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NAAC ACCREDITED 'A' GRADE

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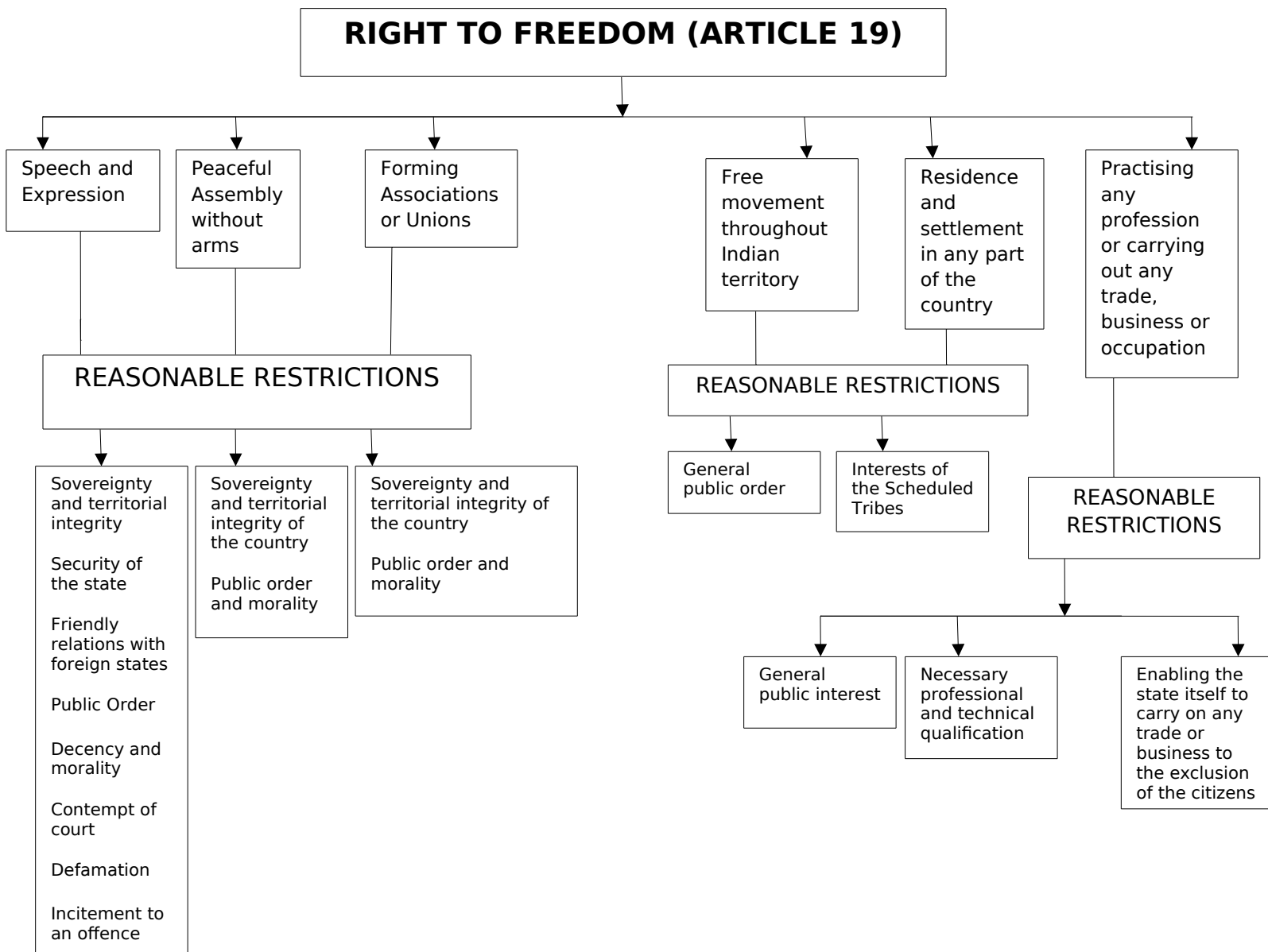
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## **RIGHT TO FREEDOM (ARTICLES 19 - 22)**

If citizens of a democratic political system are denied to enjoy freedom, the ideal and objective of democracy falls through. The struggle for democracy is essentially a struggle for freedom and equality. This is why the Indian Constitution has given much emphasis to freedom, side by side with equality. Articles 19 -22 of Part III of the Constitution have given the fundamental right to freedom. Of these, Article 19 has been characterized as the most essential of all fundamental rights which are, by nature, political rights. It is meant for Indian citizens only and not for foreigners residing in India. Originally, Article 19 gave right to seven kinds of freedom. However, the 44<sup>th</sup> Constitutional Amendment Act, 1978, deleted Article 19 (1) (f). Accordingly, the number of freedoms guaranteed by Article 19 (1) is now six.



There are six freedoms guaranteed by Article 19(1). Article 19(1)(a) gives the right to freedom of speech and expression; 19(1)(b) grants the right to assemble peacefully and without arms; 19(1)(c) gives the right to form associations and unions; 19(1)(d) gives the right to move freely throughout the territory of India; 19(1)(e) recognizes the right to reside and settle in any part of the territory of India and 19(1)(g) grants the right to practice any profession or carry out any occupation, trade or business.

However, none of these rights mentioned above are absolute. The state may make law imposing reasonable restrictions on each of these rights on grounds determined by the Constitution.

Thus-

- Article 19(2) provides for imposition of reasonable restrictions by law on the right to freedom of speech and expression in the interest of sovereignty and integrity of India, security of the state, friendly relations with foreign states, public order, decency or morality or for contempt of court, defamation or incitement to an offence.
- Article 19 (3) provides that the state by law may impose reasonable restrictions on the exercise of the right to peaceful assembly in the interests of the sovereignty and integrity of India or public order.
- Article 19 (4) provides that the state may impose reasonable restrictions on the right to form associations and unions in the interest of sovereignty and integrity of India or public order or morality.
- Article 19 (5) provides for reasonable restrictions on the right to freedom of movement and the right to reside and settle in any part of the Indian territory on grounds of general public interest or protection of the interests of any Scheduled Tribe.
- Article 19 (6) provides that the state by law may reasonably restrict the exercise of the right to freedom of profession in the interest of the general public.

Thus it is evident that the rights as guaranteed by Article 19 may be restricted only when there is a law to backup this restriction as given Articles 19 (2) to 19 (6). Again, the restrictions thus imposed by law must be reasonable. Thus, the restrictions should not be arbitrary or excessive and must have a direct and reasonable connection with its objective. The criteria of reasonableness may vary from case to case. It is not to evolve a general principle for determining reasonableness. The court must judge the reasonableness of the restrictions both from the procedural and substantive point of view. The restrictions cannot be unlimited and discriminatory riding beyond the norms of Article 14. If any of the restrictions seeks to give effect to a Directive Principle, it might be deemed to be reasonable in the public interest.

### **Article 20:**

A striking feature of the Indian Constitution is that it has guaranteed Fundamental Rights not only to ordinary people but also to those accused of an offence for both citizens and non-citizens. Article 20 (1) has two parts. Firstly it protects any accused against Ex-post Facto Law. Ex-post Facto Law means a kind of law that convicts a person for an offence he committed before the enactment of this law. Thus in India, this will not happen to any accused person. If a person commits an offence in violation of law, he shall be convicted under the law in force at the time of his commission of the offence. Also, the person is to be

given just that amount of punishment permissible by law in force at the time of his commission of the offence. However, Article 20 (1) is applicable only to a criminal offence and not to a civil offence. Further, it is not applicable to preventive detention.

According to Article 20 (2), a person cannot be prosecuted for the same offence more than once. In American Constitutional parlance, it is known as '*protection against Double Jeopardy*'.

According to Article 20 (3), a person accused of an offence cannot be forced to be a witness against himself. Thus, it prohibits self-incrimination by an accused. The principle on which it rests has the following components -

- a) It will be presumed that the accused is innocent.
- b) The onus lies on the prosecutor to prove that the accused is guilty.
- c) The accused will not have to make any statement against his will.

### **Article 21:**

The Fundamental Right given in Article 21 of Part III of the Constitution is meant for both citizens and non-citizens. This article lays down that a person cannot be deprived of his life and personal liberty except according to procedure established by law. The purport of this provision is that a person can be denied his fundamental right to life and personal liberty only when there is a law to that effect and the procedure laid down in the law concerned is strictly and carefully followed. In India whenever personal liberty under Article 21 is restricted, the Court will judge only the following

- a) Whether there is a supporting law behind this restriction, and
- b) Whether the procedure laid down in the law has been properly followed

**Article 21 (A)** has been incorporated into Part III of the Constitution by the 86<sup>th</sup> Constitution Amendment Act 2002. This article runs thus: the state shall arrange free and compulsory education for all children of the age of 6-14 years in the manner determined by the state by law. Thus, this article recognizes Article 45 of the Directive Principles of State Policy and gives the children of the age of 6-14 years the fundamental right to have free and compulsory education.

**Article 22** of the Constitution gives an arrested or detained person some protection. This article applies to both citizens and non-citizens. Sub clauses 1 & 2 of Article 22 give the following four safeguards to an arrested person -

- i. An arrested person cannot be detained in police custody without informing him of the grounds of his arrest. Giving information about the grounds of arrest is mandatory for the arresting authority as without knowing it the person will not be able to take appropriate legal action for self-defence, move the court for bail, and petition for the relevant writ.
- ii. The arrested person has a right to consult and be defended by a lawyer of his choice. If an arrested person is denied this right, then his trial shall be deemed to be vitiated.

- iii. According to Article 22 (2), an arrested person must be produced within 24 hours of his arrest before the nearest magistrate. The magistrate must judicially determine whether the arrest is strictly according to rules and law.
- iv. Article 22 (2) further lays down that if the magistrate, after the arrested person is produced before him, does not approve of his arrest, the arrested person cannot be detained beyond a period of 24 hours.

According to Article 22 (3), the protection given by Article 22 (1) and 22 (2) shall not apply to -

- a) Any enemy alien resident in India; or
- b) Any person arrested or detained under preventive detention law.

### **Preventive Detention Law:**

Whenever a person is detained without trial and conviction by a court, it is called preventive detention. Its purpose is not to punish a person who has committed an offence but to curb his liberty in order to prevent him from committing an offence in future. Thus, preventive detention is not punitive, but only preventive. Preventive detention laws of the USA and Britain are applied only in extraordinary situations like a state of war. But in India, preventive detention laws are applied in ordinary and peaceful conditions as well. However, sub clauses 4 to 7 of the Article 22 of the Indian Constitution have given the following rights and safeguards to a person detained under the Preventive Detention Act.

- a) According to Article 22 (4), a person cannot be detained under the preventive detention law for more than three months unless an Advisory Board comprising of High Court judges or former High Court judges reports that there is enough reason to extend this period. If however, the Parliament fixes the maximum period of such detention, then it can be violated by none.
- b) According to Article 22 (5), when a person is detained by an order under the Preventive Detention Law, the authority issuing the order must inform him the grounds on which the order has been made and must give him the opportunity at the earliest to make representation against the order.
- c) According to Article 22 (6), though the detaining authority must communicate to the detained person the grounds of his detention, it is not bound to disclose facts, the disclosure of which is against the public interest.
- d) According to Article 22 (7), the Parliament may by law, (i) extend the period of detention beyond three months without the advice of the Advisory Board. (ii) Determine the maximum period of detention of a person detained under Preventive Detention Law.
  - (iii) Lay down the procedure of enquiry to be followed by the Advisory Board.

In this connection, it may be mentioned that the 44<sup>th</sup> Amendment Act of 1978 had reduced the initial period of detention from three to two months. It had further provided that the Advisory Board shall be constituted on the basis of the recommendations of the Chief Justice of the appropriate High Court and that it shall consist of a Chairman and not less than two other members. However, the above changes have not yet been given effect to.