AN INSIGHT ON JUDICIAL CAPACITY AND PART OF LEGISLATURES ON RIGHT TO FREEDOM OF SPEECH AND EXPRESSION

1Ankita Sharma, 2Ishaan Singh Jain
1,2 Law Student [B.B.A. LL. B (Hons.)]
1,2 H.P National Law University, Shimla, Himachal Pradesh

Abstract: The researcher in his paper focuses on an important basic doctrine of the constitution that our forefathers thought to be an element to ensure freedom of the citizens i.e. Article 19 of the constitution which states that every citizen has the right to express one’s opinion freely without any fear through oral, written or through expression. This paper will also highlight the reasonable restrictions the state can impart so that everyone can enjoy this right equally and without harming the public sentiments. Impartment of Article 19 with its sub clauses under Part III of the Indian Constitution ensures the openness of its citizens.

This research paper will also talk about the historical background of the insertion of right to expression and speech in our constitution and how various agitations gave the final shape to it.

This research paper also talks about how the judicial capacity in India has changed the perspective of this freedom and how judiciary is playing its role in safeguarding this right of its citizens. The part of legislatures will also be discussed in this paper on how they are enabling or curbing this right conferred upon the citizens of India in their Political Scenario; how the parliamentarians are protected under this right during their parliamentary proceedings.

This research paper will include various examples like that of State of Jammu and Kashmir (currently bearing the status of UT) for better understanding this right of the Indian citizens.

This research paper is focused on an overall insight over the right to freedom of expression and speech tracing way back from its history to its present functioning.

Keywords: Article 19, Legislatures, Judicial Capacity, Freedom, Jammu and Kashmir

BACKGROUND
From the very onset of our freedom struggle, the founding fathers of our constitution decided to adopt a democratic model for the diverse country of ours. They did so because they were of the view that in such a big demography, each and every person should have a say in the decision making of the country and that every entity of the country be deemed a stakeholder in the functioning of the nation. In this pursuit, they borrowed various provisions from the constitutions of different countries and inculcated those provisions which suited for such an extraordinarily diverse country, India. The holy book of law which enshrines these provisions is rightfully deemed ‘The Constitution of India.’ This constitution has various parts such as PART II which affirms the citizenship provisions of our country, PART IV which enunciates the directive principles of the state policy providing direction to the state to work for the welfare of the people. Similarly, there is one part in our constitution which is acclaimed as the soul structure of our constitution and even cannot be amended by the elected parliament itself, this part is the PART III of the Indian Constitution which consists of all the fundamental rights that all the citizens of this country can equally enjoy and also provides a direct approach to the highest court of justice, the supreme court to seek remedy in case of any violation of the same. PART III extends from Article 12 to Article 35 of the Indian Constitution. Among these Articles, Article 19 allows a citizen to formulate and express his/her opinion or idea freely in this country; Article 19 of the Indian Constitution clearly states that all citizens have the right to (a) freedom of speech and expression (b) to assemble peaceably and without arms (c) to form associations or unions (d) to move freely throughout the territory of India (e) to reside and settle in any part of the territory of India (f) to practice any profession, or to carry on any occupation, trade or business. This article ensures that no unreasonable restrictions the state can impart so that everyone can enjoy this right equally and without harming the public sentiments. Impartment of Article 19 with its sub clauses under Part III of the Indian Constitution ensures the openness of its citizens.

This research paper also talks about how the judicial capacity in India has changed the perspective of this freedom and how judiciary is playing its role in safeguarding this right of its citizens. The part of legislatures will also be discussed in this paper on how they are enabling or curbing this right conferred upon the citizens of India in their Political Scenario; how the parliamentarians are protected under this right during their parliamentary proceedings.

This research paper will include various examples like that of State of Jammu and Kashmir (currently bearing the status of UT) for better understanding this right of the Indian citizens.

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1Constitution of India
ORIGIN OF FREEDOM OF SPEECH AND EXPRESSION

It’s very well known that our constitution and its many laws are taken and have their origin from the English Laws, also known as the Common Law. So, this English law also adopted Freedom of speech and expression in their England’s Bill of Rights 1869. Under this adopted bill of rights, right to freedom of speech and expression was given the status of constitutional right and is still in effect. Even such type of provision is also mentioned in Declaration of Rights of Men and Women adopted by France during French revolution. Article 11 of the said declaration states that free communication of ideas and thoughts is one of the essential rights of man. Every citizen can accordingly speak, write or share their thoughts but at the same time, will also be responsible for their actions of violations as defined by law. Same was also noted in the Universal Declaration of Human Rights of 1948 which also added such right which says that every human should have the right to freely express their ideas and thoughts. Taking the essence from all such declarations, our founding fathers of the constitution or the constituent assembly adopted this right and listed it under Article 19 with the title of Right to Freedom of Speech and Expression. This freedom of speech and expression has now also been considered under international and regional human right. International Convenant on Civil and Political Right (ICCPR) protects this right under International Human Rights. Article 19 of the said convention states that everyone shall have the absolute right to hold opinions without any fear and interference of any external or internal body and shall have the right to freedom of speech and expression without any interference and shall empower a person to seek, receive and impart any information and idea of any kind with no regard to frontiers whether orally or in the form of writing or print or in the form of art and through any media of their choice. As remarked by USA’s former president Abraham Lincoln, Democracy is of the people, by the people and for the people. But there cannot be any democracy where there is no redressal to the problems faced by the people and where there are no effective deliberations over proposed solutions without having both arguments in favour and against backed with their respective reasons. So, in order to establish a prudent democracy, it is necessary that people are given a proper voice so that they can put forth their problems and their arguments in favour or against the proposed or provided solutions.

CALL TO PROTECT ARTICLE 19

Freedom of speech and expression that is mentioned in Article 19 of the Indian Constitution is needed to be protected as it is through this right that one is able to express one’s feelings or ideas to the world at large. But this cannot be the only reason to safeguard this right mentioned under Article 19 of the constitution. There are many more such reasons to protect this right such as to discover the truth or investigate a situation. Freedom of speech and expression helps in discovering the actual facts or the truth related to the ongoing public policy or laws or the acts which have been implemented. It is this right that lead to the arguments in favour or against a particular policy or law or any idea. This helps in discovering the full truth or the motive of the parliament behind the implementation of that particular law. This article is required to safeguard the democratic aspect of our country. As in a democracy, each and every person has a direct or indirect say in the decision making of the country and every person has their own voice which they can raise if they feel that the particular policy will or is likely to affect their daily living. Imagine a country where no one is involved in the decision making and only one class is in power and is in the habit of oppressing their citizens’ right and does not provide a platform to raise their voice. In such a country, democracy can’t prevail where the government is against the people, not for the people and not by the people. So, protection of freedom of speech and expression helps in safeguarding the basic democratic aspect and democratic values of our country. Article 19 also ensures pluralism in the country. When every citizen is given a voice and is allowed to form associations or unions of their choice, in a society akin to such atmosphere, pluralism will prevail where self-esteem of every being is respected and nobody’s ideology is condemned for any reason. This essence of Article 19 plays a very important role in such a diverse country like India. This ensures that no voice is suppressed just because of different or clashing ideologies of people in the society. In fact, freedom of speech and expression helps intermixing of these cultures and ideologies giving a shape to more civilised society where everyone respects the rights and ideologies of every other person. So, Article 19 should not be infringed and stringent steps should be taken to safeguard it from its violation.

RESTRICTION UNDER ARTICLE 19

It has been noted that it is important to safeguard freedom of speech and expression to preserve the democratic aspect of the country and to discover the truth. But no right is absolute and unrestricted. Every right comes with its reasonable restriction so that one’s action does not affect the public order and no one enjoys his/her right in such a way that it violates the right of other person. It is important to place such reasonable restrictions so that internal security of the country can be maintained. Article 19 (2) allows the government to impose reasonable restriction in the interest of security of state. Threatening the security of the state includes enraging rebellion, waging war against the state, riot, affray etc. i.e. all those actions that can endanger the security of its citizens in the country. Mere action like of murder would not include under the threat to the security of the state. Reasonable restriction can also be imposed to protect public order. It is a wider concept when compared to security of the state. Public order, in overall sense, not only means to protect law and order but also to maintain peace, tranquillity and harmony among the members of the society. Article 19 also does not allow you to defame a person. The act of defamation will not be protected with claim of exercising of freedom of speech and expression. Defamation means falsely spreading or publication of a statement with a wrongful intention directed to a particular person that would derail the reputation in the eyes of a common

Declarations of Rights of Men and Women. 1789
International Convenant on Civil and Political Rights, 1966
President of United States of America (1809-1865)
prudent man. One cannot exercise his freedom of speech when it violates the right of another person. Article 19 interprets that everyone has the right to enjoy their freedom equally and without derailing the rights of others. Article 19 also allows to impose reasonable restriction when it comes to the contempt of court. No one can take the plea of protection of freedom of speech and expression under this contempt. Our constitution rightfully allows to impose restriction when the exercise of Article 19 exceeds the reasonable and fair limit and hinders the functioning of justice. Article 19 also does not allow such statements that effects the sovereignty and integrity of the state. Reasonable restrictions can also be imposed when it comes to protect the foreign relations of the state. Article 19(2) allows the parliament to impose such restrictions to the freedom of speech and expression where the action of one people could affect the foreign tie ups of the state. No actions and expressions are allowed by anyone to endanger the foreign relations the state have with other countries. So, Article 19 is not absolute and such type of restrictions are allowed by our constitution itself.

ROLE OF JUDICIARY
There are many a times seen that there has been disputes when it comes to the exercise of right to freedom of speech and expression. In such disputes, the role play of our judicial house has a very important aspect to decide the stand of Article 19. As seen in case of Union of India V. Naveen Jindal and Anc. where Supreme Court of India noted that hoisting of National Flag is covered under Freedom of speech and expression under Article 19 of the Indian Constitution. Even it was due to Article 19(1)(a) that we have right to information where it was observed that attaining information is also the part of freedom of speech and expression. Freedom of press was also observed by the due and intelligent observation of our supreme court where the court observed that right to press is not a separate right and is inclusive of freedom of speech and expression and moreover, right to press is not above the right to freedom of speech of any ordinary citizen. This observation came under Virender V. State of Punjab and Sakal Papers V. Union of India. Under Indulal K. Yagnik V. State and Ors., Hon’ble court decided that printing n number of papers for a newspaper and then circulating it is the fundamental right covered under Right to press which is inclusive of freedom of speech and expression of Article 19 of the Indian Constitution. There has been many more such instances where the higher courts have played their part to impart justice to right to freedom of speech and expression. As seen under Sri Bhola Nath Sen V. Chief Election Commissioner where the Court observed that one cannot enjoy his right to freedom of speech and expression when there is lack of information. So, in that case it was strongly contended that Right to information is a very much an integral part of freedom of speech and expression. It was stated by the Hon’ble court under Maneka Gandhi V. Union of India that freedom of speech and expression should not have any limitations arising from its interpretational dogmas. Exercising this freedom of speech and expression outside the Indian Territory, will also depend on the law and implementation of the said right according to the laws of the territory where the right is to be exercised. So, interpretation and observations by the Hon’ble higher courts has helped in safeguarding freedom of speech and expression from any violation and whenever, the said right has faced violation, there the higher courts have exercised their capacity to restore this violated right as seen in case of internet ban in State of Jammu and Kashmir (Currently with the status of Union Territory).

INSTANCE OF STATE OF JAMMU AND KASHMIR (CURRENTLY WITH UT STATUS)
The State of Jammu and Kashmir which is currently holding the status of Union Territory has been facing a major violation of freedom of speech and expression ever since the impromptu abrogation of article 370 and the aftermath that has been hovering for six months now. There have been many instances when there has been breakdown in this Union Territory. This state is now suffering the unconstitutional ban of internet services and it should also be noted that major trade and commerce in this state is being carried out through the internet itself. There has been preventive detention of major political leaders of the state since last six months which is also a violation of this said article 19 of the Indian Constitution. According to law, the total time period for which preventive detention is legal is of two months. Setting this aside the issue of preventive detention and majorly focusing on the internet ban, Supreme Court itself has illegalised and declared this internet ban unconstitutional and violative to Article 19 of PART III of the Indian Constitution. Supreme court in its judgement of Anuradha Bhasin and Ors. V. Union of India and Ors. under paragraph 152 and sub clause (2) incredibly observed that freedom of speech and expression and freedom to carry trade and commerce through the medium of internet is constitutionally protected right under Article 19(1)(a) and Article 19(1)(g) of the Indian Constitution and restriction on such right should be mandated according to Article 19(2) and (6) of the constitution and should also pass the test of proportionality. Moreover, Internet cannot be permanently banned, it could be suspended temporarily. So, such violation of freedom of speech and expression was noted by Hon’ble Supreme Court and the said court remarkably gave the directions to the government to restore the violated right of the state of Jammu and Kashmir (Currently with the Status of Union Territory). It is pertinent to mention that the constitution cannot be used as a mere instrument by the government to achieve their underlying motives. Brute majority can in no case replace constitutional morality.

8Contempt of Courts Act, 1971 [Section 2(a)]
9Constitution (Sixteenth Amendment) Act, 1963 [Article 19(2)]
10AIR 2004 SC 1559
11AIR 1957 SC 896
12AIR 1962 SC 305
13AIR 1963 Guj 259
14(1991) 2 CALLT 282 HC
15AIR 1978 SC 598
16(2020) 1 MLJ 574
17Temporary Suspension of Telecom Services (Public Emergency or Public Services) Rules, 2017
CONCLUSION
It can effectively be concluded that right to freedom of speech and expression mentioned under Article 19 of the PART III of the Indian Constitution is one of the most important and integral provisions of our constitution. It is due to this right that one can strongly uphold one’s ideologies and can form and express one’s opinions and ideas without any fear of consequences. This right allows to express our idea in any form, be it oral or in writing. We adopted this right from the England’s bill of rights having the essence from Declaration of the Rights of Men and Women of France and also that of Declaration of Human rights of 1948 by United Nations. This right is very important to be preserved because it protects the democratic aspect of our country and helps us to discover the truth and also allows to formulate arguments in favour or against the solution proposed or provided to us for our problem. It is this, very right of ours that help us to put forth our problems. But the exercise of Article 19 is not absolute and state can impose reasonable restriction in order to protect the security of the state, public order etc. Article 19 cannot be used to defame a person and to the hinger the court’s functioning. That’s why reasonable restrictions can be imposed to not allow the contempt of court. In all these role of legislature remains an important part as it is our parliament that make laws and policy for our country. Judicial capacity plays an important role in safeguarding freedom of speech and expression. Landmark judgements have been observed such as where the court declared Right to Information to be integral part of freedom of speech and expression and even right to press is also inclusive under Article 19 (1) of the Indian Constitution. It is the judicial capacity where the rights are restored when they are violated as seen in case of internet ban in Jammu and Kashmir. So, it is Article 19 i.e. freedom of speech and expression that gives a voice to us as a citizen and helps us in a qualitative and pragmatic decision making of the country.