
FREEDOM WITH FENCES: INDIA'S CONDITIONAL GUARANTEE OF MOVEMENT AND RESIDENCE

Aditya Kumar, Dr. Ram Manohar Lohiya National Law University, Lucknow

ABSTRACT

This article discusses the extent and subjectivity of the basic rights of movement and residence as enshrined by Article 19(1)(d) and 19(1)(e) of the Indian Constitution. These rights give Indian citizens the ability to move about freely and reside anywhere in the nation, serving as the basis for personal freedom, economic development, and cultural exchange. But the Constitution also makes provision for reasonable restrictions under Article 19(5) in the public interest, interest of national security, and protection of Scheduled Tribes. These exceptions bring to light the constitutional maxim that every fundamental right is not absolute in character.

The article discusses the fine balance between the freedom of an individual and the concerns of a plural and diverse society such as India. It explores judicial interpretations through path-breaking cases like *Kharak Singh v. State of U.P.*, *A.K. Gopalan v. State of Madras*, and *Govind v. State of M.P.*, highlighting how courts have handled clashes between state interest and rights of citizens. It also examines the imposition of movement restrictions in different contexts, such as border security, environmental protection, tribal area safeguards under the Fifth and Sixth Schedules, and during public health emergencies like the COVID-19 pandemic.

The article also points to socio-economic repercussions of movement controls, observing their disproportionate incidence on marginalised groups and the potential for exacerbating inequality. It also recognises, however, the need for such controls to stem illegal immigration, maintain ecological balance, and ensure public order.

It stipulates that any limitation should follow the guidelines of proportionality, legality, and non-discrimination, and also be amenable to judicial scrutiny. It ends by espousing a model of governance that preserves fundamental freedom but also safeguards collective well-being and democratic stability. This balanced approach is required in order to preserve the values of the constitution and guarantee justice, liberty, and equality for Indian citizens.

Keywords: Freedom of Movement, Residence Rights, Article 19 of Indian Constitution, Reasonable Restrictions, Scheduled Areas

Introduction:

Being the citizens of India, we enjoy certain constitutional, civil, and fundamental rights. The statement “Right of movement and Residence are freely available in India” refers to the constitutional right of Indian citizens. It is one of the most prominent fundamental rights of the Indian constitution available to its citizens. This right allows a citizen to move freely within and between states without unjustified interference or restriction from the government. It's aimed at promoting personal autonomy, facilitating economic opportunities, stimulate cultural exchange, and enabling individuals to seek better living conditions or escape maltreatment. The government must assure this right unless there is a exigency for reasonable restrictions by law. Moreover it is only available to citizens and to share holders of the company but not to foreigners or legal entities like companies or corporation etc.

Constitutional Provisions and Scope:

The right of movement and residence are entitled to Indian citizens in the Article 19(1)(d)¹ under Part III of the Indian Constitution which guarantees every Indian to move freely throughout the territory of India. However right is subjected to reasonable restrictions under Article 19 (5)², allows state to impose limitations in the interest of general public or for the protection of schedule tribes and in article 19(1)(e)³ guarantees every citizen to reside and settle in any part of the India like the freedom of movement this right is also subjected to reasonable restrictions in the article 19(5) introduction of general public or for the protection of schedule tribes.

Importance of the Right to Movement and Residence:

The right to freedom of movement is an crucial aspect of a personal liberty of an individual. A depreciation in this important right leads to the depreciation in the personal liberty of an individual as well as in the freely development of his/ her soul. While it is true that all rights in organised society are relative rather than absolute, in the ultimate analysis it is only respect for freedom that will give beauty and meaning to men's lives. It is important in multiple expects for making the men's life meaningful.

¹ The Constitution of India, 1950, art 19(1)(d)

² The Constitution of India, 1950, art 19(5)

³ The Constitution of India, 1950, art 19(1)(e)

Socio-Economic and Cultural Implications:

It promotes personal autonomy and self determination by allowing individuals to choose where to live and travel within their own homeland and abroad. This prominent right indirectly affects the economic prosperity of an area as it allows people to seek employment, education, and better living conditions in different regions, contributing to economic growth and prosperity. Relocation to other areas exposes individuals to various cultures, beliefs, and ways of life, which enhances their ways of thinking and the perception of things around them. This exposure leads to empathy and open-mindedness, promoting personal growth and self-development. It exposes individuals to various and multiple learning opportunities, such as getting them enrolled in great universities and schools or specialized training sessions that might not be possible in their native areas. This experience of quality education can boost one's abilities, wisdom, and employment opportunities considerably. It allows families to stay together and reunite across national lines, facilitating social harmony and mental well-being. Staying in other environments and overcoming new challenges ensures that resilience, adaptability, and self-discovery are taken care of. One gains greater insight into one's strengths, weaknesses, and interests while coping with new realities, resulting in personal development and self-improvement. It enables citizens to experience different lifestyles, traditions, and perspectives across the globe which leads to unification & enrichment of cultural's .It enables citizens to participate in political processes and exercise their democratic rights, including voting and engaging in civic activities, regardless of their location. Moving to new places allows individuals to build diverse social networks and connections, both personally and professionally. These connections provide support, mentorship, and opportunities for collaboration, which are essential for personal and professional development as well as in various aspects of life.

Overall, the right of movement and residence empowers individuals to pursue their aspirations, expand their horizons, enhancing mental growth, and develop into well-rounded, adaptable individuals .And government must ensures this at any cost.

Need for Restrictions:

Although this right forms the basis of fundamental rights, giving them without any essential restrictions would prove to be catastrophic for India's social harmony and peace, where many

religious, ethnic, and culturally diverse communities live together along with a lot of regional diversity.

Consequences of Restrictions:

One of the main consequences of limitations on the right of movement and residence is the violation of the individual's liberty. When states impose obstacles like border control, visa requirements, or residence permits, they restrict individuals' freedom of movement and settlement in other places based on their will and circumstances. This restriction of personal liberty has far-reaching implications for individuals, robbing them of personal development, economic opportunities, and cultural enrichment. In addition, movement and residence restrictions can be self-reinforcing of social disparities and discrimination. People from marginalized communities or economically disadvantaged backgrounds may face additional hurdles in meeting the criteria for residency or obtaining travel documents, thereby widening the gap between the privileged and the marginalized. But sometimes it becomes necessary to laid down restrictions for national security, protection of general public, specific areas & well being of state.

Grounds for Imposing Restrictions:

National security is a top priority of any government. Regulations regarding movement and residence are necessary to exclude unauthorized entry of people who can threaten the security of the nation, including terrorists, criminals, or undercover agents. This is particularly necessary in a nation like India, which has multiple issues of security breaches like terrorism and border clashes. India shares borders with several countries especially Pakistan and Bangladesh where managing cross-border movements is crucial for national sovereignty, territorial integrity, and immigration control as there is historical dispute. Restrictions on movement across international borders help prevent illegal immigration, smuggling of illegal & banned goods, and other anti-national activities. They also enable authorities to monitor and regulate trade, tourism, and diplomatic relations effectively.

In light of public health emergencies such as pandemics, restrictions on movement and residence is necessary to prevent the spread of infectious diseases. Quarantine measures, travel bans, and lockdowns help contain outbreaks, protect vulnerable populations, and reduce the burden on healthcare systems. This was particularly evident during the COVID-19 pandemic

when governments worldwide implemented lockdown's and other various restrictions to curb the virus's spread among citizens. These restrictions aimed to ensure public safety and health by limiting unnecessary movement and reducing the risk of infection.

Freedom of movement and residence is restricted in tribal areas in India for protecting the interest of Schedule Tribes and other various prominent and important reasons, including security concerns, protection of indigenous cultures, and preservation of natural resources. These restrictions aim to maintain the socio-cultural fabric of tribal communities and prevent exploitation or disruption by outside influences.

Regarding these provisions are enshrined under the 5th and 6th schedules of the Indian Constitution. It entitles certain protections and rights for tribal communities, including land ownership and governance. The area where the tribal population is concentrated will be demarcated as a scheduled area under the above-mentioned schedules of the Indian Constitution. The central government also takes a direct interest in safeguarding the interests of the tribal population in scheduled areas.

This fundamental right can also be infringed when there is conditions of public order decay. As It can prohibit assembly of four or more people in a public place, enshrined under, Section 144⁴ of CrPC and others various restrictions which include curfews, prohibit gatherings, rallies, or assemblies, deployment of security forces in sensitive areas, and roadblocks or checkpoints for security in areas facing unrest or security threats. However, any such restrictions must adhere to constitutional principles and cannot be arbitrary, excessive or against law.

These can also be imposed for safeguarding and conservation of the Environment in eco-sensitive areas to protect the environment and natural resources. Protected areas and eco-sensitive areas: Some areas, e.g., national parks, wildlife sanctuaries, and eco-sensitive areas, have some restrictions on movement and residence to save biodiversity and avert natural habitat loss. Restrictions are also imposed on construction, development, and human activities in coastal areas, which are enforced under Coastal Regulation Zone (CRZ) norms to protect fragile coastal ecosystems and prevent erosion and pollution. Restrictions are also enforced in forested areas to prevent deforestation, illegal logging, and encroachment, promoting sustainable forest management and biodiversity conservation under various Forest

⁴ *Code of Criminal Procedure, 1973, s. 144*

conservation laws laid down by the Central and State Governments. These restrictions are implemented through regulatory mechanisms and enforcement actions by relevant government agencies, ensuring compliance with environmental laws and safeguarding the ecological balance and public health.

Judicial Interpretation:

These reasonable restrictions are often justified by honorable courts.

In *Kharak Singh v. The State Of U. P. & Others*⁵, vexatious surveillance and domiciliary visits by police are not permitted by any law and therefore held violative of the right to freedom of movement and residence. The Court noted that even psychological restriction of freedom of movement and residence is violative of this Article.

Further on in *A.K.Gopalan v. the State of Madras*⁶ (1950), this issue came up again and again. It has been decided that an individual can assert and bank upon any fundamental right, and it will finally be the responsibility of the court to determine which fundamental right is infringed.

Here, the Supreme Court interpreted Articles 19 and 21 in too narrow a sense. In this case, the petitioner was detained under the Preventive Detention Act, 1950⁷. in prison and hence approached the Court with a writ petition that this infringed upon his rights under Articles 19(1)(d) and 21. The Court opined that Article 21⁸ which guarantees personal liberty, construes personal liberty in the sense of physical body's freedom and not rights conferred under Article 19. This case, therefore, held that personal liberty in detention cases has to be encompassed by Article 21 and not 19(1)(d).

Once more in *Govind v. State of M.P.*⁹, the petitioner alleged that the rules granted under the Police Act of M.P., i.e, Madhya Pradesh Police Vidheyak, 2002¹⁰, infringed his basic right to privacy, which is included in the right to free movement, which is included in Article 21 as well as Article 19. The police officials made a large number of domiciliary visits and secret

⁵ *Kharak Singh v. The State Of U. P. & Others*, AIR 1963 SC 1295

⁶ *A.K.Gopalan v. the State of Madras*, 1950 SCC 228

⁷ *Preventive Detention Act, 1950*

⁸ *The Constitution of India, 1950, art 21*

⁹ *Govind v. State of M.P.*(1975), 2 SCC 148

¹⁰ *Madhya Pradesh Police Vidheyak, 2002*

surveillance which disrupted his privacy. It was argued that the petitioner lived a life of a criminal. The Supreme Court held that this was a reasonable limitation by police authorities since the provisions of the Act itself can only be imposed if there was a determination through available material which reflected a criminal past at the end of the individual's life. The regulations were held to be constitutional and not violative of Article 21.

Conclusion:

In conclusion, while freedom of movement and residence are fundamental rights provided to us by our constitution, it is recognized as a basic human right globally. They are subject to reasonable restrictions in the interest of national security, public safety, protection of scheduled areas, environmental protection, conservation of biodiversity & natural heritage, public order, and the common good. However, any restrictions imposed must be proportionate, necessary, and non-discriminatory, and they should be transparent, accountable, and subject to judicial review. By striking a balance between individual liberties and collective security, societies can uphold the principles of democracy, human rights, and the rule of law. Although the government puts reasonable restrictions that are proportional in the eyes of the general public, when we see the ground level difference that exists in society it is required on the part of the state to ensure reasonable standards of proportionality. Governments should uphold their duty to protect public safety and national security, they must do so in a manner that upholds the principles of democracy, human rights, and the rule of law.