



PROVISIONS AND PRACTICES OF FUNDAMENTAL RIGHTS IN INDIAN CONSTITUTION

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Abstract

The Indian masses had also faced a lot of humiliation and suffering during the colonial period. Their situation was no better than the vassals. The layman was ruthlessly exploited and was deprived of even the basic civil rights by the despotic colonial rulers in the country. That's why the Indian leadership during their freedom struggle acknowledged the grievances of Indians and realized the need of these rights for the masses to attain their fullest development as human being. The fundamental rights are those rights, which are vital for the development of any human being. No one can attain the perfection of his life as a human being in their absence. That's why there is a long and tedious history behind these rights and India is not an exception. It is evident from human history that all over the world mankind has to wage incessant and long war against the existing regimes to get these rights. This paper is concerned with the meaning, nature, types, scopes and implications of the fundamental rights in Indian democracy. This research paper to be focus on fundamental rights in Indian Constitution – Provisions and Practices

Key Words: Indian Constitution, Fundamental Rights, Freedom Liberty, Colonial Rules, Secular State.

Introduction

“To deny people their human rights it to challenge their very humanity”.

- Nelson Mandela

The fundamental rights are those rights, which are vital for the development of any human being. No one can attain the perfection of his life as a human being in their absence. That's why there is a long and tedious history behind these rights and India is not an exception. It is evident from human history that all over the world mankind has to wage incessant and long war against the existing regimes to get these rights. These rights have come into existence in their present form with the emergence of democracy. The Indian masses had also faced a lot of humiliation and suffering during the colonial period. Their situation was no better than the vassals. The layman was ruthlessly exploited and was deprived of even the basic civil rights by the despotic colonial rulers in the country. That's why the Indian leadership during their freedom struggle acknowledged the grievances of Indians and realized the need of these rights for the masses to attain their fullest development as human being. Moreover, there was wide spread disparities prevailing in Indian society at that time and the leadership deemed it fit to provide such rights to the citizens in Indian Constitution as a panacea to eliminate these glaring diversities. In addition to it, such rights have been guaranteed to their citizens by a number of other countries at that time under the impact of Universal Declaration of Human Rights (1948) by the UNO. Therefore, there was a prolong demand of Indians for these rights and the Constituent Assembly had to incorporate these rights in the new constitution.

Meaning and Definition: The members of the Constituent Assembly were precautions / enough regarding using the term Fundamental Rights. This term has been inserted after adequate



contemplation and justification. While explaining the status of this question in the Constituent Assembly, Why these rights have been called fundamental rights? Dr B R Ambedkar, the Chairman of Drafting Committee, clarified that 1) these rights have been provided a special status in the Constitution regarding their abrogation or amendment by the State, 2) Any law of the land which so ever curtails or abrogates the fundamental rights will be null and void to that extent and 3) The citizens can move the courts to retain these rights if these are violated. Thus these rights have a special status in our constitution and it is not easy for the state (as per the definition in art. 12) to snatch or curtail these rights in normal circumstances.

Nature: The fundamental rights have remained an issue of dispute since their insertion in the constitution as it was a crucial matter for the Committee as well as the Assembly to decide on the issue regarding which rights should be included in this chapter and which should not? ~ the freedom of speech and expression is included then what should be the status of right to work and get wage? What should be the limit of these rights? Whether there should be any restriction or limitation on these rights on part of the state or these rights should be absolute one. The following are the basic characteristics of fundamental rights given in Indian Constitution:

- 1) These rights are specified and numerable in their nature. Initially there were seven rights, now their number has reduced to six i.e. the Right to Property has been removed by the 44th Constitutional Amendment Act (CM), 1978
- 2) These rights are not absolute or unlimited. The State can restrict the fundamental rights in respect of national security and integrity, public welfare, social harmony and other related matters. The number of restrictions is so high that these were not only criticized in constituent Assembly even after that and some of the critique even suggested to change the title of this Part as Fundamental Rights and Restriction Therein
- 3) The fundamental rights can be suspended, amended or curtailed by the state if the circumstances demanded so. The President can suspend all or any particular right/s by exercising the emergency power vested in him/her (Part 18) except the rights given in articles 20 and 21 vide 44th CM, 1978.3 Similarly, the Parliament has the power to amend or curtail any of these rights (through article 368) with 2/3 rd majority of the present and vote casting members but this number should not less than the clear majority of the respective house e.g. 1st CM, 1951; 24th CM, 1969; 25th CM, 1969; 26th CM, 1969; 29th CM, 1971; 42nd CM 1975, and 44th CM, 1978
- 4) These rights are justiceable i.e. if the state or any other agency curbs or snatches the rights of any citizen/s then the latter can approach the courts to restore these rights and the court can issue the appropriate writ/s (Habeas Corpus-1 Mandamus, Prohibition, Certiorari and Quo Warranto under Articles 32 and 226) and direct the state not to do such activities which are curtailing the individual/s rights. The court can also declare these activities ultra vires, hence null and void (Art. 13).
- 5) Fundamental rights have been granted to the individual and one has the freedom to take legal recourse for their safeguard as and when felt necessary. In other words, the grievanced party has to approach the court and demand their restoration. However, with the emergence of PIL system, the third party can approach the court for ensuring the rights of those people who are not capable to attain these at their own due to odd or even reasons. Besides it the court at its own, can also take suo moto notice on any matter which it deems fit for intervention and monitor its proceeding.



- 6) There is lack of economic rights i.e. right to work, right to economic security etc. in our constitution and most of the rights provided are of political and social in nature.
- 7) The fundamental rights are negative in character as they imposed restriction on the state authority to ascertain these rights for individual.
- 8) **Types:** The Fundamental Rights incorporated in Part III of Indian Constitution are as under
 - 1) Right to Equality (Art. 14-18)
 - 2) Right to Freedom (Art. 19-22)
 - 3) Right against Exploitation (Art. 23-24)
 - 4) Right to Freedom of Religion (Art. 25-28)
 - 5) Cultural and Educational Rights (Art. 29-30)
 - 6) Right to Constitutional Remedies (Art. 32)

However, the Right to Property given in articles 19(f) and 31 has remained in controversy since the implementation of the constitution which ultimately resulted into its removal from this Part vide 44th CM, 1978. Now it is just a constitutional right under article 300-A.7 The article-wise detail of these rights is as under:

(1) **Right to Equality:** This right varies from Article 14 to 18 and comprises of a set of rights which eradicates discrimination and make attempt to establish equality among citizens. It is as under:

(i) Article 14 is concerned with equality before law and equal protection of law i.e. the state will not deny to any person equality before law irrespective of ones socio- economic and political status and will provide equal protection of law to all in the territory of India.

(ii) Article 15 ensures equal access of all the citizens to public places. It deals with (i) prohibition of discrimination by the state among citizens on the grounds of caste, religion, race, sex, place of birth or any of them and (ii) The state will ensure their access to all public places without any discrimination on the above ground/so However (iii) nothing in this article shall prevent the state from making any special provision for women and children. (iv) The state can make special provision/s for the advancement of socially and educationally backward classes of citizens or for the SCs and STs. (inserted by 1st CAA, 1951) (v) The state can make reservation for citizens of clause iv even in privately managed educational institutions

(iii) Article 16 is concerned with equality in matter of public employment among the citizens. (i) There shall be equality of opportunity for all citizen in matters relating to employment or appointment to any office under the state.(ii) No citizen shall be ineligible for or discriminated against any appointment or employment under the state: on grounds of caste, religion, race, sex, descent, place of birth, residence or any of them. (iii) The state can make law regarding the residence to a class or classes for employment or appointment. (iv) The state can make provision/s for the reservation of appointment or posts of any backward class of citizens, which in its opinion is not adequately represented in public services. (iv-a) The state can make provision for reservation in matter to promotion to any class or classes of posts in the public service in favour of SCs and STs. (inserted by 85th CM,2001). (iv-b) The state can consider the backlog quota and carry it forward beyond the limit of 50% in public services.



(iv) Article 17 deals with abolition of untouchability and its practice in any form is forbidden. The state has declared it an offence punishable under the law. The Parliament has passed Anti Untouchability Act, 1955 and Civil Liberties Protection Act, 1976 to execute the provisions of this article. Besides it the National Commission for Scheduled Castes and the National Commission for Scheduled Tribes are in operation since 1995 to check the atrocities against these communities as well as for their security and upliftment.

(v) Article 18 abolishes the title conferred by the state among citizens except military or academic distinctions. No Indian citizen will accept the title from any foreign state nor any present or office there under without the consent of the president and if one does so his citizenship is likely to be abolished. However, the government has been conferring the titles like Bharat Ratan, Padam Bibhushan, Padam Bhushan, Padam Shri etc. on citizens from the very inception of this constitutions except the phase of Janta Parti rule (1977-80) when these titles were not conferred. It has also remained an issue of dispute whether the state should confer titles among citizens or not, even the Hon'ble Supreme Court of India has to intervene in this matter. The government has to clarify that these title are separate from those of British Regime and are primarily meant for appreciating, the services, role or contribution rendered by an individual to the society and the national cause.

(2) Right to Freedom: It consists of certain liberties or freedoms provided to the individual against the state authority. This right extends from Article 19 to 22. The freedoms guaranteed in this right are as under:

(i) Article 19 is concerned with the protection of certain rights regarding: (a) freedom of speech and expression, (b) to assemble peacefully and without weapons, (c) to form associations or unions, (d) to move freely through out the territory of India, (e) to reside and settle in any part of the country and (g) to practise any profession, trade or business. These rights have been provided to all citizens. (ii) However the state can check or control the above rights in the interest of sovereignty and integrity of India, public order, decency, defamation or friendly relation with foreign state or any other ground which it deems fit. This is the most disputed and comprehensive fundamental right which comprises of even the right of freedom of press and right to information.

(ii) Article 20 provides protection in respect of conviction for offences which are as under: (i) No person shall be convicted until the violation of the existing law and the penalty provided therein, will not exceed to the provisions of existing laws, (ii) No double jeopardy. And (iii) One cannot be compelled to witness against himself.

(iii) Article 21 provides protection of life and personal liberty to all the persons and no one can be deprived of his life or personal liberty without the procedure established by law. This freedom has been expanded with the passage of time and at present it comprises of the assurance of a fair trial, right to livelihood and right to education for all the children of age of 6 to 14 years After 44th CAA, 1978, the President can not suspend the rights given in articles 20 and 21 even during the proclamation of emergency.

(iv) Article 22 deals with protection against arrest and detention in certain cases. (i) Any person arrested or detained by the state or its agency will be informed at the earliest possible about the reasons of his detention and can not be prevented to take legal advice from a legal practitioner of his choice. (ii) He will be produced before the nearest Magistrate within 24 hours of his detention or arrest and can not be kept in detention beyond the period of 24 hours without the orders of the Magistrate concerned. However, the above provisions will not applicable in case of a person who for the time being is an enemy alien or who has been arrested under the preventive detention laws. The



detainees under the preventive detention laws are likely to be produced before an Advisory Board within a period of 3 months and can not be kept in detention beyond it without the advice of this board. However, the persons arrested or detained under the provisions of preventive detention are also communicated the reasons of such detention at the earliest possible. The state has passed Acts like MISA (1971), NSA(1980), TADA(1987) and POTA (2000) to make effective the provisions of this part of article 22. 11 Recently the Unlawful Activities prevention Act (2008) has been passed by the Parliament to check the terrorist and disruptive activities.

3. **Right against Exploitation:** Articles 23 and 24 are concerned with the right against exploitation. Article 23 prohibits the trafficking of human beings particularly the young women across the border, beggar and such other forced labour. The contravention of this provision will be an offence punishable in accordance with law. However, the state can impose compulsory service on the citizens without any discrimination for public welfare or in the interest of the nation. Article 24 deals with the prohibition of employment of children below the age of 14 years in factory, mine or any other hazardous activities and is an offence punishable in accordance with law. The state has passed a number of laws for making the provisions of this right effective. Child labor has been prohibited in 15 works like bidi making, domestic servant, tea shops, hotels, dabas, building and construction works, carpet making etc. Violation of these laws is punishable up to Rs 20,000 and one year imprisonment. 12th June is celebrated as Anti Child Labour Day all over the country. Inspire of it, lakhs of children are still engaged in hazardous industrial activities all over the country. Mrs Shanta Sinha, the Chairperson of National Commission for Children Development while expressing her concern regarding the state of affairs of children in the country, pointed out that the commission is working on a plan with the Railway Ministry, to rehabilitate more than 3 lakh children roaming on railway stations in the country

4. **Right to Freedom of Religion:** Articles 25 to 28 are concerned with right to freedom of religion granted to both individual as well as the community. The provisions of this right are as under: (i) Article 25 provide freedom of conscience and free profession, practice and propagation of religion to all people equally subject to public order, morality and health, and to the other provisions of this part. However, nothing in this article, prevents the state to regulate or restrict the activities of any individual or religious group on the above ground/s (ii) Article 26 empowered every religious denomination or section with freedom to manage religious affairs i.e. to establish and maintain institutions for religious and charitable purpose; to manage its own affairs in matter of religion; to own and acquire movable and immovable property; and to administer such property in accordance with law. The state can also regulate or restrict this freedom on the above mentioned ground/s (iii) Article 27 states that no person shall be forced for compulsory payment of taxes for promotion and maintenance of any religion or religious denomination. (iv) Article 28 deals with the freedom of an individual in attendance at religious instruction or religious worship in all those educational institutions, which are fully or partially paid by the state.

5. **Cultural and Educational Rights:** The articles 29 and 30 deal with the cultural and educational rights of the citizens and particularly that of the minorities. These rights are as such: (i) Article 29 (1) gives right to any section of citizens residing in any part of Indian territory to conserve and protect its culture, language and script i.e. it protects the interests of minorities. (2) No citizen shall be denied admission into any educational institution maintained by the state or receiving aid out of the state funds only on the grounds of religion, race, caste, language or any of them. (ii) Article 30 (1) concerns with the right of minorities, irrespective of their minority status, establish and administer educational institutions The state while making compulsory acquisition of their such property will compensate adequately to them so that their rights enshrined in this part remain unaffected. (2) The state will not



discriminate among the educational institutions on the ground that a particular institution is managed or / run by a minority, based on religion or language, while granting aid to them.

6. Right to Constitutional Remedies: It is the most important fundamental right and has been called as the soul of Indian Constitution. This right is the key of all the fundamental rights by which the citizens can approach the Supreme Court (Art. 32) or High Courts (Art. 226) in case of any violation of their rights given in this part and the court has the power to issue directions, orders or writs in the nature of Habeas Corpus, Mandamus, Prohibition, Certiorari or Quo Warranto to restore these rights. Moreover, the judicial review under articles 32 and 226 is the basic feature of Indian constitution beyond the pale of amendability. The President can also suspend and make ineffective to all these rights by suspending the right to constitutional remedies.

Summing Up

These attempts should focus on two points: first, to make all essential attempts to ensure fair, free and speedy justice at reasonable cost. It can be done by increasing the number of benches and their working hours (at present there are 14 judges on every 10 lakh people in the country), strengthening mobile and circuit courts, ensuring the liability of judges and advocates by making the judicial process more transparent, open and simple. The same has also been endorsed by the Justice Rao Committee in its Report on Judicial Reforms recently submitted to the Ministry of Law and Justice. The committee has pointed out that over 3 crore cases are pending in High Courts and Sub Ordinate Courts in the country and if sufficient measures are not taken to control this ever lagging number, then it will be difficult to retain the faith of layman in judiciary and it will lead to the people towards mob or road justice, a tendency which is rising rapidly in the recent period. It will not only create law and order problems but also put at stake our polity. Secondly, all those steps need to be taken which raise the level of awareness among the people regarding their fundamental rights as well as the process to retain these in case of violation.

References :

1. P.M. Bakshi, *The Constitution of India*, Universal Law Publication, Delhi 2007, pp.10-84.
2. D.O. Basu, *Introduction to the constitution of India*, Prentice Hall of India, New Delhi, 2003, p.79 .
3. M.V. Pylee, *Constitutional Amendments in India*, Universal, Delhi, 2006, pp. 576-77; pp.43-336.
4. J. N. Pandey, *Constitutional Law of India*, Central Law Agency, Allahabad, 2007, pp. 725-26.
5. Rafiwick: *Indian Government and Politics*.
6. *Politics among the actions*.
7. Katarina Tomashevski, *Women. and Human Rights*, (prepared by) 1993, Zed Books Ltd., London, New Jersey.
8. Daisaku Ikeda, *Toward a World without War-Gandhism and the Modern World Journal Value-Creation*, Oct.-Dec. 1992.
9. Ulich, *The Education of Nations-2012*, Harvard University P Massachusetts.
10. Diwar. I. *Human Rights and Law*. Deep and Deep Publications, New Delhi.
11. 'What is Civil Society', Centre for Civil Society. 'London School of Economics, 2005.
12. E.Shills, "The Virtue of Civility" (revised version of an essay originally published in 2001.)
13. K.Neilson, "Reconceptualizing Civil Society for now" in M. Waizer, *towards a Global Civil Society* 41-67 (Providence, Berghahn Books, 1995).
14. Ajay Gudavarthy (2008). *Human Rights Movements in India: state, civil society and beyond*, published in 'contribution to Indian sociology' vol.42, 2012 p 29-57.
15. V.M. Tarkunde, 2005, In defense of freedom: in A.R. Desai (ed) *Expanding governmental lawlessness and organized struggles*, Mumbai, Popular Pakistan.