

FUNDAMENTAL RIGHTS IN INDIAN CONSTITUTION AND ITS POSITION DURING EMERGENCY

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ABSTRACT

Fundamental rights are those rights which are essential, moral and spiritual development of individuals. So, these rights are essential for all round development of individual. Hence, it is called fundamental rights. Fundamental rights are applied universally to all citizens, irrespective of race, birthplace, religion, caste, class, sex or gender. In fact, the fundamental rights in our constitution are more elaborate than those found in the constitution of any other country in the world including the USA. The fundamental rights are named so because they are guaranteed and protected by the Constitution, which is the fundamental law of the land. The Fundamental Rights are also called the natural rights which command higher sanctity than other rights such as legal rights. No one can attain the perfections of his life as a human being in the absence of fundamental rights.

KEY WORDS : Rights, Equality, Constitution, Law, country, Citizen, religion, Democracy.

INTRODUCTION

The fundamental rights are considered as one of the integral part of Indian constitution. The fundamental rights are enshrined in **part 3** of the constitution from Article **12** to **35**. Rights literally mean those freedoms which are essential for personal good as well as the good of the community. The rights guaranteed under the constitution of India are fundamental as they have been incorporated into the fundamental law of the land and are enforceable in a court of law. However this does not mean that they are absolute. Originally, the constitution provided seven fundamental rights but the right to property was deleted from the list of fundamental rights by the 44 amendment act, 1978. So at present there are only six fundamental rights.

METHODOLOGY

This paper was written using theoretical analytical method as the methodology. The majority of the information in this study comes from secondary sources. Information was gathered from different books, journals, newspapers, and relevant websites.

OBJECTIVES

- To understand the concept of fundamental rights,
- To understand the position of fundamental rights during emergencies.

BACKGROUND

The first explicit demand for the fundamental rights came in the form of the “constitution of India bill, 1895” which was created under guidance of Bal Gangadhar Tilak. This bill popularly called “Sawaraj Bill 1895” spoke about freedom of speech, right to privacy, right of franchise etc. The Indian National Congress at its Bombay session in August 1918 demanded the inclusion of declaration of rights of the people of India as the British citizens in the new Government of India Act. The commonwealth of India Bill finalized by the national convention of 1925 embodied a specific declaration of rights. The resolution passed by Indian National Congress in 1927 at its Madras session lay down that the declaration of fundamental rights should be the basis of future constitution of India. The Motilal Nehru report of 1928 demanded inalienable fundamental rights for the people of India. It was basically inspired by the American Bill of Rights, which had a great impact on the thinking of Indian leaders. The Nehru report was discarded by Simon Commission.

The Indian National Congress again demanded for a written guarantee for fundamental rights in any future constitutional set up in India at the Karachi session in 1931. But the joint select committee of the British parliament did not accept the demand for the constitutional guarantee of fundamental rights to British subjects in India. The constituent assembly had appointed an advisory committee on fundamental rights headed by Sardar Vallabhbhai Patel on January 24, 1947. This advisory committee

dealt with the rights of citizens, minorities, tribal and excluded areas. In 1947 the **Sapru committee** report was published. The committee recommended that the fundamental rights must be included in the constitution of India. This committee divided fundamental rights into two parts viz. justifiable rights and non-justifiable rights. The justifiable rights were those enforceable by a court of law, those are incorporated in **part III** of the constitution. The non-justifiable rights were incorporated in **part IV** of the constitution and known as directive principle of state policy. The various clauses on fundamental rights passed were similar to other parts of the constitution. The fundamental rights were included in the first draft constitution (February 1948), the second draft constitution (17, October 1948), and final third draft constitution of (26 November 1949) prepared by the drafting committee.

FUNDAMENTAL RIGHTS IN INDIAN CONSTITUTION

The constitution itself classifies the fundamental rights under 6 categories as follows:

RIGHT TO EQUALITY

Right to equality is an important right provided for in Articles 14,15,16,17 and 18 of the constitution. **Article 14** says that the state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. It means that the state can't discriminate against a citizen on the basis of caste class religion sex or place of birth. **Article 15** of the constitution states that no person shall be discriminate on the basis of class, caste, language etc. Every person shall have equal access to public places like public parks, museums temples etc. **Article 16** of the constitution lay down that the state can't discriminate against anyone in the matters of employment. All citizens can apply for government jobs. There are some exceptions, the parliament may enact a law stating that certain jobs can only be filled by applicant who are domiciled in the area. The state may also reserve post for members of backward classes, schedule caste and schedule tribe, which are not adequately represent in the service under the state to bring up the weaker sections of the society. **Article 17** of the constitution abolishes the practice of untouchability. The enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law. **Article 18** of the constitution prohibits the state from conferring any titles. Citizen of India can't accept titles from any other foreign country. The British government had created an aristocratic class known as Rai Bahadurs, Raj Bahadur, Dewan Bahadur etc in India – these titles were also abolished. However military and academic distinctions can be conferred on the citizen of India.

RIGHT TO FREEDOM

The constitution of India contains the right to freedom in Article 19, 20, 21, and 22. The right to freedom in **Article 19** guarantees the following six freedoms---

1. Right to freedom of speech and expression.
2. Right to assemble peacefully and without arms.
3. Right to form associations, unions or co-operative societies.
4. Right to move freely within the territory of India.
5. Right to reside and settle in any part of the territory of India.
6. Right to practice any profession.

Article 20 grants protection against arbitrary and excessive punishment to an accused person, whether citizen or foreigner. It contains three provisions in that direction: (i) No ex-post-facto law (ii) No double jeopardy (iii) No self – incrimination.

Article 21 declares that no person shall be deprived of his life or personal liberty except according to procedure established by law. This right is available to both citizens and non-citizens. Protection of life and personal liberty means that a person's life and personal liberty can only be disputed if the person has committed a crime. The Supreme Court has reaffirmed its judgement in the maneka Gandhi cases. It has declared the following some rights as part of article 21:

- (i) Right to livelihood.
- (ii) Right to privacy.
- (iii) Right to shelter.
- (iv) Right to health.
- (v) Right to information.
- (vi) Right to free legal aid
- (vii) Right against inhuman treatment etc.

Article 21 (A) declares that the state shall provide free and compulsory education to all children of the age of six to fourteen years in such a manner as the state may determine. Thus this provision makes only elementary education a Fundamental Right and not higher or professional education. This provision was added by the 86th constitutional amendment Act of 2002.

Article 22 deals with the protection to persons who are arrested or detained. Detention is of two types- punitive detention and preventive detention. According to this Article no one can be arrested without being told the grounds for his arrest. Also an arrested citizen has to be brought before the nearest magistrate within 24 hours.

RIGHT AGAINST EXPLOITATION:

The right against exploitation given in **Articles 23** and **24**, provides for two provisions namely the abolition of trafficking in human beings and beggar, and abolition of employment of children below the age of 14 years in dangerous jobs like factories and mines.

RIGHT TO FREEDOM OF RELIGION

The constitution of India contains right to freedom of religion in Article **25, 26, 27**, and **28**. **Article 25** says that all persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate religion. According to **Article 26**, every religious denomination or any of its section shall have the right to establish and maintain institution or manage its own affairs in matters of religion. They also have the right to acquire movable and immovable property. **Article 27** lay down that no person shall be compelled to pay any taxes for the promotion or maintenance of any particular religion or religious denomination. Under **Article 28**, no religious instruction shall be provided in any educational institution wholly maintain out of state fund.

CULTURAL AND EDUCATIONAL RIGHT

India is a country of many languages, religions and cultures, so the constitution provides protection of the rights of the minorities under **Article 29** and **30**. According to this Article any community which has a language and a script of its own has the right to conserve and develop them. All minorities, religious or linguistic can set up their own educational institution in order to preserve their own culture.

RIGHT TO CONSTITUTIONAL REMEDIES

Right to constitutional remedies belongs to **Article 32 to 35** which empowers the citizen to move court of law if his fundamental rights are violated. The courts can issue various kinds of writs for protecting the rights of the citizens. These writs are – habeas corpus, mandamus, prohibition, quo warranto, certiorari. **Dr. B. R. Ambedkar** declared the fundamental right- right to constitutional remedies as “**The heart and soul**” of the Indian constitution.

RIGHT TO PROPERTY – (a former fundamental right)

The constitution originally provided for the right to property under **Article 19** and **31**. **Article 19** guaranteed to all citizens the right to acquire, hold and dispose of property. **Article 31** provided that “no person shall be deprived of his property save by authority of law”. The 44th amendment Act of 1978 deleted the right to property from the list of Fundamental rights. A new **Article 300-A** was added to the constitution which provided that “no person shall be deprived of his property save by authority of law”.

CRITICISM OF FUNDAMENTAL RIGHTS

Some criticisms of fundamental rights are mention in the following-

1. Excessive limitation

Fundamental rights are subjected to innumerable exceptions, restrictions, qualifications and explanations. Hence the critics remarked that the constitution grants fundamental rights with one hand and takes them with the other.

2. No clarity

They are stated in a vague, unclear, ambiguous manner. The language used is very complicated and beyond the comprehension of the common man. Sir Ivor Jennings called the constitution of India a “paradise of lawyers”.

3. No permanency

They are not permanent because the parliament can curtail or abolish them, for example, the abolition of the fundamental right to property in 1978.

4. Expensive judiciary

The judiciary has been made responsible for defending and protecting these rights. But the judicial process is too expensive and time consuming benefitting the rich.

5. No consistent philosophy

Some critics argue that fundamental rights are not product of any philosophical principle, which creates difficulty for the Supreme Court and the High Courts in interpreting the fundamental rights.

SIGNIFICANCE OF FUNDAMENTAL RIGHTS

In spite of the above criticisms, fundamental rights are significant in the following respect-

1. They form the bedrock of democratic system in the country.
2. They facilitate the establishment of rule of law in the country.
3. They serve as a formidable bulwark of individual liberty.
4. They ensure the dignity of the individual.
5. They protect the interests of minorities and other weaker sections of society.
6. They check the absoluteness of the authority of the government.

FUNDAMENTAL RIGHTS DURING EMERGENCIES

During the national emergency fundamental rights under article 19 are automatically suspended. According to article 358 of the Indian constitution when a national emergency is declared the six fundamental rights under article 19 are suspended. No separate order is required for their suspension. But the 44th amendment Act of 1978 limited the scope of article 358. According to this amendment article 19 can be only when the national emergency is declared on the ground of war and external aggression and not on the ground of armed rebellion. On the other hand article 359 of Indian constitution which deals with the suspension of other fundamental rights except those guaranteed by articles 20 and 21.

CONCLUSION

Therefore, Fundamental Rights play a significant role because they are most essential of full intellectual, moral and spiritual status of an individual. The objective behind the inclusion of fundamental rights in the constitution to established rule of law and preserve individual liberty, building an equitable society, and established a welfare state. Changes to the Fundamental Rights require a constitutional amendment, which has to be passed by a special majority of both house of parliament. This means that an amendment require the approval of two-third of the members present and voting. However, the number of members voting should not less than the simple majority of the house – whether the Lok Sabha or Rajya Sabha.

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