# Article 19 and 20 of Constitution of India

By Syndicate 6

#### Article 19

- 19(1) All Citizen shall have the right—
- (a) to freedom of speech and expression;
- (b) to assemble peaceably and without arms;
- (c) to form associations or unions;
- (d) to move freely throughout the territory of India;
- (e) to reside and settle in any part of the territory of India; and
- (g) to practise and profession, or to carry on any occupation, trade or business

#### Article 19(1)(a)

#### Article 19(1)(a)

- All citizen shall have the right to freedom of speech and expression
  - Maneka Gandhi vs Union of India case
- Right to receive and disseminate information
  - •Secretary, Ministary of I & B vs Cricket Association of Bengal
- Right to know
  - Union of India vs Association for Democratic Reforms
- Right to remain silent
- Right to hoist the National Flag freely
  - Union of India v. Naveen Jindal
- •Freedom of Press

#### 19(2) Reasonable Restrictions

- 1. Sovereignty and Integrity of India
- 2. Security of State
- 3. Friendly relations with foreign states
- 4. Public Order
- 5. Morality or Decency
- 6. Contempt of court
- 7. Defamation
- 8. Incitement to an offence
- Kharak Singh V state of Punjab
- Romesh Thaper vs State of Madras
- Babulal vs State of Maharashtra and State of Bihar v KK Mishra

#### **Essential Elements of Restrictions**

- Only by authority of Law
- Reasonable
- Purpose
- Judicial Review

#### Tests of Reasonableness of a Restriction

- 1. Directive Principal of State Policy
- 2. Arbitrariness or Excessive Nature
- 3. No abstract or general pattern or a mixed principle to judge reasonableness of the restriction
- 4. Prevailing Social Values and Social Needs
- 5. Substantive and Procedural Reasonableness

#### Press Freedom & Censorship

- There is no specific provision in the constitution. Under article 19 (1)(a) freedom of expression means the freedom to express not only one's own views but also the views of others and by any means including printing.
  - Indian Express v. Union of India
  - Sakal Papers Ltd. v. Union of India
  - Bennett Coleman and Co. v. Union of India
- Censorship of the press is not specially prohibited by any provision of the Constitution.
  - Virendra Vs State of Punjab

# Article 19 (b)

To assemble peacefully and without arms



## Article 19 (b) (3)..sub clause

Nothing in sub clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent 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 the right conferred by the said sub clause

# Reasonable restriction Art 19(b)

Article 19(1)(b) recognises and guarantees the freedom of assembly. But it is not an absolute right. Restrictions are possible against this right too, as provided under article 19(3) and (4).

Article 19(1)(b) guarantees to the citizens the right to assemble peacefully and without arms

#### Judgements

#### Babulal Parate vs State of Maharastra

Upheld the citizen's right to take out procession or to hold demonstration or public meetings as part of the freedom to assemble peacefully and without arms and right to move freely anywhere in the territory of India.

In this case the court held that section 144 or CrPC was constitutional and the magistrate had power to prevent such activities which would obstruct the public interest and peace.

#### Validity of Bandhs

- Bharath kumar vs State of Kerala
- James martin vs State of Kerala
- CPI(M) vs Bharath kumar and others
- George Kurian vs State of Kerala
- Shivasena vs B C Deshmukh and others
- INC vs institute of social welfare and others

#### Courts vs Authorities

- SC clarified that only peaceful demonstration is protected and not all forms of demonstrations.
- This fundamental right with reasonable restrictions in general interest was further consolidated by the decision of the SC in Himmatlal vs. Police commissioner.
- In this case the permission to hold a public meeting in street was denied.

#### Courts vs Authorities

- SC held that authorities should not be left with controlled discretion to regulate the freedom of assembly, though this right was subject to the control of the appropriate authority.
- In the absence of guidelines, banning public meetings on public streets was held to be arbitrary.

# Ramlila Maidan on the midnight of 4/5 June 2011



# THE SUPREME COURT'S VERDICT Delhi Police action against Baba Ramdev and his supporters

- Police and the state could have avoided the violent incident
- There was abuse of power by the Delhi Police and violation of fundamental rights of people
- The incident was a reflection of the might of the state which struck at the foundation of democracy
- It is a glaring example of trust deficit between the people governing and the people being governed
- A person of the stature of Ramdev was expected to urge his supporters to leave the ground. He is bound by legal and moral obligations

#### **SC** orders

- The prosecution of police personnel and Ramdev's supporters who behaved violently during the incident
- Compensation of Rs 5 lakh for a deceased person, Rs 50,000 to the grievously injured and Rs 25,000 for those with simple injuries

# Article 19 (1)(c)... Right to form Associations or Unions





## Glimpse...

#### Meaning, Scope and Purpose







Political party

Organisatio



Trade union



Entrepre neurship



Societ y



# EVOLUTION / ASPECTS... ASSOCIATION / TRADE UNION



Rastrabhasha prachar samity Assam case

Damyanti Vs Union

**NAACP** 

Ramkrishna Vs President Distt board Nellor

L.N. Mishra institute for social change Vs Bihar state

A Paradox...

Right to Association doesn't carry the meaning of...

Right to recognition...

Raj kulkarni vs State of Bombay case

All-India Bank Employees Association v. National Industrial Tribunal (Bank Disputes), Bombay

Right to strike...

T. K. Rangarajan Vs Tamilnadu

# Article 19 (c) (4)...sub clause RESTRICTIONS...

Empowers the state to impose reasonable restriction on the right of freedom of association & union in the interest of

public order morality sovereignty and integrity

# Now what is the Significance? Art 19 C/4



In the present context Some Positive Changes...

## Article 19(1)(d)

All citizens shall have the right to move freely throughout the territory of India

## Article 19(1)(d): Move freely

- Right to "'move" denotes nothing more than a right of locomotion, and
- "'freely" would only connote that the freedom to move is without restriction
- i. e., to move wherever one likes, whenever one likes and however one likes.
- Available only to Indian citizens

## Article 19(5)

Reasonable restriction can be imposed in interests of the general public or for the protection of the interests of any Scheduled Tribe

## Article 19(5): Restrictions

• Restrictions can be imposed only by or under the authority of law. Restrictions can not be imposed by the executive action without legal authority.

- Restrictions must be reasonable.
- Restrictions must be related to the purpose specifically mentioned in these clauses.

# Article 19(5): Reasonable Restriction

"reasonable restriction" connotes the limitation imposed on a person in enjoyment of the right-

- Should not be arbitrary,
- of an excessive nature, beyond what is required in the interests of the public,
- intelligent care and deliberation, that is, the choice of a course which reason dictates.

Ajai Canu v. Union of India, (1988)-

Imposition of wearing helmets by drivers of two wheelers

Kharak Singh vs State of UP- Police

surveillance of suspects: Watching and shadowing of suspects for the purpose of keeping record of their movement and activities & Domiciliary visits

State of U.P. v. Kaushalya, 1964

Immoral Traffic (Prevention) Act 1956 provide for

restriction on right of movements of prostitutes, and

removal of prostitutes from any place

#### Gurudatta Sharma vs State of Bihar-

Official secrets act imposes restriction to movement into a prohibited area

Prohibited areas are-

- (a) any work of defense, arsenal, naval, military or air force establishment or station, mine, minefield, camp, ship or aircraft belonging to, or occupied by or on behalf of, Government,
- (b) any place not belonging to Government where any munitions of war or any sketches, models, plans or documents relating thereof
- (d) any railway, road, way or channel, or other means of communication by land or water

Sunil Batra vs Delhi Administration case-

section 30(2) of the Prison Act 1894 provide for

restriction on movement of a prisoner

A K Gopalan vs State of Madras-

detention passed under preventive detention act

# Article 19(1)(d): Judgement 7

#### **Sawant Singh case-**

Right to travel abroad and return to one's country

# Article 19(1)(e)

All citizens shall have the right to to <u>reside</u> and <u>settle</u> in any part of the <u>territory of India</u>

# Article 19(1)(e): Reside & Settle

Reside- to stay at a place temporarily,

**Settle-** to set up a home or domicile permanently

Applicable only to Indian citizens

# Article 19(5)

Reasonable restriction can be imposed in interests of the general public or for the protection of the interests of any Scheduled Tribe

# Article 19(1)(e): Judgement 1

Ibrahim Wazir v. State of Bombay, 1954-

Influx from Pakistan (Control) Act, 1949-

Indian citizen came to India without permit and was arrested and deported to Pakistan by the Government

# Article 19(1)(e): Judgement 2

State of Madhya Pradesh v. Bharat Singh, 1967

M.P. Public Security Act, 1959 empowered the State Government-

to issue an order requiring a person to reside or remain in such a place as may be specified in the order, &

to ask him to leave the place to go to another place selected by the authorities

# Article 19(1)(e): Judgement 3

Olga Tellis & Ors vs Bombay Municipal Corporation-

People were evicted from the pavements, footpaths or accessory roads and slums

# Philosophy and background

- Varna complex social system
- Profession inherited rather than acquired
- Intolerance to change traditional profession and to maintain petrified social order
- Constitutional guarantee- an aid to building up of dynamic and democratic society

Freedom of Profession, Trade and Business Guaranteed Under Article 19 (1) (g) of the Constitution of India

(g) to practise any profession, or to carry on any occupation, trade or business.

#### definition

- Trade-exchange of goods for goods ad goods for monetary benefit
- Business- includes trade, commerce and manufacture
- Occupation-the principle business of one's life
- **Profession**-one that involves some branch of learning or science associated with exercise of intellectual or technical equipments

#### Ist Amendment

Motilal V. UP government AIR 1951 ALL257

#### This freedom is not uncontrolled

- Article 19 (6) the State is not prevented
  - (a) from imposing reasonable restrictions in the interests of general public
  - (b) from prescribing professional or technical qualifications necessary for practicing any profession or carrying on any occupation, trade or business,
  - (c) from carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service whether to the exclusion, complete or partial, of citizens or otherwise.

#### The condition

• the restriction:

• (a) Must be reasonable, and

• (b) In the interest of general public.

# Scope of Article 19(1)(g)

Freedom to carry on any occupation

Available against state not against individuals

#### Case law-1

- Education as an occupation
- P.A. Inamdar v. State of Maharashtra AIR
   2005 SC 3226 –

#### Case law -2

- Right to close business
- Excel Wear v. Union of India AIR 1979 SC 25.

#### Case law -3

- Private practice by teacher, doctors of West Bengal Medical Education
- Sukumar Mukherjee v. State of W.B (1993)3 SCC 724.

#### Case law -4

- State Lotteries not trade or business, but gambling.
- M/s. B. R.Enterprises v. State of U.P .AIR 1999 SC 1867

#### Case law 5

 Khoday distilleries ltd v. state of west bengal AIR 1993 SC724

# Distinction between art 19(1)(g) and art 301

1.	Part III of the	Declares that trade, commerce and
	constitution.	intercourse throughout india shall be
	Guarantees citizens	free
	the right to practice	
	any profession or carry	
	on any trade, business	
1.	Reasonable restrictions	Reasonable restrictions under art. 302
	under 19(6)	and 307
1.	Fundamental right	Statutory right
1.	Can only be claimed by	Can be claimed by anyone
	citizens	

#### Article 20(1)

Clause 20(1) protects an individual against ex post facto legislation, which means no individual can be convicted for actions that were committed before the enactment of the law

The Supreme Court has held that Article 20(1) of the Constitution prohibits conviction of a person under ex post facto laws

- •In *Soni Devrajbhai's* case it was ruled by the Apex Court that the offence punishable u/s 304B IPC known as "Dowry Death" was a new offence created with effect from 19/11/1986
- •Bhoora Singh vs State of UP

#### Article 20(2)

Protection against Double Jeopardy

# DOUBLE JEOPARDY



# Article 20(2)

 No person shall be punished more than once for the same offence



#### **Autrefois Convict**

 A partial protection against double jeopardy is a Fundamental Right guaranteed under Article 20 (2) of the Constitution of India, which states, "No person shall be prosecuted and punished for the same offence more than once". This provision enshrines the concept of autrefois convict, that no one convicted of an offence can be tried or punished a second time. However it does not extend to autrefois acquit, and so if a person is acquitted of a crime, he can be retried. In India, protection against autrefois acquit is a statutory right, not a fundamental one. Such protection is provided by provisions of the Code of Criminal Procedure rather than by the Constitution.

# Article 20(2)

Two important components

- 1)Prosecution by Competent court
- 2) Conviction

## DOUBLE JEOPARDY



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#### Double Jeopardy Not Applicable to

- Foreign Trade Development and Regulation Act, 1992
- Customs Act, 1962
- Central Excise Act, 1944
- Departmental Proceedings

#### Article 20(3)

No person accused of any offence shall be compelled to be a witness against himself.

#### Purpose

- Protect the accused from being compelled to incriminate himself
- Protect from torture or any forceful method
- Avoid shortcut in investigation and make it more scientific and hence effective
- Arm the agents of law with legitimate powers to bring offenders to justice

(State of Bombay vs Kathi Kalu 1961)

- No person accused of any <u>offence</u> shall be compelled to be a witness against himself.
- Sec 3(8) of the General clause act defines offence
- "Any act punishable under IPC or any special or local act applicable at that time is an offence"

• No person <u>accused</u> of any offence shall be compelled to be a witness against himself.

- Fir has been lodged
- Complaint has been made to magistrate
- Any formal complaint which may lead to prosecution in future

• No person accused of any offence shall be <u>compelled</u> to be a witness against himself.

# Compelled

- Not against voluntary disclosure
- A statement made under police custody cannot necessarily be taken under compulsion nor should be assumed so.
- Compulsion means duress either mental or physical
- Non volitional positive act of an accused incriminating himself would be compulsion
- Production of documents on notice is not compulsion MP Sharma vs Satish Chandra

# • No person accused of any offence shall be compelled to be a witness against himself.

- To be a witness is not equivalent to furnishing evidence like fingerprint, blood, handwriting.
- Conveying information based on personal knowledge of person giving the information
- Testimonial evidence like statements, gestures or physiological response

#### Striking balance- Kathi Kalu case



#### Constitutional Perspective

Protection of accused from being compelled to incriminate himself

#### Executive perspective

Strengthen the agents of law and courts with legitimate powers to bring offenders to justice



## Voice Sample

- Ritesh Sinha vs UP and ANR
  - Recruitment fraud case where mobile phone recording was evidence and voice sample required by the accused
  - Taking voice sample does not hit Art 20(30)
    - Judgement by Justice Desai
  - Appealed
  - Although "It surely doesn't hit Art 20(3)" still,
     In absense of any legal procedure the order of Magistrate was quashed.

#### Selvi & Ors vs State of Karnataka

- Compulsory:
  - Brain mapping/Brain Electrical Activation Profile test(BEAP)
  - Polygraph
  - Narco analysis
  - Functional Magnetic Resonance Imaging test
- Were in violation with art 20(3) and Rt to personal liberty and privacy as guaranteed under art 21
- However voluntary admission leading to recovery is admissible u/s 27 IEA

#### Miscellaneous

- Related intricately to Art 21- Rt to remain silence = Rt to personal liberty.
- Guidelines of NHRC are similar to this fundamental right
- Law commission in its 180th report has proposed no changes in this article as well as sections 162, 313, 314 of CRPC