



Fundamental rights: An initiates towards equality

Rinku¹, Dr. Sukhbir Singh²

¹ Assistant Professor of Political Science, Govt College Bherian, Pehow, Kurukshetra, Haryana, India

² Associate Professor of History, Govt College Bherian, Pehow, Kurukshetra, Haryana, India

Abstract

The aim of the paper is insight on the constitution of India is based on the principles of liberty, equality, fraternity and justice. For achieving aim we have undertaken a concise study of all the journals and books which are linked with the provisions of the constitution manifest great respect for human dignity, commitment to equality and non-discrimination and concern for the weaker section in society. Further, the constitution makes it mandatory for the Government to protect and promote freedoms, and to assure every citizen a decent standard of living. The right to freedom, the right against exploitation, the right to freedom of religion, cultural and educational rights, right to constitutional remedies and special provisions relating to certain classes are some of the constitutional provisions ensuring human rights.

Keywords: constituent assembly, justifiable, adequate safeguard, ex-post facto laws

Introduction

The fundamental rights guaranteed to the citizens within the Indian Constitution. Fundamental rights are the most basic rights which are required to uphold human dignity. This right affirms the principle of natural law that no one is above law by granting a set of right to the citizens that cannot be taken away by the government. The Fundamental rights have been covered under Chapter III of the constitution and contain broadly, rights such as Right to equality (Articles 14-18), Right to Liberty (Articles 19-22), right against exploitation (Articles 23-24), right to freedom of religion (Articles 25-28), right to culture and education (Articles 29-30) and right to constitutional remedies (Articles 32- 35). The Fundamental rights have been the cornerstone of the constitution and have been subjected to a lot of adjudication. For protection of such freedoms, people may reach the Supreme Court by writing the writs such as the habeas corpus, quowarranto, mandamus, prohibition and certiorari.

Historic content of fundamental rights

The fundamental rights were included in the Constitution of India with lot of enthusiasm, as the American idea of the "Bill of Rights" was one of the inspiring factors while the Indians were struggling against the Britishers for freedom. Even during an alien rule the Indian nationalists were making demands for inclusion of a Bill of Rights in the Government of India Act of 1935. But their demand could not get fulfilled as the concept of a written list of rights was not popular among the Britishers. They believe that the rights are created by the Parliament. Sir John Simon, the chairman of the Simon Commission opposed the idea of inclusion of a bill of rights in the constitution. He was of the view that the concept of the British Constitution implied the sovereignty of the Parliament. All rights in Britain originates therefore, from Parliament. Secondly, the necessity of fundamental rights arises only where autocracy rules. But where there is a parliamentary system of government there is no necessity of fundamental rights. Thirdly there can only be two possibilities with regard to

fundamental rights; either they are justifiable or non-justifiable". Similar were the views of other Britishers. But there was a fundamental difference between the British constitutional system which has evolved itself in the span of a period of centuries, and the Indian system which was not a well-established system, and social structure was a fragmented structure.

Finally, the Government of India Act, 1935 was passed without any mention of the fundamental rights. As the Indian nation got its Constituent Assembly in 1946, there was a strong demand for inclusion of a chapter on fundamental rights in the proposed constitution. A separate committee was formed under the chairmanship of Sardar Patel along with some other members particularly representing the minorities. This Committee submitted its report to the Drafting Committee, which prepared the Part on fundamental rights on the recommendations of the fundamental rights Committee.

Though there were so many constitutions in the world having the fundamental rights, and the UN was also at the same time busy in preparing the list of inalienable rights of the man, yet the framers of the Indian Constitution carefully selected the rights to confer the status of fundamental rights on those rights. Peculiar social fabric of India, having typical problems like untouchability, caste-based rankings in society, diversities based on diverse factors like language, religion, culture, level of development etc. were kept in mind while preparing the list of the fundamental rights. Part III, which deals with these rights was given the place of prominence in the Constitution. This Part was made not only "justiciable" but also immune from any encroachment by the Government in future (Article 13).

The makers of our Constitution tried their best to clarify the provisions of the fundamental rights and the limits for the enjoyment of these rights. The distinction was also made between the residents of India as the citizens and the non-citizens as the two words „citizens“ and „persons“ has been used in different rights. The Right to Constitutional Remedies in 2 cases of any infringement on these rights is made itself a fundamental right (Article 32). This Article

was considered as heart and soul of the Constitution. The importance of this Article can be measured from the views expressed by the chairman of the Drafting Committee before the Constituent Assembly about its importance. Dr. Ambedkar said, "if I was asked to name the particular Article in this Constitution as the most important without which this Constitution would be a nullity, I could not refer to any other Article except this one. It is the very soul of the Constitution and the very heart of it and I am glad that the House has realized its importance. Hereafter, it would not be possible for any legislature to take away the writs which are mentioned in this Article". At the dawn of independence these rights were adopted by the Constitutional Assembly as the Fundamental Rights after a lot of discussion.

Fundamental rights

Part III of the constitution deals with the Fundamental Rights. The fundamental rights are those rights of people which are so fundamental in nature that it cannot be undermined or curtailed at any cost except under exceptional circumstances. The fundamental rights under Part III is given from Article 12 to Article 35 of the constitution. All those article deals either with the organs of government, authorities and the instrumentalities against whom such rights can be enforced, the rights themselves or their enforceability. Following is the Article wise journey of this part from the commencement of the Constitution, till date.

About state

The Third Part of Indian Constitution begins with the definition of the word „State“. It includes the Government and Parliament of India, Governments and Legislatures of the States and other authorities under the control of the Government. This Article stands intact till date and no alteration has been made in it.

Judicial review

This article purely empowered the Judiciary for reviewing decisions and policies. Article 13 also gives power to declare any pre-constitutional law which is inconsistent with the Fundamental Rights as void to the extent of its inconsistency. It thus helps review the pre constitutional law as well as the existing laws, thereby paving the way for judicial review.

Right to equality

One of the cornerstones of India's constitution is the right to equal rights. Indian constitution's ART.14 states that 'the State shall not, before the law and equal protection of laws in territory of India, grant any person equality,' more specifically Article 15. It states that ' the State shall not discriminate against any person on sole grounds of caste, sex, religion, race, place of birth or any such person or any of them shall be subject to any disability, liability, restriction or condition relating to access to public restaurants, hotels, public entertainment palaces and shops.

Right to freedom

The right to freedom referred to in Article 19-22 shall be regarded as the soul of human rights. The set if these rights ensure to the people, the freedom of speech and expression, the people are free to say what they feel and express the same and also to gather somewhere peacefully without

arms. Citizens are free to move anywhere within the Indian Territory, and settle anywhere in the world. Citizens are also free to practice any profession or to engage in any kind of occupation, trade or business. This set of rights also protects the citizens from being convicted of any offence except when the violate any of the laws laid down in any of the legislations of the country. The person shall also not be charged with a greater punishment that what has been decided and provided for in the relevant legislation. The right to freedom as provided for in Article 20 does not require anybody to be deprived of their personal freedom except by the legal procedure.

Right against exploitation

The constitution, through the Fundamental rights, prohibits exploitation of the citizens by way of human trafficking, beggared any other ways in which the the citizens would have been exploited. The constitution does not use the word „slavery“ but rather uses the words „traffic in human beings“ which extends the ambit of the exploitation not only through slavery but also the trafficking of women and children. This set of rights also prohibits the employment of children below the age of 14. Children cannot work in hazardous surroundings such as factories or mines. Forced labor among children has also been protected.

Right to freedom of religion

Certain religious freedoms have been granted to the citizens under Articles 25-28 of the constitution. Such freedoms include freedom to conscientiously follow one's profession, practice and freedom of religious affairs, dissemination of religion, tax freedom to promote one 's religion, and freedom to attend religious instruction or religious worship in certain educational institutions. In short, these are important rights for India's religious minorities.”

Cultural and educational rights

The minority sections are granted the cultural and educational rights. Article 29 stipulates that people living in every part of the country and possessing a script or culture and distinct language shall have right to same protection. Thus Article 30 calls for the religious or lingual minorities to have the right to establish and administer educational institutions. These rights are very important rights, as they protect minorities in a diverse society such as India.

Right to constitutional remedies

Every individual has the right to approach the Supreme Court for the purpose of upholding the Fundamental Rights under Article 32 of the Constitution. The Supreme Court has the power to give orders or writs for the defense of Fundamental Rights, such as habeas corpus, mandamus, injunction, quo warranto, and certiorari. These rights cannot be suspended, except by an emergency proclamation.

But the fact remains that these rights were adopted, and had not grown in the Indian polity and society. Naturally after the commencement of the Constitution, at so many times these rights had developed contradictions with its social structure and political goals. That is the reason that the Part on fundamental rights has faced a large number of amendments.

The very first amendment of the Constitution, which was enacted by the same Constituent Assembly (working as the Provisional Parliament of the Union) was also a result of

these contradictions. On the other hand, it may be assumed that this is the liveliest part of the Constitution that is why it always remained prone to judicial interpretations and amendments.

Conclusion

A deep analysis of the Fundamental Rights and the Directive Principles make it amply clear that between Constitution and its implications, almost the entire field of the universal declaration of human rights are covered. Besides, the Indian Constitution, through these two parts (Part III and IV) has made a novel attempt to balance between enforceable rights and non-enforceable rights, allowing them to complement each other on the fundamental governance of the country. Finally, both these rights are inter-related and indispensable for the nourishment of others.

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