

## PROTECTION OF CERTAIN REGARDING FREEDOM OF SPEECH

### ARTICLE 19

#### GENERAL:

1. Liberty of thought, expression, belief, faith and worship to all the citizens is a constitutional goal enshrined in preamble to the constitution. Arts. 19, 20, 21 and 22 are the constitutional scheme to attain that goal.
2. Art. 19 guarantees certain fundamental freedoms including the freedom of speech and expression. The freedoms guaranteed thereunder are exclusively for citizens. However, freedoms are not absolute. The state may impose reas. restriction on these freedoms on the grounds allowed by the Const.
3. A. 19(1)(f) has been omitted by the Const. (44th Amendm./Act, 1978). A. 19(1)(f) guaranteed right to acquire, hold and dispose of property. After 44th Amendm. right to prop. is no longer a F.R. Presently, right to prop. is only a constitutional right U/A. 300-A.
4. Freedoms guaranteed U/A. 19(1) undergo automatic suspension when a P.O.F is made on the grounds of war or ex. aggr. The moment the proclam. ceases to operative, automatic revival of freedoms guaranteed U/A. 19(1) takes place.

#### FREEDOM OF SPEECH AND EXPRESSION: A. 19(1)(a) r/w 19(2).

- i A. 19(1)(a) guarantees to all citizens freedom of speech and expression. The state may impose reas. restr. on this freedom upon following grounds specified in A. 19(2)
  - (i) Sovereignty and integrity of India
  - (ii) Security of state
  - (iii) Friendly relations with foreign states

- (iv) Public order
- (v) Decency
- (vi) Morality
- (vii) Contempt of court
- (viii) Defamation
- (ix) Incitement to an offence

2. Freedom guaranteed U/A. 19(1)(a) is not available to legal persons. So as much as they are not citizens, share-holders and members of a company, however, have F.Rs. guaranteed U/A. 19(1)(a).

3. It is to be noted that reas. restrictions U/A 19(2) may be imposed either by making law or by an existing law. Imposition of restriction by any executive or administrative order shall be void.

#### 4. Meaning of 'Freedom of S & E':

- (i) Freedom to express one's ideas and convictions.
- (ii) Freedom to be acquainted with the ideas and convictions of the others
- (iii) Freedom to circulate one's own ideas and convictions and also of the others.

#### 5. Significance and purpose of Right to freedom of speech and expression:

- (i) Acquiring knowledge
- (ii) Investigation of truth
- (iii) Self satisfaction
- (iv) Participation in decision making
- (v) Formation of public opinion
- (vi) Help in making social knowledge.

## 6. Modes of enjoyment of right to freedom of speech and expression:

- (i) Oral and written expression
- (ii) Printing and publication
- (iii) Visible representation (science, gesture, cartoons, effigies, cartoons etc.)

## 7. Scope of right of freedom of speech and expression:

- (i) Advertisement is included in R to F of S & E. It includes commercial advertisements also (Tata Press Ltd., 1995 S.C.)  
The earlier view was that commercial advertisements were not included in R to F of S & E (Hamdard Savakhana's case, 1960 S.C.)

- (ii) Sharna and procession, if not violent and is orderly, are included in the freedom of speech and expression. But right to go on strike is not within its perview. (Radhe Shyam V. Post-Master Gen., 1965 S.C.)

- (iii) Organising bandh is not included in freedom of speech and expression [C.P.S.(M) V. Bharat Kumar & Others, 1998 S.C.]

- (iv) F of S & E is not to be limited geographically. Accordingly, F of S & E can be enjoyed within the country and abroad. (Maneka Gandhi V. U.O.P., 1978 S.C.)

- (v) F of S & E includes right to keep silence. Therefore, refusal to singing national anthem without any dishonour to it is within the perview of A-19(1)(a) (Bijoe Emmanuel V. S.O. Kerala, 1986 S.C.).

- (vi) Categorisation of feature films into A and U categories does not violate A-19(1)(a) (K.A. Abbas, 1971 S.C.)

- (vii) Photography and videography are included in journalism. Accordingly, preventing photography, videography and interviewing the prisoners shall be violative of A-19(1)(a), (M. Hasan, 1998 S.C.)

Prison authorities may restrict the journalists to communicate with and take interview of prisoner in an appropriate case (State vs. Chaita, 1999 s.c.)

- (viii) State cannot monopolise electronic media. It cannot be confined to geographical limits (Secretary, Ministry of Inform. and Broadcasting vs. Cricket Assoc. of Bengal, 1995 s.c.)
- (ix) Telephone tapping can be made only in s. 5(2) of The India Telegraphs Act, 1885. (People's Union of Democratic Rs. vs. U.D.I., 1997)
- (x) When a complaint is received as to violation of F.R. U/A. 19(1)(a) the courts have to first see the effect of stated action. Subject-matter thereof shall be subsequent consideration. (Bennet Coleman Co., 1973)

### RIGHT TO ASSEMBLE PEACEABLY & WITHOUT ARMS: A. 19(1)(b)

1. A. 19(1)(b) guarantees to all citizens right to assemble peaceably and without arms. The right can be subjected to reasonable restrictions by making law or existing laws.
2. Grounds of restriction:
  - (i) s 21 of India
  - (ii) Pub. order
3. Following are included in the right to assemble peaceably and without arms -
  - (i) Right to hold meetings
  - (ii) Right to take out processions

The assemblage must be peaceful i.e. non-violent and orderly. The assembly must not riotous, violent or disorderly.
4. The U.S. Const. permits the citizens to keep arms. No such right has been conferred directly under the C.O.I. In India, arms can be kept under the license of competent authority under the provisions of The Arms Act, 1959.

### 5. Examples of reasonable restriction:

- (i) 107, 129, 144 and 144-A Cr. P.C
- (ii) S. 30, The Police Act, 1861
- (iii) The Prevention of Seditious Meetings Act, 1911

### RIGHT TO FORM ASSOCIATIONS AND UNIONS: Art. 19(1)(c) & 19(4)

1. Art. 19(1)(c) guarantees to all citizens R to freedom to form associations and unions. It can be subjected to reasonable restriction U/A-19(4) on following grounds -

- (i) S & I of India
- (ii) Public order
- (iii) Morality

Restrictions may be imposed by making laws or under existing laws.

### 2. Scope of the Right:

- (i) Following may be made:

- (a) Partnership firm
- (b) Companies
- (c) Societies
- (d) Labour Unions or Trade Unions
- (e) Political parties
- (f) Lawyers' Assoc., Doctor's Assoc., Businessmen's Assoc., Student's Assoc.

- (ii) Right includes the following

- (a) Right not to form unions or associations
- (b) Right not to have membership of assoc or unions

3. Right to form union or assoc. may be restricted U/A 33. In other words, R to form A or U is not equally guaranteed to all citizens.

4. Cases :

- (i) O.K.A Nair, 1976 S.C.
- (ii) The Belhi Police Non-gazetted Employees' Assoc. Vs. U.O.I, 1978 S.C.

O.K.A Nair, 1976 S.C.; Held: Non-combatant employees of the Armed forces cannot form unions or associations although they are governed by civil services rule.

The Belhi Police N.G. Employees' Assoc. Vs. U.O.I, 1978 S.C. Held: Once recognition is granted to an association or union, it can be withdrawn subsequently.

RIGHT FREELY TO MOVE THROUGHOUT THE T.O.I : A-19(1)(d) 7/w 1965

1. A-19(1)(d) guarantees to all citizens right to freely move through out the T.O.I. It can be reasonably restricted on following grounds U/A-19(5) -

- (i) In the interest of gen. pub.
- (ii) In the interest of S. Tr.

2. scope of the right:

- (i) This article strengthens nationalism. It is against regionalism.
- (ii) The right allows free movement (inter state or intra state) without any license or prior authority.
- (iii) This article supports the view that India is one nation.

(iv) Cases :

- (a) Ajay Kanu, 1988 S.C.
- (b) S.O.M.P. Vs. Bal Dev Pd, 1961 S.C.
- (c) S.O.U.P. Vs. Kaushilya, 1964 S.C.

Ajay Kanu, 1988 S.C.; Held: Provision for compulsory wearing of helmets is not violative of A-19(1)(d).

S.O.M.P. Vs. Bal Dev Pd, 1961 S.C. Held: Externment of a person as a dangerous person without defining the term 'dangerous person' violates A-19(1)(d).

S.O.U.P. Vs. Kaushilya, 1964 S.C. Held: Free movement of a prostitute may be restricted at pub. place. It shall not be violative of A. 19(1)(d).

RIGHT TO RESIDE AND SETTLE IN ANY PART OF THE T.O.I. A. 19(1)(e) & 19(5)

1. A. 19(1)(e) guarantees to all citizens right to reside and settle in any part of the T.O.I. The right may be subjected to reasonable restrictions on foll. grounds -
  - (i) Interest of gen. pub.
  - (ii) Interest of S.Ts.
2. scope of the right :
  - (i) A. 19(1)(e) aims at removing internal variance in the matters of residing and settling down in any part of the T.O.I.
  - (ii) The right guaranteed U/A. 19(1)(e) is supplementary to the right guaranteed U/A. 19(1)(d).
  - (iii) The right guaranteed U/A. 19(1)(e) is exercisable subject to laws and bylaws relating to town planning.
  - (iv) This right discourages regionalism and promotes nationalism.
3. Cases :
  - (i) S.O.M.P. Vs. Bharat Singh, 1967 S.C.
  - (ii) Ibrahim v. S.O. Bombay, 1954 S.C.

S.O.M.P. Vs. Bharat Singh, 1967 S.C. ; Held: A person may be directed to reside elsewhere in the interest of public. The person concerned must be heard before the place is determined.

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Abraham Nazir Vs. S.O. Bombay, 1954 S.C.  
Held: A citizen coming to his own land without permit was not such a serious offence as to direct him to leave the state.

### RIGHT TO PRACTISE ANY PROFESSION OR TO CARRY ON ANY OCCUPATION, TRADE OR BUSINESS: A. 19(1)(g) r/w 19(6)

1. A. 19(1)(g) guarantees to all citizens right to practice any profession or to carry on any occupation, trade or business.
2. The right may be subjected to reasonable restriction on grounds:
  - (i) Interest of general public
  - (ii) Striving professional or technical qualifications
  - (iii) Creation of monopoly (total or partial in state's favour)
3. Scope of the right:
  - (i) Right to practice any profession is subject to following-
    - (a) Professional qualification
    - (b) License by competent authority
  - (ii) Right to carry on any occupation, trade or business may be regulated by law.
    - (iii) State may create a monopoly in its favour to the exclusion of citizens.
4. Cases:
  - (i) Excel Wear Vs. U.O.I, 1979 S.C.
  - (ii) Unni Krishnan Vs. S.O.A.P, 1993 S.C.
  - (iii) Dr. H.L. Chuhani, 1996 S.C.
  - (iv) M/S. B.R. Enterprises Vs. S.O.U.P, 1999 S.C.
  - (v) M.R.E Ltd. Vs. S.O. Kerala, 1999 S.C.
  - (vi) Chandrakesh Kumar Saini Vs. S.O.U.P, 2001 S.C.
  - (vii) Om Prakash Vs. S.O.U.P, 2004 S.C.
  - (viii) Godawat Pan Masala Pvt. Ltd. Vs. U.O.I
  - (ix) Moti Lal Vs. Govt. of U.P, 1951 A.I.D.



Excel Wear Vs. Union of India, 1979 S.C.

Held: No one has right to take work from any unemployed person at any remuneration fixed at his will. It is mandatory to pay minimum wages. No employer can be compelled to continue his business if he is unable to pay minimum wages. State cannot prevent him from winding up his business.

Unni Krishnan Vs. State of A.P., 1993 S.C.

Held: Establishment of educational institution and imparting education in it is not a commercial activity.

Dr. H.L. Chuhani, 1996 S.C.; The petitioner

was already in medical profession. In the mean time he became law graduate. He applied for registration before the Bar Council. The council rejected his app. on the grounds that the rule that the person already in prof. can't be regd. Held: The relav. rules were not violative of A-19(1)(g).

M/s. B.R. Enterprises Vs. S.O.U.P., 1999 S.C.

Held: Lottery is a kind of gambling. It is not a trade or business. It has an element of chance. It has nothing to do with skill or expertise. It is not protected U/A-19(1)(g) or A-300.

M.R.E Ltd. Vs. State of Kerala, 1999 S.C.

Held: Law providing for more holiday would constitute social legislation. It shall be within the perview of A-19(1)(g). It shall not be violative of A-19(1)(g).

Chandrakesh Kumar Saini Vs. S.O.U.P., 2001 S.C.

Held: Nursing home, diagnostics centres and other such establishments may be required to license may be taken from them. It shall not be violative of A-19(1)(g).

Om Prakash Vs. State of U.P., 2004 S.C.

Held: A byelaw prohibiting non-veg. food is within the perview of A-19(1)(g). Reasonableness of an absolute restric. is to be tested in a cultural, religious and spiritual backgrounds.

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Absolute restraint on non-veg. dishes at the places of Hrishikesh, Haridwar and Har ki paudi is not violative of A-19(1)(g).

Godawat Pan Masala Pvt Ltd. Vs. U.O.I,

Held: Ban for a limited period on production, sale and distribution of Pan masala and gutkha is not violative of A-19(1)(g).

Moti Lal Vs. Govt. of U.P., 1951 Allahabad.

Held: the State cannot create monopoly in trade or business. Road transport cannot be indirectly nationalised if that is done. A-19(1)(g) would be violated.

To overcome the difficulty caused by Moti Lal's case Const. (1st Amendm.) Act was made. By this amendment state monopoly has been allowed.