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FUNDAMENTAL RIGHTS UNDER THE INDIAN CONSTITUTION

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ABSTRACT

Fundamental rights are the lifelines of democracy. Almost all the written constitution of the world contains Fundamental rights. In the constitution of India part III (Arts 12-32) fundamental rights are included. The state cannot make a law, which takes away, or abridges any of the rights of the citizens guaranteed in Part III of the constitution. If it passes such law, it may be declared unconstitutional by the courts. The people of the United States of America attach a great sanctity to the rights. But fundamental rights are not absolute.

Key Word: Concept, fundamental, Right, India constitution, Equality Discrimination, Religion, Remedies.

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1. INTRODUCTION

India has been consistently concerned with the protection of Fundamental rights, and this has been reflected (for the most part) in the way in which it pursues socioeconomic development. For purposes of the social revolution in India, the most important parts of the Constitution are parts III and IV, which hold the 'Fundamental Rights' and 'Directive Principles of State Policy'. These Sections have often been called the "conscience of the Constitution." India's set of fundamental rights is, in effect, its counterpart to the American Bill of Rights (the first Ten Amendments of the American Constitution). Part III of the Constitution of India guarantees these rights because they enable a man to chalk out his own life in the manner he likes best. These rights are calculated to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent. They are also limitations upon all powers of the government, Legislative as well as Executive and they are essential for the preservation of public and private rights. There are six categories of fundamental rights enumerated in the part III of the Indian Constitution:

2. Meaning and importance of Fundamental Rights;

Fundamental Rights fulfill some basic and essential conditions of good life for human progress. These are fundamental in the sense that in the absence of these rights citizens cannot develop their personality and their own self. These rights are not the same as ordinary rights of citizen. Fundamental Rights are enshrined in the Constitution. These are constitutionally protected and guaranteed to the citizens while ordinary rights are protected by the ordinary law of the country. Fundamental Rights are inviolable in ordinary situation. Only under reasonable circumstances, these rights are suspended temporarily. Right to Life, Freedom of Speech and Expression, Right to Equality, Right to Religion, Right to Personal Liberty, Right to Education are some important Fundamental Rights of Indian citizen. Every state incorporates these Fundamental Rights in their



own Constitution and citizens can enjoy them. If anybody's Fundamental Rights are violated by force he or she can go to the court seeking legal assistance. Democratic countries like India, Japan, France, Switzerland and many other countries individuals without which democracy becomes meaningless. The Constitution of India has embodied a number of Fundamental Rights in Part III. Citizens can enjoy these rights within some definite limitations.

3. Types Fundamental Rights

- Fundamental Rights are those Rights which are mentioned under Part III of the Indian Constitution.
- There are certain Rights which are mentioned in the Constitution, but not under Fundamental Rights. Such Rights are called Constitutional Rights.
- There are certain Rights which are available to citizens through laws passed by Legislatures. Such Rights are called Statutory Rights.

The Constitution makers have laid down an elaborate list of Human Rights in the name of Fundamental Rights under part-III of the Constitution of India. The Fundamental Rights guaranteed in part-III of the Constitution of India are designed to ensure Human Rights and Article 13 of the Constitution of India declares that any attempt by the State to curtail or to infringe them as unconstitutional and void¹⁰. An eminent scholar V.G. Ramachandran has called these provisions of the Constitution as the Magna Carta of India¹¹. The Fundamental Rights guaranteed and enumerated in part-III are mostly in consonance with Human Rights enumerated in the Universal Declaration of Human Rights, 1948 and International Covenant on Civil and Political Rights, 1966 and provide inter alia. The fundamental Rights in the Indian constitution have been grouped under seven heads as follows; [Article 12 to 35]

- Right to Equality comprising Article 14 to 18 of which Article 14 is the most Important
- Right to Freedom comprising Article 19 to 22
- Right against Exploitation consist of Article 23 and 24
- Right to Freedom of Religion is guaranteed by Article 25 to 28
- . Cultural and Educational Right are guaranteed by Article 29 to 30)
- Right to property is now very much diluted and is secured to some extent by Article 30-A, 31-A, 31-B and 31-C
- Right to Constitutional Remedies is secured by Article 32 to 35

The Constitution (forty-fourth amendment) Act 1978 has abolished the right to property as a fundamental right as guaranteed by Article 19 (1) (f) and Article 31 of the Constitution and hence, Article 19 (1) (f) and Article 31 have been omitted.

4. Equality & Non-Discrimination (Articles 14 to 18)

4.1 Right to Equality- Article 14

The constitution of India guaranteed the right to equality through Article 14 to 18. Equality is one of the magnificent corner-stone of Indian democracy.. The doctrine of equality before law is necessary corollary of Rule of law which pervades the Indian constitution.

Article 14 runs as follows; "The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. This provisions corresponding to the equal protection clause of the 14 The Amendment of U.S constitutions which declares;" no state shall deny to any person within its jurisdiction the equal protection of the law.

Two concepts are involved in article 14, viz 'Equality before law and equal protection of law'. The first is negative concept which ensures that there is no special privilege in favour of any one, that all are equal subject to the ordinary law of the land and that no person, whatever be his rank or condition, is above the law



Second concept 'equal protection of law' is positive in content. It does not mean that identically the same law should apply to all persons, or that every law must have a universal application within the country irrespective of differences or circumstance. Equal protection of the laws does not postulate equal treatment of all people without distinction. The constitution prohibits discrimination against any citizen on grounds of religion, race, caste or place of birth. It ensures public employment and equality of opportunities for all citizens. To this, there are certain exceptions.

The state can reserve certain percentage of the jobs for the scheduled castes and tribes and backward classes in recruitment to public services and also in making promotions. Article 14 is based upon the principles of Natural Justice and also Dicey's Rule of Law. The protection of Article 14 extends to both citizens and non-citizens and to natural persons as well as legal persons. In Indira Nehru Gandhi vs. Raj Narain case Supreme Court held that the Rule of Law embodied in Article 14 is the basic feature of the Indian Constitution and hence it cannot be destroyed even by any Constitutional amendment. This Article prohibits unreasonable discrimination between persons.

4.2 Prohibition of discrimination on ground of Religion, Race, Sex or Place of Birth- Article 15

The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth, or any of them, either in general or in the matter of access to or use of general and public places and conveniences - Article 15.

15. (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

15. (2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to— (a) access to shops, public restaurants, hotels and places of public entertainment; or (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

15. (3) Nothing in this article shall prevent the State from making any special provision for women and children.

15. (4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

15.(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.

In order to serve the educationally and socially backward classes, the state asked the private education institutions also to reserve seats for the backward classes. Private institutions objected to it, stating it would amount to violation of right under Article 19 (1) g. The Parliament, by amending the constitution in 2005, added Clause 15 (5). According to this, it is mandatory to reserve seats for backward classes also even in private institutions whether aided or unaided, by law. The only exception is educational institutions run by minority communities. A law was enacted in this effect called Central Educational Institutions Reservation in Admission Act 2006. This Act was challenged in the Supreme Court, but the Supreme Court upheld the validity of this law.

4.3 Equality of opportunity in matter of public employment - Article 16

[1] There shall be equality of opportunity for all citizens in matters of relating to employment or appointment to any office under the state.

[2] No citizen shall, on ground s only of religion ,race ,caste, sex, descent, place of birth or any of them, be ineligible for any office under the state'.



Article 16 is spread of Article 14. article 14 lays down the rule of equality in the widest terms i.e., equality before law .Article 15 is more general and prohibit discrimination on the grounds specified therein i.e, religion, race, caste, sex, or place of birth but covering the entire range of state activities. But under Article 16 the guarantees against discrimination is limited to 'Employment' and appointment under the state. Article 16 embodied the particular application of general rule of equality with special reference for appointment and employment under the State.

4.5 Abolition of Untouchability-Article 17

Article 17 of the constitution provides that::untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of: 'untouchability' shall be an offence punishable in accordance with Law".

Article 17 is similar to the 13th Amendment of the constitution of the United States of America which abolished slavery and empowered the Congress to enforce the abolition by appropriate means.

'Untouchability' is neither defined in the constitution nor any Act. In *Jai Singh v. Union of India*, it has been observed that Article 17 places the word 'untouchability' in inverted commas; accordingly, the subject matter of the article is not untouchability in its literal or grammatical sense but the practices as it has developed historically in India.

The traditional religious concept of 'untouchability' stands abolished finds its practice in any form is strictly forbidden -Article 17.

4.6 Abolition of Title- Article-18

Article 18 of the constitution of India provides:

- 'No title, nor being a military or academic distinction, shall be conferred by the State.
- No citizen of India shall accept any title from any foreign state.
- No person who is not a citizen of India shall while he holds any office of profit or trust under the state, accept without the consent of the President any title from any foreign State.
- No person holding any office or profit or trust under the any shall, without the consent of the President, accept any present, enrolment, or office of any kind from or under any foreign state.' Article 18 is directory; no penalty has been prescribed by the government for the infringement of article 18 so far.

5. Right to freedom Article 19 to 22

5.1 Right to freedom Article 19

Article 19 of the constitution guarantees seven freedoms:

- Freedom of speech and expression
- Freedom to assemble peacefully without arms.
- Freedom to form associations or unions.
- Freedom to move freely throughout the territory of India.
- Freedom to reside and settle in any part of the territory of India.
- Freedom to acquire, hold and dispose of property.
- Freedom to practice any profession or to carry on any occupation, trade or business.

Article 19 itself imposes certain reasonable restrictions on the exercise and enjoyment of the seven freedoms.

5.2 Article 20 Protection in respect of Conviction for Offences

Article 20 prohibits the legislature to make retrospective criminal laws. This Article further contemplates that no person shall be prosecuted and punished for the same offence more than once. Article 20 (3) provides that no person accused of any offence shall be compelled to be a witness against himself.

5.3 Article 21 Protection of Life and Personal Liberty



Personal liberty and the rule of law find a place in the India Constitution. Article 12 guarantees that no person shall be deprived of his life or personal liberty except according to procedure established by law.

- No person can be convicted of any offence except for the violation of a law.
- No person can be given a penalty greater than what might have been inflicted under the law.
- No person will be prosecuted and punished twice for the same offence.
- No person accused of any offence will be compelled to be a witness against himself.

Right to life and liberty includes the following Fundamental rights:

- Right to live hood.
- Right to family pension
- .Right to shelter
- Right to good health. Right to doctor's assistance, Right to emergency medical aid, Right to appropriate life Insurance Policy.
- Right to Environment, Right to pollution free water and air, Right to protection against hazards industries, Right to freedom from noise pollution,
- Right to privacy,
- Right to travel abroad
- Right to reputation
- Right to social justice and economic empowerment
- Right to information
- Right to decent burial or cremation
- Right to not to be driven out of a state
- Right to be subjected to treated labour and to be rehabilitated
- Right of women to be treated with decency and dignity

Prisoner's Rights: a] Prisoner's right to have necessities of life, b] Right against hand cuffing, c] Right against torture or third degree method, ,d] Right to have Interview with his lawyer and family members ,e] Right to legal aid, f] Right to bail, g] Right against solitary confinement and use bar fetters, h] Right to hearing, i] Right to speedy trial j] Right against delayed execution of death sentence k] Right to appeal, l] Right against public hanging , m] Right of compensation for custodial death

Article 21 guarantees protection of life and personal liberty. This Article is contemplated among all Human Rights, the most cherished right is the Right to Life and Personal Liberty protected by Article 21 of the Constitution. Initially the Right to Life under Article 21 of the Constitution of India was restricted to the protection against any arbitrary arrest or to protection of life and liberty. But, now due to the new dimensions given by the judicial activism the right to Life includes a variety of rights which are very essential to live with human dignity. Article 21 (A) provides that the state shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law determine.

5.4 Article-22 Protection against arrest and detention in certain cases

1. No person who is arrested shall be detained in custody without being informed, as soon as may not be, of the grounds for such arrest nor shall he is denied the right to consult, and to be defended by, a legal practitioner of his choice.
2. Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said (a) to any person who for the time being is an enemy alien; or (b) to any person who is arrested or detained under any law providing for preventive detention.



3. No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless— (a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention: Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or (b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).

4. When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

5. Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers being against the public interest to disclose. Parliament may by law prescribe—(a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4); (b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and (c) the procedure to be followed by an Advisory Board in an inquiry under sub-clause (a) of clause (4).

6. Right against Exploitation

6.1 Prohibition of Traffic In human beings, beggar and force labour

There are two Article 23 and 24 which guarantee the against exploitation .Article 23 prohibit traffic in human being and forced labour and Article 24 prohibit employment of children in factories etc. Article 23 prohibits traffic in human beings, enforced labour, and employment of children below fourteen years, in factories, mines and other dangerous employment.

6.2 Prohibition of employment of children in factories etc.

Article 24 of the Constitution of India, prohibits the employment of the Children below 14 years of age in factories and hazardous employment. This provision is certainly in the interests of public health and safety of life of children.

7. Right to Freedom of Religion

Religious freedom as an individual's right is guaranteed by the Constitution to 'all persons' within the following parameters:

1. Article 25 of the Constitution guarantees to every person freedom of Conscience and Right to Profess, Practice and Propagate Religion. However this Right to Religious Freedom is subject to public order, morality and health.

2. Article 26 of the Constitution provides that subject to public order, morality and health every religious denomination or any section thereof shall have the right a). To establish and maintain institutions for religions and charitable purposes b) To manage its own affairs in matters of religion c) To own and acquire movable and immovable property d) To administer such property in accordance with law.

3.. There shall be freedom as to payment of taxes for promotion of any particular religion by virtue of which no person shall be compelled to pay any taxes the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religious denomination - Article 27.

4.. No religious instruction is to be provided in the schools wholly maintained by State funding; and those attending any State recognized or State-aided school cannot be required to take part in any religious instruction or services without their (or if they are minor their guardian's) consent - Article 28.

Freedom of religion is guaranteed by the Constitution of India as a group right in the following ways:



India's constitution guarantees religious freedom to all. Subject to certain reasonable restrictions like public order, morality, health etc, all persons are entitled to freedom of conscience and the right to profess, practice and propagate religion. The constitution debar religious instruction in all educational institutions wholly maintained by the state.

In Masud Alam v. Commissioner of Police, the banning of electrical loudspeakers was held valid. The court observed that every religion has right to have propagandists. But when such propaganda is made through loudspeakers in a crowded and noisy locality to detriment of public morals, health, order, it is prohibited by Article 25. A loudspeaker may take one to Hell instead of Heaven by very volume of its sound.

Venkataramana v. State of Mysore, the Supreme Court of India held that no Hindu can claim as part of rights protected by Article 25 (2) (b) that a temple must be kept open for worship at all hours of the day and night

In Aruna Roy V, Union of India, the Supreme Court has ruled recently that article 28 does not ban a study of religious. The whole emphasis of Art, 28 is "against imparting religious instruction". There is no prohibition on 'Study of religious philosophy and culture, particularly for having value based social life in a society which is degenerating for power, post or property'.

In a very recent case (popularly known as National Anthem case) the Division Bench²¹¹ of the Supreme Court has held that no person can be compelled to join in the singing of National Anthem against his will, "if he has genuine conscientious religious objection". Such compulsion, according to the court would be violative of the fundamental right guaranteed under Articles 19(1) (a) and 25 (1) of the Constitution.

8. Cultural and educational Rights:

The constitution safeguards the freedom of every minority community to practice its own religion and conserve its own culture, language and script.

All minorities, religious or linguistic have been given the right to establish and administer educational institutions and no discrimination can be shown in granting aid to them.

1. Any section of the citizens having a distinct language, script or culture of its own shall have the right to conserve the same - Article 29.

2. Religious and linguistic minorities are free to establish and administer educational institutions of their choice, which shall not be discriminated against by the State in the matter of giving aid or compensation in the event of acquisition - Article 30.

In State of Karnataka v. Dr. Pravin Togadia reported at the Apex Court observed that welfare of the people is the ultimate goal of all laws and State action, and above all the Constitution. They have one common object that is to promote the well-being and larger interest of society as a whole and not of any individual or particular groups carrying any brand names. It is inconceivable that there can be social well-being without communal harmony, love for each other and hatred for none. The core of religion based upon spiritual values, which the Vedas, Upanishad and Puranas were said to reveal to mankind, seem to be "Love others, serve others, help ever, hurt never" and "Servae Jana Sukhino Bhavantoo

Rajesh Himatlal Solnki v Union of India, Dismissing a petition purportedly filed in public interest with costs, a Division Bench of the Gujarat High Court in a recent decision has declared that the "offering of the prayer to the earth at the time of foundation laying ceremony cannot be termed as non-Secular action if 'manav dharma' is to be understood in its

9. Right to Constitutional Remedies

According to Article 32, every citizen has the right to move the Supreme Court for the enforcement of fundamental rights. The Supreme Court has the power to issue writs in the nature of habeas corpus, mandamus, prohibition, quo-waranto and certiorari for the enforcement of the rights. Rights have no meaning unless they are Safeguarded and enforced by the courts. According to Dr. Ambedkar, Article 32 is "the heart and soul of the whole constitution. The framers of the Indian Constitution have provided for an effective



remedy for the enforcement of the rights under Article 32 of the Constitution. Article 32 is itself a Fundamental Right. It is the very soul of the Constitution without which the Constitution would be a nullity. Article 32(1) guarantees the right to move the Supreme Court by appropriate proceedings for the enforcement of the Fundamental Rights conferred by part-III of the Constitution. Article 32 (2) confers power on the Supreme Court to issue directions or orders or writs, including writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo-warranto and Certiorari for the enforcement of any of the rights conferred by part-III of the Constitution. As per Article 32 (3) Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2). Article 32 (4) further guarantees that the right guaranteed by Article 32 shall not be suspended except as otherwise provided for by the Constitution. The above stated powers are also granted to High Courts under Article 226 of the Constitution of India. The difference between Article 32 and Article 226 is, Article 32 itself is a Fundamental Right while Article 226 is not. The power of High Courts, under Article 226 to issue writs cannot be in derogation of Supreme Courts. In other words an order under Article 32 will supersede the order of High Court previously passed.

Justice Gajendragadkar assessed Article 32 as "To move this court can be appropriately described as the corner-stone of the democratic edifice raised by the Constitution²⁸". Article 32 is considered as the expeditious and inexpensive remedy for the protection of Fundamental Rights from legislative and executive interference.

CONCLUSION

During the national movement, this idea of rights was further sharpened and expanded to constitutional rights. Our Constitution reflected this long tradition and listed the fundamental rights. Since 1950, the judiciary has functioned as an important protector of rights. Judicial interpretations have expanded the scope of rights in many respects. The government and administration of our country function within this overall framework. Rights enforce limitations on the functioning of the government and ensure democratic governance of the country.

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