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**RIGHT TO FORM ASSOCIATIONS IN INDIA: CONSTITUTIONAL,
LEGISLATIVE AND JUDICIAL PERSPECTIVE**

Abstract

The Right to Form Associations is guaranteed in the Indian Constitution and forms an important basis for workers to group together and present their issues to their employers. It is an important right for the redressal of issues of employees. Other citizens as well may form associations to deal with other issues relating to other fields of life and society. However, there are certain restrictions that are imposed on the people who can create associations on the basis of various grounds.

Aims of the Article-

- To scrutinize the constitutional backing behind the Right to form Associations.
- To contemplate various case laws regarding the Right to Form Associations.
- To perceive the judiciary and legislature's mindset toward the Right to Form Associations.

Analysis**To scrutinize the constitutional backing behind the Right to Form Associations.**

The freedom to gather together in assemblies and association is the bedrock of democracy. These assemblies and associations may consist of political parties, clubs, societies, organizations,

corporations, trade unions etc. and all these associations are made up of like-minded people with similar thinking and likewise objectives. The Constitution of India provides freedom to create associations and assemblies under Article 19(1) (b) which states that each citizen shall have the right to assemble peacefully and without weapons¹. Since the freedom to form associations are guaranteed by the Constitution, this right falls within the ambit of constitutional law. Without this right, no political party could have been formed.

To accompany the above article, Article 19 (1) (c) gives citizens of India the right to form associations or unions² however, this freedom comes with certain restrictions which are to be deemed reasonable in the eyes of the law. As stated in Article 19 (4)³, the restrictions that can be placed on the right to form associations are to strictly be on the grounds of the sovereignty and integrity of India as well as public order or morality. Thus, any association which breaches these grounds shall be deemed as dangerous to the public of India and therefore be denied the privilege of association.

The need to form associations was first seen in the 20th Century when bona fide efforts were taken to protect the rights of the working-class people. To protect their rights by encapsulating them in the Constitution was a brave yet justified step by the makers of our constitution.

Furthermore, the right to form associations comes under Part III of the Indian Constitution which means that it is a fundamental right. It indicates that all citizens have can form associations for lawful reasons and whose objective shall not be to endanger the security of India along with the intentions of only peace, legitimacy and community service. This goes to show that this right is not absolute as it is subject to certain restrictions which have to be reasonable in nature.

The grounds on which Right to Form Associations are restricted are as follows-

- Sovereignty and integrity of India- If there are disturbances or any adverse effects to the community of all Indians as a whole then this right shall be curbed under this ground.
- Public Order- If there is any association that is formed that will harm the safety, peace, order and tranquility of India then that association shall be declared as illegal.

¹ INDIA CONST. art. 19 § 1 cl. b

² INDIA CONST. art. 19 § 1 cl. c

³ INDIA CONST. art. 19 § 4

- Morality- The right to form associations will be curtailed if any individual's gets harmed by the indecency or obscene acts of any association.

To elaborate on the reasonable restrictions, there are certain elements to be taken count of which are as follows-

- Imposed by the authority of law.
- Restrictions must be reasonable.
- Restrictions must be only on the grounds as stated in Clause 4.
- Judiciary has the right to check the restrictions and review them.

It may also be prudent to note here that members of the general public service cannot join any associations. In addition to this, the right to form associations does not carry the right to strike as well as it does not carry the right to inform any rival unions. Also, it does not carry the right to recognition.

Thus, in conclusion we can say the Constitution provides the citizens of India the right to gather in associations with goodwill considering that the people will not use this freedom against India. This right is not absolute as there are certain restrictions that have been specified above by which any associations whose objectives fall within those restrictions will be deemed illegal and thus subject to closure.

To contemplate various case laws regarding the Right to Form Associations.

In the case of *Damyanti Naranga and Anr v. Union of India*⁴, a constitution bench of the Supreme Court ruled that the right to form an association includes the right to continue to be associated with that particular association voluntarily. When citizens form any association voluntarily then neither their membership can be taken away nor can they be compelled to associate with others who do they do not want to voluntarily associate with.

⁴ *Damyanti Naranga and Anr v. Union of India* 1971 3 SCR 840

This case simply means that a person who joins an association must have a voluntary relationship with that association along with the right to leave the association voluntarily. No person can be forever bound to an association and if there is any law to that effect then it shall be an illegal law.

When the question of whether civil service employees could be members of a civil employee unions of defence establishments came up, the Supreme Court in the case of *O.K.A Nair v. Union of India*⁵, held that the civil employees of defence establishments could not be a part of these unions because of Article 33 of the Constitution. This article states that the parliament has the right to restrict the rights of soldiers and thus they are not entitled to form any trade unions. The right to form any associations does not carry with it the right to achieve any objective.

Furthermore, in the case of *G.K Ghosh v. E.X. Josef*⁶ the Rule 4-B of the Central Civil Service Conduct Rules 1955 state that a government servant cannot join or be a member of the association of state servants 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 in this case held that the condition on recognition of the said association to be a right would be effective and illusory and the imposition of such condition on the right of the association has no connection with the public order of the state.

In another case, *Raghubar v. Union of India*⁷ the Supreme Court held that nobody can be compelled to become a member of a government sponsored union. It is an unreasonable restriction to force employees to take permission before becoming the members of any such unions.

It is also important to make a mention of the Doctrine of Guilt by Association. According to this doctrine, any person who is a member of a banned association is deemed guilty of that association's illegal work. This doctrine was banned in a. American Supreme Court in the case of *Elfbrandt v. Russell*⁸ wherein Justice Douglas held that this doctrine infringes unnecessarily on protected freedoms having no place in democracy. This observation was used in an Indian Supreme Court

⁵ *O.K.A. Nair v. Union of India* AIR 1976 S.C. 1176

⁶ *G.K Ghosh v. E.X. Josef* AIR 1963 S.C. 812

⁷ *Raghubar v. Union of India*, AIR 1962 S.C. 263

⁸ *Elfbrandt v. Russell* 384 US 1966

case as well which is *State of Kerala v. Raneef*⁹ where in this case a doctor by the name of Raneef was heading the medical wing of the Popular Muslim Front. The Supreme Court held that the ruling as given by the American Supreme Court will hold true in India as well and the Doctrine of Guilt by Association cannot exist in India.

With regards to restrictions, in the case of *Hazi Mohammad Ibrahim vs District School Board Malda*¹⁰ it was held that a restriction that requires a teacher to obtain prior permission before interacting with a political party is an inexpensive restriction. It aimed at preventing teachers from getting involved with political institutions.

Moreover, in the case of *Ramakrishna v. President, District Board, Nellore*¹¹, it was held that a government order requiring municipal teachers not to join any unions aside from those officially approved was held to impose prior restraint and thus invalid. It is a form of administrative censorship.

To perceive the judiciary and legislature's mindset toward the Right to Form Associations

The Constitution provides that the right to form associations be a right, the provisions of Article 19 (4) radically restrict this freedom by empowering the state to curtail on this freedom. Even though there are only certain restrictions which are placed on this freedom, it is easy to turn any association into one that conforms to these restrictions which will thus lead to an order that the association in question is illegal. This brings back memories of the colonial style rulings where the state had the authority to break up any organization or association that was deemed a threat to it. This is the path that India is on in terms of assembly and association rights. It is the judiciary's right to protect the constitution and the fundamental rights as guaranteed by it as well. It is the duty of the Supreme Court to realize these defects and to correct it. Unfortunately, enough, the Supreme Court which is the chief judiciary of India is superficial when it arrives at understanding the freedom of association. To put it simply, the judiciary underestimates this right. This may even be the mindset of the government and the legislature as they also seem to have taken a blind attitude

⁹ *State of Kerala v. Raneef* AIR 2011 SC 346

¹⁰ *Hazi Mohammad Ibrahim vs District School Board Malda* AIR 1958 Cal 401

¹¹ *Ramakrishna v. President, District Board, Nellore* AIR 1952 Mad 253

to the betterment of this right. It is the perspective shared by the judiciary as well as the legislature that the Right to Form Associations is perfect and is in no need for improvisation.

On the other hand, it can be argued that this view is affirmed because there seems to be nothing wrong with the current working of this right. It is easily understood that there is a right to freedom of association which is extended to all citizens of India, there are also restrictions on this right which are to be reasonable in nature and parliament can make laws restricting this right only to the tune of the restrictions as mentioned in Article 19(4). As the famous saying goes, if it is not broken, do not fix it. Since there are no apparent problems with the functioning of this right and if any arise then the judiciary is in full capacity to deal with such problems, pass a verdict and make a suggestion to the parliament to legislate and do the needful.

Conclusion

It would be apt to conclude by saying that the right to form associations is a fundamental right as provided and protected by the Indian Constitution. Even though it is a right given to the citizens of India it is not one of an absolute nature. Its absolute status is blocked by the restrictions put upon it as stated in Article 19(4) of the Constitution. These restrictions must not be one of an unreasonable nature as that would be scarring the sanctity of this right. The right to form associations is one which is of vital importance to the functioning of democracy and thus should not be impaired beyond the grounds as written in the above stated article. These grounds exist for genuine reasons and must not be misused to bring any and all associations under the ambit of these grounds for restrictions. Finally, though the restrictions may seem reminiscent of the colonial past of India, they are necessary to be put in place as they provide some air of restriction and regulation of the right so as this right may and will not be misused. Such misused could only mean the formation of associations which are a danger to the peace, security and moral wellbeing of India which is to be prioritized to a high regard. At the end of the day, the rights of the community as a whole must supersede the rights of the individual as a person.