



Principles Of Fundamental Rights And Modern-Day Challenges

Dr. Mahesh Koolwal, Dean & Professor, Faculty of Law JECRC University.

Ms. Apeksha Sharma, Research Scholar, Faculty of Law JECRC University , Email id-
apekshasharma.jpr@gmail.com

ABSTRACT

At the heart of Constitution is the individual whose rights are recognised as fundamental CJI Sharad Arvind Bobde

Fundamental Rights are the basic freedom granted with certain restrictions to humans. These rights are distributed in 6 categories theFundamentalequality right, the Fundamentalfreedom rights, rights which prohibit exploitation, rights practice any religion, right to attain culture and education and lastly protected by Constitutional remedies.

The Dicey doctrine rule of law is fully adopted in express under Indian Constitution. British jurist Albert Venn Dicey in 1885, define three basic principles of law

Supremacy of law: government cannot punish anyone arbitrarily

Equality before law: no man is above law

Pre dominance of judicial pronouncements: Interpretation of law by superior courts is binding on lower Courts.

This paper studies some basic principles of Fundamentalrights which are influencing judiciary according to change in world. The judiciary continuously works to finds creative solutions for problems arising due to certain rights granted to people of country, these are interpreted by judicial pronouncement and in light of various doctrine across where the right is also safe guarded by judiciary.

The author aimsto explore challenges faced by judiciary in protection of Fundamentalrights with changing world and involvement of digital technology after sudden impact of pandemic.

Keywords: Rule of Law, Judicial Review, FundamentalRights, and Constitution of India.

INTRODUCTION

The IndianConstitution lays down the basic structure through which people and citizens are governed. The Constitution grants certain right to citizen; these are elementary human freedoms which are required by every citizen of the country, to enjoy appropriate living standards in harmonious developing society. These freedoms are vital for individual holistic advancement and betterment of community. All these rights are granted with aaim to reducedisparities present in society and to radiate social equality, financial equality as well as to abolish offensive act of untouchability, forbid discrimination on grounds of caste, sex or faith, belief. The Fundamentalrights are designed to protect individuals from any State arbitrary action; even some rights are enforceable against person on violation. Constitution also establishes the principle of separation of power between main organs of state legislative, executive and judiciary it also defines

their power responsibilities and the manner in which their relationship with each other and with citizens of country is regulated.

India became independent nation on August 15 1947. The Constitution assembly was formed and given responsibility of drafting the Constitution of India which was in force on 26 January 1950. The soul of Constitution of India is depicted through the Preamble of Constitution which affirms India to be a sovereign state that no more India is under control of any other power, Socialist which means equal distribution of countries resources to citizens and Secular means country which does not bind itself to any religious faith, Democratic and Republic country. The preamble also emphasizes to secure its citizens justice Liberty Equality Fraternity to all nationals through Fundamental rights, directive principles and Fundamental duties. The source Fundamental right is from principals of England Bill of Rights (1689), the United States Bill of Rights and thirdly from France Declaration of Man's Rights (1789).

The Constitutional framers have also given the Supreme Court power of interpretation and declaration of law for its citizens. This interpreted law is binding on all courts within the territory of India¹. Even to declare law as unconstitutional where it violates any

1. Article 144 of Constitution mandates all judicial authorities in India shall act in aid of Supreme Court.

Fundamental rights are covered under judicial review. It is a process where judiciary sense that the steps taken by executive or legislative are subject to review by judiciary as they are hampering the freedom of people of country.

The Constitutional framers have drafted Constitution so well that judiciary is acting as an absorbent to social technological changes for advancement taking place in society but upholding the principles of Constitution of India and taking care of equality of its citizens.

The founding fathers of Indian Constitution declared in 1895 to British government Swaraj Mera Janmasiddh Adhikar hai

which means every individual in the country will have its freedom to enjoy and live respectful life.

Objectives

- To study Fundamental Rights upholding the spirit of human rights
- To explore challenges faced by judiciary by unfair use of Fundamental Rights

ROLE OF FUNDAMENTAL RIGHTS IN INDIAN CONSTITUTION

Fundamental rights are unique feature of Constitution of India specified under part III and article 12 to 35 for the followed by Directive Principle of State policy which constitutes social, economic and political development for modern and welfare state. In case² Supreme Court observed that objective of part III and part IV of Constitution of India is the provide "protection to Human Rights provisions and to promote Dignity of Individual along with Unity, Integrity of Nation". As per Directive Principle of State policy state shall try to import welfare of its people by supporting in basic facilities. Though on violation of Fundamental right one can approach courts under various writs but directive principle of state policy is non-binding in nature and non-enforceable by quotes on their violation.

Directive principles are covered under part IV from article 36 to 51 which is list of human civil and economic rights of people of India. Directive Principles are to be kept in mind by legislature and executive while enacting laws. The idea of Directive Principals is

2. State of West Bengal v. Subodh Gopal Bose AIR 1954, SCR 587.

Borrowed from Ireland. The Sapru Committee³ directed that individual rights are in two categories one which is justifiable as Fundamental Rights and the other non-justifiable the Directive Principles of State Policy. They are also addressed as instruments of Instructions as specified in Government of India Act 1935. The principals are based on Socialistic Principles (Article 38-47), Gandhian Principles (Article 40-48) and Liberal-Intellectual Principles (Article 44-51). These were amended from time to time article 38 was amended by 44 Amendment Act 1978, additional by 86 Amendment Act the subject content of Article 45 was modified, and article 21A primary education was specified as Fundamental right, and latest by 97 Amendment of Article 43B.

The Fundamental Rights are of two categories one which is available to citizen of Indian under article 15-19 and Article 29- 30 and the other which are available to all persons including citizens and non-citizens.

Objective of Rights

- To ensure citizen of country complete physical and moral development which are essential for respectful living?
- The grant underprivileged sections of society a feeling of security
- To strengthen the Doctrine of Rule of Law and protect the democratic form of government.

Fundamenta Rights

The rights may be as defined under Constitution of India are borrowed from Constitution of USA, and further modified as per the need to Indian society.

Right to Equality (Article 14- Article 18): -

Article 14: This article signifies the rule of equality. The article highlights two principal one which is positive in approach Equality before law and another with not positive approach which states Equal protection of law within the land of India.

Article 15: This article emphasis on theory of no discrimination. The Constitution mentions

3. Sapru Committee Report 1945, consisted of part 'Leading Principles of a New Constitution'.

that discrimination of citizen by State shall not be permitted on any of the ground viz faith, caste, gender, place of birth or any of them.

State is permitted to make specific provision for upliftment of women and children in the society

Article 16: This article offers equality of opportunity in public employment, it states that Citizen shall not be discriminated or barred from employment or appointment base on grounds of belief, race, caste, gender, descent etc or any of them; it is violation of rights for any office public or private in state.

But at same time state is granted the liberty to make special provision for engagement of deprived classes of citizen.

Article 17: Forbid any form of Untouchability or social practice to humiliate any particular classes or sections of people.

Article 18: Abolition of Titles and only those prevail which are given by military, academic.

Right to Freedom (Article 19- Article 22): -

Article 19: This right is two-edged, grantees freedom to citizens to have a dignified living and impose simultaneously adds reasonable restrictions⁴. This article grant supplementary six other Fundamental freedoms for dignified living of individual.

- Freedom related to Speech & Expression
- Freedom to Assemble peacefully
- Freedom of Associations
- Freedom to Move across territories of India.
- Freedom to Reside and to Settle down in India
- Freedom to Earn living by any profession, Occupation, trade, or Business not prohibited in India.

Article 20: This article gives protection to people of India, against an unlawful punishment. As per this article any individual may only be punished if at time of committing the action it was defined under any law and a punishable offence. Even authorities are not allowed to

4. Brij Bhushan v. State of Delhi AIR 1954 SCR605.

Execute unlimited punishment other than specified as per offence.

The protection granted through this Fundamental right is so well that it is active even under restricted period of emergency by article 359.

Article 21: Through this article Constitution protects following rights of individual Law must be enforce, Personal Liberty must be allowed, Procedure must be specified by law and Life of person to be given utter most importance, these essential elements of this article and protection granted on violation This article is limited by article 246.

Article 22: Safeguards against arbitrary arrest and detention, and to consult a lawyer, also made aware reasons of arrest and put before magistrate within 24 hrs of arrest.

Right against Exploitation (Article 23-24): -

Article 23: This article prohibits human trafficking and considers it against human dignity. To make it a grave offence it is also covered under criminal law.

Article 24: Children below 14 years of age are restricted from working in any hazardous profession.

Right to Freedom of Religion (Article 25-28): -

Article 25: These set of article teaches to respect all religions. Article 25 specifically offers freedom to Practice, profess, Conscience and propagate religion.

Article 26: This Fundamental right gives right to manage affairs related to religion but it must be in lines with principles of morality and public order.

Article 27: The Constitution allows its people to not to pay taxes on any religious expenditures incurred for the maintenance religious activities.

Article 28: As religious organisation is allowed to establish education institution for educational development of their community. But where these institutions are funded by State funded, they are prohibited from spreading religious teaching as India is secular in nature.

Right of Minorities (Article 29-30):-

Article 29: Minority is that section of society that is represented in lesser number when considered India as a whole. By Article 29 minority sections of society are allowed to do act in relation to conserve the language or traits or culture of their community.

Article 30: These minorities under the Freedom to Minority are permitted to establish educational centres and to administer for safeguarding religious and linguistic traits.

Right to Constitutional Remedies (Article 32-35):-

Article 32: The legal remedies offered to citizens for protection of Fundamental rights on violation of any of the right by State, institution or any individual. These remedies are protected by writ through which aggrieved may approach Supreme Court or High Court for enforcement of these rights. It is also known as “spirit of Constitution and exceptionally heart of Constitution”

Article 33: This article grants power to Parliament to act in favour and benefit of people appointed under Indian Armed forces and assigned duties to maintain law and order in Country.

Article 34: This article adds restriction on access to Fundamental right when the Country is under any of the emergency state and martial laws are in force due to any reasons.

Article 35: This article gives power to only to parliament to make laws to give effect to certain specified rights.

MODERN DAY CHALLENGES ASSOCIATED WITH FUNDAMENTAL RIGHTS

The Fundamental Rights play a vital role in the democracy and rights of citizens. But they have been criticized for many reasons.

1. The terms like security of State, public order, mortality, reasonable restrictions and in interest of public order have huge implication associated with these terms and affect in numerous manners to citizens. But these terms are not well explained in Constitution of India.

At certain time due to being unaware of implication of these terms State/ or certain group of association or people take advantage. Hence resulting in misguiding, or infringement rights of other people.

2. Citizen do not utilise their Fundamental right viz right to vote. As a result, people become puppets in hands of political parties and are used as instruments to create nuisance and disturb public peace. Constitution has given parliament power to make law under Article 32, if people have wisely used their right to vote it would lead to right kind of people holding position in legislation. And good leaders in interest of country take majority in parliament.

3. The new digital media is also affecting wide range of Fundamental rights. Changes in freedom of speech and information with new digital world after pandemic have drastically changed the meaning of certain Fundamental rights. This situation has both pros and cons if we see case of danger on freedom of press, many journalists have received death threats and whereas few like Gauri Lankesh who have lost life.

4. The worst utilized is the Fundamental Right specified under Article 19. The freedom to Assemble, the article clearly states that people are free to assemble peaceably without any arms. But we have regularly observed as a trend that this right have been misused during various agitation or protest

- Anti-Reservation Protest 2006,
- Jan Lokpal Bill 2011,
- Jallikattu Protest Tamil Nadu, 2017 or
- CAB, 2019
- Farmers Bill Protest, 2020
- Gujjar Andalon, 2020 etc.

All these are just peaceful protest until it's not harming daily life of people, but when these agitations become violent and start causing damage to public and private property. This is upfront breach of Fundamental Rights of people and also attracting Criminal Law Provisions as many agitation leads to act endangering life of people.

5. Fundamental Right to Speedy justice is being violated due to large number of pending cases, As Justice delayed is Justice Denied, is a legal maxim which means that victim is victimized by delay in action taken by judiciary. Numerous fake and original litigation have overburden the judicial system and affected to efficient working. And finally caused damage to rights of citizen to timely delivery of justice.

6. Another challenge is violation of Article 24 regarding child labour. According to Constitution employment of child labour in hazardous job environment is prohibited. But at all levels Govt and administration services are not able to curb this ill practice. This act leading to insecure future of youth and exploitation in other sectors. As in many family's children are also as earning member in family to earn daily living. As per last survey (Census 2011) 10.1 million children between age group 5-14 are maximum engaged in agricultural, domestic help and other allied activities.

All the above are situation where the Fundamental Right are compromised on some or the other grounds.

CONCLUSION

The Fundamental Rights are granted for convenience of people of country and giving a harmonious environment for growth in society. But these mass protests organised due to various reasons, where the protesters showcase their strength and try to overawe the Government, they also cause damage to public and private property during agitation, or depreciate the value of public facilities, or extirpate the railway tracks and highway roads.

These all acts cause irreparable loss to country and the resources, this is indirectly or directly exploitation of the rights given to people by Constitution. The protestors also harm the security forces as they try to control the agitation this result in causing irreparable damage to Humanity.

And lastly taking Law and Order in hand on grounds of Fundamental Right due to any cause, method or goals hampering the spirit of Constitution.

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