

Right to Freedom

Clauses (a) to (g) of Art. 19(1) guarantee to the citizens of India six freedoms, viz., of 'speech and expression', 'peaceable assembly', 'association', 'free movement', 'residence', and 'practising any profession and carrying on any business'. These various freedoms are necessary not only to promote certain basic rights of the citizens but also certain democratic values in, and the oneness and unity of, the country. Art. 19 guarantees some of the basic, valued, and natural rights inherent in a person.

According to the Supreme Court, (in Maneka Gandhi Case) it is possible that a right does not find express mention in any clause of Art. 19(1) and yet it may be covered by some clause therein. This gives an additional dimension to Art. 19(1) in the sense that even though a right may not be explicit, it may yet be implicit, in the various clauses of Art. 19.

Originally, Art. 19 guaranteed seven freedoms. The freedom to hold and acquire property was deleted in 1978.

However, the freedoms guaranteed by Art. 19(1) are not absolute as no right can be. Each of these rights is liable to be controlled, curtailed, and regulated to some extent by laws made by Parliament or the State Legislatures. Accordingly, clauses (2) to (6) of Art. 19 lay down the grounds and the purposes for which a legislature can impose 'reasonable restrictions' on the rights guaranteed by Arts. 19(1)(a) to (g).

Further it may be noted that, the restrictions under them can be imposed only by or under the authority of a law; no restriction can be imposed by executive action alone without there being a law to back it up.

A foreigner enjoys no rights under Art. 19. It confers certain Fundamental Rights on the citizens and not on non-citizens of India.

Test of Reasonableness: It is difficult to give an exact definition of the word "reasonable". There is no definite test to adjudge reasonableness of a restriction. Each case is to be judged on its own merits, and no abstract standard, or general pattern of reasonableness is applicable uniformly to all cases.

Again, the standard of reasonableness is to be judged with due reference to the subject-matter of the legislation in question, economic and social conditions in India and the surrounding circumstance. The concept of reasonableness must change with passage of time and absorb the current socio-economic value.

The burden to show that the restriction is reasonable, lies on the state. Ordinarily, any restriction so imposed which has the effect of promoting or effectuating a Directive Principle can be presumed to be reasonable restriction in public

interest. The Directive Principles of State Policy are also relevant in considering whether a restriction on a Fundamental Right is reasonable or not.

- ARTICLE 19 : PROTECTION OF CERTAIN RIGHTS REGARDING FREEDOM OF SPEECH,ETC.

(1) All citizens shall have the right -

- a. to freedom of speech and expression.
- b. to assemble peaceably and without arms.
- c. to form associations or unions.
- d. to move freely throughout the territory of India.
- e. to reside and settle in any part of the territory of India; and
- f. to practice any profession, orto carry on any occupation, trade or business.

Freedom of speech is the bulwark of democratic government. This freedom is essential for the proper functioning of the democratic process. The freedom of speech and expression is regarded as the first condition of liberty. It has been truly said that it is the mother of all other liberties.

In a democracy, freedom of speech and expression opens up channels of free discussion of issues. Freedom of speech plays a crucial role in the formation of public opinion on social, political, and economic matters. Freedom of speech and expression, just as equality clause and the guarantee of life and liberty has been very broadly construed by the Supreme Court right from the 1950s. It has been variously described as a "basic human right", "a natural right" and the like.

In *Maneka Gandhi v. Union of India*, Justice Bhagwati., has emphasized on the significance of the freedom of speech and expression in these words:

"Democracy is based essentially on free debate and open discussion, for that is the only corrective of government action in a democratic set up. If democracy means government of the people by the people, it is obvious that every citizen must be entitled to participate in the democratic process and in order to enable him to intelligently exercise his right of making a choice, free and general discussion of public matters is absolutely essential."

Freedom of Speech and Expression:



Reasonable Restriction on speech and expression:

- of sovereignty and integrity of India,
- security of the state, friendly relations with foreign states, public order,
- decency or morality, contempt of court, defamation, and incitement to an
- offence.

Right to Fly National Flag:

National Anthem, National Flag and National Song are secular symbols of the nationhood. They represent the supreme collective expression of commitment and loyalty to the nation as well as patriotism for the country. They are necessary adjuncts of sovereignty being symbols and actions associated therewith. If the unity and integrity of India is to be perceived in diverse situations, the feeling of loyalty, commitment and patriotism can be judged not only by giving effect to constitutionalism but also on their secular symbols. Unrestricted use of the national Flag may result in commercial exploitation of the flag. The unrestricted use of the National Flag may result in its indiscriminate use in procession, meetings etc. Instances of insults to the National Flag as a matter of protest may also occur. It must certainly be treated with the utmost respect and dignity. This might not be possible without imposing any restrictions on its use. Flag Code although is not a law within the meaning of Article 13(3) (a) of the Constitution of India, for the purpose of clause (2) of Article 19 it would not restrictively regulate the free exercise of the right of flying the National Flag. But the Flag Code to the extent it provides for preserving respect and dignity of the National Flag, the same deserves to be followed. In other words, our National Flag cannot suffer any indignity.

Right to Silence:

The right to speech implies the right to silence. It implies freedom, not to listen, and not to be forced to listen. The right comprehendsthe freedom to be free from what one desires to be free from.

Right to receive information:

The expression "freedom of speech and expression" in Art. 19(1)(a) has been held to include the right to acquire information and disseminate the same. It includes the right to communicate it through any available media whether print or electronic or audio-visual, such as, advertisement, movie, article or speech, etc. This freedom includes the freedom to communicate or circulate one's opinion without interference to as large a population in the country, as well as abroad, as is possible to reach.

In People's Union for Civil Liberties, the Supreme Court dealt with this aspect of the freedom elaborately. The right of the citizens to obtain information on matters relating to public acts flows from the Fundamental Right enshrined in Art. 19(1)(a).

PICKETING, DEMONSTRATION AND STRIKE: Within certain limits, picketing or demonstration may be regarded as the manifestation of one's freedom of speech and expression. "Peaceful picketing is free speech. Nonviolent acts are like words." Picketing or demonstration is a nonviolent act of persuasion.

Freedom of Assembly

- 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.
- Reasonable restrictions on the exercise of right of assembly on two grounds namely
 - sovereignty and integrity of India and
 - public order including the maintenance of traffic in the area concerned.

Right to movement and Settlement

Restriction: interests of the public or for the protection of the interests of any Scheduled Tribe

Freedom of Profession, etc

All citizens are given the right to practise any

- profession or to carry on any occupation, trade or business. This right is very wide as it covers all the means of earning one's livelihood

Reasonable restrictions on the exercise of this right in the interest of the general public.

Further, the State is empowered to:

- (a) prescribe professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business; and
- (b) carry on by itself any trade, business, industry or service whether to the exclusion (complete or partial) of citizens or otherwise.

Article 20: Protection in case of conviction:

20(1): "No Ex-post Facto" Legislation

- **Only in criminal cases not in civil and taxation.**
- **Can't be claimed in preventive detention.**
- **Protection only against conviction/sentence not trial.**

20(2); "No Double Jeopardy"

Only before a court or tribunal, not before departmental enquiry.

20(3) "No self-incrimination"

Both oral and documentary evidence

Only in criminal cases

Right to life and Liberty (Article 21)

- no person shall be deprived of his life or personal liberty except according to procedure established by law.

Maneka Gandhi Case: procedure established by law is manifestation of Due Process of law.

Increasing Dimensions:

- (1) Right to live with human dignity.
- (2) Right to decent environment including pollution free water and air and protection against hazardous industries.
- (3) Right to livelihood.
- (4) Right to privacy.
- (5) Right to shelter.
- (6) Right to health.
- (7) Right to free education up to 14 years of age.
- (8) Right to free legal aid.
- (9) Right against solitary confinement.
- (10) Right to speedy trial.
- (11) Right against handcuffing.
- (12) Right against inhuman treatment.
- (13) Right against delayed execution.
- (14) Right to travel abroad.
- (15) Right against bonded labour.
- (16) Right against custodial harassment

Question 8: Discuss the importance of Rights to life and personal liberty with reference to recent case laws. (To be discussed in class)

freedom of press also included in the article 19 discuss with the relevant judgements



Right to Privacy:

K.S. Puttaswamy case (2017):- Supreme Court declared that the right to life and personal liberty guaranteed in Article 21 also implicitly includes a right to privacy.

Restrictions (as stated in the Judgement):

- The right may be restricted only by state action that passes each of the three tests:
- First, such state action must have a legislative mandate.
- Second, it must be pursuing a legitimate state purpose, and
- Third, it must be proportionate i.e., such state action- both in its nature and extent, must be necessary in a democratic society and the action ought to be the least intrusive of the available alternatives to accomplish the ends.

Favor:

- Ensure the dignity of the individual as mentioned in our Preamble.
- Privacy helps to avoid unwanted and intrusive interference in an individual's personal affairs.
- Without privacy, there would be nothing to stop a Big Brother-like entity from taking control of every aspect of life.
- Rights to liberty and freedom of expression cannot survive if the right to privacy is compromised.
- Mr. Nandan Nilakeni mentions, "We need a larger privacy bill, not just for Aadhaar but also for many other things like privacy in telephone tapping and in other online systems"
- Art.12 of Universal Declaration on Human Rights and Art.17 of the International Covenant on Civil and Political Rights provide for the right of privacy.

Against:

- It can hinder the implementation and performance of welfare schemes - like Aadhar and Direct
- Benefits Transfer-which requires personal data of citizens.
- Right to Privacy will also restrict police and intelligence agencies to collect private information about accused, dead persons etc.

Concerns:

- No law has been passed and the term "privacy" has also remained undefined.
- Huge multinationals are taking data about millions of Indians abroad.
- Privacy consciousness is rather low in India compared to western countries.
- Indian institutions like joint family, temple festivals, marriage celebrations and community life do not encourage privacy.

Ques 9: Right to life has been extended to a clean human environment by the Courts in India. Discuss the development of law in this regard. (To be discussed in Class)







Article 22 (Rights During Arrest)

Punitive Detention	Preventive Detention
<p>Rights Available during arrest:</p> <ol style="list-style-type: none">1. To be informed about grounds of arrest.2. Right to consult legal practitioner 2. of choice.3. Produce within 24 hrs. before the nearest magistrate.	<ol style="list-style-type: none">1. Detention can't exceed 3 months unless it has been approved by an advisory board. Grounds of detention should be communicated however may not be communicated if there is threat to national interest.3. Parliament is authorised to make laws which may increase this limit of 3 months and prescribe cases where a person can be detained more than 3 months w/o advisory board
<ul style="list-style-type: none">• These safeguards are not available to enemy alien.• These rights are also not available to person arrested under preventive detention.	<p>44th Amendment has reduced this to 2 months but actually that has not been still entered in to forced, so old 3 months rule continues.</p>