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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

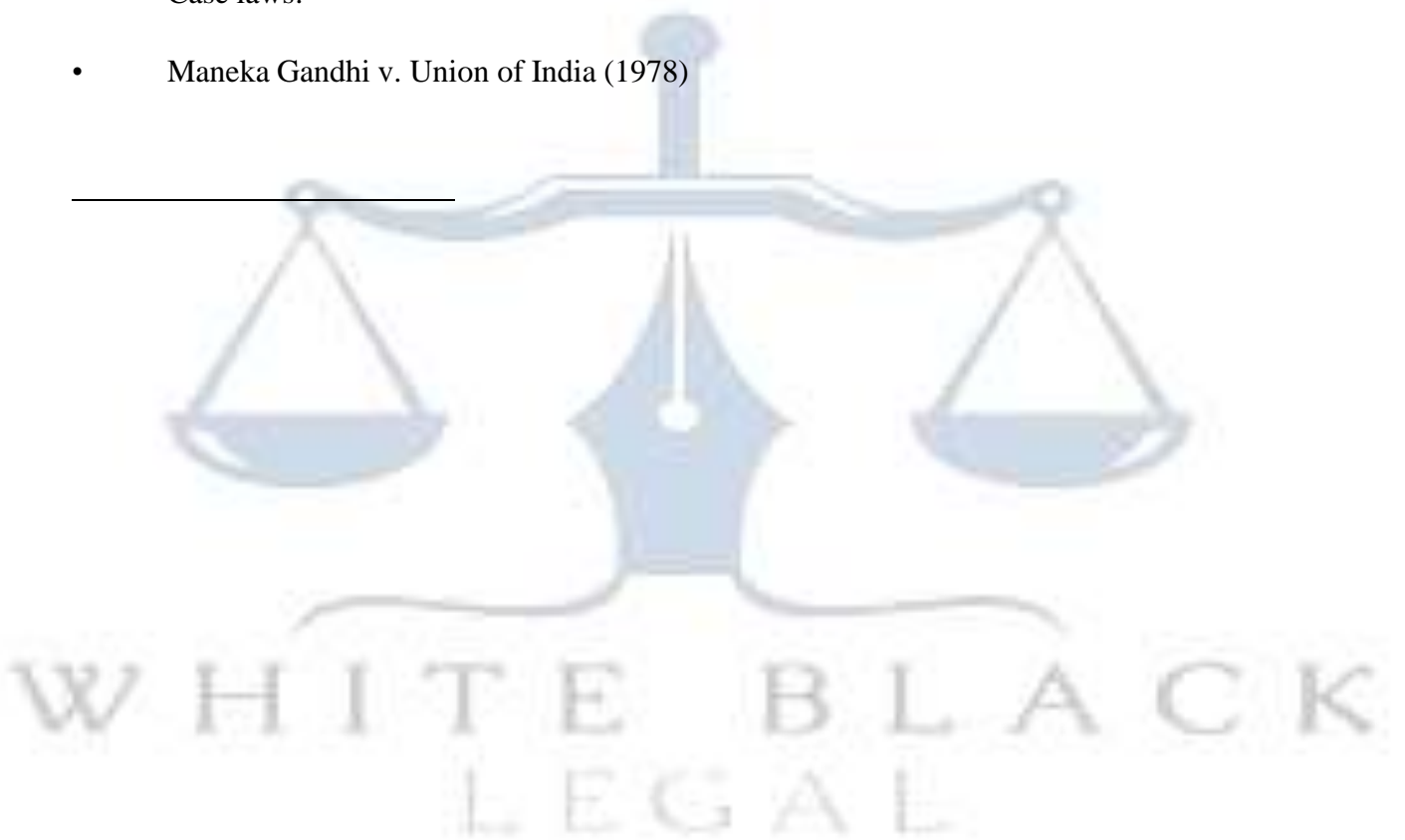
1 **ARTICLE 19 OF THE INDIAN CONSTITUTION: A COMPREHENSIVE ANALYSIS**

AUTHORED BY - ADITYA SAXENA

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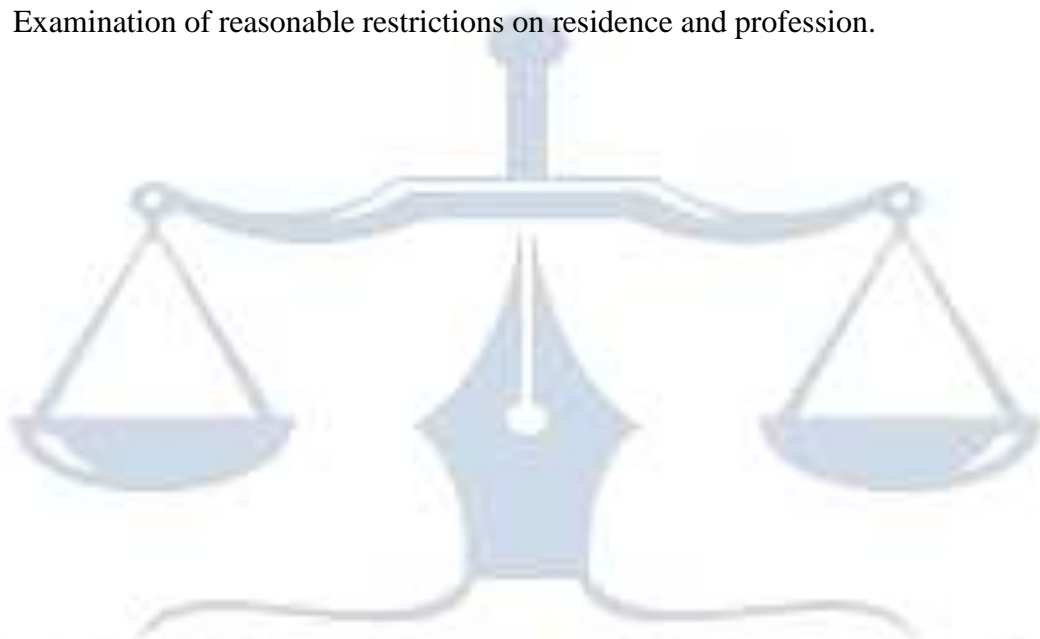


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Article 19 of the Indian Constitution: A

Comprehensive Analysis

Article 19 of the Indian Constitution guarantees certain fundamental rights to its citizens, encompassing the right to freedom of speech and expression, assembly, association, movement, residence, and profession. These rights, though essential, are subject to reasonable restrictions in the interest of sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, decency, or morality, or in relation to contempt of court, defamation, or incitement to an offense. In this article, we delve into the nuances of Article 19 and explore its interpretation through landmark case laws.

1. Freedom of Speech and Expression (Article 19(1)(a)):

Freedom of speech and expression is the cornerstone of democracy, allowing individuals to express their thoughts, ideas, and opinions freely. However, this right is not absolute and can be curtailed by the State under specific circumstances.

Case Law:

- **Romesh Thappar v. State of Madras² (1950):** In this landmark case, the Supreme Court held that freedom of speech and expression includes the freedom of circulation. The court struck down a state law that imposed pre-censorship on a journal, emphasizing the importance of uninhibited dissemination of ideas and information.

² AIR 1950 SC 124

³ AIR 1978 SC 597

- **Maneka Gandhi v. Union of India³ (1978):** In this landmark case, the Supreme Court held that the right to freedom of speech and expression includes the right to know. The court expanded the scope of Article 19(1)(a) to include the right to information, emphasizing its crucial role in a democratic society.

2. Freedom of Assembly (Article 19(1)(b)):

The right to assemble peacefully and without arms is another fundamental right guaranteed under Article 19. This right enables individuals to come together for a common purpose, such as protest or demonstration, subject to reasonable restrictions.

Case Law:

- **Himat Lal K. Shah v. Commissioner of Police, Ahmedabad (1973):** The Supreme Court held that the right to assemble peacefully does not give individuals the right to cause annoyance

² AIR 1950 SC 124

³ AIR 1978 SC 597

to others or to shout slogans that may disrupt public peace. The court emphasized the importance of balancing individual rights with public order.

- **Bijoe Emmanuel v. State of Kerala⁴ (1986):** The Supreme Court held that the right to assemble peacefully does not require prior permission from the authorities. Any restriction on this right must be reasonable and not arbitrary. The court upheld the right of students to remain silent during the national anthem as an expression of their beliefs.

3. Freedom of Association (Article 19(1)(c)):

Freedom of association allows individuals to form associations, unions, or cooperative societies to pursue common goals or interests. This right is crucial for the functioning of civil society and the protection of collective interests.

Case Law:

- **Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal (1995):** The Supreme Court held that the right to form associations includes the right to manage its own affairs without external interference, subject to reasonable restrictions in the interest of public order, morality, or health.
- **S. R. Bommai v. Union of India (1994):** The Supreme Court held that the right to form associations includes the right to join political parties and participate in political activities. The court upheld the autonomy of political parties in deciding their internal matters, including the selection of candidates

4. Freedom of Movement (Article 19(1)(d)):

The right to move freely throughout the territory of India is guaranteed under Article 19(1)(d). This right enables individuals to travel within the country without any restrictions, except those imposed by law.

⁵ AIR 1978 SC 597

Case Law:

- **Maneka Gandhi v. Union of India⁵ (1978):** The Supreme Court held that the right to freedom of movement includes the right to travel abroad. Any restriction on this right must be reasonable and not arbitrary.

- **Swaran Singh v. State of U.P. (1998):** The Supreme Court held that the right to freedom of movement includes the right to move freely from one state to another. Any law or policy that imposes restrictions on inter-state movement must be justified on reasonable grounds.

⁴ 1987 AIR 748



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⁵ AIR 1978 SC 597

5. Freedom of Residence (Article 19(1)(e)):

The right to reside and settle in any part of the territory of India is another fundamental right guaranteed under Article 19. This right ensures that citizens have the freedom to choose their place of residence within the country.

Case Law:

- **Sunil Batra v. Delhi Administration (1978)⁶:** The Supreme Court held that the right to reside and settle includes the right to live in a healthy environment free from pollution and other environmental hazards. The court emphasized the duty of the State to protect the environment for the benefit of present and future generations.
- **Olga Tellis v. Bombay Municipal Corporation⁷ (1985):** The Supreme Court held that the right to reside and settle includes the right to shelter and basic amenities. The court recognized the plight of pavement dwellers and directed the state to provide alternative accommodation.

6. Freedom of Profession (Article 19(1)(g)):

The right to practice any profession, or to carry on any occupation, trade, or business is guaranteed under Article 19(1)(g). This right enables individuals to pursue their chosen livelihood and contribute to the economic development of the country.

Case Law:

- **LIC of India v. Consumer Education & Research Centre⁸ (1995):** The Supreme Court held that the right to carry on any occupation or business includes the right to earn a livelihood by lawful means. Any restriction on this right must be reasonable and not arbitrary.

⁸ (1995 SC)

- **State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat (2005):** The Supreme Court held that the right to carry on any occupation or business includes the right to earn a livelihood by lawful means. The court struck down a state law banning the slaughter of bulls and bullocks, emphasizing the economic importance of the meat industry for certain communities.

Restrictions Contained in Article 19 of the Indian Constitution

⁶ (1978)4 SCC 409

⁷ (1985 SC)

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⁹ (1995 SC)

Article 19 of the Indian Constitution grants its citizens certain fundamental freedoms essential for the functioning of a democratic society. However, these freedoms are not absolute and are subject to reasonable restrictions imposed by the State in the interest of various important considerations. In this article, we explore the restrictions contained in Article 19 and examine their application through real-life case laws.

1. Freedom of Speech and Expression (Article 19(2)):

While Article 19(1)(a) guarantees the right to freedom of speech and expression, Article 19(2) permits the State to impose restrictions on this right in the interest of sovereignty and integrity of India, security of the state, friendly relations with foreign states, public order, decency, or morality, or in relation to contempt of court, defamation, or incitement to an offense.

Key Considerations:

- **Sovereignty and Integrity:** The State may restrict speech that poses a threat to the sovereignty and integrity of India, including secessionist or separatist movements.
- **Security of the State:** Speech that incites violence or promotes terrorism can be curtailed to maintain the security of the nation.
- **Public Order:** Speech that has the potential to disrupt public order or cause communal disharmony may be restricted to ensure peace and stability.
- **Defamation:** Laws against defamation protect the reputation and dignity of individuals from malicious attacks.
- **Incitement to Offense:** Speech that directly incites violence or provokes criminal behavior can be restricted to prevent harm to society.

Case Law:

- **S. Rangarajan v. P. Jagjivan Ram⁹ (1989):** In this case, the Supreme Court emphasized that the freedom of speech and expression includes the right to express unpopular or dissenting views. The court held that restrictions on speech must be narrowly tailored to serve a compelling state interest and should not be used to suppress legitimate criticism or debate.

2. Freedom of Assembly (Article 19(3)):

Article 19(1)(b) guarantees the right to assemble peacefully and without arms, subject to reasonable restrictions imposed under Article 19(3). The State may regulate the time, place, and manner of assemblies to maintain public order and prevent disruption.

Key Considerations:



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¹¹ (1995 SC)

- **Regulation of Assemblies:** The State can impose restrictions on the size and location of assemblies to prevent obstruction of traffic or inconvenience to the public.
- **Peaceful Assembly:** Assemblies must be conducted peacefully, without resorting to violence or disruption of public order.
- **Permission Requirements:** Authorities may require prior permission or notification for organizing large gatherings to facilitate coordination and ensure public safety.

Case Law:

- **Anuradha Bhasin v. Union of India¹⁰ (2020):** In this case concerning restrictions on internet access in Jammu and Kashmir, the Supreme Court emphasized the importance of freedom of assembly, including virtual assemblies. The court held that any restrictions on internet access must be reasonable, proportionate, and subject to judicial review.

3. Freedom of Association (Article 19(4)):

Article 19(1)(c) grants the right to form associations or unions, subject to reasonable restrictions imposed under Article 19(4) in the interest of public order, morality, or health.

Key Considerations:

- **Regulation of Associations:** The State may regulate the activities of associations to prevent illegal or harmful practices.
- **Public Morality:** Associations promoting activities deemed immoral or against public decency may face restrictions to uphold societal values.
- **Health Concerns:** Associations that pose a risk to public health, such as those advocating harmful practices or spreading misinformation, can be regulated to protect the well-being of citizens.

¹¹ (2017 SC)

Case Law:

- **K.S. Puttaswamy v. Union of India¹¹ (2017):** In this landmark case on the right to privacy, the Supreme Court recognized the importance of freedom of association in protecting individual autonomy and personal choices. The court held that any restrictions on the right to form associations must be justified by a compelling state interest and be proportionate to achieve that interest.

4. Freedom of Movement (Article 19(5)):

¹⁰ (2020 SC)



¹² (2017 SC)

Article 19(1)(d) guarantees the right to move freely throughout the territory of India, subject to reasonable restrictions imposed under Article 19(5) in the interest of the general public or for the protection of scheduled tribes.

Key Considerations:

- **Protection of Scheduled Tribes:** Restrictions on movement may be imposed to safeguard the rights and interests of scheduled tribes residing in certain areas.
- **Public Safety:** Measures such as curfews or restrictions on movement may be implemented during times of emergency or unrest to ensure public safety and prevent violence.

Case Law:

- **People's Union for Civil Liberties (PUCL) v. Union of India (2005):** In this case concerning restrictions on the movement of tribal communities in conflict zones, the Supreme Court emphasized the importance of balancing individual rights with the security concerns of the state. The court held that any restrictions on movement must be necessary, proportionate, and subject to judicial review.

5. Freedom of Residence and Profession (Article 19(6)):

Article 19(1)(e) guarantees the right to reside and settle in any part of the territory of India, while Article 19(1)(g) protects the right to practice any profession, subject to reasonable restrictions imposed under Article 19(6) in the interest of the general public.

Key Considerations:

- **Zoning Laws:** Restrictions on residence and profession may be imposed through zoning laws to regulate land use and ensure orderly development.
- **Public Health and Safety:** Regulations governing professions such as medicine or law aim

to protect the public from unqualified practitioners and ensure quality service delivery.

- **Licensing Requirements:** Certain professions or businesses may require licenses or permits to operate, subject to regulatory oversight by the State.

Case Law:

- **M.C. Mehta v. Union of India¹⁴ (1986):** In this case concerning restrictions on industrial activities causing environmental pollution, the Supreme Court emphasized the importance of balancing economic development with environmental protection. The court held that any restrictions on the right to practice a profession must be necessary to protect public health and the environment.



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¹⁴ (2017 SC)

In conclusion, while Article 19 of the Indian Constitution guarantees several fundamental freedoms, these freedoms are not absolute and can be restricted by the State under certain circumstances. However, any restrictions imposed must be reasonable, necessary, and proportionate to achieve a legitimate state interest, and should always be subject to judicial review to ensure the protection of individual rights and liberties.

