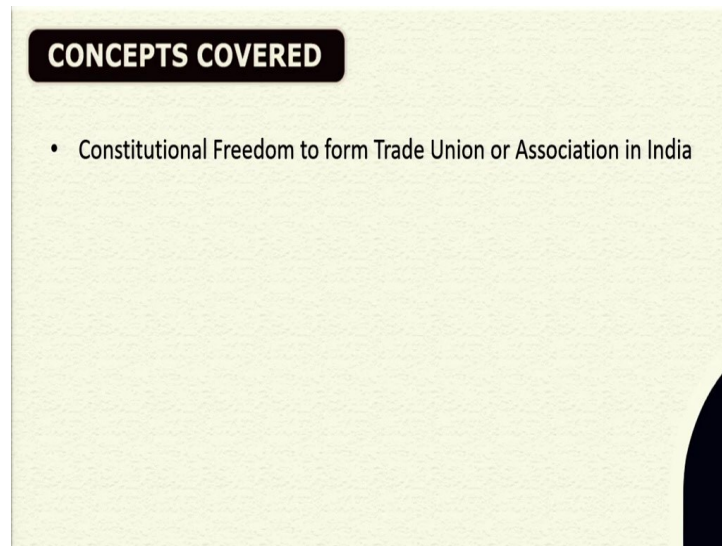


New Labour Codes of India
Professor K.D. Raju
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Lecture 07
Constitutional Freedom to Form Associations and Unions

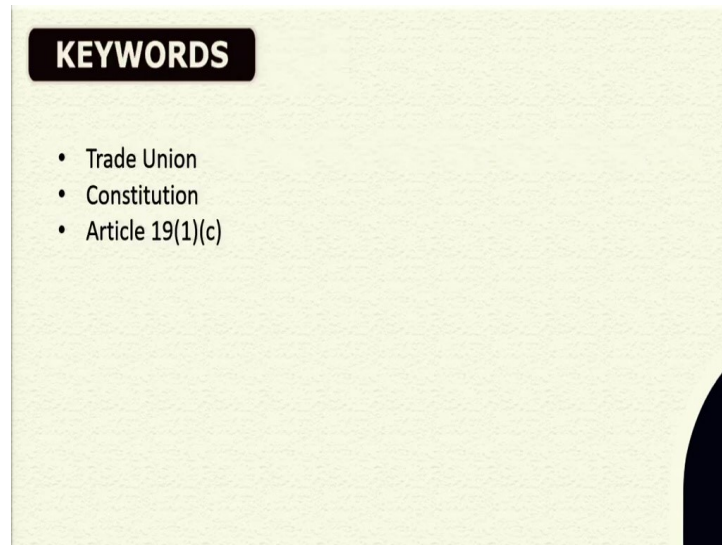
Dear students, today we are going to discuss the constitutional freedom to form associations and unions. So, in the last classes, we were talking about the various asset of labour law.

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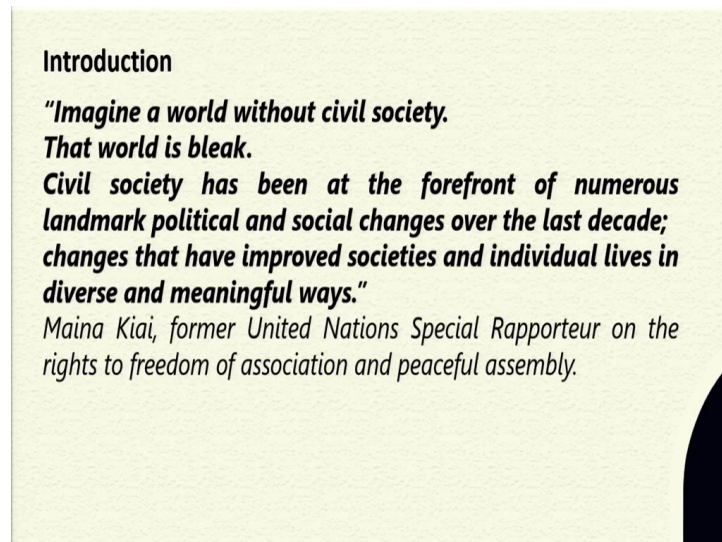
And today we are going to specifically talk about the constitutional freedom of forming an Association under the Indian constitution.

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So, it is a fundamental right, which is enshrined under Article 19(1)(c) of the Indian Constitution, which provides the freedom of association.

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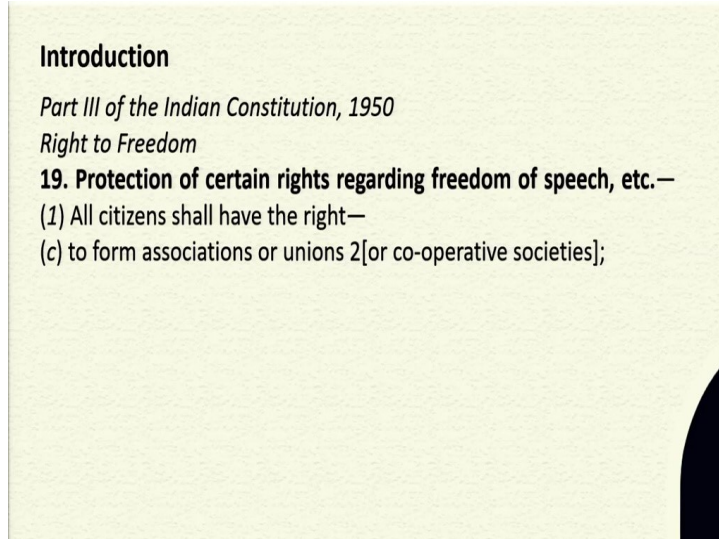


So, before starting the Indian constitution, you can see that Maina Kiai the former United Nations Special Rapporteur, said talk about the freedom of association and peaceful assembly, I caught imagining a world without civil society, that word is bleak.

Civil society has been at the forefront of numerous landmark political and social changes over the last decade. Changes have improved societies and individuals' lives in diverse and meaningful ways. I unquote. So, he very clearly said that, so, the civil society, free civil

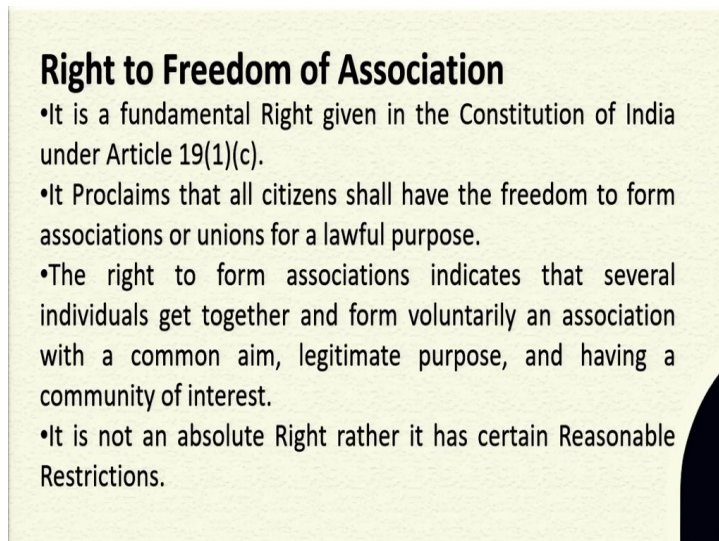
society, there must be freedom of association and peaceful assembly is inevitable for any civilized society.

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When it comes to our Indian constitution, we can see that the protection, is saying that the protection of certain rights regarding freedom of speech. So, all citizens of India have the freedom to form associations or unions or cooperative societies, then we come to ask a question, whether every citizen, every citizen has a right to form an association. So, we have to look into the reasonable restrictions of article 19 enshrined in the fundamental rights.

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So, we can see that this special freedom to form associations, it says that, it proclaims all citizens have the freedom to form associations for the purpose of lawful purposes. So, it indicates several individuals can get together voluntarily and form associations with a common aim for a legitimate purpose and also have a common objective, purpose, aim and also common interest.

And it is the question of whether it is an absolute right, again, we have to discuss whether it is an absolute right the Supreme Court through various judgments very clearly said that, it is not an absolute right, rather it is subject to reasonable restrictions.

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Right to freedom of Association

- Freedom of speech and expression means the right to speak, and the right to express oneself through any medium-by words of mouth, writing, pictures, signs, the internet etc.
- Every citizen has a right to hold an opinion and to be able to express it, including the right to receive and impart information.
- The expression 'freedom of speech and expression' has a wide connotation.
- It includes the freedom of the propagation of ideas, their publication, and circulation.

So, if we look closely look into the right to freedom of association, we can see that, yes, there is the right to speak and also right to express one's own thought. So, it can be by means of writing, by speech, through pictures or signs. So, now, with the advent of technology, through social media and the internet, so, everyone can express their opinion and also affiliation with any associations. So, and also it can include the right to receive and impart information.

So, freedom of speech and expression in the modern sense, I would say that the advent of technology has wide connotations. So, it includes the propagation of one's own ideas, publications, opinion and freedom to communicate with others through associations.

(Refer Slide Time: 4:44)

Right to freedom of Association

Supreme Court held in the case laws of State of *Madras vs. V.G.*

Rao:

“The right to form associations or unions has such wide and varied scope for its exercise and its curtailment is fraught with such potential reactions in the religious, political, and economic fields. That the vesting of authority in the executive government to impose restrictions on such right, without allowing the grounds of such imposition, both in their factual and legal aspects, to be duly tested in a judicial inquiry, is a strong element which, in our opinion, must be taken into account in judging the reasonableness of the restrictions imposed on the exercise of the fundamental right under Article 19 (1) (c).”

And also, we can see that it is interpreted widely by the Supreme Court of India. So, in one of the famous cases the state of Madras versus V.G. Rao the Supreme Court said “ the right to form associations or unions has such a wide and varied scope for its exercise. And its curtailment is fraught with such potential reactions in the religious, political and economic fields that the vesting of authority in the executive government to impose restrictions on saturation without allowing the grounds of such imposition, both in their factual and legal aspects to be duly tested in a judicial inquiry is a strong element, which in our opinion, must be taken into account in judging the reasonableness of the restrictions imposed on the exercise of the fundamental rights under Article 19(1)(c)”

So, through this particular decision, the Supreme Court said that the freedom of association or freedom of unions has a wide scope. So, it can be through religious associations, political associations, economical associations, and so on and so forth. So, if the authorities, if they execute, want to put restrictions, reasonable restrictions, that they want to put reasonable restrictions, must be through a judicial inquiry, it is subject to judicial scrutiny. So, if you want to put restrictions on fundamental rights, it is subject to reasonableness that restrictions are subject to the interpretation of the code.

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Significance

- It guarantees that everyone has the freedom to create and participate in groups, whether formally or informally.
- It is the enabling right, at the heart of democracy and the rule of law, to allow effective participation of non-state players in economic and social policies.
- It ensures that both workers and employers have a voice and are represented, which is critical for the efficient operation of both labor markets and general governance systems in a country.

So, and also we can see that this is one of the very important fundamental rights under the Indian constitution, it can be everyone's freedom to create and participate in groups, whether formally or informally. So, now, there are a lot of controversies with regard to various religious groups, not only in India but in other countries as well. But in India, this freedom to form associations is a fundamental right. So, it is an enabling right. So, in any democratic society, a democratic society is ruled by rule of law.

So, effective participation in an association is an integral part of its fundamental rights and also it plays economic, social, and political rights of its citizens, every citizen when it comes to workers, and employers, so, both workers and employers can form associations and they can represent through their associations.

So, it is necessary for it is a prerequisite for the operation of proper labour markets and governance of the complete workers or employers in the country. So, if the employers want to negotiate with the workers at a large scale in geography like India, they require associations, it is not only the employers, but also the workmen, they also require associations and unions, so, it is a fundamental right.

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Reasonable restrictions

1. Sovereignty and Integrity of India: To safeguard the sovereignty of the country the freedom to form associations can be restricted.

This freedom will also be restricted if it causes any disturbance or affects the oneness of the country.

2. Public Order: To maintain the safety, public peace, order, and tranquility of the country, the right to form association can be restricted.

3. Morality: This freedom can be restricted if any of the individual's activities involve indecency or obscenity.

So, under this particular provision, we can see that the government can put reasonable restrictions, reasonable restrictions to form associations. So, the first grounds for putting such restrictions on, the sovereignty and integrity of India. So, the government can ban any association or restrict the formation or the working of any association to safeguard the sovereignty of the country. So, sovereignty and integrity of the country and this freedom are restricted, especially when any disturbance, affects the working of such organization in the country.

And the second ground is public order. And public order is a wide connotation with a variety of interpretations from the apex courts in this country. To maintain safety, public peace, order and tranquillity of the country. So, the formation of any association can be restricted. And the third ground is morality. So, this freedom can be restricted if any of the individual activities are involved indecency or obscenity. So, scholars say that morality changes from society to society.

So, what is morality, and what is the standard of morality, it will depend from instance to instance and we have enough jurisprudence in this country on what constitutes morality. So, the freedom of association can be restricted on the grounds of morality. So, we have three grounds the first one is the sovereignty and integrity of India and the second is the Public Order and the third is morality. So, these are the three grounds under which the executive can put reasonable restrictions on the exercise of the freedom of association under Article 19(1)(c).

(Refer Slide Time: 11:25)

Armed Forces

Right to form an association under Armed Forces Articles 33 of the Constitution empowers the Parliament to pass a law restricting the right to form a political association to :

- 1.The members of the Armed forces.
- 2.The members of the Forces charged with or
- 3.Persons employed in any bureau or other organization established by the state for purposes of intelligence or counterintelligence, or
- 4.Persons employed in or connected with the telecommunication system.

And India has a lot of problems with the next class we are going to deal with the ILO conventions. So, we have certain problems with regard, especially in the case of forces. So, the exceptions are provided under Article 33. So, the parliament can pass any law to exempt or restrict political activities in various forces including the military forces. So, in the armed forces, this particular freedom is restricted.

So, here are the persons who are employed in special bureaus, the organizations established by the state for purpose of intelligence or counterintelligence. The first we said down forces, second we said intelligence bureaus and also under the head may be persons to score connected with the telecommunication systems. So, we know that in our country associations, associations are specifically defined and trade unions are separately defined under the Trade Unions Act. So, article 90 restricts the formation of associations in the armed forces.

(Refer Slide Time: 13:07)

Armed Forces

In ***O.K.A. Nair v. Union of India***, 1976 AIR 1179

And the appellants were members of the civil employee's unions in the varied centres of Defense Establishments.

The Commandant declared their unions as an unlawful association.

They challenged the validity of the impugned order on the bottom that the said order was violative of Article 19 (1) (c).

So, we will see some of the cases also where the Supreme Court has interpreted this particular provision and one of the famous cases is O.K.A. Nair Vs Union of India, 1976. In this case, the appellants were the staff. They are civil employees and attached to the defence establishments, even though they are themselves per se, Defense personnel, but they are staff those who are attached to the different establishments.

So, the commandant declared their unions or associations as unlawful. So, the petitioner is under the parties challenge the validity of this particular order alleging that it violates article 19(1)(c) of the Constitution. So, when we look into the exceptions under Article 33, it clearly talks about the armed forces. So the question here the Supreme Court has asked to determine is whether the staff connected with the Armed Forces civilian staff or civilian employees connected with the armed forces.

(Refer Slide Time: 14:24)

Armed Forces

In *O.K.A. Nair v. Union of India*:

- ❑ The Supreme Court held that the civil employees of the defence establishments, answer the outline of the members of the soldiers within the meaning of Article 33, and thus **they aren't entitled to form trade unions.**
- ❑ The right to form associations or unions does not carry with it the right to achieve any objective.
- ❑ Thus, **the trade unions have no guaranteed right to effective bargaining.**

So the Supreme Court in these cases, there is N number of civilian staff or employees associated with the defence establishments. So, the Court interpreted article 33, And the Court said that even though they are civil employees, those who are attached even though they are per se, not soldiers, but are attached with the defence establishments. They are not entitled to form trade unions.

So, if there is any right form association or union does not carry with it the right to achieve any objective. So, even though you are joining trade unions, there has no guaranteed right to effective bargaining. So, the Supreme Court try to say that it is not necessary that there must be trade unions or that participation in trade union activities not necessarily guarantees the right to effective bargaining. So, article 33 definitely puts a specific restriction to form associations or trade unions in the armed forces.

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Restrictions

Like any other Fundamental Right under Article 19, this right to association is also **not absolute** and is subjected to regulation in social interest.

Article 19(4) specifically empowers the state to make any law to fetter, abridge or abrogate any of the rights under Article 19(1)(c).

So, with these restrictions, we can say that the Supreme Court clearly said that the right fundamental right under Article 19 to form an association is not an absolute right. And it is subject to regulations and subject to social interest and subject to the national interest.

And also, 19(4) empowers the state to make law for abrogating or taking away or abridge or fetter, any rights which are provided under Article 19(1)(c). So, if the Armed Forces Act specifically takes away this particular right, then it is very well within the meaning of article 33 exceptions, the state can make laws for reasonable restrictions under Article 19(1)(c).

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Restrictions

- It can be imposed only by the authority of law.
- The restriction must be Reasonable.
- The restriction must be related to the purpose specifically mentioned in Clause 4.
- Judiciary has the power to test the validity of these Restrictions on two grounds:
 - whether the restriction is reasonable, and
 - whether it is for the purpose mentioned in the clause under which the restriction is being imposed.

So, several conditions are also put for taking away this particular authority. It includes these kinds of restrictions that can be imposed only by the authority of law. So, that is why the central government or the state government's consent can pass appropriate laws, that restriction must be put to the test of reasonableness. And the restriction must be related to the purpose specifically mentioned in clause 4.

And the judiciary has the power to test or validate this particular restriction to test the reasonableness on two grounds they are whether the restriction is reasonable and whether it is for the purpose mentioned in the clause under which the restriction is being imposed. If these two conditions are fulfilled, then it can be these kinds of restrictions can be imposed under the authority of law. But always these restrictions are subject to judicial to be can be put to the test of reasonableness.

(Refer Slide Time: 18:09)

Railway service

• **In *Balakotaih v. Union of India*, 1958 AIR 232**

The services of the appellant were terminated under Railway Service Rules for his being a member of the communist party and a trade unionist.

• The appellant contended that the termination from service amounted in substance to denial to him of the right to form an association.

So, another question is considered by the Supreme Court and in *Balakotaih versus union of India*, 1958 case, here the question was whether the railway employee can be a part of a particular party or union or association. So, article 19(1)(c) specifically provides freedom of association to every citizen of India. But the question is specifically with regard to whether this is available to people who are in service and those who are under specific service routes.

So, the question considered by the court, in this case, was whether a person who is in the railway service can be a member of the Communist Party that is Communist Party and a trade unionist. So, the appellant here questioned that his termination from the service amounted to

the denial of this particular right, which is guaranteed by the Constitution as a fundamental right. Under Article 19(1)(c) there is freedom of association.

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Government Service

- The appellant had no doubt a fundamental right to form an association, but he had **no fundamental right to continue in Government service.**
- Hence, it had been **held that the order terminating his services wasn't in contravention of Article 19 (1) (c) because the order didn't prevent him to continue in Communist Party as a trade unionist.**
- Reasonable Restrictions

So, the Supreme Court consider this question and look into the matter. The mentioning or the observation of the court is very important in this case. The court very clearly said that there is no doubt it is a fundamental right to form Association. But a government servant had no fundamental right to continue in government service. So, as a citizen, he can become a member of any association or any trade union, but as a civil servant or in a particular service railway service, he has to follow the railway service routes.

So, the Court held that the order terminating his services from the railway was not in contravention of article 19(1)(c), because the order never prevent him to continue to be a part of the Communist Party as a trade union or he wants to works under that particular trade union. But if the service rules prevent him from doing so, then the service rule will provide.

So, he is free to continue to exercise his freedom of joining any association, but not as service personnel. So, he can resign from the service, if he wants to continue in the service, he has to follow the service rules. So, the court said that he is free to continue in any association, but as a civil servant, he cannot you have to follow the government service rules.

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**Raja Kulkarni And Others vs The State Of Bombay on 24 November, 1953 ,19
SCR 384**

Judgment:

- It is obvious that the Act imposes **no restriction** either upon the freedom of speech and expression of the textile workers or their right to form associations or unions.
- The statute lays down the minimum qualification of **15%** of membership to enable the Union to be called a "representative union" so as to represent the interests of the entire body of workers in their relations with the employers.
- It was perfectly reasonable not to allow any other union such as the appellants to interpose in a dispute on behalf of the textile workers when they did not command the **minimum percentage** or when their membership fell below the prescribed percentage.

And another case which we can see in Raja Kulkarni and others Vs state of Bombay, all these are some of the early cases, here the Act sees so, the court says that the Act imposes no restriction either upon the freedom of speech and expression of the textile workers or the right to form associations or unions. So, the statute here in this particular case, putting the minimum qualification of membership, a minimum number of membership in a particular trade union to be called a representative union we can see that this case was concerning 1953. The new code also included a provision for representative units.

So, if you want to be a representative union, then there must be a certain minimum percentage of membership in that particular union. So, the question in this particular law was 15 percent membership. So, the court said that this restriction is perfectly reasonable. So, if a union wants to be a representative union of the textile workers, so, they can the minimum percentage must be there, if they below go below that particular minimum percentage, it cannot be said that they are representative union.

So, freedom of forming an Association, freedom of forming a union and Representative unions are something different, if especially low which talks about a percentage of support, then that will provide that provision will prevail over this general provision of forming an association of unions. So, this percentage is a statutory minimum which prescribes for representing the workers or in this particular case the textile workers.

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Damyanti Naranga v. The Union Of India And Others on 23 February, 1971, 1971 SCR (3) 840

The Supreme Court held that

“The right to form an association”, the Court said, “necessarily ‘implies that the person forming the association has also the right to continue to be associated with only those whom they voluntarily admit in the association.

Any law by which members are introduced in the voluntary association without any option being given to the members to keep them out, or any law which takes away the membership of those who have voluntarily joined it, will be a law violating the right to form an association”.

Another case which we can see is the Damyanti Naranga versus Union of India. So, here also in this case also the court elaborately considered the question of right from associations.

So, the Court said in this case, this necessarily implies that the person forming the association has also the right to continue to be associated with only those whom they voluntarily admit to the association, any law by which members are introduced in the voluntary association without any option being given to the members to keep them out or any law which takes away the membership of those who have voluntarily joined it will be a law violating the right to form an association.

So, the court said that certain restrictions, and certain conditions to be in membership in a union as well. So, any law which is violating the right to form an association is violating article 19(1)(c) as well. So, if a person is voluntarily admitted to the association, so, the right to form an association, which also contains which implies a person to continuously associated with or voluntarily associated with that particular association as well. So, if any contrary provisions in the law is violating the right to form an association

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G.K. Ghosh v. E.X. Josef, 1963 AIR 812

- ❑ Rule 4-B of the Central Civil Services (Conduct) Rules, 1955, requires a Government servant to not join or still be a member of the Association of state servants as soon as the recognition is given to such association is withdrawn or if the association is made, no recognition is granted thereto within six months.
- ❑ The Supreme Court held that the condition on recognition of the said association to be a right would be ineffective and illusory and the imposition of such condition on the right of the association has no reference to the general public order of the State.

So, in *G.K. Ghosh Vs E.X. Joseph*, this particular case is again always the central government service rules, the central government Civil Services Conduct rules 1955 is very strict in its nature. So, the question is, whether a government servant can join an association or a union.

So, here, this already recognition is granted or may be granted within under 6 months, the Supreme Court held that the condition on recognition of the said association to be right would be ineffective and illusory and the imposition of such conditions on the right of the association has no reference to the general public order of the street. So, we can see that the central civil services conduct rules 1955 prohibits all civil servants from joining associations or unions.

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Haji Mohd. District Board, Malda, AIR 1958 Cal 401

- ❑ It had been held that a restriction requiring a teacher to require prior permission to interact in political activities is an inexpensive restriction.
- ❑ It aimed toward preventing teachers from getting involved with political institutions.
- ❑ For, an educator is not merely a citizen but he has got to be under certain terms and discipline of employment.

So, it is clear through other cases as well, for example, the Haji Mohd. district board, Malda, So, in this particular case, you can see that, so, whether a teacher can involve in political activities. So, here, the particular provision says that prior permission, prior permission is to be taken to interact with the political activities. So, the objective of this particular restriction is to aim toward preventing teachers from getting involved with political institutions.

So, the court said that the educator is not merely a citizen, but he has got to be under certain terms and disciplines of employment. So, a teacher is a person who makes the future citizens of this country. So, there can be reasonable restrictions. So, this particular requirement for permission to interact with political institutions are reasonable in nature

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Ous Kutilingal Achudan Nair And ... vs Union Of India & Ors on 20 November 1976, 1976 SCR (2) 769, Bench: Sarkaria, Ranjit Singh

Judgment:

- In view of these notifications issued under s.4 of the Defence of India Act and the Army Rules, the appellants can no longer claim any fundamental right under Art. 19 (1) (c) of the Constitution.
- The appeal fails and is dismissed.

And also, the courts in various other cases. So, the Court has dismissed and such reasonable restrictions are held valid restrictions, especially, when it comes to the defence forces, that is the defence of India Act, the army rules and other forces, we know that the courts are confirmed such restrictions under Article 19 as the reasonable restrictions and the dismissed the appeal which came to the courts for decisions.

So, we know that, yes, the right to form Association is a fundamental right, but when it comes to the forces and different forces, India is very strict in its approach, and the courts are also in strict in their approach towards the formation of associations and unions.

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O. K. Ghosh And Another vs E. X. Joseph on 30 October, 1962, 1963 AIR 812, 1963 SCR Supl.(1)789
J.C.

Judgment:

- Rule 4(A) of the Central Civil Services (Conduct) Rules, 1955, in so far as it prohibited any form of demonstration **was violative** of the Government servants' fundamental rights under Art. 19(1) (a) and (b).
- Participation in demonstration organised for a strike and taking active part in preparation for it cannot, either in law or fact, mean participation in the strike.
- The secretary could not be said to have taken part in a strike as such and the proceeding against him under rule 4(A) being based on that part of it which was invalid must also be invalid.
- Rule 4(B) of the said Rules imposed restriction on the undoubted right of the Government Servants under Art. 19 **which were neither reasonable nor in the interest of public order** under Art. 19(4).

So, we can see that in some of the cases, so, I think we have already discussed the central civil services conduct rules. So, we can see that, if any rules impose restrictions on the undoubted right of the government servants under Article 19, which are neither reasonable nor in the interest of public order, if it is not in the public order or which is not reasonable, then it will fail. So, if it is reasonable and it is for the interest of the public, then definitely that order is applicable.

So, in continuously in many cases, we can see that the Supreme Court held that the central civil services personnel were prevented from prohibited from, forming associations and trade unions.

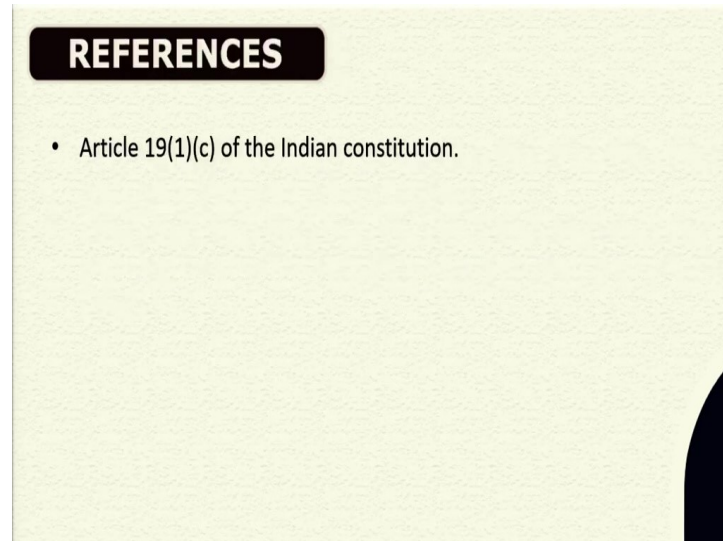
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CONCLUSIONS

- The Trade Union Jurisprudence has been enriched by the several Landmark Indian Supreme Court decisions.
- The decisions have defined and reasonably restricted the freedom guaranteed under Article 19(1)(c) on forming association or trade unions.

So, in conclusion, we can see that in article 19(1)(c), there is unbridled freedom to form associations and trade unions envisaged in article 19(1)(c) of the Indian Constitution. And the jurisprudence formed by the courts in India have enriched the Indian jurisprudence of the right to form associations, especially the landmark judgments of the Supreme Court of India

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So, we can see that article 19(1)(c) is an important provision to form trade unions and also to form associations which will have serious repercussions on the working of trade unions and the working people in India. So, the courts are very sensible in interpreting this particular right and very strictly. Thank you.