** two men fighting on the road might at best affect local law & order, but it will not threaten the security of the state.
- As a result, various high courts struck down several laws that restricted freedom of speech & expression on the grounds of affecting public order and incitement to an offense.
- In response, the parliament enacted the **first constitutional amendment act** and added ground-public order.
- It also added the term **reasonable restrictions** so that the restrictions imposed by the state are not excessive.
- The 16th constitutional amendment act added the term "sovereignty, and integrity of India "to 19(2).
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#### **Constitutional Nuances:**

- Any provision that mentions " in the interest of" has given lesser and very specific powers/scope for the government to make laws.
- Any provision that mentions" relates to " has given more and broad powers/scope for the government to make laws.

**The topics for the next class are other grounds for restricting freedom of speech and related court cases.**