

THE RIGHT OF PEACEFUL ASSEMBLY

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ABSTRACT

The Right of peaceful assembly and association has been recognized as a basic human right under Article 20 of the Universal Declaration of Human Rights. The freedom of assembly is an adjunct of and equally essential as the freedom of expression to a democratic system of Government. The right of peaceful assembly and association lie at the core of any democratic and open society. Apart from the UN Declaration on Human Rights, this right is guaranteed by European Convention on Human Rights, International Covenant on Civil and Political Rights and by many National Constitutions.

Keywords: Right to peaceful assembly, section 144 of CrPC.

INTRODUCTION

According to Chief Justice Marshall of the US Supreme Court, this right derives its source from those laws whose authority is acknowledged by civilized man throughout the world. Similarly, Carl J. Fredrick, in his book, expressed that, whether or not the free speech and free assembly are natural rights, they are necessary concomitants of constitutional decision, for, major deliberation of an issue by any number of people who are to act collectively, presupposes an exchange of view on the issues involved in the decision.

Although there is a lot of interference with this right on the part of those entrusted with the State Power. If there are no proper safeguards, then this right can be eroded. Dr. Anand Prakash, in his book said, "One can safely make the positive assertion, on the basis of human experience, that the survival of a Government by consent depends quite a great deal on the zealotness with which the people safeguard the right to free assembly and freedom of association and create institutions which can effectively check-mate their erosion. Eternal vigilance, therefore, is required on the part of citizens, so that those rights are preserved, sustained and strike deep roots in the policy.

RIGHT TO ASSEMBLY: INDIAN SCENARIO

Article 19(1)(b) of the Constitution of India provides right to assemble peaceably and without arms; thus the above right is subject to three limitations namely- (a) the assembly must be peaceable; (b) it must be unarmed; (c) the State may impose any reasonable restriction as may be deemed necessary in the interests of public order; or of the sovereignty or integrity of India.

Disorderly or tumultuous assemblage may be forbidden. It is obvious that the right exists only in the case of an assemblage for lawful purposes.

The right of public meeting or of procession is not specifically guaranteed by the Constitution but will follow from the right of assembly. But there is no right to hold a meeting anywhere as the citizens please, e.g., on private property or even on Government property, in the absence of any law or usage supporting such right. The right to hold meetings in public places is subject to the control of the appropriate authority regarding the time and place of the meeting.

It was held in *Himmat Lal*'s case that freedom of assembly is an essential element of any democratic system. The citizens have the right to discuss their ideas and problems be it of social, religious, economic or political in nature. However, this right is not absolute but restrictive in nature. Reasonable restrictions can be imposed by the state as the state owns the multi-dimensional responsibility of maintaining and ensuring security of the State as well as social public order.

A restriction of this right would be upheld if it is in the interest of public order e.g., the provision in section 126 of the Representation of the People Act, 1951, which bans public meetings within any constituency on the date of an election; or in section 144 of CrPC, which authorizes the making of temporary orders for the prevention of an imminent breach of the peace; or section 14 of the U.P Opium Smoking Act, 1934, which penalizes the act of being a member of an opium smoking assembly;¹³ or for the purpose of suppressing the mischief of gambling. Reasonable restrictions imposed under Article 19(3) are in the interests of sovereignty and integrity of India or public order. Article 19(b) has always been an issue of debate in the country. It has been reviewed, studied and interpreted numerous times by the Supreme Court. Although the restriction must be substantively and procedurally reasonable and should be limited in its nature, duration and area of operation. For e.g., an order prohibiting meetings "in any place of public resort" in a city has, accordingly, been held to be too wide and unreasonable. On the other hand, in order to prevent

imminent breach of the peace, any suitable anticipatory action taken would be justified. Section 144 of the Code of Criminal Procedure deals with unlawful assemblies and is intended to serve a public purpose and protect public order. Chapter VIII of the Indian Penal Code (Of offences against the public tranquility) lays down the conditions when an assembly becomes „unlawful“. According to section 141 of IPC, an assembly of five or more persons is designated as an unlawful assembly, if the common object of the persons composing the assembly is-“ (a) To overawe by criminal force, or show of criminal force, [the Central or any State Government or Parliament or the Legislature of any State], or any public servant in the exercise of the lawful power of such public servant; or (b) To resist the execution of any law, or of any legal process; or (c) To commit any mischief or criminal trespass, or other offence; or (d) By means of criminal force, or show of criminal force, to any person, to take or obtain any possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or (e) By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or omit to do what he is legally entitled to do.”

Section 144 CrPC, describes a complete procedural mechanism to deal with unlawful assembly. The powers under section 144 CrPC are to be exercised in order to prevent disturbance of public order, tranquility and harmony by taking immediate steps by a specified authority when it is desirable to take such preventive measures.

CONCLUSION

Although on several occasions the state machinery or the Police exercise unnecessary and arbitrary force to curtail the rights of the citizens under Section 144 of CrPC that should be monitored properly by the state in order to provide a smooth way to their citizen.