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Right to Certain Freedom Under Article 19

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6.1 Introduction

- ▶ The constitution of India contains the right to freedom, given in Articles 19,20,21A, and 22.
- ▶ Originally, Article 19 contained seven rights. But, the right to acquire, hold and dispose of the property was deleted by the 44th Amendment Act of 1978.
- ▶ These six rights are protected against only state action and not private individuals. Moreover, these rights are available only to the citizens and to shareholders of a company but not to foreigners or legal persons like companies or corporations, etc.
- ▶ The State can impose 'reasonable' restrictions on the enjoyment of these six rights only on the grounds mentioned in Article 19 itself and not on any other grounds.
- ▶ The rights to freedom are the most important fundamental rights guaranteed by the constitution of India. It makes democracy meaningful.

6.2 Article 19- Right to Freedom

- ▶ As per Article 19, the following six freedoms are guaranteed to every person of the country :
 1. Right to freedom of speech and expression.
 2. Right to assemble peaceably and without arms,
 3. Right to form associations or unions,
 4. Right to move freely throughout the territory of India,
 5. Right to reside and settle in any part of the territory of India,
 6. The right to practice any profession or to carry on any occupation trade or business.

Freedom of speech and expression

- ▶ Every citizen has the right to assemble peaceably and without arms. It includes the right to hold public meetings, demonstrations and take out processions. This freedom can be exercised only on public land and the assembly must be peaceful and unarmed. This provision does not protect violent, disorderly, riotous assemblies, or one that causes a breach of public peace or one that involves arms. This right does not include the right to strike. Every person has freedom of speech and expression.
- ▶ However, the State can inflict a restriction on this freedom in the interests of the sovereignty and integrity of the country, for the security of the state, friendly relations with foreign countries, public order, in relation to the contempt of court, defamation or incitement to an offense.

Freedom to assemble

- ▶ All citizens have the right to form associations or unions or co-operative societies^{10b}. It includes the right to form political parties, companies, partnership firms, societies, clubs, organizations, trade unions or any body of persons.
- ▶ It not only includes the right to start an association or union but also to continue with the association or union as such. Further, it covers the negative right of not to form or join an association or union. Freedom to form associations or unions or co-operative societies The State can enforce restrictions on such freedom in the interest of public order, morality and the sovereignty and integrity of the country.

Freedom to move, freely

- ▶ An Indian citizen has the freedom to move freely throughout the territory of India.
- ▶ However, the government can impose restrictions on this right only in the interest of the general public.

Freedom to reside and settle

- ▶ citizens of India have the freedom to reside anywhere in the country.
- ▶ However, in the interest of the general public or for the protection of the scheduled tribes the State may impose certain restrictions.

Freedom to practice any profession or to carry on any business occupation or trade

- ▶ Every person can carry any business or practice any profession provided it is not dangerous or immoral.
- ▶ Also, professional or technical qualifications must be acquired before practicing any profession or carrying on any trade.

Restriction on Right to Freedom

- ▶ It is logical that equal rights for all must mean limited rights for any. Hence, the State may impose reasonable restrictions, upon the exercise of any of these rights.
- ▶ The freedom to assemble is subject to two restrictions. The assembly must be peaceable and the members of assembly must not bear arms. However, the Sikhs are allowed to carry 'Kirpan' as part of their religious creed.
- ▶ In the U.S.A. right to, bear arms is a fundamental right. In India, this right is denied in the interest of public order.
- ▶ The right to form associations or unions does not entitle persons to enter into criminal conspiracy either against individuals, groups or against the state.
- ▶ The right to move freely or to reside and settle in any part of India does not cover trespass into homes or restricted areas. State also may restrict this freedom to protect the aboriginal tribes.
- ▶ The right to practice any profession or to carry on any occupation, trade or business is also subject to reasonable restrictions. Thus, professions or, trade or, the business must not be harmful to the interest of the community. The State may also prescribe qualifications for a particular profession or, technical occupation. The State may itself carry on trade or business to the exclusion of citizens.

Power of Courts to enforce freedom of citizens of India

- ▶ Every Indian citizen has the power to move the High Court or the Supreme Court for protecting and securing his personal freedom.
- ▶ The Courts are empowered to issue writs in the nature of Habeas Corpus.
- ▶ The Courts can order the presence of a detained or imprisoned person and set him free in case there is no legal justification for his detainment or imprisonment.

Rights to Freedom during National Emergency

- ▶ The rights to freedom under Article 19 of the Indian Constitution have suspended during the period of the National Emergency declared by the President of India.

- ▶ Further, during the period when the National Emergency is in operation, the President is empowered to suspend the right of citizens to move the Supreme Court for the enforcement of their personal freedom.

Right to Information (RTI)

- ▶ Article 19(1) of the Constitution has given the fundamental status to the right to information in 2005.
- ▶ Under this Article, every citizen has freedom of speech and expression.
- ▶ Also, he or she has the right to know how the government works, what roles does it play and what are its functions.

6.3 Article 22 - Protection Against Arrest and Detention in Certain Cases

- ▶ Article 22 gives protection against arrest and detention in certain cases.
- ▶ Constitution provide following safeguards against arbitrary arrest.
 - Information or ground of arrest should be 'provided'
 - Right to consult and to be defended by a legal practitioner of his choice.
 - A person should be made to present before Magistrate within 24 hours of arrest.
 - A person shall not be detained beyond a period of 24 hours without authority of Magistrate.
- ▶ Above safeguards are not available:
 - To alien enemy
 - .When a person is arrested and detained under 'preventive detention'. Preventive detention means the detention of a person without trial.
- ▶ Safeguards against preventive detention:
 - A person cannot be detained for more than 3 months.
 - Detaining authority should communicate the reason for detention.
 - Detained persons should be given the opportunity of representing against the order.

6.4 References

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