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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

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# **THE EXTENT OF RIGHT TO FREEDOM AS A FUNDAMENTAL RIGHT**

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## **Abstract:-**

Right to freedom is a fundamental right given in the constitution of India which is available to not only Indians but also to non-Indian people in some circumstances. These are basic freedoms which a human requires for a dignified life. Although we live in a democratic country these rights are not absolute for us there are some circumstances like threat to the nation in which we can't exercise these rights by saying that we have a freedom to do so. We often see there are some people who cross these limitations and when they get penalized they claim that they are free to do it under right to freedom and the state is violating their rights. In our research we tried to find out the extent to which a person can exercise his right and what are the restriction on which a person should refrain from claiming it.

**Keywords:** Right to freedom, fundamental right, democracy, constitution, limitations.

## **Introduction:**

For the welfare of the citizens of the country Indian constitution has given a number of fundamental rights, which a citizen can claim against the state. These six rights which our constitution gives us are the basic rights which a person needs to live a quality life in the country. These fundamental rights also include right to constitutional remedy, which means if any of these rights has been infringed by the state he can claim it by taking the help of judiciary. Right to freedom is also one of the basic rights which our constitution gives us. It says that any person who is a citizen of India has a right to speak freely, they are free to express their thoughts, they have a freedom to move in any part of the country which comes under India's territory. Citizens are free to have a residence in any part of the country,

they are free to form association, they have a right to be part of peaceful assembly which is without arms, they are free to carry any occupation which they want. Citizens of India can claim all those rights against the state if it gets violated, unless there any circumstance arises which is against the state, or which can create risk to national security, or which can destroy public order. Besides these rights a citizen has also right to life and personal liberty, right to get a protection from double jeopardy, right to remain silent and right to education under the provision of right to freedom in the constitution of India. Right to life is an absolute fundamental right which cannot be infringed in any circumstances except any procedure established by law i.e death penalty given to a person under Indian Penal Code (IPC). Right to life is available to Indian as well as non-Indian citizens also.

### **Research Gap & Literature Review:-**

As per the literatures we found during our research right to speak freely and expressions of thoughts of citizens is a barricade for a democratic government as it is an essential element to run a democratic function properly. Right to speak and express freely is the mother of all liberties which a citizen has in any democratic country as it is the basic human right or natural right of a person. The authors of those literatures have focused on the debate of constituent assembly which has provided several freedoms to the citizens of India, they have also discussed on the constitutional protection available on the right to freedom. The authors have not only discussed the rights of the citizens but also they have discussed its limitations also, like what are the conditions in which a person can't violate while exercising his right to freedom, what are the scenarios in which these rights can be taken back or can be infringed.

The main issue or the gap which I found during my research is that almost every authors have focused on the article 19, specially on right to speak and express freely although there are a number of rights available to the citizens of India under right to freedom mentioned in article 19 to 22 of the constitution. Even some rights are available to the non-citizens also.

There are some research articles available on those rights also but most of them are discussed separately as they have chosen a specific article from 19 to 22 and have written on it. Right to life, the most crucial right of a person also comes under right to freedom as every person is free to live is life with dignity and no one can abolish his right except any procedure which has been established by



law.

## **Methodology:**

In our research we have chosen the analytical method. First of all we analysed the provision of right to freedom which is available in the third part of the constitution and thereafter we went for an analogy of the landmark judgement given by the Supreme Court in which the court has interpreted, upheld those rights while clearing ambiguity on it. In the constitution there is just a mention of rights from article 19 to 22 in which 19 has mentioned a number of rights but other 3 articles does not have a mention of number of rights they just have a mention of a general right in which a lot of rights can come under it. So there is always some sort of ambiguity among the citizens while interpreting it and which is being cleared by the apex court of India. We have also done a comparative analysis of laws of other countries related to right to freedom available to their citizens as compared to the rights which are available to the citizens of India. We have also gone through the international statutes which makes mandatory to the governments to frame laws following those guidelines given by United Nations and its bodies. By the analyzation of all these statutes and laws we have tried to find out the limitations of these rights at what extent a person can claim his acts or deeds under right to freedom.

## **Article 19**

The article says that it will protect the rights which has a provision of freedom for the citizens, the provisions are as follows: -

**Right to speak and express freely<sup>1</sup>**:- Being a human being we have an ability to think and speak about our thoughts and ideas on any topic, as right to speak is a basic right of a human being. Article 19(1)(a) gives every citizen of India a freedom to speak and express his ideas, if a person wants to say anything on any topic, he is free to say it. He is free to express it in any manner he wants whether it is vocal, written or in a form symbol anything. Nobody can restrict the person to express his ideas and if anyone does so it will be considered he has violated the right of the person. As per the right a person is free to speak or propagate his view as well as others. However the right is not absolute, it has some limitations also, a person cannot speak beyond the extent of those limitations.

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<sup>1</sup> The Constitution of India, s. 19

The Right to Freedom of speech and expression does not only mean right to speak but it also has several expansions by the interpretation of Apex court. Some of the expansions are following: -

- **Right to remain silent :-** Right to speak freely also gives a person right to remain silent if he does not want to speak, no one can compel a person to speak on any topic against his will to remain silent on the same. The right to remain silent came into the light after the **Bijoe Emmanuel Case**<sup>2</sup> which is popularly known as “*National Anthem case*”. In the case three students of a school were found to be not singing the National Anthem as the faith they used to believe and worship didn’t allow them accept anything above their religion but the children chose to stand at the time when National Anthem used to be sung. They used to stand silently at the time of National Anthem. When the school authorities did find it, they took an action against the students, The students went to court seeking that they have a fundamental right to remain silent under freedom of speech and expression. The court gave the judgement in favour of the students and said that a person cannot be forced against his will to sing the National Anthem if he has a valid objection based on his genuine consciousness or religious faith. The court rendered the expulsion of the students as invalid as they have a right to remain silent. It was also said that the “Prevention of insult to National Honour Act 1971 was not violated as the students showed respect to the National Anthem.
- **Freedom of Press :-** Media is also known as fourth pillar of democracy because it acts as mediator between people and the government. They raise the problems which are related to general public concern so that government can get an easy knowledge of it. To show the concerns of the public the press should be free from any kind of control or threat, if media will not get freedom to show what they want it will be violation of freedom of speech of citizens of the country as media is the one who helps them to communicate with the government about their issues. There should be no any kind of pre-censorship on what press can show or not. The issue of pre-censorship was raised in **Brij Bhushan Case**<sup>3</sup> in which it was decided that freedom of press is an important element of political liberty. Under the article 19(1)(a) of constitution editor/ manager of newspaper have similar right as individual citizens are having. It was said in the judgement that freedom of speech and expression also includes

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<sup>2</sup> Bijoe Emmanuel v State of Kerala & Ors (AIR 1987 SC 748)

<sup>3</sup> Brij Bhushan v State of Delhi (AIR 1950 SC 129)

freedom to propagate and circulate ideas of other individuals and pre-censorship on the publication can be considered as violation of fundamental right.

- **Limitations :-** The right is not absolute it comes with certain restrictions also, there are some circumstances or subjects on which a citizen cannot speak or comment by saying that it is his fundamental right to do so. A person should speak nothing which can be threat to security of state, which can damage good relations with friendly countries, which can disturb public order, which is against decency, morality, which can be an incitement of an offence, defamation, contempt of court and which can be threat to India's sovereignty and integrity. Article 19(2) has the mention of the restrictions written above. It was decided in **A K Gopalan case**<sup>4</sup> that although a man is a national being and has a desire to do a lot of things but in a civilized society his desires should be controlled/regulated with the exercise of similar desire by the others. Restrictions can be imposed and also the restriction must be valid and reasonable, as it must fall under the ambit of article 19(2).

**Right to peaceful protest or assembly**<sup>5</sup>:- Article 19(1)(b) says every citizen of India has a right to assemble peaceably at any place with the condition that they should be without arms. For example we often see a gathering of a number of people in rallies and protests in which people raise their voice against the policies of the government and the ruling party, the gathering will be considered as legal as it is fundamental right of the citizens until it is peaceful and no any kind of arms and ammunitions are used in it. The moment violence breaks in the protest and it start destroying public order the restriction will be imposed on its assembly. Article 19(3) has given the criteria and circumstances in which the restriction can be imposed, it says that shall not prevent the state to make, operate any law which is related to India's sovereignty, integrity and public order

**Right to form unions and associations**<sup>6</sup> :- Under article 19(1)(c) All the citizens of India have a right to form their own union and association in the country. For example labour union of India, associations of business and etc. The restriction are given in article 19(4) which says the same should not affects any law related to national security, public order, morality and India's

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<sup>4</sup> A. K. Gopalan v State of Madras (AIR 1950 SC 27)

<sup>5</sup> The Constitution of India, article 19(1)(b)

<sup>6</sup> The Constitution of India, article 19(1)(c)

sovereignty and integrity.

**Freedom to move, live and settle in any part of India<sup>7</sup>** :- As per the article 19(1)(d) of the constitution of India, citizens of the country have a freedom to move at any place across the territory of India. Article 19(1) (e) says that citizens have a freedom to reside or settle anywhere in the country wherever they want. Article 19(5) talks about the restrictions which says that it should not affect or violate any law existing in the country related to India's sovereignty and integrity and also it should not affect the rights of Schedule Tribes of the place where a person moves or desires to move, reside and settle.

**Freedom of occupation<sup>8</sup>** :- As per the article 19(1)(g) says citizens of India are free to practice any kind of profession, carry occupation, any trade or a business the right has two restrictions, first is the educational qualification any person is free to choose their profession but they should have the educational qualification required to get that job, for example, to become a judge one should have degree of law. Second restriction is that the same business or trade are being run by the government.

## **Article 20**

### **Right to get protected in conviction for offences<sup>9</sup>**

1. **“Ex Post facto Law”** :- In clause(1) of the article it has been mentioned that any person will not be punished for the act done by him which is not an offence or does not affect any law at the time when he committed and also no person will be punished for an offence more than the punishment prescribed by the law at the time when offence was committed by him. In simple terms it can be said that the criminal law should not be retrospective i.e it should not apply on the offences committed before its enactment, because if a person knows that the act which he is going to commit is violation of law and he will be penalised for the same there is a high probability that the person will not commit the crime in fear of getting the punishment. Similarly if we have a knowledge about our act which we are doing is not an offence there are high chances that we will go towards the commitment of it and if becomes an offence in future with a retrospective effect we will be penalized for

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<sup>7</sup> The Constitution of India, article 19(1)(d), (e)

<sup>8</sup> The Constitution of India, article 19(1)(g)

<sup>9</sup> The Constitution of India, article 20

the crime which we never committed. In **Kedarnath case**<sup>10</sup> it was decided that the person can be punished only for the act which was declared as an offence the time of commission of the act nothing for else.

2. **Right to get protected against double jeopardy :-** In clause(2) of the article says that no any person should be punished twice for one and the same offence he committed i.e if a person has committed an act of theft and he has been convicted or the trial has been started for the same in the court of law, no other trial will start against him in any another court for the commitment of the same offence and if he does the same offence again the trial may be initiated against him for the commitment of the second offence. The rule does not apply on the review petitions and the appeal, it only prohibits initiation of trial in any court which having the same power and jurisdiction as the pervious court had.
3. **Right to get protected against self-incrimination :-** As per clause(3) of the article any person who is an accused of committing a crime will not be forced to be a witness against himself i.e if a person has been accused of committing a crime and he is not willing to accept or say something related to the crime he should not be compelled to do so.

## **Article 21**

**Right to have a life and personal liberty**<sup>11</sup> :- Article 21 says that every person has a right to have a life including personal liberty and he shall not be denied of it except any procedure which is established by law. State has the duty to protect the life and personal liberty of a person whether he is a citizen of India or not. Here, procedure established by law means any law or statue which has been enacted by following the due process of law by the legislative, it should be reasonable and not arbitrary. For example Indian Penal Code has the provision of death penalty in some offences like murder, rape etc. and if a person is found to be guilty of that offence he will get punishment of death sentence by the court of law and he can't avail the immunity of this right as a fundamental right under article 21.

- **Personal Liberty :-** Personal liberty means a should not be arrested or kept in detention except for any procedure which is legally established and it is also mandatory that the law should not be arbitrary on its own. The concept was first

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<sup>10</sup> Kedar Nath Bajoria v State of West Bengal

<sup>11</sup> The Constitution of India, article 21

interpreted in **A K Gopalan case**<sup>12</sup> in which it was said that the law under which a person has been arrested should be enacted by due process of law, Article 21 protects a person only against the action of the executive not against the legislature which made a very narrow interpretation of scope of personal liberty the scope was widened in **Maneka Gandhi case**<sup>13</sup> which overruled the judgement of **A K Gopalan Case** and said that article 21 involves the concept of natural justice, the law and procedure must satisfy the golden triangle of article 14, 19 and 21. It was also said that citizens have protection against the actions of legislatures as well as executives.

- **Right to Privacy :-** The concept was first evolved in **Kharak Singh case**<sup>14</sup>, in which the petitioner had filed a petition against the state because he was kept on surveillance by U.P police as he was released from the investigation of a dacoity case due to lack of evidence and catch out him again the police had opened his history sheet and kept him on surveillance, The petitioner challenged its constitutional validity by saying that it is violation of his fundamental right under article 21. The judgement came in the favour of the Kharak Singh and concept of right to privacy was evolved although there is not any express provision for the same still it's an essential part of ones personal liberty.

Similarly the court has interpreted more than hundred rights under article 21 which includes right to livelihood, right to marry, right to information, right to get a free legal aid, right to live with human dignity, right to have a speedy trial in the court, right to travel abroad, right to get a shelter etc.

### **Article 21 A (Right to Education)**<sup>15</sup>

It is the duty of the state to provide compulsory education which must be free for all the children who are between six to fourteen years of age and in such a manner that will be decided by the state. The concept was not from the beginning it became a fundamental right in 2002 as the parliament came with 86<sup>th</sup> constitutional amendment which made the

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<sup>12</sup> A. K. Gopalan v state of Madras (AIR 1950 SC 27)

<sup>13</sup> Maneka Gandhi v Union of India (AIR 1978 SC 597)

<sup>14</sup> Kharak Singh v State of UP (AIR 1963 SC 1295)

<sup>15</sup> The Constitution of India, article 21A

free education of the children mandatory. It was introduced in **Mohini jain case**<sup>16</sup> which is also known as the “capitation fee case”. It was decided in the case that right to be educated is a fundamental right and charging of fees from students is indirect denial of education to them, it was said that state has the duty to provide education. The judgement of this case was partly overruled by **Unnikrishnan case**<sup>17</sup> in which it was said that there should be provision to give free education to the children who are 14 or less than 14 years of age and after that it is obligation on the state as per their economic capacity. The right to life and personal liberty can’t be suspended even in the period of emergency.

## **Article 22**

**Right to get protected against any arrest and detention**<sup>18</sup>:- The right of freedom also gives us protection against getting arrested and detained in the both Scenarios, whether he has been arrested for being accused of committing a crime or he has been detained under preventive detention for being a suspect of a crime which is likely to be committed in future.

**In Normal Arrest :-** In clause (1) of the article it is said that no any person will be arrested and detained without getting information regarding grounds of his arrest and the arresting authorities cannot deny him to consult him with the lawyer he wants to consult, including his right to get defended by the lawyer he wants to represent his case. In **Joginder Kumar case**<sup>19</sup> it was said that the person who has been detained has the right to know the cause of his arrest and is also entitled to inform any third person about his arrest including the location of his arrest. In Clause (2) of the article it is said that if a person has been arrested and detained in the custody then he shall be produced in front of the magistrate within 24 hours of the arrest and if the police fail to produce him within the time limit he has a right to be released from the custody. The limit has an exclusion of the time of travelling from the place of the arrest to the court in which he going to be produced. For example if a person has been arrested outside the country it is not possible to produce him in front of

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<sup>16</sup> Mohini Jain (Miss) v State of Karnataka (AIR 1992 SC 1858)

<sup>17</sup> Unnikrishnan v State of Andhra Pradesh (AIR 1993 )

<sup>18</sup> The constitution of India, article 22

<sup>19</sup> Joginder Kumar v State of UP (AIR 1994 SC 1349)

court within 24 hours that is the reason the time limit doesn't include the journey time. Clause (3) of the article has given two exceptions in which the provisions of these previous 2 clauses will not apply, if the person is an enemy of the state or he is an alien and if he is an Indian who has been arrested under the provision of preventive detention then the provisions of previous two clauses will not apply on him.

**In Preventive Detention :-** The clause (4-7) of the article 22 talks about the rights of a person if there is a case of preventive detention. The person who has been arrested under preventive detention should not be detained more than the period of ninety days and also the detention should be reported within three months to an advisory board which consists of persons who are or were Judges of High Court or has a qualification to be the Judges of the same. The detention period of three months can be extended if Parliament by law prescribes for the same, the parliament also has the authority to prescribe the procedure of the detention which an advisory board has to follow and the person should be detained by the due process of law made by the parliament. The person who has been detained shall be communicated by the authority who has made the order and he shall get an opportunity to be represented against the order. The detainee has a right to get informed about the reason of his arrest except if the authority believes that it is against the public order.

Besides these provisions, judiciary has also given certain interpretations of the article 22 which has widened its scope. In **D K Basu Case**<sup>20</sup> the court gave some guidelines which are essential for an arrest, they are as follows, the duty officer should be carrying their visible ID and also their name tags, they should have memo of arrest with them, the arrestee has a right to inform a family member or a friend or a third person whom he wants to inform for the same, at the time of arrest a trained doctor should conduct a medical examination of the person who has been arrested and also regular examination of him should be done till he remains in the custody.

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<sup>20</sup> D. K. Basu v State of W.B (AIR 1997 SC 610)



**Conclusion :-** Overall right to freedom not only gives us freedom to do the act what we desire but also it gives us protection from the arbitrary acts of the executives as well as legislatives. In one hand it gives us we a number of freedoms such as to speak, express, move, reside, trade freely across the territory of India and in other hand it provides us assurance that our basic rights which is essential for human dignity will not be violated even though we are accused or have been found guilty of an offence, the basic rights which a human requires to live a dignified life will remain protected under right to freedom. All these rights are not absolute, some sort of restrictions has been stated in the articles itself. The role of judiciary is also important in interpreting some rights as well as restriction which has not been mentioned in the article and if it is mentioned and have some ambiguity. We can't exercise our freedom rights if it is going against the state, threat to the unity and integrity of India, harms public order, destroys good relations with friendly countries.

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