



## FREEDOM OF ASSOCIATION

**AUTHOR** – SEGAR S, PG STUDENT AT UNIVERSITY LAW COLLEGE & DEPARTMENT OF STUDIES IN LAW,  
BANGALORE UNIVERSITY, BANGALORE.

**BEST CITATION** – SEGAR S, FREEDOM OF ASSOCIATION, *ILE MULTIDISCIPLINARY JOURNAL*, 2 (1) OF 2023, PG.  
45-55, APIS – 3920 – 0007 | ISSN – 2583-7230.

### **ABSTRACT**

*The Constitution of India provides for freedom to assemble and the freedom to associate. Article 19 (1) (b) provides that all citizens shall have the right to assemble peaceably and without arms. While Article 19 (1) (c) accords all citizens the right to form associations or unions or cooperative societies. This article examines both rights in the context of Indian constitutionalism.*

*The freedom to assemble is of special interest within the realm of constitutional law, since it is enabled and restricted by an intersection of the constitutional text and the criminal procedure code. The freedom of association is not curtailed by any procedural code. Its character and breadth is shaped only by the jurisprudence of the Supreme Court, and the limitations imposed by the Constitution. The reasoning of the Court is superficial when it comes to appreciating the freedom of association.*

*The Court has not considered the need to provide for greater conceptual clarity on the two necessities of the two freedoms. Nor has the Court engaged in a discussion of principles that must guide it when interpreting these freedoms. Instead the Court has engaged in a case by case analysis while crafting jurisprudence as it sees fit based on categories or classes of bearers of these freedoms. For instance, instead of engaging in a discussion on strikes, it creates classes of citizens who cannot strike- lawyers or government employees or members under the essential services regimes.*

*The Right to Freedom is one of the Fundamental Rights guaranteed by the Constitution of India. It is very important to understand what this right entails and includes. The six fundamental rights enshrined in the Constitution are considered essential for the functioning of Indian democracy. The right to freedom gives citizens basic freedom with respect to speech and expression, form associations, freedom of personal liberty, freedom to live a life of dignity, etc. The right to freedom is important because it is a basic human right. The Indian national struggle against colonialism was a fight to be free of foreign colonial rule, and also for the freedom to live life with dignity, to determine how to live in accordance with law, profess any occupation or trade, speak and express freely, move and reside in any part of the country, and ultimately to be able to live meaningful lives with security.*

*Freedom of association means that every individual is free to organise and to form and participate in Groups/Associations, either formally or informally. Article 19(1)(c) of the Indian Constitution guarantees the right to form associations and unions to all or any of its citizens. However, under clause (4) of Article 19, the state may impose reasonable restrictions on this right in the interest of public order, morality, or India's sovereignty and integrity. Here we will discuss the Freedom of Association.*



## I. Introduction

*"Imagine a world without civil society. That world is bleak. Civil society has been at the forefront of numerous landmark political and social changes over the last decade; changes that have improved societies and individual lives in diverse and meaningful ways."*

*Maina Kiai, former United Nations Special Rapporteur on the rights to freedom of association and peaceful assembly.*

Freedom of association encompasses both an individual's right to join or leave groups voluntarily, the right of the group to take collective action to pursue the interests of its members, and the right of an association to accept or decline membership based on certain criteria. It can be described as the right of a person coming together with other individuals to collectively express, promote, pursue and/or defend common interests. Freedom of association is both an individual right and a collective right, guaranteed by all modern and democratic legal systems, including the United States Bill of Rights, article 11 of the European Convention on Human Rights, section 2 of the Canadian Charter of Rights and Freedoms, and international law, including articles 20 and 23 of the Universal Declaration of Human Rights and article 22 of International Covenant on Civil and Political Rights. The Declaration on Fundamental Principles and Rights at Work by the International Labour Organization also ensures these rights.

## II. Statement of Problem

Freedom of association is a fundamental right of every individual is free to organise and to form and participate in Groups/Associations, either formally or informally. Article 19 (1) (c) of the Indian Constitution guarantees the right to form associations and unions to all or any of its citizens. But under clause (4) of Article 19, the state may impose reasonable restrictions on this right in the interest of public order, morality, or India's sovereignty and integrity.

## III. Object of the study

- i. Every individual has the right to organise, establish, and participate in associations.
- ii. To form associations/groups/unions covers a wide range of activities, such as political parties, clubs, societies, companies, organizations, entrepreneurship, trade unions, and so on.
- iii. To form associations and unions encompasses the right to establish businesses, societies, trade unions, partnership enterprises, and clubs, among other things.
- iv. The right extends beyond the simple founding of an association to its establishment, management, and operation.
- v. To form an association or union includes the right to form or not form, to join or not join an association or union.
- vi. The right to form groups or unions is curtailed solely for the sake of public order or ideals; there are rarely any associations or unions formed for immoral or conspiratorial purposes.

## IV. Hypothesis

1. Whether the freedom of association is a absolute right
2. The validity of reasonable restrictions on freedom of association

## V. Research Methodology

The research attempts to create a foundation for conducting the research under study in research methodology. One needs to have a solid foundation for the study that is intended to be undertaken in order to have a better investigation in the topic of inquiry. The data collected are secondary sources. In order to research properly, one must plan first for each field of study.

## VI. Freedom of Association

- **Freedom of association** implies that every individual has the right to organise, establish, and participate in associations.



- The Freedom to form associations / groups / unions covers a wide range of activities, Example: political parties, clubs, societies, companies, organizations, entrepreneurship, trade unions, and so on.
- The freedom to form associations and unions encompasses the right to establish businesses, societies, trade unions, partnership enterprises, and clubs, among other things.
- The right extends beyond the simple founding of an association to its establishment, management, and operation.
- The freedom to form an association or union includes the right to form or not form, to join or not join an association or union.
- The right to form groups or unions is frequently curtailed solely for the sake of public order or ideals; there are rarely any associations or unions formed for immoral or conspiratorial purposes.

## VII. History

The general freedom to associate with groups according to the choice of the individual, and for the groups to take action to promote their interests, has been a necessary feature of every democratic society. Because freedom of association necessarily recognizes pluralistic sources of power and organisation, aside from the government, it has been a primary target for repression by all dictatorial societies. In the United Kingdom, all forms of "combination" were prohibited and criminal, particularly worker organisations, until the Combination Act 1825. After this, it was still not by the Companies Act 1856, the Trade Union Act 1871 and the Criminal Conspiracy and Protection of Property Act 1875 that companies and then trade unions became generally lawful. In Germany, a similar set of repressive laws were put in place against both trade unions and social democrat organisations by

the Bismarck government under the Sozialistengesetze (the "Socialist Acts") in 1878. These remained in force until 1890. In 1933, trade unions were once again prohibited by the Fascist dictatorship of Hitler's National Socialist party, and the existing unions were nationalized and combined into a single government controlled German Labor Front. In West Germany after World War II, free trade unions were quickly resurrected and guaranteed by the German Grundgesetz. In the United States, trade unions were classified by various state courts, at various times, as being in restraint of trade. Under the Clayton Act of 1914, trade unions were given a general freedom to organize and to act collectively to secure collective agreements, however further hurdles were put in place until the National Labor Relations Act 1935 created a comprehensive labor code.

## Issues

### Intimate association

A fundamental element of personal liberty is the right to choose to enter into and maintain certain intimate human relationships. These intimate human relationships are considered forms of "intimate association." The paradigmatic example of "intimate association" is the family. Depending on the jurisdiction it may also extend to abortion, birth control and private, adult, non-commercial and consensual sexual relationships.

### Expressive association

In the United States, expressive associations are groups that engage in activities protected by the First Amendment – speech, assembly, press, petitioning government for a redress of grievances, and the free exercise of religion. In Roberts v. United States Jaycees, the U.S. Supreme Court held that associations may not exclude people for reasons unrelated to the group's expression. However, in the subsequent decisions of Hurley v. Irish-American Gay, Lesbian, and Bisexual Group of Boston, the Court ruled that a group may exclude people



from membership if their presence would affect the group's ability to advocate a particular point of view. The government cannot, through the use of anti-discrimination laws, force groups to include a message that they do not wish to convey.

This concept continues to apply broadly to private groups, notwithstanding the Supreme Court's ruling in *Christian Legal Society v. Martinez* (2010), which upheld Hastings College of Law policy that a student group on campus could not enjoy university recognition while excluding people from group activities by requiring them to undergo a religious test. The Court found that the school's conditions on recognizing student groups were viewpoint neutral and reasonable. The policy requires student organizations to allow "any student to participate, become a member, or seek leadership positions, regardless of their status or beliefs" and so, can be used to deny the group recognition as an official student organization because it had required its members to attest in writing that "I believe in: The Bible as the inspired word of God; The Deity of our Lord, Jesus Christ, God's son; The vicarious death of Jesus Christ for our sins; His bodily resurrection and His personal return; The presence and power of the Holy Spirit in the work of regeneration; [and] Jesus Christ, God's son, is Lord of my life." The Court reasoned that Hastings sought to treat all student groups equally; the CLS, on the other hand, sought an exemption to apply a religious test to their membership. Thus, the college's all-comers policy is a reasonable, viewpoint-neutral condition on access to the student organization forum.<sup>[8]</sup>

### Limitation

The implicit First Amendment right of association in the U.S. Constitution has been limited by court rulings. For example, it is illegal in the United States to consider race in the making and enforcement of private contracts other than marriage. This limit on freedom of association results from Section 1981 of Title 42

of the United States Code, as balanced against the First Amendment in the 1976 decision of *Runyon v. McCrary*.<sup>[9]</sup>

Governments often require contracts of adhesion with private entities for licensing purposes, such as with Financial Industry Regulatory Authority for stock market trading in the 1938 Maloney Act amendments to the Securities Exchange Act of 1934. These contracts often bar association with banned members, as can be seen in *United States v. Merriam*, 108 F.3d 1162.

### VIII. The right to assembly and association - UDHR (Article 20)

1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

From student occupations of universities in Paris in 1968 to the Arab Spring of 2011, mass demonstrations have been the way people demand social change. Article 20 of the Universal Declaration of Human Rights (UDHR), combined with Article 19's freedom of expression, together ensure the right to gather publicly or privately and collectively express, promote, pursue and defend common interests. To exercise the rights in Article 20, you do not have to march down the ChampsÉlysées or take over your local equivalent of Egypt's Tahrir Square. Freedom of "peaceful assembly" also covers sit-ins, walk-outs, vigils, group discussions and theatre performances. States not only have an obligation to protect peaceful assemblies, but should also take measures to facilitate them. In the context of protests and demonstrations, the UN's Basic Principles on the Use of Force and Firearms by Law Enforcement Officials contains very strict guidelines on the use of force, including that "intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life."

The former UN Special Rapporteur on the rights to peaceful assembly and association, Maina Kiai, pointed out that "Participating in peaceful



protests is an alternative to violence and armed force, as a means of expression and change, which we should support. It must thus be protected, and protected robustly." Article 20 also gives us the right to form or join a group – and protects us from being compelled to join an association. Associations include trade unions, clubs, religious associations, political parties – and, increasingly today, online groups. Social media has played a vital role in helping human rights defenders and communities to organize, voice their concerns and respond to threats. Technological innovation has also greatly helped them document human rights violations, and carry out remote monitoring and swift reporting. But on the dark side, video and on-line surveillance, on-line censorship and harassment, and incitement to violence via social "The exercise of fundamental freedoms should never be considered a crime, and impunity should never be accepted." – UN experts, on an Egyptian mass trial of 739 protestors, and the failure to investigate deaths and injuries caused by security forces. media platforms also endanger associations, and their individual members, in a variety of ways.

Civil society groups, included under Article 20's protection of the right to association, were in the forefront of securing many of the world's most significant human rights advances – such as the movements to abolish slavery and to secure the right to vote for women, as well as current movements such as those calling for an end to discrimination against people based on their sexual orientation or gender identity, and an end to sexual abuse and harassment of women. Every day, in every part of the world, civil society contributes to the promotion, protection and advancement of human rights. This is one of the reasons why the UDHR holds the world record for the number of translations, many of which have been arranged or carried out by civil society rather than by governments. The rights and freedoms laid down in the UDHR are of fundamental importance to civil society, and their own fundamental importance to the cause of human rights is recognized in the protection

granted to them under Article 20. Successive UN High Commissioners for Human Rights have consistently underlined the vital role of civil society in defending human rights. In the words of current High Commissioner, Michelle Bachelet, without human rights defenders, "the Universal Declaration of Human Rights would be lifeless. It is the courage, the generosity of spirit, the integrity and the selflessness of human rights defenders which have kept the Universal Declaration alive. Time and again, it has been thanks to their work that States have acted in support of rights." However, civil society groups face a growing tide of legal restrictions on their registration, funding, and ability to speak and operate freely, often with counterterrorism and security concerns providing justification for far-ranging constraints. But they also face threats to their security: according to UN data, at least 1,019 human rights defenders, including 127 women, were killed in 61 countries across the world from 2015 to 2017. And that is only the tip of the iceberg as many killings are not reported and countless other human rights defenders were subjected to intimidation, harassment, criminalization, arbitrary detention, torture, forced disappearance and other human rights abuses. In a 2018 report on reprisals, UN Assistant Secretary-General Andrew Gilmour, highlighted three worrying trends: the growing tendency to label human rights defenders as "terrorists" or "criminals" in an attempt to discredit them; applying legal and administrative procedures to retaliate against them; and the abuse of accreditation and security procedures to block civil society organizations from engaging with the UN.

The global alliance of civil society organizations known as CIVICUS summed up the importance of such organizations: "When governments showed the worst of humanity, as in Myanmar, Syria and Yemen, civil society showed the best, voluntarily placing ourselves in the firing line, doing what we could to help and exposing human rights abuses." A view strongly endorsed by the UN Human Rights Chief, Michelle Bachelet, who has asserted that "the expansion



of human rights protection would not have been possible without national human rights institutions, civil society and human rights defenders.”

**IX. Article 19 in the Constitution of India**  
**All citizens shall have the right**

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

**X. Right to make an association**

The right bound to form associations or unions is more or less a charter for all working people class during this nation. Union activity wasn't only restricted by most of the Western nations until comparatively recently, but in many nations, it had been even looked upon as an anti-social and anti-state consideration. Working-class had to undergo great problems before they might obtain even the elementary rights that vitally affected their existence as a separate group or class in social norms. It had been only in the 20th century, particularly after the primary war, that any significant measure was imposed on the state to make sure the legitimate rights of the working-class through labour and industrial legislation. To urge these rights fundamental and embody them intrinsically in the Constitution was indeed a way bolder breakthrough. Fully recognizing the recent trend of these times, the Constitution of India has made the labour right to make the association a fundamental one.

The right to make associations or unions are often stopped only in the interests of public order or values there are often no association or

union for an unethical or conspiratorial manner. Interpreting the scope of the proper the Supreme Court held in the case of *State of Madras vs. V.G. Rao* “The right to make associations or unions has such wide and varied scope for its exercise and its curtailment are fraught with such potential reactions in the religious, political and economic fields. That the vesting of authority in the chief government to impose restrictions on such right, without allowing the grounds of such imposition, both in their factual and legal aspects, to be duly tested during a judicial inquiry, is a robust element which, in our opinion, must be taken under consideration in judging the reasonableness of the restrictions imposed on the exercise of the elemental right under Article 19 (1) (c).

**XI. Freedom of Association – Constitutional Provisions**

- **Article 19 (1) (c)** guarantees the freedom to organise organisations, unions, or cooperative societies.
- It involves not only the right to form an association or union, but also the right to remain with the association or union as is. It also includes the negative right not to create or join an organisation or union.
- The State may impose reasonable limits on the exercise of this right on the basis of India's sovereignty and integrity, public order, and morality.
- Subject to these constraints, citizens have unrestricted freedom to organise groups or unions for the pursuit of legitimate aims and purposes.
- However, the right to receive association recognition is not a fundamental right.
- The Supreme Court concluded that the trade unions have no guaranteed right to effective bargaining or right to strike or right to declare a lockout.
- The right to strike can be restricted by an appropriate industrial law.
- The Police Forces (Restriction of Rights) Act of 1966 makes it illegal for police officers to organise trade unions.



- The Constitution also empowers Parliament to make legislation restricting the right to organise political associations to members of the military forces, intelligence agencies, and anyone working in the telecommunications industry.

## XII. Significance of Freedom of Association

- It guarantees that everyone has the freedom to create and participate in groups, whether formally or informally.
- The right to form groups or unions is essentially a constitution for all working people in our country.
- The freedom to form associations is seen as the lifeblood of democracy, since without it, political parties that are essential to the operation of a democracy cannot be founded.
- It is the enabling right, at the heart of democracy and the rule of law, to allow effective participation of non-state players in economic and social policies.
- It ensures that both workers and employers have a voice and are represented, which is critical for the efficient operation of both labour markets and general governance systems in a country.

## XIII. Freedom of Association – Restrictions

- The right to associate, like any other Fundamental Right protected by Article 19, is not absolute and is susceptible to restriction in the public interest.
- Article 19(4) expressly permits the state to enact legislation that restricts, abridges, or abolishes any of the rights guaranteed by Article 19(1). (c).
- In the interests of India's sovereignty and integrity, public order, and morality, Clause (4) permits the state to put reasonable restrictions on the exercise of the right to form associations.

## XIV. Essential Elements of Restriction

- It is frequently imposed only by legal authorities.
- Reasonable restrictions are required.
- Clause 4 specifies that the restriction must be linked to the stated goal.

The judiciary has the power to examine the legality of those restrictions on two grounds: whether they are inexpensive and whether they are being imposed for the purposes stated in the article under which they are being imposed.

## XV. 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.

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 Art 19, the Court said that clause (4) can't be called in to say validity for the Act. Under clause (4), of Art 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.

#### **XVI. Fundamental Rights Vs. Emergency War Emergency**

If the president is satisfied that a grave emergency exists whereby the security of India or any part of its territory is threatened by war, external aggression or armed rebellion, he may proclaim a state of emergency under Article 352.

#### **Constitutional Emergency in the States**

If the President is satisfied on receipt of a report from the Governor or otherwise that a situation has arisen in which the Government of a State cannot be carried on in accordance with the provisions of the Constitution, he is empowered to proclaim an emergency under Articles 356.

#### **Suspension of Fundamental Rights**

During the period of emergency, as declared under the either of the two categories discussed above, the State is empowered to suspend the Fundamental Rights guaranteed under Article 19

of the Constitution. The term 'State' is used here in the same sense in which it has been used in the Chapter on Fundamental Rights. It means that the power to suspend the operation of these Fundamental Rights is vested not only in Parliament but also in the Union Executive and even in subordinate authority. Further, the Constitution empowers the President to suspend the right to move any court of law for the enforcement of any of the Fundamental Rights. It means that virtually the whole Chapter on Fundamental Rights can be suspended during the operation of the emergency. However, such order are to be placed before Parliament as soon as possible for its approval. But article 20 and article 21 cannot be suspended in any case.

Suspension of fundamental rights during emergency is a matter of debate and conflicts of opinion ab initio.

it would be a mistake to treat human rights as though there were a trade-off to be made between human rights and goals such a security and development. Strategies based on the protection of human rights are vital both for our moral standing and the practical effectiveness of our actions'

- Kofi Annan

It would be a mistake to treat human rights as though there were a trade-off to be made between human rights and goals such a security and development. Strategies based on the protection of human rights are vital both for our moral standing and the practical effectiveness of our actions'

- Kofi Annan

Fundamental rights are moral rights which have been made legal by the Constitution. These constitutional rights which are 'fundamental' in character represent rights in the 'strong sense'. They are distinct from ordinary legal and constitutional rights because they may not be restricted on ground of general utility.

The very essence of these rights is that they are guaranteed even if the majority would be worse





off in doing so, that fundamental rights are necessary to protect the dignity of an individual. Invasion of these rights is a very serious matter and it means treating a man as less than a man. This is grave injustice and it is worth paying the incremental cost in social policy or efficiency that is necessary to prevent it.

### **XVII. International Labour Organisation (ILO)**

The right of workers and employers to form and join organizations of their own choosing is an integral part of a free and open society. In many cases, these organizations have played a significant role in their countries' democratic transformation. From advising governments on labour legislation to providing education and training for trade unions and employer groups, the ILO is regularly engaged in promoting freedom of association. The ILO's Committee on Freedom of Association was set up in 1951 to examine violations of workers' and employers' organizing rights. The committee is tripartite and handles complaints in ILO Member States whether or not they have ratified freedom of association conventions. Through the Committee on Freedom of Association and other supervisory mechanisms, the ILO has frequently defended rights of trade unions and employers' organizations.

Freedom of association is a fundamental human right proclaimed in the Universal Declaration of Human Rights (1948). It is the enabling right to allow effective participation of non-state actors in economic and social policy, lying at the heart of democracy and the rule of law. Ensuring that workers and employers have a voice and are represented is, therefore, essential for the effective functioning not only of labour markets but also of overall governance structures in a country.

The right of workers and employers to form and join organizations of their own choosing is an integral part of a free and open society. In many cases, these organizations have played a significant role in their countries' democratic transformation. The ILO is regularly engaged in promoting freedom of association (39): from

advising governments on labour legislation to providing education and training for trade unions and employer groups.

Closely linked to freedom of association is the issue of collective bargaining. Collective bargaining is a fundamental right that is rooted in the ILO Constitution and reaffirmed as such in the 1998 ILO Declaration on Fundamental Principles and Rights at Work. Collective bargaining is a key means through which employers and their organizations and trade unions can establish fair wages and working conditions, and ensure equal opportunities between women and men. It also provides the basis for sound labour relations. Typical issues on the bargaining agenda include wages, working time, training, occupational health and safety and equal treatment. The objective of these negotiations is to arrive at a collective agreement that regulates terms and conditions of employment. Collective agreements may also address the rights and responsibilities of the parties thus ensuring harmonious and productive industries and workplaces. Enhancing the inclusiveness of collective bargaining and collective agreements is a key means for reducing inequality and extending labour protection.

Freedom of association and collective bargaining are among the founding principles of the ILO. Soon after the adoption of the (fundamental) ILO Conventions on freedom of association and collective bargaining: the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No.87), and the Right to Organise and Collective Bargaining Convention, 1949 (No.98), the ILO came to the conclusion that a supervisory procedure was needed to ensure compliance with the relevant conventions in countries that had not ratified them. As a result, in 1951 the ILO set up the Committee on Freedom of Association (CFA) for the purpose of examining complaints about violations of freedom of association, whether or not the country concerned had ratified the relevant conventions. The CFA is a Governing Body



committee, and is composed of an independent chairperson and three representatives each of governments, workers and employers. Further details on the functioning of the CFA are provided here.

Over the years, the ILC has adopted a number of additional Conventions and Recommendations relating to freedom of association and collective bargaining.

### **XVIII. Freedom of Association - Important Judgments**

In **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".

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.

In **O.K.A. Nair v. Union of India** and the appellants were members of the civil employee's unions in the varied centres of Defense 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 volatile 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 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.

In **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. Reasonable Restrictions.

In **O.K. Ghosh v. E.X. Joseph**, Rule 4-B of the Central Civil Services (Conduct) Rules, 1955, requires a Government servant to not join or still be a member of the Association of state servants as soon as the recognition is given to such association is withdrawn or if the association is made, no recognition is granted thereto within six months. The Supreme Court held that the condition on recognition of the said association to be a right would be ineffective and illusory and the imposition of such condition on the right of the association has no reference to the general public order of the State.

In **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 **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.

In the case of **State of Madras vs. V.G. Rao**, The Supreme Court interpreted the extent of the appropriateness.

"The freedom to form groups or unions has such a broad and diversified scope for its practice, and its restriction is laden with potential religious, political, and economic repercussions".

The fact that the Government has the authority to impose restrictions on such rights without allowing the grounds for such restrictions to be duly tested in both factual and legal aspects during a judicial inquiry is a robust element that, in our opinion, must be taken into account in judging the reasonableness of the restrictions imposed on the exercise of the elemental right under Article 19 (1)(c).

#### **XIX. Conclusion**

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.

#### **XX. Bibliography**

##### **Books:**

- 1.MP Jain
- 2.DD Basu
3. VN Shukla
4. YV Chandrachud

##### **Case Reference:**

1. Damayanti v. Union of India 1971 AIR 966
2. O.K.A. Nair v. Union of India 1976 AIR 1179
3. Balakotaih v. Union of India AIR 232 SCR 1052
4. O.K. Ghosh v. E.X. Joseph AIR 1963 812
5. Haji Mohd. District Board, Malda AIR 1958 Cal 401
6. Ramakrishna v. President, District Board, Nellore AIR 1952 Mad253
7. State of Madras vs. V.G. Rao 1952 AIR 196 1952 SCR 597