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Evolution of Associational Freedom in Modern Society

Dilip Pandey

Abstract
Associations can take on various forms depending on their intended purpose. According to Cole, an association is defined as "any group of individuals united by a shared objective or system, engaging in cooperative actions that extend beyond a singular act. To achieve their purpose, members come to an agreement on specific methods of operation and establish rudimentary rules of collective action." Essentially, an association is a gathering of individuals who have come together for a particular cause, which may encompass benefits for its members, the betterment of society, or advancements in scientific or charitable endeavours or similar purpose.[1]
The importance of freedom of association in a modern society becomes evident when we consider the role that voluntary associations play today. The democratic ideal, being fundamentally a moral concept, should be pursued through democratic means. Democracy's true value lies in the methods we employ, how we foster personal growth, promote social
progress, govern our nation, and in every aspect of our individual and collective lives. The driving force behind preserving and advancing democratic life is the power of freedom. Self-governance serves as the bedrock of a democratic society.
However, for freedom to be effective, it must be guided by moral principles. Every freedom entails corresponding responsibilities for individuals and others, rendering freedom itself subject to social control. Conversely, society, wielding its power, bears the responsibility of empowering individuals with the means to effectively exercise their freedom. This delicate and challenging interplay between individual freedom and responsibility, and societal power and responsibility, presents the crucial task of striking a balance between the two. In order to do so, every democratic country must define this freedom through a series of concrete rights tailored to the community's needs and safeguard them through a robust legal framework.

Keywords: Freedom of association, Association, Voluntary associations, Democracy, Power, Human rights, international law, History, Development, Contemporary world, Significance, Civil society, social movements, Political participation, Trade unions, non-governmental organizations, Fundamental rights, Constitutional law, International human rights law, Humanitarian law, Peace building, Development cooperation.

Introduction
Human nature compels us to look for companionship. Being social by instinct and necessity, man has always lived in the company of other beings, building communities of varying sizes depending on the degree of social development. Groups of people have gathered together around shared interests or convictions, forming associations that later became corporations and other organizational structures. The line separating the group's many members and its unity is muddled by constant association and a common feeling of purpose.
However, as humans live within societies, they require rules to govern their interactions with one another, as well as individuals within the group who demand and enforce compliance with these rules. Hence, the notions of freedom of association and the establishment of laws are intrinsic to the very existence of humankind. In this historical fact, we have the origin of law and the nucleus of what in political science and constitutional law is called the state.[2]

1. Ballentine, Law Dictionary, 1948, p. 118.
2. See Munir, M.,' Pakistan Constitution', p.1; Also, Sen, S.C., 'Company Action in Modern
    a. Set Up', Calcutta, 1969, p.43.

"The association and co-operation of human beings in voluntary groups is one of the most important facts of social development. As life becomes more highly organized and complex, the groups formed by men and women associating freely for particular purposes increase in number, size power and diversity. In England to-day, for example, it is impossible even to enumerate the countless thousands of voluntary associations which exist for one purpose or another ….. Taken in the aggregate, the voluntary associations, with membership rolls running into many millions and a huge accumulation of property, present a formidable array of power; and their activities extend into almost every field of human activity – economic, professional, religious, educational, political, scientific, athletic, artistic, social, and one knows not what else"[3].

This researcher now plunges into some important characteristics of the right to freedom of association. Distinguishing speech from action, courts have protected the former but never the latter, if unlawful. Speech compounded with unlawful action has generally failed to receive judicial favour. However, it is worth mentioning that association is nothing but the action of forming a more or less enduring group for achieving certain ends. Accordingly, the right of association implies the power of doing a particular kind of act. It is the first important characteristics of this right.

Another important characteristic of this right is that men act in combination. Men acting in combination will command greater power and resources and will exert greater pull and pressure in the various spheres of social life than men acting individually. Burke said: "Liberty, when men act in bodies, is power".[4]

It would be erroneous to assume that an individual's actions lack the exercise of power. Looking back at history, the quest for liberty has consistently involved the pursuit of privileges or, more precisely, the acquisition of power by certain groups of individuals. For instance, the Magna Carta bestowed specific privileges upon the secular and ecclesiastical nobility, which subsequently formed the basis of their liberties. Similarly, Clauses 4 and 6 of the Bill of Rights (1689) explicitly aimed to transfer power from the monarch to the parliament, which was predominantly influenced by the emerging middle class.

These historical examples demonstrate that individual and collective actions are intricately linked to the exertion of power. The struggle for liberty throughout history has been a struggle for the acquisition and distribution of power among various groups within society.

The French Revolution substituted for the feudal privileges, privileges for the rising bourgeoisie in France.[5]The Fourth article of the French Declaration of 1789 declared: "Liberty consists in the power to do everything that does not injure another".[6]Locke went on to narrate that, "Liberty … is the power a man has to do or forbear doing any particular action".[7]If we need to make a summation, liberty, in general and liberty of association in particular, signify power.

There is a mention of "Fundamental Rights" in Part III of the Indian Constitution. It is to note that the word 'right' is not used throughout therein to signify a right ***strictosensu***. For example, article 20(2) of the Indian Constitution provides a bar against double persecution and punishment. It looks like to confer immunity. Whereas article 19 (1) (a) of the Indian Constitution confers a liberty i.e. freedom of speech and expression. Whereas article 19 (1) (c) of the Indian Constitution, in guaranteeing freedom of association, confer a power, 'for it bestows an ability to effect legal relations of others.[8]It is self-evident that the right of association in the Indian Constitution signify 'power'.

Cromwell once remarked: "Every sect saith, 'O, give me liberty', but give him it, and to his power he will not yield it to anybody else".[9]History has proven that when a group of men have gained a certain liberty, they may deny the same liberty to another group of men. Milton, who had written the immortal '*Aeropagitica*' in defence of the 'liberty of unlicensed printing', agreed to become a censor of news in the Cromwellian regime. Those who gained political liberty in England in 1688 and in France and the United States in 1789 denied the suffrage to persons without property. Workers were long denied the freedom to form trade unions in the nineteenth century. In the resolution of constitutional conflicts in respect of the basic freedoms, it is necessary to bear in mind the psychological tendency of those endowed with power to deny power to those without it.[10]

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3. Robson, 'Justice & Administrative Law', 3rd Ed., pp. 317-320.
4. Burke, 'Reflection on the Revolution in France (World's Classics).
5. Leo Garshoy, 'The French Revolution and Napoleonic Wars, 147 (1960): political rights were
    a. made a monopoly of the well-to-do, for the new constitution did away with privileges based upon birth, but respected and strengthened those arising out of property.
6. Ritchie, op. cit., at 141 note 4; The corresponding article in the Declaration of 1793 said: 'Liberty
    a. is the power which belongs to man of doing everything that does not injure the rights of
    b. another'. See also Roger Sultan, 'French Political Thought in the 19th Century, 36 (1931) and J.N. Figgis, Churches in the Modern State 106 (1913)
7. Locke, 'Essay on Human Understanding' 11, XX1, XV, quoted from Maurice Cranston,
    a. 'Freedom: a New Analysis 17 (3rd Ed. 1967). In his work, 'An Enquiry Concerning Human Understanding' Hume said: "By liberty, then, we can only mean power of acting or not acting according to the determination of the will…" V111, !, 114 (Bentam, Matrik ed. 1965).
8. Paton, 'Jurisprudence', 215 (1946).
9. Tanner, J.R. 'English Constitutional Conflicts of the Seventeenth Century', 183 (1st ed., reprint
    a. 1961).
10. Dwivedi, S.N., op. cit., at 239.

Historical Developments

Historically, the foundation for the concept of freedom of association can be traced back to the principle of religious freedom and, subsequently, to the notion of free enterprise for commercial endeavours. The broader notion of freedom of association for political purposes, as well as the specific recognition of freedom of association for trade union purposes, emerged as more recent developments.

While the concept of freedom of association is not explicitly mentioned in historical documents like the Magna Carta, the American Constitution, or the French Declaration of 1789, its earliest reference can be found in the Dutch Constitution of 1814. However, it is important to note that the concept gained significant recognition in the realm of international human rights. Article 20 of the Universal Declaration of Human Rights explicitly recognizes and safeguards the freedom of association.

Thus, while freedom of association may not have been explicitly articulated in earlier legal texts, its significance and protection have gradually evolved, finding explicit recognition in international human rights instruments. Almost all the modern constitutions framed after UDHR contain the provision for freedom of association including that of India which got independence from British rule in 1947.[11]

Meaning of Association

To associate" signifies "to unite for a shared objective," and according to the Oxford Dictionary, the term "association" refers to "a group of individuals united for a common purpose." Duguit emphasizes that "individual liberty encompasses the freedom of association." If individuals possess the right to freely pursue their activities, they must also have the right to freely form associations with others. The commonly accepted definition of association is outlined in Article 1 of the French Law of 1901, which reads as follows:

"Association is a covenant by virtue of which two or more persons place in common in a permanent manner their knowledge or their activity, with the object other than that of sharing benefits. It is regulated, in respect of its validity, by the general principles of law applicable to contracts and obligations".

The above-mentioned definition looks comprehensive but cannot be taken as fully accurate, on the reason that an association is not a convention but an organization of persons created by a convention. Further, the term, 'association' is of a general character and naturally includes every type and form of association. The right to association has, therefore, been held to cover combinations of labour or trade unions as they are now called. The Indian Constitution has expressly mentioned the word 'unions and this word can only be taken to mean not only a trade union but also a union of employers. There are, however, constitutions which distinguish between the general right of association and the specific right of forming trade unions, as for example, Articles 18 and 39 of the Italian Constitution, 1948, as amended to 1963.[12]

According to Tocqueville, the freedom of association is the second 'most natural privilege'.[13]According to the Supreme Court of India, it is a basic freedom.[14] In *State of Madras v. V.G. Row*,[15]the Chief Justice, speaking for the Full Court, said: 'The right to form associations or unions has …. Wide and varied scope for its exercise and its curtailment is fraught with … potential reactions in the religious, political and economic fields…'

According to Ritchie, the liberty of association may be regarded as a mere application of the right of the public meeting.[16]In the United States the broader rights of association have developed, in part, out of the right of assembly, and in part, out of the broader 'due process' concepts.[17]Historically, the right of assembly was closely connected with the right of petition. Mentioned as early as Magna Carta (1215),[18]the right of petition was important in English constitutional history, because it was through the device of the petition that the barons and commons in parliament first asserted the right to assume the initiative in legislation.[19]Gradually the petition evolved into the legislative Bill, so that by 1414 the commons were able to assert to the king 'that there should no statute or law be made, unless they gave thereto their assent', since they were 'as well assenters as petitioners'.[20]The right of petition received its classic modern formulation in the Bill of Rights of 1689, which declared "That it is the right of the subjects to petition the king and all commitments and prosecutions for such petitioning are illegal".[21]

While historically the right of peaceful assembly was regarded in America as a by-product of the right of petition,

11. See Article 19 (1) © of the Indian Constitution.
12. Further discussion will follow later.
13. Tocqueville, 'Democracy in America' (Mentor Book), 98. He said eloquently: Amongst the laws
    a. which rule human societies, there is one which seems to be more precise and clearer than all others. If men are to remain civilized, or to become so, the art of associating together must grow and improve in the same ratio in which the equality of conditions is increased.
14. State of Madras v. V.G. Row, A.I.R. 1952 S.C. 196 at 200.
15. Ibid.
16. Ritchie, 'Natural Rights', 1952, 214.
17. David Fellman, 'The Constitutional Right of Association', 1963, p.3.
18. Magna Carta, ch.61; SeeKcKechnie, W.S., 'Magna Carta', 1914, pp. 465-77.
19. See Pollard, A.F. 'The Evolution of Parliament' (London, Longmans, Green, 1920), pp. 329-31.
20. For the text see Adams, G.B. and Stephens, M.M., 'Select Documents of English Constitutional
    a. History (New York: Macmillan, 1916) pp.181-82. Down to Tudor times the words 'petition' and 'bill' were regarded as synonymous in common speech. McIlwain, C.H., 'The High Court of Parliament' New Haven: Yale Uni. Press, 1910, p.211.
21. Adams and Stephens, op. cit., p.464.

and was so once described by the Supreme Court,[22] it is now regarded, as Chief Justice Hughes said in 1937, as '…cognate to those of free speech and free press and is equally fundamental…. The right is one that cannot be denied without violating those fundamental principles of liberty and justice which lie at the base of all civil and political institutions.[23]Professor Willis mentioned: 'The right to assemblage includes only the physical meeting of many in one place. The right of association presupposes organization and a relation of some permanence between many persons. For the maintenance of political liberty, the right of association is fully as important as the right of assemblage'.[24]'Whatever its pre-degree', as remarked by a judge of the High Court of Allahabad, 'the right of association stands on its own feet in our public law. It has become ***sui generis'.***[25]

The need for freedom of association cannot be overestimated. If free discussion[26]or the freedom to meet for consultation with others[27]be essential to democracy, no less essential would be the freedom to form political parties to discuss questions of public importance and canvass for the acceptance by the government in power for the time being of alternative solutions through constitutional methods.

Freedom of association is not only essential in democracy for the political purposes, it is necessary for the maintenance of the other rights guaranteed to the individual by the constitution or the law. *Prima facie,* the right to form associations is the greatest bulwark against power in any form. Where a single voice cannot make itself heard that of the multitude certainly can. In the words of Denning:[28]

"If men are ever to be able to break the bonds of oppression or servitude, they must be free to meet and discuss their grievances and to work out in unison a plan of action to set things right".

Freedom of Association in Contemporary World

(i) United States of America

Indeed, the American Constitution does not contain a specific guarantee of the right to association. As a result, trade unions were considered illegal restraints on interstate commerce until as late as 1908. However, in 1977, the Supreme Court recognized the legality of trade unions and affirmed the right of workers to join them. This recognition was based on the understanding that the objective of trade unions, namely the improvement of working conditions for their members, is a legitimate one. The right of workers to organize for collective bargaining was deemed a "fundamental right" because individual employees were deemed to be at a disadvantage when dealing directly with their employers, and unions were seen as essential to providing labourers with an equal footing in negotiations with their employers.

Similarly, peaceful picketing,[29] unattended with violence,[30] to publicise a labour dispute, as well as the right of employees to strike and to persuade others to strike, if not actuated by malice,[31] have been upheld as lawful. It is now 'beyond debate' that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the liberty assured by the 'Due process' clause of the 14th Amendment.[32]'It is immaterial whether the beliefs sought to be advanced by association pertains to political, economic, religious or cultural matters.[33]

In some cases, the freedom of association has been deduced from the First Amendment:[34] "Our form of government is built on the premise that every citizen has the right to engage in political expression and association. This right was enshrined in the First Amendment of the Bill of Rights".[35]It has been held that the freedom of association includes not only the freedom to engage in an association for the advancement of beliefs and ideas, but also the formation and organization of parties, as a mode of expression of all political ideas,[36]or for the purpose of assisting persons who seek legal redress for infringement of their constitutional or other rights.[37]

It has been held to lie at the foundation of a free society in the same way as freedom of speech, and it has been further held that to require a person seeking employment under the state to submit a list of all organizations with which he is or has been associated, infringes his freedom of

22. United States v. Cruikshank, 92 U.S. 542, 552 (1876).
23. De Jonge v. Oregon, 229 U.S. 353, 364-65 (1937).
24. Willis, Professor H.E. 'Constitutional Law of the United States (1936), as quoted by Pirzada, op.
    a. cit., p.242.
25. S.N. Dwivedi, 'Right to Group-Life Under the Constitution, Its Nature and Scope' in Journal of
    a. the Indian Law Institute, Vol. 12, p.237.
26. Thornhill v. Alabama, (1940) 310 U.S. 88.
27. U.S. v. Cruikshank, (1875) 92 U.S. 542.
28. Denning, Road to Justice, 1955, p. 98.
29. Thornhill v. Alabama, (1940) 310 U.S. 88.
30. Milk Wagon Drivers v. Dairies, (1941) 312 U.S. 287;
    a. American Federation v. Swing, (1941) 312 U.S. 321.
31. American Steel Foundries v. Central Trades Council, 263 U.S. 457.
32. National Association v. Alabama, (1957) 357 U.S. 449 (460-3); Bates v. Little Rock, (1959) 361
    a. U.S. 516 (523).
33. National Association v. Alabama, op. cit.
34. The First Amendment of the National Constitution states that Congress shall make no law
    a. abridging 'the right of the people peaceably to assemble, and to petition the govt. for a redress of
    b. grievances.
35. Sweezey v. New Hampshire, (1956) 354 U.S. 234 (250); N.A.A.C.P. v Button, (1963) 371 U.S.
    a. 415; Gibson v. Florida Legislative Committee, (1963) 372 U.S. 539 (543)
36. Ibid.
37. N.A.A.C.P. v. Bulton, op. Cit., at 428.

association.[38]It has been acknowledged that freedom of association includes the right of privacy in one's association.[39]As in the case of the other primary freedoms, such as of speech, press or assembly, governmental action may be held to constitute an abridgement of the right of association, not only where the action is direct but also where the abridgement, though not intended, inevitably follows from the government action.[40]Thus, a law[41]or even a judicial order[42]may be liable to be annulled, where its effect would be to discharge[43]the exercise of the right of association, e.g., a court order which compels a non-commercial association (which is not unlawful) to disclose the list of its ordinary members.[44]Such restriction of the right of association violates 'due processes in the absence of an overriding social interest.[45]Thus, in the case of profit-making association, such as those of paid solicitors or foreign corporations, the interest of protecting the general public in their dealings with such organizations, may justify the State in requiring them to disclose their membership,[46]but in the case of non-profit making lawful associations, the State has no such interest in the identity of their ordinary members, as distinguished from the office bearers.[47]

On the same principle, though the proper and efficient enforcement of the power of taxation may sometimes entail the possibility of encroachment upon individual freedom, where the occupational license tax of a municipality is aimed at reaching all commercial, professional and business occupations within the municipal area, there is no relevant correlation between the power to levy such tax and the requirement of a compulsory disclosure of the membership of the National Association for the advancement of the coloured people.[48]If such organizations were to claim exemption from the tax on the ground that it is a charitable establishment, information as to the specific sources of its income and expenditure might be a subject of relevant inquiry.[49]The position is otherwise where the statute distinguishes between associations engaging in unlawful activities such as intimidation and other associations.[50]

There is a vital relationship between freedom to associate and privacy in one's associations. Hence, adherents of particular beliefs or political parties cannot be required to wear identifying arm bands.[51]

(ii) United Kingdom

English law permits complete freedom of association for any lawful purpose, as long as no specific legal rule is violated. In general, it is not illegal in England to form associations for lawful objectives, unless unlawful methods are employed. Therefore, restrictions on the right of association are primarily imposed due to unlawful behaviour and can be categorized under two main aspects: (1) Conspiracy, and (2) Quasi-military organizations. These limitations arise from engaging in unlawful conduct rather than from the act of association itself.

(iii) European Union

The Constitution of Switzerland ensures the right to freedom of association, with certain limitations in the interest of public order. Article 56 of the Constitution states that citizens have the right to form associations, as long as the objectives and methods of such associations are not unlawful or threatening to the State. The cantonal legislatures are responsible for implementing measures to prevent abuses. Additionally, the right to public gatherings is derived from this article.

Similarly, the Constitution of Ireland includes specific provisions for the recognition and protection of the fundamental rights of citizens. It guarantees, subject to considerations of public order and morality, "The right of citizens to form associations and unions." However, laws can be enacted to regulate and control the exercise of this right in the public interest. It is further emphasized that laws governing the manner in which the right to form associations and unions, as well as the right to free assembly, may be exercised should not involve any political, religious, or class-based discrimination.

It has been held by the Irish Supreme Court[52]that to deprive a person of the choice of the persons with whom he will associate, is not a 'control' of the exercise of the right to association, but a denial of the right altogether. Hence, a law which allows the citizen only to join one or more 'prescribed' associations, and thereby prohibits the right of forming associations, is not a valid regulation or control of the exercise of the right 'in the public interest' and is, accordingly, repugnant to the constitution.[53]The objective of the Trade Union Act, 1941, was to limit the number of trade unions and to prevent trade unions from accepting new members. The effect of a 'determination' by the Tribunal set up by the Act, in favour of a particular union was that during a period of five years no other union could accept new members. It was held by the Supreme Court that the Act was repugnant to the right of association guaranteed by Article 40(6) (1) of the constitution and therefore voids.[54]

It was also held that, just as the individual has the freedom to join or not to join an association, so an association has the freedom to accept or not to accept a person as its

38. Shelton v. Tucker, (1960) 364 U.S. 479 (486).
39. American Communications v. Douds, (1950) 339 U.S. 382 (393).
40. National association v. Alabama, supra.
41. American Communications v. Douds, supra.
42. National Association v. Alabama, supra.
43. American Communications v. Douds. Supra.
44. National Association v. Alabama, supra.
45. Ibid.
46. Ibid.
47. [47] Ibid; Also, Bates v. Little Rock, (1959) 361 U.S. 516 (525)
48. Bates v. Little Rock, supra.
49. U.S. v. Kahriger, (1952) 345 U.S. 22.
50. Byrant v. Zimmerman, (1928) 278 U.S. 63.
51. Sweezey v. New Hampshire, (1957) 354 U.S. 234 (250).
52. National Union v. Sullivan, (1947) I.R. p.77.
53. Ibid.
54. Ibid.

member,[55]unless such a person has a right to membership under statutory rules.

The Constitution[56] of Germany contains provision for protection of fundamental rights of citizens, including the right to freedom of association. Article 9 of the Constitution provides-

1. All Germans shall have the right to form associations and societies.
2. Associations, the objects or activities of which conflict with criminal laws or which are directed against the constitutional order or concept of international understanding, are prohibited.
3. The right to form associations to safeguard and improve working and economic conditions shall be guaranteed to everyone and to all trades and professions. Agreements which restrict or seek to hinder this right shall be null and void; measures directed to this end shall be illegal".

Article 18 of the Basic Law (1949) of Germany provides that the basic rights of the citizens are forfeited, if he abuses 'freedom of expression of opinion, in particular freedom of the press, freedom of teaching, freedom of assembly, freedom of association, the secrecy of mail, post and telecommunication, or the right of asylum in order to attack the free democratic order'.

Western European constitutions now generally contain provisions regarding the right of association. The Belgian Constitution[57]guarantees the right of association in Article 20 thus: "Belgians have the right of association. This right cannot be subjected to any preventive measure".

In the Constitution of the Netherlands,[58]there is not section devoted to fundamental rights, but the constitution recognizes certain rights of the people including the right of association, subject to regulation by law in the interests of public order. Article 9 provides: "The right of association and assembly is recognized. The exercise of this right shall, in the interests of public order, be regulated and limited by law".

The 1948 Constitution of France[59]guaranteed freedom of association, subject to similar freedom of others and to public security, in Article 8 thus: 'Citizens have the right of association…. The exercise of this right has no other limits than the rights and liberty of others and public security'. Article 4 of the New French Constitution declares that 'political parties and groups shall be instrumental in the expression of the suffrage. They shall be formed freely and shall carry on their activities freely. They must respect the principles of national sovereignty and democracy'.[60]

To cite an older democratic constitution, it is of interest to note what the Danish Constitution[61]in Article 78 has to say on this subject:

1. Citizens shall be entitled, without previous permission, to form associations for any lawful purpose.
2. Associations employing violence, or aiming at attaining their object by violence, by instigation to violence or by similar punishable influence on people of other views, shall be disclosed by judgment.
3. No association shall be dissolved by any government measure. However, an association may be temporarily prohibited, provided that proceedings (i.e. judicial) be immediately taken against it for its dissolution.
4. Cases relating to the dissolution of political association may without special permission be brought before the highest court of justice of the Realm.
5. The legal effect of the dissolution shall be determined by statute".

The new Italian Constitution, [62]unlike other constitutions, makes a distinction between the general right of association and the specific right of forming trade unions and guarantees the two rights separately in Articles 18 and 39 in a comprehensive way. Article 18 provides that 'citizens are entitled to form associations, without authorization, for reasons not forbidden to individuals by criminal law'. But it goes on to say that 'secret association and those which pursue aims, even indirectly, by means of organizations of a military character, are forbidden. Article 39 provides:

"Freedom in the organization of trades unions is affirmed. No compulsion may be imposed on trade unions except that of registering at local or central offices according to the provisions of the law. A condition of registration is that the statutes of the union sanction an internal organization on a democratic basis. Registered trades unions have a legal status. They may, being represented in proportion to the number of their registered members, negotiate collective labour agreements having compulsory value for all persons belonging to the categories to which said agreements refer".

(iv) Commonwealth Nations

The object of the Canadian Bill of Rights, 1958, was to provide for recognition and protection of certain human rights and fundamental freedoms. The Bill in Part 11 has recognized and declared in express terms, among other rights, the freedom of assembly and of association.

55. Tierney v. Amalgamated Society, (1959) I.R. 254.
56. The Basic Law of the Federal Republic of Germany, 1949, as amended in 1966; Art. 9(1)(2)(3).
57. The Constitution of Belgium, 1831, as amended to 1921.
58. The Constitution of the Netherlands, 1815, as amended to 1963.
59. The Constitution of France, 1948, replaced by the New Constitution of 1958 as amended to 1963.
60. See Nicholas Wahl, 'The Fifth Republic', New York, 1959, p.104.
61. The Constitution of the Kingdom of Denmark Act, 1953 and the Succession to the Throne Act,
    a. 1953 comprise the constitutional documents of Denmark. Up to 1849 the Govt. of Denmark was autocratic in form. From June 5 of that year, when the first liberal constitution became law, it has been that of a constitutional monarchy, with govt. by parliamentary majority *de facto* from 1901 and *de jure* from June 5, 1953, the date of the present Act of the constitution.
62. The Constitution of Italy, 1948, as amended in 1953 and in 1963, Arts. 18 & 39.

It may be noted that in the Canadian Bill of Rights, the rights are not entrenched in the sense that they can only be repealed by a somewhat difficult legislative process. It has merely provided in section 3 of Part 11 of the Bill that 'all the Acts of Parliament of Canada enacted before or after the commencement of this part, all orders, rules and regulations there under, and all laws in force in Canada or in any part of Canada at the commencement of this Part are subject to be repealed, abolished or altered by the Parliament of Canada, and shall be so construed and applied as not to abrogate, abridge or infringe or to authorize abrogation, abridgement or infringement of any of the rights and freedoms, recognized by this Part'.[63]

In Australia there is no formal expression of fundamental freedoms in the constitution, but English law and customs generally prevail in practice. Moreover, there is no federal bill of rights in Australia, as there is in the United States.

The Constitutional (Declaration of Rights) Bill, 1959, which was aimed at securing certain fundamental freedoms, included a clause requiring every proposed law inconsistent with the Declaration of Rights Act to be approved by a majority of electors at a referendum before being submitted for royal assent. The bill was withdrawn and consequently never passed into law.

The working of democracy and freedom of association in Australia are, illustrated by the well-known case, *Australian Communist Party v. The Commonwealth*:[64] The Communist Party Dissolution Act, 1950, had dissolved the party, declaring it to be an unlawful association, and had imposed certain disabilities upon persons and institutions, which, in the opinion of the Executive, were associated with it. The contemplated disabilities related to employment in the Federal public service and in industry as well as membership of trade unions. The majority of High Court of Australia refused to hold that the Act, specifically directed against an association, could be justified as a proper exercise of the defence power in the condition of ostensible peace then prevailing in 1950. It might have been otherwise had the legislation in question been enacted by parliament during a state of emergency in Australia. A situation disclosing 'a clear and great national danger, such as an imminent war or actual violence or a threat thereof would have rendered the Act valid'. As it was, however, the Act prescribed no conduct, duties or prohibitions, but sought to impose penalties on a particular organisation, by means of a recital in the preamble (reflecting the opinion of the Executive) that certain persons were engaged or were likely to engage in activities prejudicial to defence.[65]

In New Zealand, as in Australia, there is no formal declaration of rights of the people in the constitution, but English law and customs prevail. In August, 1963, a Bill of Rights based on the Canadian model was introduced in the New Zealand parliament and was carried.

The Constitution of the Federal Republic of Nigeria[66]contains a Bill of Rights in Chapter III. Article 26, which provides for freedom of assembly and association, reads:

1. Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to trade unions and other associations for the protection of his interests.
2. Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society:

(a) In the interest of defence, public safety, public order, public morality or public health;
(b) For the purpose of protecting the rights and freedoms of other persons; or
(c) Imposing restrictions upon persons holding office under the state-members of the armed forces of the Federation or members of a police force".

The debt which this provision owes to the Universal Declaration of Human Rights, 1948, is obvious. It not only guarantees freedom of assembly and association for all within Nigeria, but also contains the kinds of limitations provided for in Article 29 and 30 of the Declaration; more specifically, certain limited restrictions, which are to be found in all the democracies, are imposed on members of the civil service, the armed forces and the police with regard to freedom of association.

The Constitution of Kenya[67]in Article 24 provides for freedom of assembly and of association in terms which are, in substance, similar to those of the Constitution of Nigeria. Clause (2) of Article 24 provides that 'except with his consent, no person shall be hindered in the enjoyment of his freedom of assembly and association'.

It may be added that almost all the African countries that have gained their independence since 1960 and that have embodied fundamental human rights in their constitutions have followed the Nigerian pattern in respect of the provision for freedom of assembly and association.[68]

With regard to dissolution of an association, a distinction is made between a law to dissolve an association falling into a category determined by specific criteria and a law specially dissolving a particular association. It is a familiar provision in the criminal codes of the English-speaking African, Caribbean and South-East Asian countries that certain societies may be declared to be unlawful, if certain objective conditions are met. These are that the association

63. Canadian Bar Review, Vol. 37, 1959, pp. 1and 2.
64. Australian Communist Party v. The Commonwealth, 83 C.L.R. 1 (1950-1951).
65. See Anderson, Ross: Australian Communist Party v. The Commonwealth, 1 Univ. Q.L.U.
    a. Brisbane, 1951, p.34; also, Beasley: Australia's Communist Party Dissolution Act, 1950, 29 Can. Bar Rev. 490.
66. The Constitution of the Federal Republic of Nigeria, 1963, replacing that of 1960. The
    a. Constitution of 1960 contained exactly the same provision regarding freedom of association.
67. The Constitution of Kenya is attached to the Independence Order in Council of December 12,
    a. 1963.
68. Ellias, Dr. T.O., 'Freedom of assembly and Association' in Journal of the International
    a. Commission of Jurists. Vol. VIII, No.2 1968, Geneva, p. 64.

must be of ten or more persons and that it should have been formed for the purpose of levying war on the Government, killing or injuring persons, destroying or injuring property, subverting or promoting subversion of the Government or of its officials, committing or inciting to acts of violence or intimidation, interfering with or resisting the administration of the law, or disturbing or encouraging disturbance of peace and order in the community concerned.[69]

In respect of the right to freedom of association, Article 19 (1) (c) of the Indian Constitution provides:

"Every citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interest of morality or public order".

At the same tune Article 26, 29 and 30 of the Indian Constitution (Part III) provides certain safeguard with regard to the rights of religious, cultural and linguistic minorities. The provision in Article 19 (1) (c) is general in nature and the latter is particular. Historically the former is subsequent to the latter; indeed, it appears to have been distilled by a process of induction from the latter.[70]

It illustrates how constitutional theory has developed from the particular to the general. The totality of these rights – the particular and general – reflects the faith of the framers of the constitution in a pluralistic society, their awareness of the rights of the minority and their spirit of toleration for dissent. They did not approve of the concession theory of associations[71]nor did they believe in the preposterous rule that the religion of the ruler is the religion of his subjects.[72]

The language of the provision in Art 19 (4) of the Indian Constitution is wide and vague, which permits the state to impose reasonable restrictions on the exercise of the right in the interests of public order and morality. Courts, on whom has fallen the 'none too easy task' of interpreting the constitution, have wisely refrained from drawing up neat frontiers of the right and the restriction. The constitution sets out the framework of government. It is 'written for men of fundamentally differing opinion'. It is a dynamic document and speaks for the present as well as the future.[73]Accordingly it is neither wise nor practicable to construct iron cast categories. According to Mr. Justice Bose, 'the laws of liberty, of freedom and of protection under the constitution will also slowly assume recognizable shape as decision is added to decision'.[74]In V.G. Row's case[75]also, the same idea was put forth by the Supreme Court. It said that no abstract standard or general pattern of reasonableness can be prescribed. The courts have not been dogmatic and doctrinaire; they have adopted a pragmative approach and have preferred to draw the contours of each phase of liberty on a case-to-case basis.[76]

Conclusion

In conclusion, the freedom of association can be characterized by three key aspects: action, combination, and power. Throughout history, this freedom has faced significant constraints. Churches and sects, for example, were suppressed during periods of religious intolerance in Europe, while political associations aiming for freedom from foreign rule were often outright banned in the Indian subcontinent during British colonial rule. There is a natural inclination to monopolize power, with those who have attained liberty often reluctant to share it with those who have not. This human weakness must be kept in mind when resolving constitutional conflicts pertaining to the rights of association.

The principle of freedom of association has two primary aspects. Firstly, it encompasses the notion of a recognized legal right for individuals to join together for the advancement of shared objectives. Secondly, it includes the right to freely assemble as members of an association in order to conduct its business. The right to gather is an inherent part of the right to form an association rather than being solely a component of the right to freedom of assembly.

Historically, the claim for freedom of association originated from the principle of religious freedom and later expanded

69. See, e.g., section 62 of the Criminal Code of Nigeria. All such colonial enactments would appear
    a. to have been animated by the (English) Unlawful Societies Act, 1799.
70. Acton, 'Lectures on Modern History', 25, 43 (Fontana Library (1960); J.N. Figgis, 'Churches in
    a. the Modern State' (1913) at p. 101.
71. Laski, 'Studies in the Problem of Sovereignty' (1917), reprint 1968) p.5: Everywhere the one
    a. comes before the Many. All Manyness has its origin in Oneness and to Oneness it returns. Therefore, all order consists in the subordination of plurality or Unity, and never and nowhere can a purpose that is common to Many be effectual unless the One rules the Many and directs the Many to the goal….
    b. Richard Simpson, quoted by J.N. Figgis, op. cit., at 111: This theory of State absolution supposes the State to be prior to all associations; it assumes that they must all ask its leave to exist before they have right to be; and therefore, it has a continual right of inspection and supreme control over
    c. them. Hence it must follow that freedom is no general right, but a collection of liberties and
    d. immunities granted as concessions and compromises by the absolute power.
72. Will and Ariel Durrant, 'The Age of Louis X1V', 71 (1961): Under the Peace of Augsburg (1535)
    a. and later protestants agreed to the principles ***Cuius region ejusreligio***- religion of the ruler should be made obligatory upon his subjects.
73. State of West Bengal v. Anwar Ali, (1952) S.C.R. 284 at 359.
74. Ibid., at p. 363.
75. State of Madras v. V.G. Row, A.I.R. 1952 S.C. 196 at 200.
76. N.S. Mirajkar v. State of Maharastra, (1966), 3 S.C.R. 284 at 359.

to include the doctrine of free enterprise for commercial purposes. In recent times, these issues have extended to other spheres, primarily in the realms of politics and industry.

On the one hand is the problem of the treatment to be meted out to groups which dissent from generally held views in a particular community. Combination to promote such views has variously been regarded as legal or as so highly illegal as to merit the severest punishment. In Great Britain, for example, there is no legal barrier to the formation of any association, however wide its purposes. It may nevertheless bring its proponents within the ambit of a rather widely drawn law of sedition. In the United States a similar general freedom to combine exists; but most states have passed laws to make illegal combinations which seek to promote syndicalism or communist opinion; the law of California has been most notoriously enforced.[77]

In countries where the tradition of the Roman law has been dominant the case has been otherwise. In France, for example, save for brief moments of revolutionary temper, as in 1789-91 and 1848-49, freedom of association has been rigorously controlled; and its general admission dates only from 1901. While freedom of association is guaranteed to all German citizens in the constitution, the regulation of the constitutional right is left to the legislator to implement by suitable legislation and may be restricted by legislation or on a basis of law. In Holland a general right of association was established by the constitution of 1948 with, however, the proviso that the law might regulate and limit its exercise in the interest of the public peace. Most modern written constitutions contain similar provisions.

The provisions of article 20 of the Universal Declaration of Human Rights, adopted by the General Assembly of the United Nations on December 10, 1948,[78] regarding freedom of assembly and association, are among the most basic to the flowering of democracy in any modern state. All the newer nations of Africa and Asia that have entrenched a body fundamental human rights in their national constitutions have in respect of these two freedoms followed closely the pattern set by the 1948 Declaration, and, as we have seen,[79] some constitutions treat the two freedoms together in the same provision, while others deal with them separately. The older nations, whether or not they have written constitutions, will agree that they have been influenced by the Declaration, if not in the formulation of the specific provisions, at least in the practical application of its ideals in the administration of justice. These freedoms are intended to be universal in their application and not, as we have seen in certain instances, to apply only to sectional interests or privileged elements in the state. It is by virtue of these freedoms that we have and enjoy our free parliamentary institutions, associations of employers and of employees, trade unions, private clubs and societies of various kinds; and with these go inevitably the right to assemble, to organize group activities and to undertake processions, subject always to the overriding requirement of state security and general public welfare as defined in the relevant municipal laws.

All the modern written constitutions recognise the right to freedom of associations or unions as one of the fundamental rights. But like all other rights, the right to freedom of association does not and cannot function in a social or political vacuum, which means that under some circumstances it is legitimate for government to regulate in order to protect other rights. This can also be encroached upon by legislation, existing or prospective, 'in the interest of morality or public order'. However, the government measure to regulate the freedom of association must ultimately pass the judicial test of reasonableness. The State of Madras[80] is a leading case in India which deals not only on the test of reasonableness to be applied to a restriction on a fundamental right, but also on the right to form an association.

The right of association is central to any serious conception of constitutional democracy. In the big states of modern times the individual cannot function politically within any measure of effectiveness, unless he is free to associate with others without hindrance. Tocqueville emphasised that the liberty of political association had become 'a necessary guarantee against the tyranny of the majority, especially needed in democratic countries to prevent the abuse of political power.'[81] He noted that the right of political association involves, first, a number of individuals who give public assent to certain doctrines, second, the power of meeting; and third, the uniting into electoral bodies to choose representatives in a central assembly. In his view, therefore, such an association becomes in effect a government within the government. In fact, most people find much of their identity, in either in economic, social, political professional or confessional terms, in some form of group activity. "If we are individualists now," earnest Barker once observed, 'We are corporate individualists. Our 'individuals' are becoming groups."[82] It follows that the government has an obligation to protect the right of association from invasion, and to refrain from making inroads into that right through its own activities.

As the courts devote more and more time to the emerging problems which touch upon the right of association, it is becoming increasingly evident that the basic problem of defining its scope is very much like the problem of spelling out the motes and bounds of any similar right. It is now clear that the right of association, however valuable it may be, is no more absolute in character than are such hallowed rights as freedom of religion or freedom of speech. We do not, and cannot, in the nature of things, live in a world of absolute private rights, particularly because private rights themselves jostle each other, and when this happens, choices or accommodations must be made, and partly because public interests often overshadow private interests in specific situations. Just as free speech, for example, ends where libel or sedition begins, so the court recognises that the right of association ends where the law of criminal

77. Laski, H.J., Encyclopedia of Social Sciences, 1931, Vol. V1, 448.
78. See Chapter III, F.N. 32.
79. See Chapter III, Ss. 2E and F.
80. State of Madras v. V.G. Rao, A.I.R. 1952 S.C. 196.
81. Tocqueville, Democracy in America, ed. Phillips Bradley, N.Y. 1948, pp. 194-5.
82. Barker, Earnest, Political Thought in England, 1848-1914, Oxford, 1954, p. 158.

conspiracy begins.[83]

The role of judiciary is definitive of the proper limits within which this freedom may be lawfully restricted. We have seen how jealously the freedom of assembly and association are guarded by the courts, when called upon to review administrative action touching individual rights in this area, as far as we are able to judge on the basis of the cases we have considered, judicial practices seem fairly consistent in giving due weight to the claims of the individual against any apparent arrogation of arbitrary power by the Executive.

On the industrial side the history of freedom of association is comparatively modern. Broadly speaking, it synchronizes with the coming of the industrial revolution in Britain in the beginning of the nineteenth century. Once great masses of workers were congregated into factories, it was inevitable that they should form trade unions to protect and improve their standard of life; and the formation of similar bodies by their employers was equally inevitable. Industrialisation and the labour movement, which began and ripened early in England, spread to other European countries and in due course started in the United States of America, and, as the unions became stronger, they were able to spread their influence to newer countries.

The trade union in England, however, has come a long way, legally speaking, from the days when it was treated by courts as an adaptation of the social club to the environment of industrial relations. The present Industrial Relations Act, 1971, gives every worker a right to belong to or not to belong to a trade union or other organisations of workers as well as corporate personality to a union registered under the Act.[84] In America, self-organisation, collective bargaining and all other allied union activities involve the right of free assembly which may not be conditioned by the statute, or by previous injunctive process; but the government may regulate labour unions with a view to protecting public interests, without trespassing on the domain set apart for free assembly.[85]

Significant changes in attitudes are seemingly required regarding human relations, specifically in the perception of the role of trade unions. The evolution of collective employment relations in the industrial sector has brought workers and employers to the cusp of a new form of human interaction. However, individuals tend to unconsciously and instinctively carry over attitudes and beliefs that have been shaped by traditional activities like household service and agricultural labor into these new relationships.

To foster healthier and more productive human relations in the industrial context, it becomes crucial to recognize the need for fundamental shifts in attitudes. This involves challenging and transforming deep-rooted notions and expectations inherited from past social and economic structures. By embracing a fresh perspective and adopting progressive approaches, both workers and employers can forge more harmonious and mutually beneficial relationships within the evolving industrial landscape.

83. See Fellman, David, The Constitutional Right of Association, Chicago, 1963, pp. 104-5.
84. See Ch. 1V, Sec. 10 and Ch. V1, Sec. 1.
85. 16 C.J.S., Constitutional Law, Art. 214.

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