

## CHAPTER IV

### Right to Certain Freedoms

#### 1. Rights Guaranteed under Article 19

Article 19 of the Constitution confers certain very basic rights on every citizen of India. They are contained in Sub-clauses (a) to (f) of Clause 1 of Article 19. Clauses 2 to 6 of Article 19 authorise the State to impose reasonable restrictions on the said rights to ensure the larger interest of the society in general. They are as follows:—

(1) *Freedom of Speech* : Sub-clause (a) of Clause (1) of Article 19 confers the right to Freedom of Speech and Expression (vide Clause 'a'). Clause (2) of Article 19 empowers the State to impose reasonable restrictions on the exercise of the right conferred by the above Clause in the interest of sovereignty and integrity of India and the security of the State, friendly relations with foreign states, public order, decency or morality or in relation to contempt of court and defamation or incitement to an offence.

(2) *Freedom of Assembly* : Sub-clause (b) of Article 19(1) confers the right to assemble peacefully and without arms. Clause (3) of Article 19 confers power on the State to impose in the interest of the sovereignty and integrity of India or Public Order, reasonable restrictions on the exercise of the said right.

(3) *Right to form Associations* : Sub-clause (c) of Article 19(1) confers on every citizen the right to form associations or unions. Clause (4) of Article 19 confers power on the State to impose in the interest of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of this right.

(4) *Freedom of Movement, Right to Residence and Property* : Sub-clause (d) of Article 19(1) confers the right on every citizen to move freely throughout the territory of India. Sub-clause (e) of Article 19(1) confers the right to reside and settle in any part of the territory of India. Sub-clause (f) of Article 19(1) confers the right to acquire, hold and dispose of property. Clause (5) of Article 19 confers power on the State to impose reasonable restrictions on the exercise of any of these rights in the interests of the general public or for protection of the interest of any scheduled tribe.

(5) *Right to occupation* : Sub-clause (g) of Article 19(1) confers the right to every citizen to practise any profession or to carry on any occupation, trade or business. Clause (6) of Article 19 confers power on the State to impose reasonable restrictions on the exercise of the right in the interest of professional or technical qualification necessary for practising any profession or carrying on any occupation, trade or business.

## 2. Right Subject to Reasonable Restrictions

(1) *Imposition of reasonable restrictions* : From the above, it may be seen that while Sub-clauses (a) to (g) of Clause 1 of Article 19 confer certain very important rights on the citizen, Clauses (2) to (6) of Article 19 confer power on the State to impose reasonable restrictions on the exercise of Fundamental Rights conferred by Clauses (a) to (g) for purposes of achieving the specific objects mentioned in the Clauses. The right conferred under Clauses (a) to (g) under Article 19 are not absolute. Clauses (2) to (6) which authorise the State to impose reasonable restrictions on the rights of individuals are designed to strike a balance between the individual right and the interests of the society as a whole so as to see that an individual may not exercise his right to the detriment of others. Therefore, the rights of citizens can be restricted in the circumstances and for the purposes for which reasonable restrictions are authorised to be imposed under Clauses (2) to (6). While that is the position in respect of all the citizens, citizens who join Government service, in the very nature of things cannot effectively exercise some of the Fundamental Rights guaranteed under Article 19(1) of the Constitution, such as, to reside and settle in any part of the territory of India, to practise any profession or to carry on any occupation, trade or business, etc. In respect of other rights also, the rights of Government servants are liable to be restricted in a reasonable manner for achieving the purpose for which such restrictions can be imposed under Clauses (2) to (6) of Article 19.

(2) *Test of reasonableness* : Whenever a law or rule is challenged on the ground that it infringes any of the rights guaranteed under Sub-clauses (a) to (f) of Article 19(1) by imposing unreasonable restrictions, the opinion of the State as to the reasonableness of the restriction is not final. It is open to judicial review by the Court.<sup>1-2</sup> Therefore, whenever the validity of a rule or law is challenged before the Court, while no set pattern of reasonableness can be made applicable to all cases, the Court has got to determine the reasonableness of the restriction considering the following aspects:

- (a) nature of right alleged to have been infringed,
- (b) the underlying purpose of restriction imposed,

1 Chintamanrao V. State of M.P.—AIR 1951 SC 118—1950 SCR 759.

2 Hanif Quareshi V. State of Bihar—AIR 1958 SC 731—1959 SCR 629.

- (c) the extent and urgency of the evil sought to be remedied thereby,
- (d) the disproportion of the imposition,
- (e) the prevailing conditions at the time.

All the above facts should enter into the judicial verdict in adjudging the validity of the law imposing reasonable restrictions.<sup>3</sup> The standard of reasonableness also vary from time to time and should be related to the adjustments necessary to solve the problems which the society has to face from time to time.<sup>4</sup> Similarly, the restriction which may be reasonable in relation to one Fundamental Right may not be reasonable in relation to another Right though enumerated in the same Clause (1) under Article 19. In adjudging the validity of a restriction the courts have necessarily to approach it from the point of view of furthering the social interest which the legislation proposes to promote and the situation which presented itself to the State when the impugned law was enacted.<sup>4</sup> After applying the above principles if it is found that the law in question passes the test of reasonableness, the law has got to be upheld. If on the other hand, it does not pass the test of reasonableness, the law has got to be struck down. The cases which have arisen with specific reference to the rights of Government servants under Article 19 of the Constitution and the principles enunciated therein are set out hereinafter.

(3) *Special position of Government servants* : These Fundamental Rights which are available to every citizen of India are also available to Government servants. A Government servant is not excluded from the operations of these Fundamental Rights. Article 33 of the Constitution of India, however, provides that Parliament may by law determine to what extent any of the rights conferred by Part III (Fundamental Rights) shall in their application to the members of the armed forces charged with the maintenance of public order be restricted or abrogated. To the extent so enacted, law is immune from attack on the ground of violation of any of the Fundamental Rights. The other classes of Government servants cannot be excluded from the protection of the rights guaranteed by Part III by reason of their being Government servants. However, by reason of their being Government servants and the nature of incidence of the duties which they have to discharge in that capacity, it might necessarily involve restrictions of certain freedoms such as the one contained in Article 19(1)(e), namely, to reside and settle in any part of India and on right conferred by Article 19(1)(g), namely, to practice any profession or to carry on any trade or business. Similarly, the conclusion that the Government servants are entitled to the Fundamental Rights does not imply that in relation to this class of citizens the responsibility arising from official position would not by itself impose some limitations on the exercise of their rights as citizens. For instance, Section 54(2)

3 State of Madras V. V. G. Row—AIR 1952 SC 196—1952 SCR 597.

4 Jyoti Pershad V. Union Territory—AIR 1961 SC 1602.

of the Indian Income Tax Act, 1922 (now repealed) provided "if a public servant discloses any particulars contained in such statement, return, account, document, evidence, affidavit, deposition or record he shall be punishable with imprisonment which may extend to six months and also shall be liable to fine". This is an example of the kinds of restriction on the freedom of speech and expression on a Government servant which stands imposed on account of his official position. Similarly, Section 128(1) of the Representation of the Peoples Act, 1951, enjoins on every officer, clerk, agent, etc., who performs any duty in connection with the recording or counting of votes at an election shall maintain secrecy of the voting and shall not communicate to any person any information calculated to violate such secrecy, and that the breach of the rule is liable for punishment with imprisonment for a term which may extend to three months or with fine. The provisions on these or similar lines in the various enactments or rules regulating the conduct of Government servants restrict the freedom of the officers. The information having been obtained by them in the course of their duties by virtue of their official position, rules or provisions of the law prescribing the circumstances in which alone such information might be given out or used, do not infringe the right of freedom of speech as is guaranteed by the Constitution. Subject to these limitations, the Government servant is entitled to the protection of the Fundamental Rights contained in Part III of the Constitution.<sup>5</sup>

(4) *Restriction of peaceful demonstration* : A rule which prohibited a demonstration by Government servants in any form amounts to abridgement of the Fundamental Right guaranteed under Article 19(1)(a) and (b) of the Constitution. No doubt, if the rule was so framed as to single out such types of demonstrations which were likely to lead to a disturbance of public tranquillity or which would fall under the other limiting criteria specified in Article 19(2), the validity of the rule could be sustained but a rule which lays a ban on every type of demonstration, however innocent and however incapable of causing a breach of public tranquillity it may be, and does not confine itself to those forms of demonstration which might lead to that result is violative of Article 19(1)(a) and (b) of the Constitution of India. A demonstration is a visible manifestation of the feelings or sentiments of an individual or group. It is thus a communication of one's ideas to others to whom it is intended to be conveyed. It is in effect a form of speech or of expression because, speech need not be vocal since signs by dumb persons would also be a form of speech. A demonstration might also take the form of an assembly and even then the intention is to convey to the person or authority to whom the communication is intended, the feeling of the group which assembles. From the very nature of things, a demonstration may take various forms, it may be noisy and disorderly. For instance, stone-throwing by a crowd may be cited as an example of a violent and disorderly demonstration, and it

5 (a) Kameshwar Prasad *V.* State of Bihar—AIR 1962 SC 1166.  
 (b) O. K. Ghosh *V.* E. X. Joseph—AIR 1963 SC 812.

can equally be peaceful and orderly, such as, when the members of the group merely wear some badges drawing attention to their grievances. Therefore, any law which prohibits any form of demonstration by Government servants is violative of their Fundamental Rights under Article 19(1)(a) and (b) of the Constitution.<sup>6</sup>

(5) *Restriction on Freedom of Speech* : A rule which prohibits the Government servants from publishing any document or making any public utterances, criticism of any current or recent policy or action of the Government amounts to a blanket restriction of their freedom of speech and expression and prohibits them from making any public utterance even it be an utterance relating to their conditions of service and even at a meeting of the Government servants, if it has the effect of any adverse criticism of any current or recent policy or action of the Government. A rule of the kind cannot be a reasonable restriction on the Fundamental Rights guaranteed under Article 19(1)(a). No public interest is going to be served by requiring a Government servant to refrain from criticising the policy or action of the Government relating to his conditions of service or matters concerning them even if it is to be only in the presence of his colleagues. On the other hand public interest requires that the Government servants should be contented, efficient and disciplined. This cannot be achieved by prohibiting the Government servants to speak in relation to their conditions of service. Further, no useful purpose will be served by forming an association of Government servants if they are prevented to discuss the policy of the Government in relation to their conditions of service which process necessarily may involve the criticism of the policy of the Government. It may be that a rule restricting the Government servants from criticising the Government's policy or action before the general public may be reasonable because of his position as a Government servant. But a rule which prohibits a Government servant from criticising the Government's policy or action regarding conditions of service in his own association meetings or circulating any document among the members of his own association criticising the Government's policy or action relating to his conditions of service or connected matters, cannot be said to impose a reasonable restriction as authorised by Clause (2) of Article 19. Article 19(2) of the Constitution provides that reasonable restrictions may be imposed in the interest of 'decency' and permits the State to prohibit the use of obscene language and gestures and not a fair criticism of the Government's policy or action.<sup>7</sup>

(6) *Prohibiting from taking active part in politics* : A civil servant like any other citizen is entitled to the freedom of political conviction. But by

6 Kameshwar Prasad *V.* State of Bihar—AIR 1962 SC 1166—Rule 4 of the Bihar Government Servants Conduct Rules in so far it relates to total prohibition of any demonstration by Government servants held invalid and to the extent it prohibited strike upheld. O.K. Ghosh *V.* E. X. Joseph—AIR 1963 SC 812—Rule 4A of the Central Civil Servants Conduct Rules in so far it prohibited any type of demonstration by Government servants held invalid but to the extent it prohibited strike upheld.

7 B. Manmohan *V.* State of Mysore—1966(1) Mys. L. J. SN. P. 23—Rule 7(1) of the Mysore Government Servant's Conduct Rules, 1957, held void.

virtue of his special obligations as a civil servant, he is debarred from giving expression to his conviction in a manner which will interfere with his official duties as a loyal Government servant. Therefore, any rule regulating the conduct of Government servants which prohibits Government servants from taking active part in politics amounts only to a reasonable restriction and cannot be struck down as infringing any of the freedoms guaranteed under Article 19 of the Constitution.<sup>8</sup>

(7) *Prohibition of demonstration within the office premises* : An order issued by an administrative authority prohibiting the holding of meetings within the office premises including the open grounds forming part of the premises does not amount to deprivation of the right of employees guaranteed under Article 19(1). There is no Fundamental Right to hold public meetings in Government premises. The rights conferred on citizens under Clauses (a), (b) and (c) of Article 19 do not include the right to exercise them in whatever place they please. Hence, a restriction to hold a public meeting in the office premises is valid and does not contravene the right guaranteed under Article 19(1) (a) of the Constitution.<sup>9</sup>

### 3. Right to Recover Pay or Pension

(1) *Pay* : A right of a Government servant to recover the salary due to him is a Fundamental Right. Withholding of money due to a Government servant by way of salary amounts to deprivation of right to property within the meaning of Article 19(1) (f) of the Constitution. The said right can be enforced by means of a writ.<sup>10</sup>

(2) *Pension* : A pension to which a civil servant is entitled to under the service rules is not a bounty, but it is a property within the meaning of Article 19(1) (f) and Article 31(1) of the Constitution to which a civil servant is entitled to. Therefore, no order can be passed by the State depriving a retired civil servant of his legitimate pension unless he has been given reasonable opportunity to show cause against such reduction.<sup>11</sup>

### 4. Restriction on the Rights of Members of Police Force

A legislative enactment which seeks to lay an embargo on certain activities of the members of the Police Force which is charged with the duty of ensuring and maintenance of Public Order for the purpose of maintaining the efficiency of that service and its utility is a reasonable restriction. Any breach

8 P. N. Rangaswamy *V.* Commissioner of Coimbatore—AIR 1968 Mad. 387.

9 Railway Board *V.* Niranjan Singh—AIR 1969 SC 966.

10 (a) Thakur Seh dev Singh *V.* State of Jammu & Kashmir—SLR 1972 J & K 711.

(b) A. R. Vinuta *V.* Director of Collegiate Education—W. P. No. 2069/70 DD 11-4-1973 (Mys).

11 (a) State of Punjab *V.* K. R. Erry—SLR 1972 SC 836.

(b) Deokinandan Prasad *V.* State of Bihar—AIR 1971 SC 1409.

of discipline by its members necessarily reflects in a threat to public order and tranquillity. If they themselves are indisciplined they could hardly serve as an instrument for maintenance of public order. Hence, a provision of law which penalises the creating of dissatisfaction among the members of the Police Force or to withhold their services from the Government has to be sustained as having been properly made in the interest of public order.<sup>12</sup>

#### **5. Abridging of Fundamental Right of Members of Armed Forces and Police Force**

(1) Article 33 of the Constitution authorises the Parliament to restrict or abrogate the rights contained in Part III of the Constitution in relation to the members of the Armed Forces or the forces charged with the maintenance of public order with the object of ensuring proper discharge of their duties and the maintenance of discipline among them. Therefore, the provisions contained in the Armed Forces Act cannot be challenged on the ground that the Fundamental Right is violated.<sup>13</sup>

(2) Any law relating to abridgement of Fundamental Rights relating to members of the Police Force must be a law made by the Parliament in exercise of its powers under Article 33. A law made by the President in exercise of his delegated powers of a State Legislature is invalid, as it amounts only to a legislation by the State who has no competence to make such a law.<sup>13</sup>

12 *Dalbir Singh V. State of Punjab*—AIR 1962 SC 1106.

13 *Ramswarup V. Union of India*—AIR 1965 SC 247—(1965) 5 SCR 931.