

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

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ISSN

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AN ANALYSIS OF RIGHT TO FORM ASSOCIATIONS AND UNIONS UNDER CONSTITUTION OF INDIA

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LL.M FIRST YEAR.

(SEM-II)

Progressive Education Society's

MODERN LAW COLLEGE, PUNE

SAVITRIBAI PHULE PUNE UNIVERSITY 2023-2024

ABSTRACT

Article 19(1)(c) of the Constitution of India guarantees to all or any its citizens the proper to make associations and unions under clause (4) of Article 19, the state may by law impose reasonable restrictions on this right in the interest of public order or morality or the sovereignty and integrity of India. the proper to make associations or unions features a very wide and varied scope including all kinds of associations' viz., political parties, clubs, societies, companies, organizations, entrepreneurship, trade unions, etc. It thus includes the proper to make companies, societies, partnerships, and trade unions. This text will deal with Article 19(1) (b) and (c) and its reasonable restrictions.

INTRODUCTION

The right to form associations and unions is in fact a fundamental right under the Constitution of India under Article 19 (1) (c). The legislation made the act with the purpose in mind which was to provide freedom to people who wish to form associations and unions, but they were fore-sighted with the potentially harmful effects that this right could have on people. The right to form associations includes the right to form companies, societies, partnerships, trade unions and political parties and these rights are governed by reasonable restrictions. The Constitution grants this right as a fundamental right because of the importance of the interactions it holds, but at the same time it includes being a participant of an association which means a complete voluntary decision. The people are equally free to not to join an association as much as they are free to join one. The Constitution focuses on giving recognition to the objective that people need to engage

in a healthy environment with people from different spheres. The right to freedom of association gives to people the opportunity to express and protect the common interests.

Now if we see man is a social animal, he cannot live aloof from his fellow mates in the community. No man can live and progress in isolation, he needs people around to communicate with in order to survive in the society. So, these associations and groups will not only help an individual to socialize and create warm and cordial relations with others but also will give him opportunity to put forth his thoughts and opinions relating to any issue or particular agenda in the society. Whenever a person joins any association or group it gives himself an opportunity to act as a helping hand in promotion and acknowledgement of his views, choices and interests. It also acts as an inspiration to others to come ahead and share their own ideologies. But here at the same time while forming associations or groups, one has to even look into assuring whether the situation is handled with harmony and peace. Obedience of all these rights and freedoms should be carried in the disciplined form. These associations should also focus on motivating the other members to do better and come up with new ideas and at the same time be supportive towards each other.

CONSTITUTIONAL PROVISION

¹Article 19(1) (c) of the Constitution of India guarantees to all or any its citizens the right to make associations and union under clause (4) of Article 19, the state may by law impose reasonable restrictions on this right in the interest of public order, morality or the sovereignty and integrity of India. While the constitution provides for it as a right, the procedural provisions radically restrict this freedom, by empowering the State to manage its expression and peremptorily curtail its exercise. Therefore, it is a fundamental right given in the constitution of India under Article 19(1) (c). It proclaims that each one citizen shall have the freedom to make associations or unions for a lawful purpose. The right to make associations indicates that several individuals get together and form voluntarily an association with a standard aim, legitimate purpose, and having a community of interest. It is not an absolute right rather it's a certain reasonable restriction.

RIGHTS OF FREEDOM GUAANTEED UNDER ARTICLE 19 (1) (c)

This section will discuss the jurisprudence of the Supreme Court with regard to the freedom of association. The only other source of law with regard to this right is the limitation imposed by the Constitution itself. The Constitution's Article 19 (1) (c) guarantees the freedom of association to

¹ Indianlawportal.co.in

all citizens. However, Article 19 (4) provides that the right to form associations or unions can be limited by reasonable restrictions in the form of an existing or new law made in the interests of the sovereignty and integrity of India, or public order or morality. The restriction on the grounds the interests of the sovereignty and integrity of India, was not in the original text of the Constitution.⁵¹ The jurisprudence of the Court is separated into six themes and subsections. First, appropriate notice prior to designation as an unlawful association. The second, what constitutes an 'unlawful' association. Third, the freedom to form an association versus achieving its aims. Fourth, maintaining the composition of an association, and control of an association. Fifth, the right not to join a association, and finally, restrictions specific to employees of the state.

- **Right not to join an Association**

In **Tika Ramji v. Uttar Pradesh**², the Supreme Court considered whether it was legal to mandate that sugar factories purchase cane only from cooperative societies formed by cane growers given the right of freedom of association of those cane-sellers who were not members of such bodies? ³The Court held that the fundamental right to form an association did not extend to make the negative right to not form an association a fundamental right.⁴The Court reasoned that as per the facts of the case there was no restriction on the rights of the petitioner. It explained that the petitioner was neither under any compulsion to join the society nor were there any restrictions on the market that was available to him. Finally, the Court concludes that the State Government could mandate the purchase of sugarcane only under certain circumstances to ensure fair practice in the market⁵.

Surprisingly, contrary to **Tika Ram is M. Sitharamachary v. Senior Deputy Inspector of School & Another**⁶. Here, the Andhra Pradesh High Court was petitioned by an elementary school teacher, who argued that he not be forced to be part of an association, as mandated by Rule 3 of the GOM No. 418(Education and Public Health) dated 24th February, 1939. An obligation imposed on members included meeting at least once a month, with absences being punishable. Justice Satyanarayana Raju quite contrary to Tika Ramji that was decided only a year and odd before, rightly reasoned that the right to form an association necessarily implies that a person is free to refuse to be a member of an association as well⁷. The judge located his rationale in the not

²AIR 1956 SC 676

³ The U.P Sugarcane (Regulation of Supply and Purchase) Act, 1953 vide a notification dated September 27, 1954 mandated this.

⁴Tika Ramji, paras 43-45.

⁵ Id.

⁶ AIR!1958 AP 78

⁷bidpara8

simply the 'forced' membership but the inconveniences caused by it, like punishment for non-attendance of association meetings. He also relied on **Suryapal Singh v. U.P Government**⁸ in arriving at his decision.

Advantage of Right to form Associations and Unions

Right to form associations or unions is a freedom which inspires, motivates and supports individuals to act in accordance with law as well as people get an exposure to live with each other either in groups or unions.

- This helps in facilitating and making a way for the sharing of ideas and various opinions.
- It encourages free flow of opinions, convictions in a systematic and organized manner.
- By being in associations or groups, individual gains confidence of dealing with various issues and also gets an opportunity to interact and express his feelings in a collective environment. Individuals get a kind of support and feel encouraged to deal various issues also they get engaged in providing some important information and sharing with each other.
- Involvement in these associations or groups would help individuals to survive socially.
- These clubs, groups or associations should work with a common interest, common aim, legitimate interest and also in the interest of the community.

So, as we can see due to the inclusion of the Right to form Associations and Unions many individuals feel inspired, motivated and get a feeling of being supported by others equally. This is the real magic of togetherness and dealing various issues in a collective manner. By addition of this right, many individuals have got an opportunity to showcase their opinions in front of others and also get encouragement for the same.

RESTRICTIONS IMPOSED UNDER THIS RIGHT TO FORM ASSOCIATIONS:

REASONABLE RESTRICTION:

Like any other Fundamental Right under Article 19, the proper to the association is additionally not absolute and is subjected to regulation in social interest. Article 19(4) specifically empowers the state to form any law to fetter, abridge, or abrogate any of the rights under Article 19(1) (c). Clause (4) empowers the state to impose reasonable restrictions on the exercise of Right to make Association, in the interest of the sovereignty and integrity of India, Public order and Morality,

⁸AIR 1951 ALL 674 (FB)

Essential Elements of Restriction:

- It is often imposed only by the authority of law.
- The restriction must be Reasonable.
- The restriction must be associated with the aim specifically mentioned in Clause 4.
- Judiciary has the facility to check the validity of those Restrictions on two grounds: whether the restriction is cheap, and whether it is for the aim mentioned in the clause under which the restriction is being imposed.

The Constitution of India has given fundamental rights to the protection of associations. Article 19(1) (c) speaks about the elemental right of a citizen to make associations and unions. Under clause (4) of Article 19, however, the State may by law impose reasonable restrictions on this right in the interest of public order or morality or the sovereignty and integrity of India. The proper association pre-supposes organization. It as an association or permanent relationship between its members in matters of common concern. It thus includes the right to form companies, societies, partnerships, trade unions, and political parties. The proper security isn't simply the right to make association however additionally to continue with the association intrinsically. The freedom type to make association implies additionally the freedom to make or to not form, to hitch or to not join, an association or union.

Special restrictions on the association rights of employees of the state:

This section will discuss the restrictions on the rights of government employees including members of the armed forces and security personnel. Even though the rights that are discussed involve their freedom of association- the restrictions imposed on them as a class have substantially burdened their ability to exercise this freedom.

Restrictions on members of the armed forces:

The freedom of association of members of the armed forces and security personnel are even more compromised than other government employees. In *OusKutilingalAchudan Nair and Ors. v. Union of India and Ors.*⁹, members of the Civil Employees Union, who were employed as 'non-combatants un-enrolled' by the Army, argued that their association not being recognised violated their freedom of association. The State argued, that the Army Act whose Rules prohibited joining

⁹ (1976) 2 SCC 780.

or forming a trade union governed civilian employees. The appellants argued that they were not 'members of the Armed Forces' as envisaged by Article 33 of the Constitution as they were civilian employees. The Court opined that such civilian employees of the Army were an integral part of the Armed Forces and were within the purview of Article 33. This provision enables Parliament to modify the application of fundamental rights guarantees of Constitution to members of the armed forces and other specified personnel and hence the restrictions on fundamental rights of civilian members of the Armed Forces were valid.

Similarly, in **Delhi Police Non-Gazetted Karmachari Sangh and Ors. v. Union of India and Ors.**,¹⁰ the appellant union was derecognised under the **Police Forces (Restrictions of Rights) Act, 1996**¹¹. The union contended that this violates their freedom under Article 19 (1)(c). The union was initially recognised, but a change in the rules meant that the union could only consist of officers of the same rank. Since the union membership comprised a cross section of ranks, before and after the change of the service rules, its recognition was withdrawn. The Supreme Court while ruling against the appellants reasoned that Parliament had the power to impose restrictions upon the fundamental rights of 'members of Armed Forces' under Article 33¹². Hence, such restrictions could be imposed on unions and associations. It further held that this classification had its own rationale of discipline, which could not be questioned by the Court¹³.

In ¹⁴**Damayanti v. Union of India**, The Supreme Court held that "The right to form an association", the Court said, "necessarily 'implies that the person forming the association has also the right to still be related to only those whom they voluntarily admit in the association. Any law by which members are introduced in the voluntary association with none option being given to the members to stay them out, or any law which takes away the membership of these who have voluntarily joined it, is going to be a law violating the right to form an association".

In ¹⁵**O.K.A. Nair v. Union of India**, and the appellants were members of the civil employee's unions in the varied centres of Defence Establishments. The Commandant declared their unions as an unlawful association. They challenged the validity of the impugned order on the bottom that the said order was violative of Article 19 (1) (c). The Supreme Court held that the civil employees of the defence establishments, answer the outline of the members of the soldiers within

¹⁰ (1987) 1 SCC 115

¹¹ <https://legislative.gov.in/sites/default/files/A1966-33.pdf>

¹² Ibid para 17.

¹³ Ibid para 20

¹⁴ AIR 1971 S.C. 966

¹⁵ AIR 1976 S.C. 1176

the meaning of Article 33, and thus they aren't entitled to form trade unions. The right to form associations or unions does not carry with it the right to achieve any objective. Thus, the trade unions have no guaranteed right to effective bargaining.

In¹⁶ **Balakotaih v. Union of India**, the services of the appellant were terminated under Railway Service Rules for his being a member of the communist party and a trade unionist. The appellant contended that the termination from service amounted in substance to denial to him the right to form an association. The appellant had no doubt a fundamental right to form an association, but he had no fundamental right to continue in Government service. Hence, it had been held that the order terminating his services wasn't in contravention of Article 19 (1) (c) because the order didn't prevent him to continue in Communist Party as a trade unionist.

The restrictions on the right to form associations and unions imposed by law must be reasonable and that they can only be imposed on the grounds specifically mentioned in clause (4) of Article 19, in the interests of the sovereignty and integrity of India, or public order or morality on the exercise of this right.

A restriction which does not fulfil these conditions are going to be considered as unreasonable by the courts and can be declared illegal. it might be an unreasonable restriction to compel employees to possess previous permission before becoming members of a specific union. Similarly, when a law imposes a restriction on the union on the bottom that a union shall not be entitled to represent its members in an industrial dispute unless the union is approved by the executive authority at his absolute discretion, can't be sustained.

Grounds on which this freedom gets restricted:

- **Sovereignty and Integrity of India:** To safeguard the sovereignty of the country the freedom to form association are often restricted. This freedom also will be restricted if it causes any disturbance or affects the oneness of the country.
- **Public Order:** to take care of safety, public peace, order and tranquillity of the country, the right to form an association is often restricted.
- **Morality:** This freedom is often restricted if any of the individual's activities involve indecency or obscenity.

¹⁶AIR 1958 S.C. 232

The right to form association includes the right to form companies, societies, partnerships, trade union and political parties. The right guaranteed is not merely the right to form association but also to continue with the association intrinsically. The freedom to form association implies also the freedom to form or to not form, to hitch or to not join, an association or union.

Any law by which members are introduced in the voluntary association with none option of being given to the members to stay them out, or any law which takes away the membership of these who have voluntarily joined it, is going to be a law violating the right to form an association. The Hindi Sahitya Sammelan Act does not merely regulate the administration of the affairs of the first society, what it does is to change the composition of the society itself. The results of this alteration in the composition are that the members who voluntarily formed the association are now compelled to act in the association with other members who are imposed as members by the act and in whose admission to a membership that they had no say. Such alteration in the composition of the association itself interferes with the right to still function as members of the association which was voluntarily formed by the first founders. The Act, therefore, violates the right of the first members of the society to form an association guaranteed under Article 19 (1) (c).

Regarding the plea that the Act imposes reasonable restriction under clause (4) of Article 19¹⁷, the Court said that clause (4) can't be called in to say validity for the Act. Under clause (4), of Article 19 reasonable restrictions are often imposed only in the interest of the sovereignty and integrity of India or the interests of public order or morality. The alteration of the constitution of the society in a manner laid down by the act is not in the interest of the sovereignty or integrity of India or the interests of public order or morality.

- **Right of Association and soldiers:**

In ¹⁸**O.K.A. Nair v. Union of India**, a crucial question arose whether civilian employees, designated as non – combatants like cooks, chowkidars, barbers, mechanics, bootmakers, tailors etc. Attached to the Defence Establishments have a right to form associations or unions. The appellants were members of the civil employee's unions in the varied centres of the Defence Establishment. The Commandment declared their unions as unlawful associations. They challenged that the impugned action was violative of their fundamental right to form associations or unions under Art 19(1)(c) of the Constitution. They contended that the members of the unions,

¹⁷ https://www.constitutionofindia.net/constitution_of_india/fundamental_rights/articles/Article%2019

¹⁸ AIR 1976 S.C. 1176

though attached to the Defence Establishments, were civilians and their service conditions were regulated by government officials Rules and thus they might not be called as” members of the Armed Forces” within the meaning of **Article 33 of the Constitution**¹⁹. The Supreme Court rejected the contentions of the appellants and held that the civilian employees of the Defence Establishments answer the outline of the members of the soldiers within the meaning of Article 33 and, therefore weren't entitled to form trade unions. It's their duty to follow or accompany the Armed Personnel on active service or in camp or on March. Although they are non-combatants and, in some matters, governed by the government officials Rule, yet they are integral to soldiers. Consequently, under the Army Act, the Central Government was competent to form rules restricting or curtailing their fundamental right under Art 19(1) (c).

- **Restrictions on the liberty of Association:**

In ²⁰**Haji Mohd. District Board, Malda** , it had been held that a restriction requiring an educator to require prior permission to interact in political activities is an inexpensive restriction. It aimed toward preventing teachers from getting involved with political institutions. For, an educator is not merely a citizen but he has got to be under certain terms and discipline of employment.

In ²¹**Ramakrishna v. President, District Board, Nellore**, a government order requiring municipal teachers to not join unions aside from those officially approved was held to impose prior restraint on the right to form association and union, which was in the character of administrative censorship, and hence invalid.

Article 19 (1) (c) of the Constitution of India guarantees to all its citizens the right to form associations, or unions or Co-operative Societies. Under clause (4) of the Article 19²², however, the State may impose reasonable restrictions on this right in the interest of public order or morality or the sovereignty and integrity of India.

To safeguard the sovereignty and integrity of the country the freedom to form association can be restricted if it causes any kind of disturbance or affects the oneness of the country. To maintain safety, public peace, order and tranquility of the country, the right to form association can be restricted. This freedom can be restricted if any of the individual's activities involve indecency

¹⁹ https://www.constitutionofindia.net/constitution_of_india/fundamental_rights/articles/Article%2033

²⁰ AIR 1958 Cal 401

²¹ AIR 1952 Mad 253

²² https://www.constitutionofindia.net/constitution_of_india/fundamental_rights

or obscenity.

The right to carry out a strike or a lockout can be controlled or restricted by an appropriate industrial legislation and the validity of the same can be tested with clause (4) under the Article 19 (1) (c)

CONCLUSION

Now we can conclude that these associations, groups, clubs and other associations do indeed play a significant role in an individual's life. They also play a major part in determining his perception and persuades him to have a broader vision and a widened approach towards everything happening in the society. The Constitution ensures that no citizen residing within the residing within the territorial jurisdiction of the country is deprived of this right granted under Article 19 (1) (c). But at the same time, it is the duty of the citizens to ensure that in the due course of formation of a particular association as well as during the time span of the membership, harmony, discipline and order continues to persist in the society. Also, equally it is important to take into consideration that the same does not give rise to breach of public peace.

Therefore, it can be concluded that these associations, clubs, groups and other organizations do indeed play a big role in an individual's life. They also play a serious part in determining his perception and persuade him to possess a broader vision and a widened approach towards everything happening in society. The Constitution ensures that no citizen residing within the territorial jurisdiction of the country is bereft of this right granted under Art 19(1) (c). But at an equivalent time, it is that the duty of the citizens to make sure that in the due course of formation of a specific association also as during the time span of the membership, harmony, discipline and order continues to continue the society. It is important to require into consideration that an equivalent does not produce to breach of public peace. It's also necessary that the formation or participation and even continuation of those different associations don't act as a barrier or an obstacle in the progress and development of the country. If in the least the goal or the motive of the people engaged in them is evil or ulterior an equivalent will end in causing an imbalance in the democratic system. It'll also pose a threat to the welfare and well-being of the people in the country.

According to my view technically, an argument is often raised that Article 19 allows freedom to form associations. However, labour unions are ruled by the trade unions act. Therefore, the constitutional guarantee is restricted by the statutory provisions. Now trade unions act doesn't mention the formation of trade unions as a matter of right however tons of as a variety and completion of formalities. Therefore, it can't be said that there is a right to form trade unions. The

right to form associations or unions doesn't ask statutory bodies like local board and municipalities and thus suppression of an area board or municipalities under the relevant law can't be deemed to be an infringement of such right to form associations or unions.

