

Constitutional Law and Public Administration in India

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Lecture-01

Right to Freedom – I

Article 19 of the Constitution is about the right to freedom. There are six rights that are protected under Article 19 namely, right to freedom of speech and expression, right to assemble peacefully without arms, freedom to form associations or unions, freedom to move freely across the territory of India, to reside and settle in any part of the country and the freedom to practice any profession or to carry out any occupation, trade, or business. Originally, Article 19 had seven rights, but Article 19(1)(f) does not exist any longer. It was deleted by the 44th amendment to the Constitution in 1978. It was the right to acquire, hold and dispose of property. So, currently these are the six rights which are protected. These are rights that are to be exercised by the citizens against the state. So, the citizens have the right and the state has the duty and obligation to protect these rights. These rights cannot necessarily be exercised against private individuals or private citizens. The right is also available to shareholders or groups of individuals, because they are also included under the term 'citizens'. Freedoms under Article 19 are only for citizens; they are not available for foreigners and these freedoms are not absolute. Article 19(2) talks about reasonable restrictions on some of these rights.

Freedom of Speech and Expression

The right to express one's views or opinions, beliefs, or conviction freely by word of mouth, writing, printing or through pictures or by any other means, whether digital or non-digital is considered as the right to freedom of speech and expression. The Supreme Court has held that the freedom of speech and expression may include any of these following subsets of rights: First, under the freedom of speech and expression, the citizens have the right to propagate one's view as well as the views of others. There is freedom of the press under Article 19 and the freedom of commercial advertisement and the freedom to tap telephones in the interest of national security. There is the right to telecast, and the monopoly of the electronic media can remain with the government.

The right includes the right to call for a 'bandh' by a political party or an organization. Citizens have the right to know or the right to information. Right to know was a

fundamental right, even before the right to information became a statutory right in 2005. The freedom of speech and expression has a positive connotation and includes the freedom to remain silent which is a negative reading of the same right.

Imposition of pre censorship on newspapers cannot be done, censorship is not permitted. There exists the right of demonstration or picketing, but not the right to strike. Right to strike is not part of Article 19 unless it is a legal strike as declared by the industry. Some of the subsets of rights have evolved over a period through various decisions of the court to mean what freedom of speech and expression mean.

Under Article 19(2), reasonable restrictions on your freedom of speech and expression can be imposed on the grounds of sovereignty of the state, security of the state, integrity of India, friendly relationship with foreign states, public order, decency or morality, contempt of court, defamation and finally incitement of an offense. These are quite like the restrictions that are under the Right to Information Act 2005, especially under Section 8(1)(a).

In *Indian Express Newspaper v. Union of India* (1985), the Supreme Court said that the Constitution ensures the right to the freedom of the press. However, to maintain equity of the distribution of newsprint or newspaper or any other part of what is required for the press to be utilized, some kind of restriction may be imposed by the Newsprint Control Order of 1959. During times when there was shortage of raw material in the state, to see that every press gets equitable distribution of available resources of newsprint, the said order was enacted. It was challenged by Indian Express as being violative of freedom of speech and expression. But the court balanced the interest justifying that, the ownership and control of material resources of the state or the community should be done to serve the common good of every individual. So, it is the greatest happiness of the greatest number. And hence, reasonable restrictions are sometimes necessitated by the security of the state.

Similarly, under the freedom of assembly, citizens can assemble, but it should be done peaceably and without arms. So, peaceful meetings and peaceful demonstrations can be done under freedom of assembly. However, the right to hold public meetings and demonstrations are confined to public land. The right cannot be exercised on private land. No provision in the Constitution allows disorderly nature of riots to take place and once there is a breach of public peace or order, or if anyone in the gathering who has come to the assembly carries any kind of arms, then this right is taken off. The state can impose reasonable restrictions on the right to assemble peacefully because public order and security must be maintained.

Hence, under Section 144 of the Criminal Procedure Code, 1973, a magistrate can restrain the assembly of individuals by passing an order saying that such an assembly is no longer legal; and if the assembled group does not disperse, they will be subjected to law-and-order

sanctions. Your right for a peaceable assembly must not result in injury or safety or any risk of safety or disturbance to other communities. There should not be any infringement of public tranquility. Health and safety of all individuals in the society must be maintained when the right to peaceful assembly is being exercised.

Under Section 141 of the Indian Penal Code, an assembly of five or more persons may become unlawful if the object of such an assembly is to resist the execution of any law or to resist the execution of any legal process; and the same could be declared to be an unlawful assembly. If you are forcefully occupying any kind of a property of any individual or any person, this is forceful or illegal occupation, and such assembly can be declared unlawful under Section 141. If a mischief or criminal trespass is committed, orders can be passed under Section 141 of the IPC. If someone forces another to do an illegal act, a restraining order can be imposed against the former from committing that unlawful act as well. If a decision to threaten any government officer who is exercising his official lawful duty is made, the same would attract Section 141 of the Indian Penal Code.