

Fundamental Rights: Bedrock of Indian Democracy

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ABSTRACT

The Fundamental Rights are inevitable for supporting the ideal of political democracy. It protects the institution of a controlling and tyrannical rule in the country, and guards the liberties and freedoms of the people against the attack by the State. The Fundamental Rights activate as limits on the dictatorship of the administrative and arbitrary laws of the legislature. Freedom is a fundamental value in democratic societies, and the Indian Constitution guarantees diverse features of freedom to its citizens. Fundamental Rights form the foundation of self-ruled societies; guarantee the protection of individual liberties, promoting equality, and perpetuation the principles of justice and human dignity.

Keywords: Constitution, Fundamental, Rights, Freedom, Liberty, Speech, Equality, Religion and Discrimination

INTRODUCTION

Fundamental rights are defined as those rights which are essential for intellectual, moral and spiritual development of individuals. All these rights are essential for existence of individuals, hence called Fundamental rights. These are universally applicable to all citizens, irrespective of race, birth place, religion, caste or gender. The origin of Fundamental rights can be traced to England's Magna Carta, the United States' Bill of Rights and France's Declaration of the Rights of Man. The fundamental rights are protected in the Indian Constitution is crucial for every citizen. Fundamental rights are crucial in keeping individual liberties, forming the bedrock of democratic societies.

Fundamental Rights under the Indian Constitution:

The Part III of the Constitution of India gives a detailed description on a charter of rights called the 'Fundamental Right'. It is described as the Magna Carta of India. These Fundamental Rights guarantee civil freedom to all the citizens of India to allow them to live in peace and harmony. These are the basic rights available to every Indian citizen irrespective of their caste, creed and religion, place of birth, race, colour or gender. These Fundamental Rights include Right to Equality, Right to Freedom, Right to Freedom of Religion, Cultural and Educational Rights, Right against Exploitation.

The Fundamental Rights were included in the Constitution because they were considered essential for the development of every individual and to preserve human dignity. They are justiciable i.e. any violation of these rights can be questioned in the court of law (the Supreme Court and High Court) through writs. Changes in Fundamental Rights require a constitutional amendment.

The Constitution originally laid seven rights including the Right to Property, but the 44th Amendment of 1978 deleted the right to property, though it still is a constitutional right. Long after the deletion of the Right to Property, Right to Education was added to the list of Fundamental Rights under Section 21A on 2nd April, 2010.

Significance of Fundamental Rights: The concept of Fundamental Rights limits the power of government and prevents the executive and the legislature from becoming authoritative or dictatorial. It also provides an opportunity for the individual for self-development. "According to them, 'democracy' is, in essence, a government by opinion and therefore, the means of formulating public opinion should be secured to the people of a democratic nation. For this purpose, the constitution guaranteed to all the citizens of India the freedom of speech and expression and various other freedoms in the form of the fundamental rights" (Laski, Harold Joseph (1989:7)

Constitutions that did not contain such provisions have resulted into dictatorial rule. Hence, the philosophy and concept, underlying the Fundamental Rights is that constitutional limitation on the power of the government is the only way of ensuring and safe-guarding the basic human freedoms and so the dignity and self-respect for the individuals.

Categories of Fundamental Rights: The Fundamental Rights have been listed under seven sections from Articles 12 to 35, which include

- **Right to Equality** guarantees to all persons (citizens as well as other) equality before the law and equal protection of law. It prohibits discrimination between citizens on ground of religion, race, caste, sex, place of birth, or any of them. All citizens have equal access to shops, public entertainments and places of public resort, which are maintained wholly or partly by the state. However, special provisions may be made in

respect of women, children, socially and educationally backward classes and scheduled castes and scheduled tribes. The Constitution guarantees equal opportunities relating to public employment to all citizens, but some posts may be reserved for backward classes. It abolishes untouchability and also abolishes the system of conferring titles by the state, except military and academic distinctions. "The Right to Equality is one of the chief guarantees of the Constitution. It is embodied in Articles 14–18, which collectively encompass the general principles of equality before law and non-discrimination and Articles 17–18 which collectively encompass further the philosophy of social equality" (Basu 1993: 90)

- **Right to Freedom** includes a variety of rights such as right to speech and expression, right to assemble peacefully or to form association, right to move freely throughout the territory of India, right to life and liberty, right to reside and settle in any part of India and so on.
- **Right against Exploitation** ensures that seeks to ban trafficking in human beings, begar or any other form of forced labour. Employment of children below 14 years of age in any factory or mine or other risky occupations is also prohibited by law.
- **Right to Freedom of Religion** ensures that all citizens have been guaranteed freedom to profess, practice and propagate any religion. Every religious group has been given the freedom to manage its religious affairs and to own, acquire and administer property for religious or charitable purposes.
- **Cultural and Educational Rights** guarantees to the minorities the right of conserving their language, script and culture, to receive education and administer educational institutions of their choice. "The Cultural and Educational rights, given in Articles 29 and 30, are measures to protect the rights of cultural, linguistic, and religious minorities, by enabling them to conserve their heritage and protecting them against discrimination" (Basu 2003: 345)
- **Right to Constitutional Remedies** guarantees the right to move the Supreme Court for the enforcement of Fundamental Rights. This right can, however, be suspended during the operation of a proclamation of emergency by the President.

There are certain Fundamental Rights which are granted only to citizens of India and not to foreigners. These include protection from discrimination on the grounds of religion, race, caste, sex or place of birth (Article 15), equality of opportunity in matters of public employment (Article 16), freedom of speech and expression (Article 19), Protection of language, script and culture of minorities (Article 29), and cultural and educational rights (Article 30). "On the other hand, freedoms of speech and expression, and freedom to reside and settle in any part of

the country are reserved for citizens alone, including non-resident Indian citizens" (Tayal, B. B.; Jacob, A. 2005)

Writs under Article 32: It is important to note that the Fundamental Rights given in Article 12-35 of the Indian Constitution cannot be violated. In case of its violation, it can be questioned in a court of law through certain writs under Article 32. These writs include

- **Habeas Corpus** It is a command of the court to a person who is detaining another person, to bring the body of the person in his custody at a stipulated time and place for a specified purpose.
- **Mandamus** It is an order that commands a person or a body to do what constitutes his or its duty as legal performance.
- **Prohibition** It is issued to prevent a subordinate court not to exceed its jurisdiction or act contrary to the norms of natural justice.
- **Certiorari** It is used to order the shifting of a suit from a lower court to higher court to prevent an excess or abuse of jurisdiction before the commencement of the trial.
- **Quo Warranto** It restrains a person from acting in an office to which he is not entitled. The court may declare the office vacant.

Criticism of Fundamental Rights: Ever since its adoption, the chapter on Fundamental Rights in the Constitution has been under criticism, both in India and outside. The critics argued that some important rights such as Right to Work etc. were not included. It was also pointed out that the spirit of the whole chapter was spoiled by taking away much of the freedoms or rights provided through the insertion of many preventive provisions such as preventive detention, suspension of the right to constitutional remedies etc.

Some Judgements on Fundamental Rights : In 2017, the nine-judge Constitution Bench of the Supreme Court headed by former Chief Justice of India JS Khehar in a landmark unanimous decision has declared Right to Privacy as an intrinsic part of Right to Life and Personal Liberty under Article 21.

Another landmark judgment with regard to the protection of Fundamental Right is the passing of Muslim Women (Protection of Rights on Marriages) Bill 2017 by Lok Sabha which declares Triple Talaq illegal and criminalises it with up to three years of imprisonment for husband. The majority of judges found Triple Talaq violative of the Constitution and Fundamental Right under Article 14 (Equality before Law). The success or failure of a democracy depends largely on the extent to which civil liberties and basic rights are enjoyed by the citizens.

CONCLUSION

A democracy must aim at the highest development of the individual, which can certainly be achieved through the Fundamental Rights. Only a free society wherein individuals feel dignified, enjoy basic rights can assure the all round and quick progress of its members and thus of the nation itself. Herein lays the importance of Fundamental Rights in the success of democracy. Doctrine of Separation of Powers is the foundation of Indian Democracy. This core feature of the Indian Constitution has seen steady erosion in recent times. The right to constitutional remedies is the most essential fundamental right protect in the Indian Constitution. Most fundamental rights were sized during emergency of 1975 from the citizens of India.

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