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1946

Constituent Assembly, Fundamental Rights.

Minutes of the Advisory Committee

Meetings on Fundamental Rights
and the Committee members
suggestions.

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$$167 + 1 = 168$$

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$$168 + 173 = \underline{341}$$

T.L.No.-1697

file Fundamental Rights

SEAL OF THE CONSTITUENT ASSEMBLY OF INDIA

CONSTITUENT ASSEMBLY OF INDIA

No. CA/24/COM/47

COUNCIL HOUSE,

New Delhi, the 23rd April 1947.

FROM

THE HON'BLE SARDAR VALLABHBHAI PATEL,

*Chairman, Advisory Committee on Minorities
Fundamental Rights, etc.*

TO

THE PRESIDENT,

Constituent Assembly of India.

SIR,

On behalf of the members of the Advisory Committee appointed by the Constituent Assembly of India on the 24th January 1947, I have the honour to submit this interim report on fundamental rights. In coming to its conclusions, the Committee has taken into consideration not merely the report of the Sub-Committee on fundamental rights but also the comments thereon of the Minorities Sub-Committee.

2. The Fundamental Rights Sub-Committee recommended that the list of fundamental rights should be prepared in two parts, the first part consisting of rights enforceable by appropriate legal process and the second consisting of directive principles of social policy which, though not enforceable in Courts, are nevertheless to be regarded as fundamental in the governance of the country. On these latter, we propose to submit a subsequent report; at present, we have confined ourselves to an examination only of the justiciable fundamental rights.

3. We attach great importance to the constitution making these rights justiciable. The right of the citizen to be protected in certain matters is a special feature of the American constitution and the more recent co-operative constitutions. In the portion of the Constitution Act, dealing with the powers and jurisdiction of the Supreme Court, suitable and accurate provision will have to be made to define the scope of the remedies for the enforcement of these fundamental rights. These remedies have been indicated in general terms in clause 22 of the Annexure.

4. Clause 26 of the Statement of May 16th, 1946, contemplates the possibility of distributing fundamental rights between the constitutions of the Union, the Groups, if any, and the Units. We are of the opinion that fundamental rights of the citizens of the Union would have no value if they differed from Group to Group or from Unit to Unit or are not uniformly enforceable. We recommend that the rights set out in the Annexure to this

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report be incorporated in the constitution so as to be binding upon all authorities, whether of the Union or the Units.

5. Clause 10 deals with the freedom, throughout the Union, of trade, commerce and intercourse between the citizens. In dealing with this clause, we have taken into account the fact that several Indian States depend upon internal customs for a considerable part of their revenue and it may not be easy for them to abolish such duties immediately on the coming into force of the Constitution Act. We, therefore, consider that it would be reasonable for the Union to enter into agreements with such States, in the light of their existing rights, with a view to giving them time, up to a maximum period to be prescribed by the constitution, by which internal customs could be eliminated and complete free trade established within the Union.

6. We have made a special provision in regard to full faith and credit being given to the public Acts, records and judicial proceedings of the Union in every Unit and for the judgments and orders of one Unit being enforced in another Unit. We regard this provision as very important and appropriately falling within the scope of fundamental rights.

7. Clause 2 lays down that all existing laws, regulations, notifications, custom or usage in force within the territories of the Union inconsistent with the fundamental rights shall stand abrogated to the extent of such inconsistency. While in the course of our discussions and proceedings we have kept in view the provisions of existing Statute law, we have not had sufficient time to examine in detail the effect of this clause on the mass of existing legislation. We recommend that such an examination be undertaken before this clause is finally inserted in the constitution.

8. The Fundamental Rights Sub-Committee was of the opinion that the right of the citizen to have redress against the State in a court of law shall not be fettered by undue restrictions. That Sub-Committee was not able, however, to draft a suitable formula as the matter requires more investigation than was possible in the time at its disposal. It was also suggested during our deliberations that certain additional fundamental rights should be inserted in the constitution. We have not had the time to consider these matters; we shall do so in due course and incorporate any recommendations we may have to make on them in our next report.

9. The Fundamental Rights Sub-Committee and the Minorities Sub-Committee were agreed that the following should be included in the list of Fundamental Rights:—

“Every citizen not below 21 years of age shall have the right to vote at any election to the legislature of the Union and of any Unit thereof, or, where the legislature is bicameral, to the lower chamber of the legislature, subject to such disqualifications on the ground of mental incapacity, corrupt practice or crime as may be imposed, and subject to such qualifications relating to residence within the appropriate constituency, as may be required, by or under the law.

(2) The law shall provide for free and secret voting and for periodical elections to the legislature.

(3) The superintendence, direction and control of all elections to the legislature, whether of the Union or of a Unit, including the appointment of Election Tribunals, shall be vested in an Election Commission for the Union

or the Unit, as the case may be, appointed, in all cases, in accordance with the law of the Union."

While agreeing in principle with this clause, we recommend that instead of being included in the list of fundamental rights, it should find a place in some other part of the constitution.

I have the honour to be,

Sir,

Your most obedient servant,

(Sd.) VALLABHBHAI PATEL,

Chairman.

*Advisory Committee on Minorities,
Fundamental Rights, etc.*

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ANNEXURE

JUSTICIABLE FUNDAMENTAL RIGHTS

Definitions

1. Unless the context otherwise requires—

(i) "The State" includes the legislatures and the governments of the Union and the States and all local or other authorities within the territories of the Union.

(ii) "The Union" means the Union of India.

(iii) "The law of the Union" includes any law made by the Union legislature and any existing Indian law as in force within the Union or any part thereof.

Application of Laws

2. All existing laws, notifications, regulations, customs or usages in force within the territories of the Union inconsistent with the rights guaranteed under this part of the Constitution shall stand abrogated to the extent of such inconsistency, nor shall the Union or any unit make any law taking away or abridging any such right.

Citizenship

3. Every person born in the Union or naturalised in the Union according to its laws and subject to the jurisdiction thereof shall be a citizen of the Union.

Rights of Equality

4. (1) The State shall make no discrimination against any citizen on grounds of religion, race, caste or sex.

(2) There shall be no discrimination against any citizen on any ground of religion, race, caste or sex in regard to—

(a) access to trading establishments including public restaurants and hotels,

(b) the use of wells, tanks, roads and places of public resort maintained wholly or partly out of public funds or dedicated to the use of the general public:

Provided that nothing contained in this clause shall prevent separate provision being made for women and children.

5. There shall be equality of opportunity for all citizens in matters of public employment and in the exercise of carrying on of any occupation, trade, business or profession.

Nothing herein contained shall prevent the State from making provision for reservations in favour of classes who, in the opinion of the State, are not adequately represented in the public services.

No citizen shall on grounds only of religion, race, caste, sex, descent, place of birth or any of them be ineligible for public office or be prohibited from acquiring, holding or disposing of property or exercising or carrying on any occupation, trade, business, or profession within the Union.

Nothing herein contained shall prevent a law being made prescribing that the incumbent of an office to manage, administer or superintend the affairs of a religious or denominational institution or the member of the Governing Body thereof shall be a member of that particular religion or denomination.

6. "Untouchability" in any form is abolished and the imposition of any disability on that account shall be an offence.

7. No heritable title shall be conferred by the Union.

No citizen of the Union and no person holding any office of profit or trust under the State shall, without the consent of the Union Government, accept any present, emoluments, office, or title of any kind from any foreign State.

Rights of freedom

8. There shall be liberty for the exercise of the following rights subject to public order and morality or to the existence of grave emergency declared to be such by the Government of the Union or the Unit concerned whereby the security of the Union or the Unit, as the case may be, is threatened:—

(a) The right of every citizen to freedom of speech and expression:

Provision may be made by law to make the publication or utterance of seditious, obscene, blasphemous, slanderous, libellous or defamatory matter actionable or punishable.

(b) The right of the citizens to assemble peaceably and without arms:

Provision may be made by law to prevent or control meetings which are likely to cause a breach of the peace or are a danger or nuisance to the general public or to prevent or control meetings in the vicinity of any chamber of a Legislature.

(c) The right of citizens to form associations or unions:

Provision may be made by law to regulate and control in the public interest the exercise of the foregoing right provided that no such provision shall contain any political religious or class discrimination.

(d) The right of every citizen to move freely throughout the Union:

(e) The right of every citizen to reside and settle in any part of the Union, to acquire property and to follow any occupation, trade, business or profession:

Provision may be made by law to impose such reasonable restrictions as may be necessary in the public interest including the protection of minority groups and tribes.

9. No person shall be deprived of his life, or liberty, without due process of law, nor shall any person be denied the equal treatment of the laws within the territories of the Union:

Provided that nothing herein contained shall detract from the powers of the Union Legislature in respect of foreigners.

10. Subject to regulation by the law of the Union trade, commerce, and intercourse among the units by and between the citizens shall be free:

Provided that any Unit may by law impose reasonable restrictions in the interest of public order, morality or health or in an emergency:

Provided that nothing in this section shall prevent any Unit from imposing on goods imported from other Units the same duties and taxes to which the goods produced in the Unit are subject:

Provided further that no preference shall be given by any regulation of commerce or revenue by a Unit to one Unit over another.

11. (a) Traffic in human beings, and

(b) forced labour in any form including *begar* and involuntary servitude except as a punishment for crime whereof the party shall have been duly convicted,

are hereby prohibited and any contravention of this prohibition shall be an offence.

Explanation.—Nothing in this sub-clause shall prevent the State from imposing compulsory service for public purposes without any discrimination on the ground of race, religion, caste or class.

12. No child below the age of 14 years shall be engaged to work in any factory, mine or any other hazardous employment.

Explanation.—Nothing in this shall prejudice any educational programme or activity involving compulsory labour.

Rights relating to religion

13. All persons are equally entitled to freedom of conscience, and the right freely to profess, practise and propagate religion subject to public order, morality or health, and to the other provisions of this Chapter.

Explanation 1.—The wearing and carrying of *Kirpans* shall be deemed to be included in the profession of the Sikh religion.

Explanation 2.—The above rights shall not include any economic, financial, political or other secular activities that may be associated with religious practice.

Explanation 3.—The freedom of religious practice guaranteed in this clause shall not debar the State from enacting laws for the purpose of social welfare and reform, *or for throwing upon Hindu religious institutions any class of burden.*

14. Every religious denomination shall have the right to manage its own affairs in matters of religion and, subject to the general law, to own, acquire and administer property, movable and immovable, and to establish and maintain institutions for religious or charitable purposes.

15. No person may be compelled to pay taxes, the proceeds of which are specifically appropriated to further or maintain any particular religion or denomination.

16. No person attending any school maintained or receiving aid out of public funds shall be compelled to take part in the religious instruction that may be given in the school or to attend religious worship held in the school or in premises attached thereto.

17. Conversion from one religion to another brought about by coercion or undue influence shall not be recognised by law.

Cultural and Educational Rights

18. (1) Minorities in every Unit shall be protected in respect of their language, script and culture, and no laws or regulations may be enacted that may operate oppressively or prejudicially in this respect.

(2) No minority whether based on religion, community or language shall be discriminated against in regard to the admission into State educational institutions, nor shall any religious instruction be compulsorily imposed on them.

(3) (a) All minorities whether based on religion, community or language shall be free in any Unit to establish and administer educational institutions of their choice. *The State however*

(b) The State shall not, while providing State aid to schools, discriminate against schools under the management of minorities whether based on religion, community or language.

Miscellaneous Rights

19. No property, movable or immovable, of any person or corporation, including any interest in any commercial or industrial undertaking, shall be taken or acquired for public use unless the law provides for the payment of compensation for the property taken or acquired and specified the principles on which and the manner in which the compensation is to be determined.

20. (1) No person shall be convicted of crime except for violation of a law in force at the time of the commission of that act charged as an offence, nor be subjected to a penalty greater than that applicable at the time of the commission of the offence.

(2) No person shall be tried for the same offence more than once nor^s be compelled in any criminal case to be a witness against himself.

21. (1) Full faith and credit shall be given throughout the territory of the Union to the public acts, records and judicial proceedings of the Union and every Unit thereof, and the manner in which and the conditions under which such acts, records and proceedings shall be proved and the effect thereof determined shall be prescribed by the law of the Union.

(2) Final civil judgments delivered in any Unit shall be executed throughout the Union subject to such conditions as may be imposed by the law of the Union.

Right to Constitutional Remedies

22. (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of any of the rights guaranteed by this part is here by guaranteed.

(2) Without prejudice to the powers that may be vested in this behalf in other courts, the Supreme Court shall have power to issue directions in

the nature of the writs of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari* appropriate to the right guaranteed in this part of the Constitution.

(3) The right to enforce these remedies shall not be suspended unless when, in cases of rebellion or invasion or other grave emergency, the public safety may require it.

23. The Union Legislature may by law determine to what extent any of the rights guaranteed by this part shall be restricted or abrogated for the members of the armed forces or forces charged with the maintenance of public order so as to ensure fulfilment of their duties and the maintenance of discipline.

24. The Union Legislature shall make laws to give effect to those provisions of this part which require such legislation and to proscribe punishment for those acts which are declared to be offences in this part and are not already punishable.