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Article 19 of the Indian Constitution and Its Implication: An analysis

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Abstract

Every citizen of India is guaranteed six fundamental freedoms under Article 19(1) of the Indian Constitution, including freedom of speech and expression, the right to assemble peacefully and without arms, the right to form associations, unions, or co-operative societies, the right to move freely throughout India's territory, the right to reside and settle in any part of India, and the right to practise any profession, trade, or business.² These six essential freedoms are the natural and basic liberties that come with being a citizen. These freedoms, however, are not unrestricted or unconstrained, but are subject to some reasonable limitations. This research paper attempts to focus on the six essential freedoms guaranteed by Article 19, and its implications as well as explains the Article 19 through the relevant case laws.

Introduction

Fundamental Rights are given under Part III, Articles 12 to 35, of the Indian Constitution. Some of these rights are solely available to citizens, while others are open to citizens and non-citizens. These basic rights are unalienable, subject to the conditions outlined in the constitution. It declares that no legislation, ordinance, custom, usage, or administrative order has the power to limit or eliminate a fundamental right. These rights bind both the legislative and executive branches, and any law that infringes a fundamental right is null and void. If a fundamental right is intrinsic to the constitution's core structure, it cannot be taken away by a constitutional amendment.

Some of these basic rights are express declarations, such as those found in Articles 25, 26, 29(1), 30(1), and 32; others are prohibitory declarations, such as those found in Articles 18(1), 23(1), 24, and 28(1); still, others are specific forms of restrictions on state action, such as those found in Articles 14, 15, 16, 20, 21, 22(1), 27, and 28. In contrast, others require state action, such as those

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² Constitution of India , https://www.constitutionofindia.net/constitution_of_india (last visited April 30th ,2022)

found in Articles 15(4), 16(3), 16(4), 16(5), 22(7), 23 (2). 25(2), 30(1)(a). Furthermore, some of the basic rights are affirmative affirmations that also impose limitations on these rights, such as Articles 19(1) and 19(2) to 19(3).

The constitution states that the state shall not create legislation that deprives or restricts basic rights and that such laws shall be invalid to the degree of incompatibility. Fundamental rights, thus, limit the exercise of power by the legislature. The constitution envisions a "welfare state," which should be implemented by the Union and the States, subject to constitutional constraints on their authority. Individuals have the right under Article 32 of the constitution to petition the Supreme Court for redress for any infringement of a fundamental right, and the High Courts have the power under Article 226 of the constitution to issue certain writs for the enforcement of any of the rights under Part III of the constitution.

This particular article talks and discussed about one of the most important fundamental right of the Indian constitution i.e. Article 19 it mainly discusses about the rights and the restrictions that have been provided in the above mentioned article. This article in detail discusses about various aspects on the article 19 from freedom of speech and expression to the right of free movement. The entire article discusses about the article and its various aspects.

Right to Freedom of Speech and Expression

The Indian Constitution states that all citizens have the right to freedom of speech and expression under Article 19(1)(a). Speech is a divine gift to humanity. A person's thoughts, opinions, and feelings are communicated to others through speech. As a result, this is a fundamental right. "Everybody has the right to freedom of speech and expression," declares the Universal Declaration of Human Rights, "which comprises the right to freedom of opinion without intervention and to seek, receive, and transmit ideas and information over any medium and irrespective of limits" (1948). The right to freedom of speech and expression is restricted by Article 19(2) of the Constitution.

The Constitution (First Amendment) Act of 1951 included public order as a justification for

placing restrictions. The Supreme Court defined the "scope of freedom of speech and expression", saying that the phrases "freedom of speech and expression" must be construed widely to include liberty to propagate one's opinions by terms, writing, or multimedia means. Every person of this country has the freedom to express himself or herself through the printed and electronic media, subjected to the limitations set forth in Article 19(2) of the Constitution. The new dimensions of freedom of speech and expression are freedom of press and right to information. Press freedom is at the heart of social and political discourse. The courts have a key responsibility to safeguard press freedom and nullify any laws or administrative acts that infringe on it in violation of the Constitution. However, the freedom to information has not yet been extended to the point where Section 5 of the Official Secrets Act of 1923, which forbids the revelation of some official papers, has been declared unlawful. To summarize, the 'right to information' is but one minor limb of the right to free speech and expression. Article 19 (2) lays out the basis for limiting free expression, including national security, cordial relations with other nations, public order, contempt of court, sedition, and so on. TATA Press Ltd. V Mahanagar Telephone Nigam Ltd. Is one of the most important cases in this area. The Supreme Court ruled that the protection of Section 19(1) "economic speech" could not be denied simply because it was made by entrepreneurs. The Court has always given a liberal reading to the value and content of Article 19(1)(a), making it subject only to the constraints authorised under Article 19(1)(a), as evidenced by the foregoing case law analysis (2). Intolerant governments' attempts to curtail or strangle this freedom have been rebuffed, especially when public officials have displayed dictatorial tendencies.

Right to Assemble Peaceably and Without Arms

All inhabitants of India are guaranteed the freedom "to assemble peacefully and without arms" under Article 19 (1)(b). The right to hold meetings and processions is included in the right to assemble. The democratic government's very concept includes the right to assemble³. As a result, the freedom to assemble also encompasses the ability to hold meetings and processions. The right, like every other individual right, isn't absolute but somewhat limited. The gathering must be nonviolent and must not disrupt the public order.

³ Guruswamy, Menaka, Freedom to Assemble and the Freedom of Association (February 6, 2015)

If the assembly is rowdy or rioting, it is not protected by Article 19(1)(b), and reasonable restrictions may be imposed in the interests of "Indian sovereignty and integrity" or "public order" under clause (3) of the article 19.

Article 19(1)(b) protects existing Indian law restricting public meetings for the sake of public order if the limits are acceptable when a lawful assembly becomes unlawful. A gathering may be dispersed if it becomes illegal. Chapter viii of the Indian penal code outlines the conditions for a gathering becoming "unlawful". If the common objective of a gathering of five or more people is to commit a crime, it becomes an unlawful gathering under section 141 of the Indian penal code.

An assembly that was not unlawful when it was first convened may become illegal if it grows violent or is likely to cause a commotion. If a disturbance to the public peace is reasonably anticipated, such an assembly may be ordered to disperse under section 129 of the criminal process code of 1973. It is illegal under Section 151 of the Indian penal code to refuse to distribute after receiving a legitimate instruction to do so. A magistrate can obtain security for upholding the peace from anyone liable to commit a breach of peace under Section 107 of the criminal process code. 144th Section Code of the criminal procedure If there is a risk of hindrance, annoyance, or injury to any lawfully employed parson, or danger to human life, health, or safety, or a disruption of the public tranquility, a riot, or any affray, the magistrate has the authority to restrain an assembly, meeting, or procession. In the interest of public order, the police act of 1861 enables a public official to direct the conduct and prescribe the route and hour of all gatherings and processions. To carry out a procession, a public member must get a prior license under section 30 of this act. A law granting the magistrate the ability to give or deny a license to hold a meeting, as well as a law from a magistrate, is lawful.

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Right to Practise Any Profession, Trade Or Business

Article 19(1) (g) talks about the right to practice any kind of profession or any occupation, trade or business which is a granted right to all the citizens of India at their own wishes. With this freedom, it doesn't mean that this right gives the people the freedom to carry out trade or any profession that is immoral or dangerous in nature or to the society. Under Article 19(1) (g), the first main restriction should be based on the interest of the public and the society. The term interest of public was explained by the Court as "is of wide import comprehending public order, public

health, public security, morals, economic welfare of the community... is a social welfare measure in the interest of general public.”⁴

In *Bombay Hawkers Union v. Bombay Municipal Corporation*⁵, the provisions of the Municipal Corporation Act was challenged as it had made street hawkers to have mandatory license to carry out trade so as to remove the unauthorized hawkers from the street. The Court had held that the street was meant for the public and if any of the hawkers had caused nuisance or public disharmony would be removed and this restriction was held constitutional. Secondly, with this freedom of practicing any kind of profession doesn't give people the right to conduct trade with dangerous or things prohibited by the law. There are some activities that are not permissible but also lawful and reasonable, such as prohibition of liquor trade is not permissible but at the same time it is reasonable due to the safety of public morality, interest etc.

In *State of Kerala V. Joseph Antony*⁶, the State Government had imposed a ban on mechanized nets and water trawlers which was challenged by the Court stating that such an imposing was causing unreasonable restriction on the freedom of profession. The ground of imposing by the government was only made on good intention to support the livelihood or the poor fishermen who couldn't afford the expensive machinery thereby making the restriction constitutional.

Thereby freedom and its restriction has proved to be detrimental to the smooth functioning of the society and in taking care of the welfare of the people. If certain restrictions weren't imposed on freedom, then the society would be in an unbalanced state causing disharmony among the people, thereby making these restrictions as a tool to protect the people and its society.

Right to Move Freely Throughout the Territory of India

The right to freedom of movement is one of the few central and basic liberties gave to us. The public authority should guarantee this right except if there is a requirement for sensible limitations by law. In India, this right is given to every one of its residents. Article 19(1) (d) guarantees to all citizens of India that right to move freely throughout the territory of India. This right is however subjected to reasonable restrictions mentioned in clause (5) of the article .i.e in the general interest

⁴ *Municipal Corp. v. Jan Mohd. Usmanbhai*, (1986) 3 SCC 20. 31.

⁵ *Bombay Hawkers Union v. Bombay Municipal Corporation* AIR 1985 SC 1206

⁶ *State of Kerala v Joseph Antony* AIR 1994 SC 721

of public or the protection of the interest of the scheduled tribes.

Thus the constitution guarantees to its citizens a right to go wherever they like in Indian Territory without any kind of restrictions whatsoever. They can move not only from one state to another but also from one place to another. This freedom cannot be curtailed by any law except within the limits prescribed under the article 19(5). What the constitution lays stress upon is that the entire territory is one unit so far the citizens are concerned⁷. Thus the object was to make Indian Citizens national minded and not to be petty and parochial.

The grounds on which these restrictions are been imposed are: in the interest of general public; for the protection of the interest of scheduled tribes. In the case of state of M.P v. Baldeo Prasad⁸, the court held that the law providing for externment of dangerous character from a particular locality cannot be called reasonable if it does not specially define as to what is meant by dangerous character as it gives the administrative authority arbitrary powers to determine as to whether a citizen is of dangerous character. In the case of state of Uttar Pradesh v. Kaushalya⁹, the Supreme Court has held that the right of movement of prostitutes may be restricted on the grounds of public health and the interest of morals.

The right of a citizen to move freely may also be restricted for the protection of the interest of scheduled tribes. The object is to protect the original tribes which are mostly settled in Assam and other parts of our nation. These tribes have their own culture, language, customs and manners. It was considered necessary to impose restrictions upon the entry of outsiders to these areas. It was feared that uncontrolled mixing of the tribes with people of the other areas might produce undesirable effect upon the tribal people.

To conclude, the right to freedom of movement is a key right given to us by our Constitution. It is perceived as an essential basic liberty around the world. In the present occasions of pandemic, the limitations are essential for the overall population interest, however the effect of such limitations

⁷ N.B.Khare v. State of Delhi, AIR 1961 SC211.

⁸ AIR 1961 SC 293

⁹ AIR 1964 SC 416;

is exceptionally unbalanced. Albeit the public authority puts limitations that are relative according to the overall population, when we see the ground level distinction that exists in the public eye it is needed with respect to the state to guarantee sensible principles of proportionality.

CASE ANALYSIS

i. RAMESH THAPER V. STATE OF MADRAS¹⁰

In the current case of Ramesh Thaper v. State of Madras, the province government used its authority under Section 9 (1-A) of the Act of Maintenance of the Public Order 1949 to prohibit the entrance and circulation of the weekly publication "Cross Roads," which was printed and published in Bombay. The Order was declared unlawful by a majority of the Court of Justice because it violated Article 19 point (a) of the Constitution (1). The Court, in reaching its judgement, resorted to two United States decisions. The Supreme Court has cited and approved the following text. "Freedom of expression as well as freedom of publishing is important to that right. The journal should also have a title meaning without dissemination."¹¹

The court in the final part of the verdict they have stated that the the freedom of the press could not only be violated if the publication's circulation is not directly prohibited, as was the case with Romesh Thapar, but also if some government action adversely affects the circulation of the publication.

ii. SAKAL PAPERS (P) LTD. V. UNION OF INDIA¹²

In Sakal Papers (P) Ltd. v. Union of India, the Supreme Court held the right not only to the subject which it was entitled to disclose, but also to the volume of circulation to spread his ideas as granted by Article 19(1) (a).

During this time, the Laws of the Price and Page Act of 1956 gave the Central Government control over the rates and distribution of advertising space in connection to the pages and scale of newspapers. According to that law, the Central Government issued an Order for Daily Newspapers

¹⁰ Ramesh Thaper v. State of Madras 1950 AIR 124

¹¹ ibid

¹² Sakal Papers (P) Ltd., And Others vs The Union Of India 1962 AIR 305

in 1960, laying out the maximum number of pages that a journal could print on a pricing basis. A minimum price was set, and a newspaper published a certain amount of pages.

The verdict was criticised as a violation of press freedom, and by delaying its implementation, the number of pages was cut or the price increased. In that case, the publication's distribution rate would be reduced, and the press rights would be expressly violated. As a result, the command was a two-edged sword. By reducing the amount of space on the pages as a result of a reduction in the number of pages, news, ideas, and knowledge are no longer circulated, published, or distributed.

iii. MINISTRY INFORMATION AND BROADCASTING V. CRICKET ASSOCIATION OF BENGAL¹³

The Supreme Court made a huge breakthrough in its Registrar, the Bengal Ministry of Information and Radio Cricket Association, by ruling that, under Article 19(1)(a), an individual had the right to television and transmit to an audience via the electronic media, television and radio, in every significant case, and that the State had no monopoly on electronic communication. As a monopoly on broadcasting by the government or any other body, it was held to be incompatible with the right to freedom of speech. Because, unlike Article 19(2), State monopolies under Article 19(6) will not be allowed to comply with Section 19(1)(g) of the Act, any monopoly could be created in such media.

It directed the central government to take immediate steps to establish an independent public authority to control the use of airwaves, to liberate Doordarshan or Akashvani from government influence, and to ensure that people' freedom of speech and expression is fully and effectively exercised.

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CONCLUSION

The article briefly discusses on how the right to freedom of speech and expression is clearly derived as one of the most important fundamental rights. It entails disseminating one's viewpoints through words, writing, audio-visual instruments, advertisements, and any other means of communication. It also includes rights to knowledge and freedom of the press, among other things.

¹³ Secretary ministry of information and broadcasting v. Cricket Association Bengal 1995 AIR 1236

As a result, this fundamental right has a broad application. The Hon'ble Supreme Court has given Article 19(1) (a) of the Indian Constitution a fairly broad and liberal interpretation over the years. These interpretations have led to the recognition of various rights such as the right to receive and disseminate information, the right to know, the right to remain silent, the right to receive education, and the right to fly the National Flag freely and with dignity as expressions of one's national pride. These new rights stem from the Supreme Court's expansive interpretation of the phrase "freedom of speech and expression" in Article 19(1)(a) of the Constitution.

In Article 19(1)(b), Every citizen has the freedom to peacefully gather without arms. In the sake of India's sovereignty and integrity, as well as public order, this right is subject to reasonable limitations. In India, the press has been unable to exercise its right to freedom of expression in order to express popular opinion. The Daily Newspapers (Price and Page) Order, 1960, which limited the amount of pages and size that a daily might publish for a fee, was found to be a violation of press freedom and not a reasonable restriction under Article 19 in Sakal Papers Ltd. v. Union of India (2). The constitutionality of the Newsprint Control Order, which set the maximum number of pages, was also ruled down by the Court in Bennett Coleman and Co. v. Union of India, which found it to be a violation of Article 19(1)(a) and not a reasonable restriction under Article 19(1)(b) (2). The G's claim was dismissed by the court. Article 19(1)(d) of the Indian Constitution entitles every citizen to move freely throughout the territory of the country.

The Constitution guarantees residents the right to free movement from one state to another and anywhere within a state, according to Article 19(1)(d). A person who is free to migrate from one location to another within the country's borders. There are several exceptions, such as territories occupied by Scheduled Tribes and military bases. A human right is the freedom to roam freely across India's territory, which asserts that an individual has the right to migrate or travel from one place to another inside India's territory. This also includes the ability to settle and reside in any part of India's territory.

However, as stated in clause (5) of Article 19, there are some limitations imposed. Provisions (d) and (e) of Article 19 are complementary to one another; these two clauses offer an individual

unrestricted movement across the country and allow them to reside in any portion of India. The Constituent Assembly was well-versed in civil liberties while also being wary of total liberty. Thus, the restrictions put on freedoms are outlined from Clause (2) to Clause 6) The Constitution establishes reasonable restrictions on the right to travel under paragraph (5) of Article 19.

All individuals have the right to practise any profession or carry on any occupation, commerce, or business under Article 19 (1) (g) of the Indian Constitution, subject to Art. 19 (6), which enumerates the types of restrictions that the state can impose on the citizens' right to practise any profession or carry on any occupation, trade, or business. Art 19(1) (g) does not imply that the state or other statutory authority must establish conditions to make any trade profitable or to attract clients to the business/businessman. Furthermore, a citizen whose occupation of a location is illegal cannot assert a fundamental right to conduct business there, because fundamental rights cannot be invoked to justify an illegal act.



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