

## CHAPTER III

### RIGHT TO CERTAIN FREEDOMS\*

Certain freedoms indispensable for the paramount development of human personality have been guaranteed to the citizens of India under the ambit of fundamental rights. These freedoms as fundamental rights enable a man to chalk out his own life in the manner he likes best within the four corners of the Constitution of India. These are calculatedly framed to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent. These freedoms recognize the importance of the individual in the affairs of the state and seek to assure to every citizen full freedom to enjoy life, liberty and happiness as he likes.<sup>1</sup>

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.

#### **Rights guaranteed under article 19**

*Freedom of speech:* Article 19(a) confers the right to freedom of speech and expression. Article 19(2) empowers the state to impose reasonable restrictions on the exercise of the right 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.

*Freedom of assembly:* Article 19(1) (b) confers the right to assemble peacefully and without arms. Article 19(3) 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.

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

*Freedom of movement, right to residence and property:* Article 19(1)(d) confers the right on every citizen to move freely throughout the territory of

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1 *Golaknath v. State of Punjab*, AIR 1967 SC 1643.

India; article 19(1)(e) confers the right to reside and settle in any part of the territory of India. Article 19(1)(f) confers the right to acquire, hold and dispose of property. Article 19(5) 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.

*Right to occupation:* Article 19(1)(g) confers the right to every citizen to practise any profession or to carry on any occupation, trade or business. Article 19(6) 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.

### **Rights subject to reasonable restrictions**

*Imposition of reasonable restriction:* 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 rights to the detriment of others. Therefore, the rights of citizens can be restricted in the circumstances and for the purpose 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 who join government service, in the very nature of things they 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.

*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. The reasonableness of the restriction is required to be tested from procedural as well as substantive aspect of the law imposing the restriction.<sup>2</sup> It is open to judicial review by the court.<sup>3</sup> There should be a proper balance between the rights guaranteed by article 19(1) and social control permitted under clause (2) to (6) of this article. To be a reasonable restriction there should be a direct and proximate nexus or

2 *Papnasam Labour Union v. Madura Coats Ltd.*, (1999)1 SCC 501; *K.K. Kochuni v. State of Kerala*, AIR 1959 SC 725.

3 *Chintamanro v. State of M.P.*, AIR 1951 SC 118; 1950 SCR 759; *Hanif Qureshi v. State of Bihar*, AIR 1958 SC 731; 1959 SCR 629.

a reasonable connection between the restriction imposed and the object sought to be achieved. Therefore, whenever the validity of a rule or law is challenged before the court, no set pattern of reasonableness can be made applicable to all cases. The court has to determine the reasonableness of the restriction considering the following aspects<sup>4</sup> :

- (a) Nature of right alleged to have been infringed,
- (b) the underlying purpose of restriction imposed,
- (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 considerations should enter into adjudicatory process determining the validity of the law imposing reasonable restrictions.<sup>5</sup> The methods of imposing the restriction should also be reasonable.<sup>6</sup> The standard of reasonableness 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>7</sup> In determining the reasonableness of the restriction the court takes into account the nature of the right alleged to have been violated, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition and the prevailing conditions at the time.<sup>8</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. After applying the above principles, if it is found that the impugned law passes the test of reasonableness, it must be upheld.

*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, however, provides that Parliament may by law determine to what extent any of the rights conferred by part III 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

4 *Harakchand v. Union of India*, AIR 1970 SC 1453; *Krishna Kakanth v. Govt. of Kerala*, AIR 1997 SC 128; *Dharam Dutt v. Union of India*, (2004) 1 SCC 712; AIR 2004 SC 1295.

5 *State of Madras v. V.G. Row*, AIR 1952 SC 196; 1952 SCR 597.

6 *Pattumma v. State of Kerala*, AIR 1978 SC 771; *V.G. Row*, *id.* at 5.

7 *Jyoti Pershad v. Union Territory of Delhi*, AIR 1961 SC 1602.

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) 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 or with both. 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. Rules requiring confidentiality of information do not infringe the right of freedom of speech.<sup>9</sup>

*Restriction on peaceful demonstration:* A rule which prohibited a demonstration by government servants in any form amounts to abridgement under article 19(1) (a) and (b).<sup>10</sup> 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

8 *Harakchand Ratanchand Banthia v. Union of India*, AIR 1970 SC 1453; *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat*, (2005) 8 SCC 534.

9 *Kameshwar Prasad v. State of Bihar*, AIR 1962 SC 1116; *O.K. Ghosh v. E.X. Joseph*, AIR 1963 SC 812; *People's Union for Civil Liberties v. Union of India*, (2004) 2 SCC 476; AIR 2004 SC 1442.

10 *Communist Party of India v. Bharat Kumar*, AIR 1998 SC 184.

does not confine itself to those forms of demonstration which might lead to that result, is violative of article 19(1)(a) and (b). 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 can equally be peaceful or 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).<sup>11</sup>

*Restriction on freedom of speech:* A rule which prohibits the government servants from publishing any document or making any public utterances, criticising 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 if 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 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 contended, 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

<sup>11</sup> *Kameshwar Prasad, supra note 9; S.D.Sharma v. Trade Fair Authority, SLR 1985 Del 670.*

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. Article 19(2) 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>12</sup>

*Prohibition from taking active part in politics:* A civil servant like any other citizen is entitled to the freedom of political conviction. But by virtue of his role obligations, 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 of conduct which prohibits government servants from taking active part in politics amounts to a reasonable restriction and cannot be struck down as infringing any of the freedoms guaranteed under article 19.<sup>13</sup>

*Prohibition of demonstration within the office premises:* An order 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 article 19(a) (b) and (c) do not include the right to exercise them in whatever place they please.<sup>14</sup>

*Rule prohibiting contribution to newspapers:* A rule prohibiting an employee from owning (wholly or in part) editing or managing any newspaper or periodical without previous permission of the specified authority is invalid, as violative of article 19(1)(a) if it does not specify the grounds on which the permission could be refused.<sup>15</sup>

*Rules restricting the right under article 19 in public interest, discipline and efficiency:* A rule, prohibiting an officer of the state from (i) using his influence to secure employment to any of his relatives in any private undertaking with which he has official dealings, (ii) engaging himself in any trade or business without permission, (iii) accepting of gift without permission; and (iv) indulging in money lending is designed in the interest of discipline, efficiency, and prevention of misuse of official position. Such restrictions are reasonable and therefore, not violative of article 19.<sup>16</sup>

12 *B. Manmohan v. State of Mysore*, 1966(1) Mys LJ SN 23.

13 *P.N. Rangaswamy v. Commissioner of Coimbatore*, AIR 1968 Mad 387.

14 *Railway Board v. Niranjan Singh*, AIR 1969 SC 966; *Krishna Chander v. Union of India*, AIR 1974 SC 1589; *Nand Kishore v. State of Bihar*, AIR 1978 SC 1277.

15 *Bank of India Officers Association v. Bank of India*, SLR 1979(2) MP 326.

16 *Ibid.*

Similarly, a rule which requires the officers of the state to send annual returns regarding their properties, assets and liabilities, as also the rules which requires the taking of permission of the specified authority before instituting any action for the vindication of acts done in official capacity are reasonable restrictions in public interest and therefore not violative of article 19.<sup>17</sup>

Likewise, a rule which prohibits an employee of state, from making public, by publishing or causing to be published or passing on any document or information coming into his possession in his official capacity is a reasonable restriction in public interest and therefore valid.<sup>18</sup>

*A code of conduct for teachers:* A code of conduct imposing restrictions on the fundamental rights guaranteed under article 19(a), (b), (c) and (g) of the employees of the aided educational institutions, such as prohibition from accepting private tuitions, publishing notes or key answers in respect of subject prescribed for the examination and other codes of conduct designed in the interest of education and prevention of malpractices is reasonable.<sup>19</sup>

### **Right to recover pay or pension**

*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). The said right can be enforced by means of a writ.<sup>20</sup>

*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(2) 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>21</sup>

### **Restriction on the rights of members of police force**

A law which imposes 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 of discipline by its members

17 *Ibid.*

18 *Ibid.*

19 *B.N. Srirama v. State of Karnataka*, ILR 1985 Kar 3147.

20 *Thakur Sehdev Singh v. State of Jammu & Kashmir*, SLR 1972 J&K 711; *A.R. Vinuta v. Director of Collegiate Education*, W.P.No.2069/70 DD 11-4-1973 (Mys).

21 *State of Punjab v. K.R. Erry*, SLR, 1972 SC 836; *Gorakhpur University v. Shitla Prasad Nagendra (Dr)*, AIR 2001 SC 2433; *Union of India v. P.D. Yadav*, (2002) 1 SCC 405; *Deokinandan Prasad v. State of Bihar*, AIR 1971 SC 1409; *State of Kerala v. M. Padmanabhan Nair*, AIR 1985 SC 356.

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>22</sup>

### **Abridging of fundamental right of members of armed forces and police force**

Article 33 of the Constitution authorises 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 provision contained in the Armed Forces Act cannot be challenged on the ground that fundamental right is violated.<sup>23</sup>

Any law relating to abridgement of fundamental rights relating to members of the police force must be a law made by 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 legislation by the state who has no competence to make such a law.<sup>24</sup>

*Army Act –restriction of fundamental right:* Section 21 of the Army Act which empowers the central government to restrict to such extent and in such a manner the right of a member of a military service, for being a member of an association or of any class of trade union or to attend any meetings or to take part in any demonstration, political or otherwise or to communicate to press or publish any book, letter or any document, cannot be held to be invalid on the ground of violation of articles 14 and 19 in view of the express power conferred under article 33 to exclude the application of the fundamental rights to the members of military service.<sup>25</sup>

### **Article 21**

*Rule prohibiting second marriage:* It is competent for the state to lay down reasonable conditions of service in respect of employment under it. The condition that no government servant shall contract a second marriage when his/her spouse is living is valid. Such a condition is in accordance with

22 *Dalbir Singh v. State of Punjab*, AIR 1962 SC 1106; *Delhi Police Non-Gazetted Karamchari Sangh v. Union of India*, AIR 1987 SC 379.

23 *See Dalbir Singh, ibid.*

24 *Ramswarup v. Union of India*, AIR 1965 SC 247; (1965) 5 SCR 931.

25 *R. Vishwan v. Union of India*, AIR 1983 SC 658.



the law prohibiting bigamy which is by itself a reasonable regulation of the liberty of an individual.<sup>26</sup>

**Right against exploitation (article 23)**

*Asking civil servants to discharge other public duties:* It is a basic rule of public service that it is competent for the state to utilise the services of public servants in any manner, other than the work for which they are employed, in lieu of their work, if such employment is in the interest of the public. Turning down the plea of civil servants that they are not obliged to do any other kind of work and such insistence on the part of the state was violative of article 23<sup>27</sup> as patently untenable, the Madhya Pradesh High Court said thus:

The points raised in the petition and the argument advanced thereon apparently are thought provoking, but in the present democratic set up, is wholly an antithesis. It is indeed unfortunate to note that the teachers who have, from the time immemorial been regarded as intellectuals and builders of society in general and the nation in particular, should have complained of these works which are of public purpose. It is to be realised that the very conception of a just Government, as in our country, and its duty towards its citizens includes the reciprocal obligation of each and every individual to voluntarily come forward and render such service as is required by the state in case of need and, if necessary, the state must have right to compel performance, provided, of course, the services required to be rendered fall within the meaning of "public purpose" and unless each and every citizen imbibes within himself a spirit of sacrifice, social justice would remain a far cry. This right of the state is to be found in article 23 of the Constitution of India.....

In addition to this, reference may also be made, at this stage, to the provisions of Article 51-A of the Constitution of India which prescribe for the fundamental duties of every citizen. Clause (d) of Article 51-A prescribes one of the duties, which is, to render "national service". In our opinion, the terms "national service" and "public purpose" are synonymous. The term "public purpose" though of common occurrence, has not been defined. It includes an object or aim in

26 *Mann M.S. v. Union of India*, SLR 1976 (1) Del 350.

27 (1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this article shall prevent the state from imposing compulsory service for public purposes, and in imposing such service the state shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

which the general interest of the community as opposed to particular interest of individual is directly and vitally concerned... The same meaning can be attributed to the term "national service", Census, election, draught, famine, epidemic, earthquakes, maintenance of peace and harmony, law and order, external aggression, internal disturbance, defence, etc., are but some of the examples concerning general interest of the community. There may be other aims and objects in which general interests of the community get involved under certain circumstances. Preparation of ration cards is one of them. We have been referred to the documents annexed with the petition but from none of the documents, it can be inferred that female teachers have been asked to bring males for sterilisation. The instructions contained in Annexures 'A' and 'B' with the petition are general in nature and in the absence of any specific instances, we are not prepared to accept the contention... that female teachers were asked to motivate males for sterilisation... We would, however, like to observe that keeping in view the custom, culture and tradition of Indian womanhood, the authorities would refrain from requiring any female to render such services, even though for public purpose, which may encroach upon their morality and modesty. Morality and modesty are fluid in concept and their contents depend upon time, place and stage of civilisation... Therefore, in order to determine whether a particular work though for public purposes should be asked to be rendered by females, the authorities should have due regard to the prevalent custom, culture and tradition so as not to hurt the feelings of fair sex.<sup>28</sup>

*Obligation to work on holidays or after office hours when expedient:* The whole time of a civil servant is at the disposal of the state. Declaration of holidays and fixation of works, which are undoubtedly intended to give necessary leisure, having due regard to requirements of rest and health, a civil servant cannot refuse to discharge a work entrusted to him even after office hours or on holidays when exigencies of administration so demand. So long such direction is reasonable and there is no reasonable cause for the civil servant concerned for not obeying such direction he is liable to be punished for misconduct.<sup>29</sup>

28 *Devendra Nath v. State of M.P.*, SLR 1984(1) MP 231 at 233.

29 *Marigowda v. The Principal Munsif*, SLR 1982 (2) Kar 372.

