BLOGS

Article 19(2): Reasonable Restrictions on Article 19

Ruchika Mohapatra · 28 Sep 2023

Edit TABLE OF CONTENTS Introduction Article 19(2): Reasonable Restrictions on Article 19 Security of State under Article 19(2) Public Order under Article 19(2) Decency or Morality under Article 19(2) Contempt of Court under Article 19(2) Defamation under Article 19(2) Incitement to an offence under Article 19(2) Cases on Reasonable Restrictions on Article 19 Conclusion

Introduction

Article 19 outlines the fundamental rights of Indian citizens related to freedom of speech and expression, peaceful assembly, forming associations or unions, free movement within the country, and the right to practice any profession, occupation, trade, or business.

However, they are subject to reasonable restrictions on Article 19 that are imposed by the State in the interest of sovereignty, integrity, security, friendly relations with foreign States, public order, decency, morality, contempt of court, defamation, incitement to an offence, or for protecting the interests of any Scheduled Tribe.

Article 19(2): Reasonable Restrictions on Article 19

Article 19(2) specifies the grounds for reasonable restrictions on Article 19. These include:

1. Sovereignty and integrity of India
2. Security of the State
3. Friendly relations with foreign states
4. Public order
5. Decency or morality
6. Contempt of Court
7. Defamation
8. Incitement to an offence

Security of State under Article 19(2)

The first ground aims to prevent speech that advocates the secession of any part of India's territory from the Union. It pertains to the country's territorial integrity rather than that of individual states.

"Security of the State" covers speech that aims to overthrow the government, incite rebellion, or provoke external aggression. However, the Court clarified in ***Romesh Thappar v. State of Madras*** that ordinary breaches of public order that do not endanger the state do not fall under this category.

Public Order under Article 19(2)

The Romesh Thapar case introduced the **addition of "public order" as a ground for restriction**. It encompasses speech that directly incites disorder or tends to do so.

Decency or Morality under Article 19(2)

"Decency or morality" represents the balance between individual freedom of speech and the state's duty to protect morals. **The Hicklin Test**, which examines whether discourse tends to deprave or corrupt those open to immoral influences, was initially used to assess obscenity **(Ranjit Udeshi v. State of Maharashtra)**.

However, the courts have since shifted to the **Community Standards Test**, which considers contemporary societal values and national standards **(Aveek Sarkar v. State of West Bengal)**.

Obscenity should be determined based on the perspective of an average person, and the work in question should be evaluated. The concept of obscenity evolves with changing social values.

Contempt of Court under Article 19(2)

"Contempt of Court" is another ground for restriction, encompassing both civil and criminal contempt. Civil contempt involves willful disobedience of a court decision or breach of a court undertaking.

Criminal contempt includes actions like scandalizing or undermining the authority of a court, prejudicing judicial proceedings, or obstructing the administration of justice. **Articles 129 and 215** empower the Supreme Court and High Courts to punish contempt.

Defamation under Article 19(2)

"Defamation" is also grounds for reasonable restriction, involving statements that expose a person to hatred, ridicule, or contempt. **Sections 499 and 500 of the Indian Penal Code** criminalize defamation, even if the statement is true. The Supreme Court upheld the constitutionality of these sections in **Subramanian Swamy v. Union of India**.

Incitement to an Offence under Article 19(2)

In the context of Article 19(2), “incitement” typically refers to speech or expression that directly encourages or provokes others to engage in unlawful or harmful activities, such as violence, discrimination, or acts that threaten public order and safety.

Cases on Reasonable Restrictions on Article 19

In **Shreya Singhal v. Union of India**, the Court reaffirmed that any reasonable restriction on Article 19 must be directly related to the eight subject matters outlined in Article 19(2). In this case, **Section 66A of the Information Technology Act 2000**, which imposed severe punishment for electronic communication causing annoyance or inconvenience, was invalidated as it had a chilling effect on freedom of speech and expression due to its overbreadth and vagueness.

In **People’s Union for Civil Liberties (PUCL) v. Union of India**, the Supreme Court recognized that the telephone is also a means of expression. Phone tapping would be a violation of Article 19(1)(a) unless it constitutes a reasonable restriction under Article 19(2).

Unlike in the **USA (Texas v. Johnson)**, the Supreme Court disapproved of flag burning as free speech or expression **(Union of India v. Naveen Jindal**. The Supreme Court also acknowledged gender identity as an aspect of expression under Article 19(1)(a) in **National Legal Services Authority v. Union of India.**

There is no fundamental right to engage in bandhs and hartals. No party or organization is entitled to paralyze industry or commerce. This also applies to strikes, especially for government employees **(T.K. Rangarajan v. Government of Tamil Nadu).**

Conclusion

While the rights under Article 19 of Constitution of India are not absolute and can be curtailed by reasonable restrictions on Article 19 to maintain public order, national security, and the interests of the state, landmark judgments by the Indian judiciary have been instrumental in upholding and defining the contours of these rights.

Through dynamic interpretations and a commitment to protecting fundamental rights, the judiciary has ensured that these liberties are not arbitrarily infringed upon and have evolved to address the ever-changing needs of society.

This evolution has enabled citizens to engage in public discourse, freely express their opinions, associate with like-minded individuals, and pursue their chosen occupations, thereby fostering a robust democratic culture that respects the rights and dignity of every citizen.

To read Landmark Judgements on Article 19, click here!