

FUNDAMENTAL FREEDOMS UNDER ARTICLE 19 OF THE CONSTITUTION OF INDIA

Article 19(1)¹ of the Constitution, guarantees certain fundamental rights, subject to the power of the State to impose restrictions on the exercise of those rights. The Article was thus intended to protect these rights against State action other than in the legitimate exercise of its power to regulate private rights in the public interest.

FREEDOM OF SPEECH AND EXPRESSION

Expression is a matter of liberty and right. The liberty of thought and right to know are the sources of expression. Free Speech is live wire of the democracy. Freedom of expression is integral to the expansion and fulfillment of individual personality. Freedom of expression is more essential in a democratic setup of State where people are the Sovereign rulers. Iver Jennings said, without freedom of speech, the appeal to reason which is the basis of democracy cannot be made. Milton in his *Aeropagitica* says that without this freedom there can be no health in the moral and intellectual life of either the individual or the nation.

According to Justice Krishna Iyer, *"This freedom is essential because the censorial power lies in the people over and against the Government and not in the Government over and against the people."*

The freedom of speech and expression is required to fulfill the following objectives :

- a) To discover truth
- b) Non self-fulfillment
- c) Democratic value
- d) To ensure pluralism

The people of India gave to themselves, the Constitution of India, with a view of make it Sovereign, Democratic, Socialistic, Secular and Republic. In our democratic society, pride to place has been provided to freedom of speech and expression, which is the mother of all liberties. One of the main objectives of the Indian Constitution as envisages in the Preamble, is to secure LIBERTY OF THOUGHT AND EXPRESSION to all the citizens. Freedom of Expression is among the foremost of human rights. It is the communication and practical application of individual freedom of thought. Irrespective of the system of administration, various constitutions make a mention of the freedom of expression.

In *Bennett Coleman & co. v. Union of India*, the Supreme Court held that newspaper should be left free to determine their pages and their circulation. This case arouse out of a constitutional challenge to the validity of the Newspaper (Price & Page) Act, 1956 which empowered the Government to regulate the allocation of space for advertisement matter. The court held that the curtailment of advertisements would fall foul of Article 19(1)(a), since it would have a direct impact on the circulation of newspapers. The court held that any restriction leading to a loss of advertising revenue would affect circulation and thereby impinge on the freedom of speech.

In *Indian Express Newspapers v. Union of India*, a challenge to the imposition of customs duty on import of newsprint was allowed and the impugned levy struck down. The Supreme Court held that the expression *freedom of the press* though not expressly used in Article 19 was comprehended within Article 19(1)(a) and meant freedom from interference from authority which would have the effect of interference with the content & the circulation of newspapers.

In *Secretary, Ministry of Information and Broadcasting v. Cricket Association, Bengal*, the Supreme Court held that broadcasting is a means of communication and a medium of speech and expression within the framework of Article 19(1)(a). This case involved the rights of a cricket association to grant telecast rights to an agency of its choice. It was held that the right to entertain and to be entertained, in this case, through the broadcasting media are an integral part of the freedom under Article 19(1)(a).

Article 19(1)(a) of the Indian Constitution guarantees to all its citizens including media "the right to freedom of speech and expression". Clause (2) of Article 19, at the same time provides: "nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interest of:-

- a) Sovereignty and Integrity of India.
- b) The Security of the State.
- c) Friendly relations with foreign states.
- d) Public order.
- e) Decency or Morality.
- f) Contempt of Court.
- g) Defamation.
- h) Incitement to an offence.

FREEDOM TO ASSEMBLE

The freedom to assemble is of special interest within the realm of constitutional law, since it is enabled and restricted by an intersection of the constitutional text and the criminal procedure code. While the constitution provides for it as a right, the procedural provisions radically restrict this freedom, by empowering the state to regulate its expression and peremptorily curtail its exercise. This rather contradictory approach is a reflection of a colonial legacy and the unquestioning adoption of most of the provisions of the 1872 Code of Criminal Procedure by the contemporary Indian State. It is logical that the colonial state maintained a legal framework that enabled a quick breakup of any sort of organising, meeting, association or assembly that could threaten it. It is unfortunate that the modern India continues this legacy, both in the context of assembly and association rights. In *Himat Lal K. Shah v. Commissioner of Police*, the Supreme Court considered the question as to whether the requirement that prior permission in writing from the police before holding a public meeting on a public street violated the Petitioners Article 19 (1) rights? Here the rule in question enabled the

Commissioner or an officer designated by her to refuse permission for such a meeting.

Chief Justice Sikri writing for the majority distinguished between a statutory provision that

enabled the regulation of conduct of persons in assemblies and processions and a rule that enabled the refusal of permission to hold public meetings on public streets without guidelines being prescribed for the officer responsible. He found no fault with the prior permission requirement, as according to him "the right which flows from Art. 19 (1) (b) is not a right to hold a meeting at any place and time. It is a right which can be regulated." He invalidated the arbitrary powers conferred on the officer authorised by the Commissioner of Police.

In *Kameshwar Prasad v State of Bihar*, a rule that prohibited any form of demonstrations by government employees was examined. The court reasons that a government servant, did not lose her fundamental rights, and that the rule by prohibiting both orderly or disorderly demonstrations violates Article 19 (1) (b). The Court did not take issue with the notion that governmental employees as a class could have their rights or freedoms burdened. The apex court explains that "by accepting the contention that the freedoms guaranteed by Part III and in particular those in Article 19 (1) (a) apply to the servants of Government we should not be taken to imply that in relation to this class of citizens the responsibility arising from the official position would not by itself impose some limitations on the exercise of their rights as citizens".

Restrictions on the freedom of assembly

Article 19 (3) of the Constitution provides that nothing in the right to assemble peaceably shall affect the operation of any existing law in so far as it imposes, or prevents the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of that right. The restrictions pertaining to sovereignty and integrity were added after the adoption of the Constitution.

FREEDOM OF ASSOCIATION

Article 19(1)(c) of the Constitution of India guarantees to all its citizens the right "to form associations and unions or cooperative societies" Under clause (4) of Article 19, the state may by law impose reasonable restrictions on this right in the interest of public order or morality or the sovereignty and integrity of India. The right to form associations or unions or cooperative societies has a very wide and varied scope including all sorts of associations viz., political parties, clubs, societies, companies, organizations, entrepreneurships, trade unions etc.

The right to form trade unions should not lead to the conclusion that trade unions have a guaranteed right to an effective collective bargaining or to strike as a part of collective bargaining or otherwise. The right to strike or to declare a lock-out may be controlled or restricted by various industrial legislations such as Industrial Dispute Act or Trade Unions Act.

Right to form association does not carry the right to recognition

Right to form association does not carry the right to strike

Right to form association does not carry the right to inform rival union

Freedom of association and government employees

In *O.K Ghosh v. E.X. Joseph*, the respondent, a government servant was the secretary of the civil accounts association. The appellant was the accountant general of Maharashtra. A memo was served on the respondent intimating him that it was proposed to hold an enquiry against him for having deliberately contravened the provisions of Rule 4-A of the Central Civil Services (Conduct) Rules 1955 in so far as he participated actively in various demonstrations organized in connection with the strike of the central government employees and had taken active part in the preparations made for the strike. The respondent filed a writ petition in the High Court of Bombay with a prayer that a writ of certiorari be issued to quash the charge sheet issued against him. He also prayed for a writ of prohibition against the appellant prohibiting him from proceeding further with the departmental proceedings against him. The respondent Joseph also contended that Rules 4-A and 4-B were invalid as they contravened the fundamental right guaranteed to him under 19(1)(a)(b)(c) and (g). The High Court held that Rule 4-A was wholly valid but Rule 4-B was invalid. Rule 4-A provided that no government servant shall participate in any demonstration or resort to any form of strike in connection with any matter pertaining to his conditions of service. Rule B provided that no government servant shall join or continue to be a member of any service association which the government did not recognize or in respect of which the recognition had been refused or withdrawn by it. As both parties were not satisfied with the judgement given in the High court they preferred appeal to the Supreme Court.

The Supreme Court held that Rule 4-A in so far as it prohibited the demonstration of employees was violative of fundamental rights guaranteed by Article 19(1) (a) and (b), that the High Court was wrong in conclusion. The Supreme Court further held that participation in demonstration organized for a strike and taking active part in preparations for it cannot mean participation in the strike. The respondent could not be said to have taken part in the strike and the proceedings against him under Rule 4-A were invalid. The Supreme Court also held that Rule 4-B imposed restrictions on the undoubted right of the government servants under Article 19 which were neither reasonable in the interest of public order under Article 19(4) in granting or withdrawing recognition, the government might be actuated by considerations other than those of efficiency or discipline amongst the services or public order. The restrictions imposed by Rule 4-B infringed Article 19(1)(c) and must be held to be invalid.

Restrictions on the Freedom of Association

The right of association like other individual freedom is not unrestricted. Clause (4) of Article 19 empowers the State to impose reasonable restrictions on the right of freedom of association and union in the interest of "public order" or "morality" or "sovereignty or integrity" of India. It saves existing laws in so far as they are not inconsistent with fundamental right of association.

FREEDOM TO MOVE FREELY THROUGHOUT THE TERRITORY OF INDIA

Article 19(1)(d) guarantees to all citizens of India the right "to move freely throughout the territory of India." This right is however, subject to reasonable restrictions mentioned in clause (5) of Article 19, i.e. in the interest of general public or for the protection of the interest of any Scheduled Tribe.

Article 19(1)(d) of the Constitution guarantees to its citizens a right to go wherever they like in Indian territory without any kind of restriction whatsoever. They can move not merely from one State to another but from one place another within the same State. This freedom cannot be curtailed by any law except within the limits prescribed under Article 19(5). What the Constitution lays stress upon is that the entire territory is one unit so far the citizens are concerned. Thus the object was to make Indian citizens national minded and not to be petty and parochial.

Grounds of Restrictions – The State may under clause (5) of Article 19 impose reasonable restriction on the freedom of movement on two grounds-

- a) In the interests of general public
- b) For the protection of the interest of Scheduled Tribes.

FREEDOM TO RESIDE AND SETTLE IN ANY PART OF THE TERRITORY OF INDIA

According to Article 19(1)(e) every citizen of India has the right "to reside and settle in any part of the territory of India." However, under clause (5) of Article 19 reasonable restriction may be imposed on this right by law in the interest of the general public or for the protection of the interest of any Scheduled Tribe. The object of the clause is to remove internal barriers within India or any of its parts. The words "the territory of India" as used in this Article indicate freedom to reside anywhere and in any part of the State of India.

It is to be noted that the right to reside and right to move freely throughout the country are complementary and often go together. Therefore most of the cases considered under Article 19(1)(d) are relevant to Article 19(1)(e) also. This right is subject to reasonable restrictions imposed by law in the interest of general public or for the protection of the interests of any Scheduled Tribes. Thus where a prostitute, under the Suppression of Immoral Traffic in Women and Girls Act, 1956, was ordered to remove herself from the limits of a busy city or the restriction was placed on her movement and residence, it was held to be a reasonable restriction.

FREEDOM TO PRACTISE ANY PROFESSION, OR TO CARRY ON ANY OCCUPATION, TRADE OR BUSINESS

Article 19 (1) (g) of Constitution of India provides Right to practice any profession or to carry on any occupation, trade or business to all citizens subject to Art.19 (6) which enumerates the nature of restriction that can be imposed by the state upon the above right of the citizens. Sub clause (g) of Article 19 (1) confers a general and vast right available to all persons to do any particular type of business of their choice. But this does not confer the right to do anything consider illegal in eyes of law or to hold a particular job or to occupy a particular post of the choice of any particular person. Further Art 19(1) (g) does not mean that conditions be created by the state or any

statutory body to make any trade lucrative or to procure customers to the business/businessman. Moreover a citizen whose occupation of a place is unlawful cannot claim fundamental right to carry on business in such place since the fundamental rights cannot be availed in the justification of an unlawful act or in preventing a statutory authority from lawfully discharging its statutory functions.

Keeping in view of controlled and planned economy the Supreme Court in a series of cases upheld the socially controlled legislation in the light of directive principles and the activities of the private enterprises have been restricted to a great extent. However under Article 19(6), the state is not prevented from making a law imposing reasonable restrictions on the exercise of the fundamental right in the interest of the general public. A law relating to professional or technical qualifications is necessary for practicing a profession. A law laying down professional qualification will be protected under Article 19(6).

Under article 19(6)(ii) nothing contained in Sub-clause(g) of Clause (1) of Article 19 shall affect carrying on by the State any trade, business, industry or service, whether to the exclusion, complete or partial of citizens or otherwise if it is not in the interest of general public. Article 19 (6)(ii) will have no application if the State is not carrying on any trade.