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Freedom Of Occupation, Business, Profession and Trade-Article 19(1)(2)

The Constitution of India taking into consideration the need and the importance of work, enshrines and has guaranteed a fundamental right under article 19(1) (g) to practise any profession, or to carry on any occupation, trade or business, to all the citizens residing within the jurisdiction of the country. This right aims at the welfare and well being of the citizens as well as the nation as a whole. Under this article, every citizen has the right to choose an employment, or take up any trade or occupation etc as per his volition and free will, but at the same time the State has the right to impose certain limits, which it feels necessary for the interest of the public. This article does not guarantee a monopoly to any individual to carry on any occupation.



R.N. 111/2001

DACSSS, Bihar, India

ESTD.

2001-02

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Legal Status	A Welfare Society Registered in the year 2001 under Society Registration Act- 21, 1860 By the department of Registration Government of Bihar Patna India – R.N.111/2001
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GOI APPROVAL	Education, Training and Internship for skill Elevation under CTE/TVET Scheme

Ref. No-.....

Date: -

The right to carry on a business also includes the right to close it, at any time depending upon the desire of the owner. The State cannot compel any citizen to run a business which is against his will. But as no right is absolute, the right to close a business is also not an absolute right. It is something which the State has the right to control by law for the welfare of the public. The right to close down a business cannot be equated with the right not to start and carry on a business. If a person does not wish or even plan to start any kind of business, he cannot be pressurized to start one, it is completely upto his discretion. However, if a person is involved in some business, he can be compelled by the State to close it down, for the concern of the general public.

Article 19(1) (g) provides that all citizens shall have the right to practice any profession, or to carry on any occupation, trade or business.

Article 19 (1) (g) confers a general and vast right available to all persons to do any particular type of business of their choice. But this does not confer the right to do anything consider illegal.

Subject: Constitutional Law-II

Study Material on Topic: Article 19(1) (g)- Freedom Of Occupation, Business, Profession and Trade Expression, Unit-III(A)

B.A.LL.B-4th sem

Subject Teacher: Akhlaqul Azam

Freedom Of Occupation, Business, Profession and Trade-Article 19(1)(g)

The Constitution of India taking into consideration the need and the importance of work , enshrines and has guaranteed a fundamental right under article 19(1) (g) to practise any profession , or to carry on any occupation , trade or business , to all the citizens residing with the jurisdiction of the country. This right aims at the welfare and well being of the citizens as well as the nation as a whole. Under this article, every citizen has the right to choose an employment, or take up any trade or occupation etc as per his volition and free will, but at the same time the State has the right to impose certain limits , which it feels necessary for the interest of the public .This article does not guarantee a monopoly to any individual to carry on any occupation. The right to carry on a business also includes the right to close it, at any time depending upon the desire of the owner. The State cannot compel any citizen to run a business which is against his will. But as no right is absolute, the right to close a business is also not an absolute right. It is something which the State has the right to control by law for the welfare of the public. The right to close down a business cannot be equated with the right not to start and carry on a business. If a person does not wish or even plan to start any kind of business, he cannot be pressurized to start one, it is completely upto his discretion. However, if a person is involved in some business, he can be compelled by the State to close it down, for the concern of the general public.

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in eyes of law or to hold a particular job or to occupy a particular post of the choice of any particular person.

Objective of Article 19 (1)(g)

This fundamental right is intended to evolve socio-economic strengthening throughout our country. The essence of true and just democracy is derived from the powers provided to citizens of any nation. These powers are in form of fundamental rights guaranteed by State. The word "guarantee" plays an eminent as well as vital role in deciding the gravity of power provided by the state to its citizens. Our Indian Constitution provides six basic fundamental rights to citizens of India and even some rights are conferred to non-citizens also. Our Constitution has tried to cover all the ambits under which citizens can be guaranteed fundamental rights.

Analysis of Article 19 (1) (g)

Article 19(1)(g) provides a tool which will ensure to all citizens their right to earn livelihood, this article is an enabling provision for the same. Article 19(1)(g) guarantees to all citizens the right to practise any profession or to carry on any occupation, trade or business. The ambit of this article tries to cover all forms as well as means to earn livelihood and to do economic activity. The basic objective to add so many overlapping terms i.e trade , business ,occupation, profession in this article in our constitution is that the our constitution makers did not want to omit any kind of economic activity and create any loophole. Kuldeep Singh J has defined the four expressions i.e profession, occupation, trade and business in *Sodan Singh v. New Delhi Municipal Committee* (1989) case as follow –

"Profession" means an occupation carried on by a person by virtue of his personal and specialised qualifications, training or skill. The word „occupation" has a wide meaning such as any regular work, profession, job, principal activity, employment, business or a calling in which an individual is engaged. „Trade" in its wider sense includes any bargain or sale , any occupation or business carried on for subsistence or profit, it is an act of buying and selling of goods and services. It may include any business carried on with a view to profit whether manual or merchantile. „Business" is very wide term and would include anything which occupies the time. Attention and labour of am man for the purpose of profit. It may include in its form trade,

profession, industrial and commercial operations, purchase and sale of goods and would include anything which is an occupation as distinguished from pleasure”

Trade:

The word ‘trade’ means exchange of goods for goods or goods for money or any business carried on with a view for profit, whether manual or mercantile distinguished from liberal arts or learned professions and from agriculture. Trade in its primary meaning is the exchanging of goods for goods or goods for money, in its secondary meaning for goods, it is repeated activity in the nature of business carried on with a profit motive, the activity manual or mercantile, as distinguished from the liberal arts or learned professions or agriculture.

Business:

The expression ‘business’ is used in a wide sense so as to include the practice of the profession of an advocate. The word ‘businesses’ must be interpreted in the context of the statue in which it occurs and not in the context of the other statutes or in a manner alien to the context of the statute concerned. ‘Business’ includes any trade, commerce or manufacture or any adventure in the nature of trade, commerce or manufacture, or any profession or vocation, calling an immediate task or objective ; a commercial or industrial enterprise; and means practically anything which is an occupation as distinguished from pleasure. The expression ‘business’ is a word of indefinite import. In taxing statutes it is used in the sense of an occupation or profession which occupies the time, attention and labour of a person normally with the object of making profit. It also refers to employment, occupation, profession, or commercial activity for gain or livelihood. Activity or enterprises for gain, benefit, advantage or livelihood are business.

Occupations:

An employment by which a person earns his living is his occupation. The trade or calling by which one ordinarily seeks to get his livelihood. The word ‘occupation’ particularly refers to the vocation, profession, trade or calling in which a person is engaged for hire or for profit, and it has been repeatedly held that a person’s principal business and chief means of obtaining livelihood constitutes his occupation. The term expresses an idea of continuity, continuous series of transactions and implies regularity in a specific line of activity. Furthermore, time is a

necessary ingredient, and although it need not be protracted, it must not be momentary. It does not include an isolated or semi-occasional and temporary adventure in another line of adventure. No universal test can however be laid down for determining when an activity amounts to an occupation and when it does not.

Profession

The meanings of the word profess have been given in Webster's New Word Dictionary as "to avow publicly, to make an open declaration of", to declare one's behalf in, as to profess religion, to accept into a religious order. The meanings given in the Shorter Oxford Dictionary are more or less the same. 'Profession' defined in Concise Oxford Dictionary means, among other things, vocation and calling, especially one that involves some branch of learning or science, as the learned profession (divinity, law, and medicine). A profession is normally associated with the exercise of intellectual or technical equipment resulting from learning or science. The term 'profession' involves the idea of an occupation requiring either purely intellectual skill or manual skill controlled, as in painting and sculpture, or surgery, by the intellectual skill of the operator, as distinguished from an operation which is substantially the production or sale of arrangements for the production or sale of commodities.

The SC has distinguished between the meanings of words "trade" and business in *Krishan kumar v. State of J&K*; (1967). The SC brings out the distinction between the two terms in the following manner: "The word; 'business' is ordinarily more comprehensive than the word 'trade', although very often one is used synonymously with the other. The word 'business' connotes some real, substantial and systematic or organized course of activity or conduct with a set purpose. Although a citizen has a fundamental right to carry on a trade or business, he has no fundamental right to insist upon the Government or any other individual for doing business with him.

The words 'trade', 'business', 'profession' in Article 19 (1) (g) have been interpreted varyingly. The word 'trade' as used in Article 19 (1) (g), has been held in Safdarjung Hospital case 26 is of the widest scope. It includes the occupation of men in buying and selling, barter or commerce, work, especially skilled e.g. the trade of gold smiths. It even includes persons in a line of business in which persons are employed as workmen.

The word 'business' it is said, is ordinarily more comprehensive than the word 'trade' but one is used as synonymous with other. In *Safdarjung Hospital case (1970)* again the Court said that the word 'business' too is a word of wide importance. In one sense it includes all occupations and professions. But in the collocation of the terms and their definitions these terms have a definite economic content of a particular type and have been uniformly accepted as excluding professions and are only concerned with the production, distribution and consumption of wealth and the production and availability of material services.

In *Narain Swadeshi Weaving Mills v. Commissioner of Excess Profits Tax(1955)* the Supreme Court observed that the word business connotes some real, substantial and systematic or organized center of activity or conduct with a set purpose but no general principle could be laid down which would be applicable to all cases and that each case must be decided on its own circumstances according to ordinary common sense principles as to what business is. A profession on the other hand, has been held ordinarily as an occupation requiring intellectual skill, often coupled with manual skill.

In the case of *T.M.A. Pai (2002)*, it was held that Article 19 (1) (g) employs four expressions viz. profession, occupation, trade and business. Their fields may overlap, but each of them does have a content of its own. They cover all activities of a citizen in respect of which income or profit is generated, and which can consequently be regulated under Article 19 (6). Education has so far not been regarded as a trade or business where profit is the motive. Even if there is any doubt about whether education is a profession or not, it does appear that education will fall within the meaning of the expression 'occupation'. The establishment and running of an educational institution where a large number of persons are employed as teachers or administrative staff, and an activity is carried on that results in the imparting of knowledge to the students, must necessarily be regarded as an occupation, even if there is no element of profit generation. It is difficult to comprehend that education, *per se*, will not fall under any of the four expressions in Article 19(1) (g). 'Occupation' would be an activity of a person undertaken as a means of livelihood or a mission in life.

Scope and Ambit of Article 19 (1) (g)

Freedom to Carry on Any Occupation

Article 19 (1) (g) confers a broad and general right which is available to all persons to do work of any particular kind and of their choice. It does not confer the right to hold a particular job or to occupy a particular post of one's choice. The right to pursue a calling or to carry on an occupation is not the same thing as the right to work in any particular post under a contract of employment.

In *Fertilizer Corporation v. Union of India (1981)* the workmen challenged the validity of sale of certain plants and equipments on the ground that they will be deprived of their employment and their constitutional right under Article 19 (1) (g) will be violated. The court held that Article 19 (1) (g) does not protect the right to work in a particular post under a contract of employment as such Article 19 (1) (g) can not be invoked against the loss of a job or removal from service. But this does not confer the right to do anything considered illegal in the eyes of law or to hold a particular job or to occupy a particular post of the choice of any particular person. Further Article 19 (1) (g) does not mean that conditions be created by the State or any statutory body to make any trade lucrative or to procure customers to the business/ businessman.

Article 19 (1) (g) is Available against the State and Not Against the Private Individuals:

For a considerable period, the approach of the Judiciary had been that the rights which are given to the citizens by way of fundamental rights as included in Part III of the Constitution are the guarantee to the citizens against State. But actions as distinguished from violation of such rights from private parties are the private action and are sufficiently protected by the ordinary law.

Locus Standi: Who can file Petition for Enforcement of Article 19(1)(g)

In *A.B.S.K. Sangh (Rely) v. Union of India (1981)* it has been held that even an unregistered association can maintain a petition for relief under Article 32 of the Constitution if there is a common grievance i.e. Article 32 is not to protect only individual's fundamental rights but is capable of doing justice wherever it is found and the society has an interest in it. In the historic judgment in Judges' Transfer case (1982), the seven judges Constitution Bench of the Supreme Court has set at rest the controversy whether a person not directly involved can move the court for the redressal of grievances. The court held that any member of the public having 'sufficient interest' can approach the court for enforcing constitutional or legal rights of such persons or group of persons even through a letter. In the same case the Hon'ble Court has held that it can

not be said that lawyers only have the right of locus standi to file a petition in respect of every matter concerning judges, courts and administration of justice. Again in *Rice and Flour Mills v. N.T. Gowda* (1971) the Supreme Court held that a rice mill owner has no locus standi to challenge under Article 226 for setting up of a new rice mill even if the setting up of such rice mill is in contravention of the rule because no right vested in the applicant has been infringed.

The Freedom under Article 19 (1) (g) is available only to the Citizens of India and it can not be claimed by Non-citizens. The fundamental rights guaranteed under Article 19 are available to citizens, i.e., living natural persons having Indian citizenship. A non-citizen cannot challenge validity of laws under Article 19. For the purpose of Article 19 (1) (g), the following entities have been held to be non-citizens. A company incorporated under the company Act. However, the fundamental rights of the shareholders of a company are not lost when they associate to form a company. A religious denomination or a section thereof. Municipal committee, a juristic person like a Union, a deity an association registered under the Societies Registration Act.

Ghodra Electricity Co. Ltd. v. State of Gujarat (1975)

It was held that though a company has no fundamental right under Article 19, a shareholder and the managing director have the right under the Article 19 (1) (g). Court observed:

- (i) The scope of Article 19 (1) (g) is restricted merely to those natural human beings who are Indian citizens and that
- (ii) The state can regulate private business corporations in a major way without caring for limits prescribed by the Article 19 (1) (g) of the Constitution.

This affords greater lee way to the government to regulate private enterprises to promote national interests.

In *Thomson CSF v. National Airport Authority* (1993) the claim of the foreigner company was based on Article 14 without falling back upon Article 19 (1) (g). The foreigner company by invoking the writ jurisdiction prayed for injunction restraining the Airport Authority from granting the contract of modernization of Air Traffic Services to another foreigner company. The court held that a foreign company can ask the Court to see whether the action of the State measure up to the various dimensions of Article 14 and demolish it if it fall short of the

same. Since the rights and duties are all comprehended in Article 14 of the Constitution and there is no need to fall upon Article 19 (1) (g) and the court will not tolerate a less exacting standard of judicial review in case of a contract where a foreigner is a competing party.

Cases

In *Chintamanrao v State of M.P (1951)*, an Act of Madhya Pradesh Government empowered the Deputy Commissioner to prohibit the manufacture of bidis during the agricultural season in such villages as he might specify in his order. The Supreme Court held that such a provision is void , as it violates Art 19(1)(g) , since a total prohibition of the manufacture imposes an unreasonable and excessive restriction on the lawful profession of manufacturing bidis.

In *Mohd.Faruk v. State of M.P.(1958)*, the M.P Municipal Corporation Act, 1956, made it mandatory upon the Corporation to make adequate provisions for the construction, maintenance and regulation of a slaughter house. Section 432 authorizes the Government to modify or repeal any bye-laws made by the Corporation. Therefore acting under Section 432, the Government by a notification cancelled the bye-laws made by the Jabalpur Municipality relating to bulls and bullocks which prohibited the slaughter of such animals. It was held by the Supreme Court that such notification infringed the fundamental right of the petitioner guaranteed under Art. 19(1)(g) as the power to cancel the bye-laws cannot be exercised in an arbitrary manner. It was observed that the sentiments of a section of a community may be hurt by permitting the slaughter of bulls and bullocks. However, a prohibition imposed on the exercise of a fundamental right to carry on an occupation, trade or business will not be regarded as reasonable, if it is imposed not in the interest of general public but merely to respect the susceptibilities and sentiments of a section of the people whose way of life, belief or thought is not the same as that of the claimant.

The right to carry on business includes the right to close it any time the owner likes. But as no right is absolute, so the right to close is also not absolute. The restrictions can be placed on it in the interest of public. In *Excel Wear v. Union of India*, (1979), it was held that refusal or approval for closure of a business when the owner cannot pay even minimum wages to his employees, was not in the interest of public and hence it was invalid.

S.K.K weaver Co-operative v State of Tamil Nadu (1987) the government or its executive officers cannot interfere with the fundamental right guaranteed under article 19(1)(g) of the constitution, unless they can point some specific rule of law which authorized their act. The government order prohibiting flaying of co-operative society after a living person, including political leader or minister was held invalid and destructive to the basic principles of rule of law.

Bhagwandas v. Municipal Corp. Delhi (1995): the Municipal Corporation Delhi imposed prohibition on sale of sugar- cane juice in Municipal Area. The constitutionality of the prohibition imposed was challenged on the plane of fundamental right of Article 19(1) (g). While dismissing the order of the corporation as unconstitutional, the court reasoned that there should be sufficient material enabling the formation of the opinion by the authority that an outbreak of dangerous disease is impending or had already taken place.

Probable Questions

1. Explain in detail objective of fundamental right to Freedom of Occupation, Business, Profession and Trade.
2. “*All citizens shall have the right to practise any profession or to carry on any occupation, trade or business*”. Comment with help of decided cases.
3. “*Fundamental right under article19 (1) (g) is intended to evolve socio-economic strengthening throughout our country*”. Comment
4. Discuss the ambit of fundamental right to Freedom of Occupation, Business, Profession and Trade under article19 (1) (g).

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Affiliation, Accreditation & Membership : India & Abroad

Autonomous Board for Secondary & Post Secondary Education

Ref. No.

Date.....



Notification No. P.26/4/52 C.C.
Bharat Sarkar/Government of India
Grih Mantralaya/Minister of Home Affairs

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New Delhi, the 20th September, 1952

Subject: Recognition of the Examinations.

According to the Ministry of Home Affairs, Government of India, Notification No. F. 26/4/52 C.C. dated 20th September, 1952 issued in consultation with the Union Public Service Commission that in case of Degree/Diploma awarded by Boards and Universities in India which are incorporated by one act of Central or Part A/Part B State Legislature in India, no formal orders recognizing such Degree or Diploma need be issued by Government.

Such Degree/Diploma should be recognized automatically for the purpose of employment.

Sd/-
(Harish Chandra)
Under Secretary to the Govt of India



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RN : 111/2001-02 DACSS BIHAR

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Origin of All India for Education & Training : Globally Recognized Professional Institution

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9576740702
8521772770

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Ref No :.....

Date:.....

Recognition

Education & Examination

Govt. Notification

Ministry of Human Affairs

Government of India

Notification no. 26/04/52CC

Issued in consultation with UPSC

That in the case of Degree/Diploma awarded by Board/University in India which are incorporate by an act of central or part B state legislature in India.

No formal orders of recognition for such degree/diploma needed to be issued by government. Such degree should be recognized automatically for the purpose recognized automatically for the purpose of employment.



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However, the Board maintains good standing for **Public Accountability** with its Private Financial resources.



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Date:-.....

प्रामाणिक होंगे एनजीओ के दिए गए कौशल प्रमाणपत्र, दिलाएंगे रोजगार

रिटेट उन्नी गान्धरा

नई दिल्ली: विश्वसनीयता पर सभे तमाम प्रश्न विज्ञों के कारण मोदी सरकार ने गैर सरकारी संगठनों (एनजीओ) की भूमिका को निस्संदेह समीक्षित किया है, लेकिन समाज में व्यापक पहुंच रखने वाली इन संस्थाओं की शक्ति को भी जनहित में भुनाने की तैयारी सरकार कर रही है। कौशल विकास एवं उद्यमशीलता मंत्रालय के अधीन कार्यरत राष्ट्रीय व्यावसायिक शिक्षा एवं प्रशिक्षण परिषद (एनसीबीईटी) ने निर्णय किया है कि अपने स्तर से विभिन्न क्षेत्रों में कौशल प्रशिक्षण देने वाली गैर सरकारी व गैर लाभकारी संस्थाओं (एनपीओ) का नियमितीकरण किया जाएगा। उनके

- एनजीओ-एनपीओ का मानवीकरण कर रिक्ल ईको-सिस्टम के विराटर की तैयारी
- एनसीबीईटी ने विभिन्न संस्थाओं व कारपोरेट प्रतिनिधियों के साथ मंथन कर बनाई गाइडलाइन

पाठ्यक्रमों में एकरूपता लानकर प्रशिक्षण प्रमाण-पत्रों का मानकों के अनुरूप और प्रामाणिक बनाया जाएगा, ताकि रिक्ल ईको-सिस्टम इनके सहारे समाज के अंतिम छोर तक पहुंचे और अधिक से अधिक युवा रोजगार-स्वरोजगार के लिए तैयार हो सकें।

एनसीबीईटी का मानना है कि एनजीओ-एनपीओ का दायरा बहुत बड़ा है। ये संस्थाएं गरीब, पिछड़े व

आदियार्थी यांगे की ओर काम करती हैं। इनमें तमाम संस्थाएं अपने स्तर से कौशल कार्यक्रम पूर्ण चलाती हैं। उनमें आप्यार्थी प्रशिक्षण से भी ही तो प्रामाणिक या कोई मानक न होने के कारण उनकी स्वीकार्यता उद्योगों-कारखानों या शिक्षण संस्थाओं में नहीं होती। इसे देखते हुए ही इस दिशा में काम शुरू हुआ है कि कौशल प्रशिक्षण के शीत्र में काम करने वाली गैर लाभकारी, गैर सरकारी संस्थाओं का नियमितीकरण कर उन्हें ईको-सिस्टम में शामिल कर विश्वसनीय बनाया जाए। इसके लिए एनसीबीईटी की ओर से पिछले दिनों दो बैठकें देश के प्रमुख एनजीओ और कारपोरेट प्रतिनिधियों के साथ कीं।