

UNIT1

CHAPTER4

FUNDAMENTAL RIGHTS

An eternal problem that faced statesmen and political scientists was how to make a proper adjustment between individual freedom and social control. Under a democratic system this problem assumes extreme difficulty. The success or failure of democracy depends largely on the extent to which civil liberties are enjoyed by citizens. A democracy aims at the maximum development of individual's personality and this personality is inseparably bound with his liberty. Therefore, every democracy pays full attention to secure maximum freedom, without endangering the state itself. A common device adopted for this purpose is to incorporate a list of fundamental rights in their constitution and guarantees them from violation by executive and legislative authorities.

- FR=Magna Carta Of India
- Inspired by the Bill Of Rights in the U.S. Constitution.
- They are regarded as the conscience of the constitution.
- Contained in Part iii (article12-article35)of the constitution.

Why FR is called as Fundamental?

- 1)They are fundamental because they are guaranteed and protected by the Constitution , which is fundamental law of land.
- 2)They are fundamental also in the sense that they are required for all round development of the individual.
- 3)They are required for individual existence in dignified manner.
- 4)They secure political freedom.

Important Features Of Fundamental Rights:-

1. Integral part of the constitution

Fundamental are an integral part of the constitution. They cannot be altered or taken away by the ordinary legislation. Any law passed by any legislature in the country could be declared null if it is derogatory to the rights guaranteed by the constitution.

2. Detailed and comprehensive:

The chapter in fundamental rights in the constitution is most comprehensive and elaborate.

All Articles included in this chapter is within an elaborate set of limitations and reservations.

4. Fundamental rights are justifiable:

Another feature of fundamental rights is that are justifiable. If any of these rights is violated, the affected individual is entitled to move either to Supreme Court or High court for the protection and enforcement of his rights.

5. Restrictive nature of fundamental rights:

Fundamental rights , guaranteed in Part III of the constitution, are **not absolute rights**. They are subjected to reasonable limitations provided in the constitution itself. Every right is permitted under certain limitations and reasonable restrictions. It can be imposed at anytime for the longer interest of the general community

6.Suspension of rights:

The President of India may suspend to all or any of the fundamental rights during the emergency operation. He may also suspend the right of the people to move the courts for the enforcement of fundamental rights.

7. Citizens alone enjoy fundamental rights:

Another feature of the fundamental rights is that some of the fundamental rights are available to Indian citizens alone E.g. Art 15, 16,18,29,30. Rights relating to protection of life, freedom of religion, and right against exploitation are guaranteed to every citizen with Indian or alien.

8.No natural or un enumerated rights:

F.Rs in the Indian constitution is not based on the theory of natural rights.

Besides the

Indian constitution has left no scope for un enumerated rights.

9.Amendable:

In Kesavananda Bharati case the Supreme Court ruled that the fundamental rights can be amendable under article 368, but subject to the condition that its “basic structure” cannot be changed.

Classification of fundamental rights:

The constitution itself classifies the FRs under 7 groups:

1. Right to equality
2. Right to freedom
3. Right against exploitation
4. Right to freedom of religion
5. Cultural and Educational Rights
6. Right to property
7. Right to constitutional remedies

Out of these, “Right to property” has been deleted by 44th constitutional amendment (1978) and consequently it is not a fundamental right now. A separate Article 31-A has been added to the constitution to protect it as a constitutional right.

1. Right to equality

Articles 14 to 18 of the constitution deals with the right to equality. Equality is the principal foundation of all other rights and liberties.

(a) Equality before law:

Article 14 treats all people the same in the eyes of the law.

- This provision states that all citizens will be treated equally before the law.
- The law of the country protects everybody equally.

Under the same circumstances, the law will treat people in the same manner

(b) Prohibition of discrimination on certain grounds (Article 15)

Art 15 is a particular aspect of equality guaranteed by Art 14. Article 15, forbids discrimination on certain grounds; The state shall not discriminate against any persons on grounds of religion , caste ,sex, or place of birth or any of them. Every person shall have equal access to public places like public parks, museums, wells etc. However, the state may make any provision for women and children. Special provisions may be made for the advancements of any socially or educationally backward classes or SCs or STs.

Interpreting the Article, Supreme Court rejected the plea that ‘residence’ in the state was equivalent to place of birth, and held that these are two distinct conceptions both in ,law and in fact.

(c) Equality of opportunity in matters of public employments(Art.16)

Article 16 guarantees equality of opportunity in matters of public employment. The state is prohibited from showing any discrimination against any citizen on grounds of religion, caste, race, sex, place of birth or residence. The only exceptions to the above rule of equality are:

- (i) Residence within the state may be laid down by parliament as a condition for particular classes of employment;
- (ii) The state may reserve any post of appointment in favour of any backward class of citizens, who are not adequately represented in the services under the state.
- (iii) The claim of members of scheduled castes and scheduled tribes shall be taken into consideration in the matter of appointment to services and posts under the states.
- (iv) The claim of members of scheduled tribes shall be taken into consideration in the matter of appointment to services and posts under the union and the states

V Abolition of Untouchability : (Article 17)

Article 17 abolishes untouchability and its practice in any form is made an offence punishable under law. Parliament is authorized to make a law prescribing the punishment for this offense(Art.35).In the exercise of this power, parliament has enacted the untouchability (offenses) Act 1955.This Act has been amended and renamed in 1976 as the ‘Protection of civil Rights Act,1955’.

(d) Abolition of titles (Art 18):

Article 18 prohibits the state to confer titles on anybody, whether Indian or alien. Military and academic distinctions are ,however, exempted from this prohibition. In 1954,the Govt of India introduced decorations of four categories, namely, Bharata Ratna, Padma Vibhushan, Padma Bhushan and Padma Shri. These awards were mere decorations and are not prohibited. They are mere state recognitions of good work by citizens in various fields of activity. There was a vehement criticism from some quarters that the introduction of these awards violates Article 18.

2. Right to Freedom

According to M.V.Pylee, “Personal liberty is the most fundamental of all fundamental rights”. Articles 19 to 22 of the constitution guarantees to the citizens of India, a set of rights, collectively known as ‘Right to freedom’. Article 19, is the most important of these. Art.19 originally guarantees seven fundamental freedoms to the citizens of India.

They are: (a) Freedom of speech and expression.(b)freedom to assemble peacefully ,without arms(c)freedom to form associations or unions,(d)freedom to move freely throughout the territory of India(e)freedom to reside and settle in any part of the territory of India;(f)freedom to acquire ,hold and dispose of property and (g) freedom to practice any profession or to carry any occupation, trade or business. The 44th amendment act 1978, omitted the “right to property “ and hence it is ceased to be a fundamental right and became only a legal right, under the control of ordinary law. The rest of rights guaranteed by the Article 19 are, popularly known as ‘**six**’ **freedoms under the constitution**.

Limitations upon Article 19

The rights or freedoms guaranteed by the Art 19 are not absolute. The guarantee of each of the above rights is limited by the constitution itself by conforming upon the state a power to impose by law reasonable restrictions as may be necessary in the larger interest of the community. The restrictions on their freedoms are provided in clauses 2 to 6 of the Article 19 of the constitution. It should be noted that when a proclamation of emergency (Article 352), Article 19 itself remains suspended.

The freedom of speech and expression is subjected to reasonable restrictions imposed by the state relating to (a) defamation;(b) contempt of court;(c)decency or morality;(d) security of the state; (e)friendly relations with foreign states;(f) incitement to an offence;(g)public order; (h)maintenance of sovereignty and integrity of India.

The freedom of assembly is subject to the qualification that the assembly must be peaceful and without arms and subject to such reasonable restrictions as may be imposed by the ‘state’ in the interest of public order.

Again, the right to form associations or union is also subject to reasonable restrictions imposed by the state. Similarly the right of everyone to move freely throughout the territory of India or to reside and settle in any part of the country shall also be subjected to restrictions imposed by the state in the interest of general public or for the protection of any scheduled tribes.

Similarly, the right of every citizen to practice any profession or to carry on any occupation trade or business is subject to reasonable restrictions imposed by the state and subject to any law laying down qualifications for carrying on any profession or a technical occupation or enabling state itself to carry as any trade or business to the exclusion of the citizens.

Freedom of the press:

There had been no special provision in the constitution, guaranteeing the freedom of the press. The Constituent Assembly did not think it necessary to incorporate a separate right of the press in the chapter on ‘fundamental rights.’Freedom of the press’ is included in the wider freedom of ’expression’ and is comprehensive enough to cover the press.

Protection in respect of conviction for offenses-Article 20

Article 20 affords protection against arbitrary punishment to any person who commits an offense. There are four such guaranteed protections:

- a) A person can be convicted of an offence only if he has violated a law in force at the time when he is alleged to have committed an offense;
- b) No person can be subjected to a greater penalty than what might have been given to him under the law that was prevalent when he committed the offense;
- c) No person can be prosecuted and punished for the same offense more than once;
- d) No person accused of an offense can be compelled to be a witness against himself.

e) No person accused of an offense can be compelled to be a witness against himself.

According to M.V. Pylee, “These provisions guard against retrospective application of a punitive law and double punishment for the same offence. These are, indeed guarantees of great importance which establish ,’the primary of law over the passions of man’ ”.

Protection of life and personal liberty (Art.21)

Article 21 of our constitution provides that “No person shall be deprived of his life or personal liberty except according to procedure established by law”. The keynote in Article 21 is” law.”

The Supreme Court in 1992, declared that Indians have a fundamental right to education ‘at all levels’. This right has been held to be part of the fundamental right to life under Article 21 of the constitution. The Supreme Court stated that the right to life and dignity of an individual “cannot be assured unless it is accompanied by the right to education”. With this judgement the Supreme Court has converted the non enforceable’ right to education’ in the Directive Principles of the constitution into an enforceable fundamental right. By the 86th constitutional amendment,2002, the following Article has been inserted after article 21 of the constitution : “21 A –States that the state shall provide free and compulsory education to all children of the age of 6 to 14 years in such a manner as the state may ,by law, determined” .The Right of Children to Free and Compulsory Education Act has come to force from 1st April,2010.Now every child in the age group of 6-14 years will be provided eight years of elementary education in an age appropriate class room in the vicinity.

The 44th amendment had declared the right to life and liberty inviolate. The fundamental right to life and liberty must continue in all circumstances. Article 21 was thus made an exception to the general rule laid down in Article 359-that the President has the power to suspend the enforcement of any or all of the fundamental rights during an emergency. The Supreme Court ruled later in another case that a person whose fundamental right under Article 21 has been violated has a right to monitory compensation as a remedy in public law.

Protection against arrest and detention (Article 22)

Article 22 guarantees three rights:

1. It guarantees the right to every person who is arrested to be informed of the cause of his arrest
2. His right to consult and to be defended by a lawyer of his choice

3. Every person arrested and detained in custody shall be produced before the nearest magistrate within a period of 24 hours and shall be kept in continued custody only with his authority

There are, however two exceptions to the universal application of the rights guaranteed under the first two clauses of Article 22. These relate to:

1. Any person who is for the time being an enemy alien: or
2. Any person who is arrested or detained under any law providing preventive detention

3 Right Against Exploitation

Article 23 and 24 deal with right against exploitation .This right seeks to ban traffic in human beings, beggar or any other form of forced labour. Employment of children below 14 years of age is also prohibited by law. Exploitation means misuse of services of others with the help of force. In India prior to the promulgation of Constitution, services of backward communities and weaker sections were used without any payment. This was known as the practice of beggar. The Constitution abolished this hated practice. Similarly in India, women from backward areas were purchased and sold elsewhere. Under the right, trafficking in women has been abolished. By this Acts the Constitution has put an end to child labour as well.

The Constitution also prohibits forced labour of any form which is similar to beggar. The abolition of forced labour and of economic and physical exploitation of the weaker sections of the people has been taken by the enactment of the Bonded Labour System (Abolition) Act 1976, by the parliament.

4.Right to freedom of religion.

The right to freedom of speech and expression, and the right to form associations and unions are also rights which guarantee religious speech and expression and the right to form religious associations and unions. But the Constituent Assembly was not satisfied with such provisions alone in its bid to infuse complete confidence in the religious minorities. They adopted a separate group of Articles dealing solely with the right to freedom of religion. India being a secular state, observes an attitude of neutrality and impartiality towards all religions. Articles 25,26 27 and 28 provide freedom of religion.

Article 25 enacts that all persons are equally entitled to freedom of conscience and the right to profess practice and propagate religion. There are only three restrictions to the freedom of

religion, namely, public order morality and health, Article 26 is a corollary to Article 25. It guarantees the freedom to manage religious affairs. According to this, every religious denomination is given the right:

- 1) To establish and maintain institutions for religious and charitable purposes;
- 2) To manage its own affairs in matters of religion;
- 3) To own and acquire movable and immovable property; and
- 4) To administer such property in accordance with law.

Article 27 provides an additional protection to religious activity by exempting funds appropriated towards the promotion or maintenance of any particular religion from the payment of taxes.

Article 28 prohibits religious instruction in any educational institution whether such instruction is given by the state or by other body. But this prohibition will not apply to any educational institution which is established under any endowment or trust. Religious instruction should be imparted in such institutions, even if it happens to be administered by the state. No person attending such institution shall be compelled to receive that religious instruction without the consent of himself or of his guardian. Thus, while the secular character of the state is demonstrated by all state educational institutions, private or denominational institutions, even when they receive state aid, are given freedom to maintain their religious character.

5. Cultural and Educational Rights

The Constitution provides that a minority shall have the right to conserve its own language, script, literature and culture. Admission to any state aided educational institution shall not be refused to anybody on grounds of religion race, caste or language (Article 29).

Article 30 provides that all ‘minorities’, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.” The state shall not on granting aid to educational institutions discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

6. Right to constitutional remedies.

A declaration of fundamental rights is meaningless unless there is an effective machinery for the enforcement of rights. This is provided in Article 32, which adopts special provisions guaranteeing the right to constitutional remedies. It guarantees the individual right to move the Supreme Court by appropriate proceedings for the enforcement of his fundamental rights. The second section of this Article empowers

the Supreme Court to issue directions or orders or writs, including writs in the nature of **habeas corpus, mandamus, prohibition, quowarranto and certiorari** for the enforcement of the rights. Further, the parliament may by law , empower any other court to exercise all or any of the powers exercisable by the Supreme Court without prejudice to the powers of the Supreme Court. The right to constitutional remedies may be suspended as provided by the Constitution under Articles 353 and 359. The importance of this Article(32) as such , was quite realised in the Constituent Assembly, and majority of the members agreed that, “it is the very soul of the Constitution and the very heart of it”

Writs mentioned in the Constitution:

a) Habeas Corpus: The term literally means, “You may have the body “ In India the power

to issue a writ of Habeas Corpus is vested only in the Supreme Court and the High Courts. It is issued in the nature of an order calling upon the person who has detained another to produce the latter before the court to let the court know on what ground he has been confined and to set him free if there is no legal justification for the imprisonment. The writ has only one purpose to set at liberty to a person who is confined without legal justification .The writ is issued not only against authorities of the state but also to private individuals or organisations if necessary. court or the Supreme court commanding a person or body to do that which is his, or its, duty.

b) Mandamus: It literally means’ **We command**’ . The writ of mandamus is an order of the High Court or the Supreme Court commanding a person or a body to do that which is his, or its, duty to do.. Usually it is an order directing the performance of ministerial acts. A ministerial act is one which a person or body obliged by law to perform under given circumstances.

c) Prohibition: Prohibition is a writ issued by the Supreme court or High court to an inferior court forbidding the latter to continue proceedings therein in excess of its jurisdictions or to usurp a jurisdiction with which it is not legally vested .The object of the writ is to compel inferior courts to keep themselves within the limits of their jurisdiction .

d) Certiorari: It is a prerogative writ which orders the removal of a suit from an inferior court to a superior court. It may be used before trial to prevent an excess or abuse of jurisdiction and to remove the case for trial to a higher court.

Prohibition and certiorari are both issued against courts or tribunals exercising judicial or quasi- judicial powers. Certiorari is issued to quash the order or decision of the tribunal, while prohibition is used to prohibit the tribunal from making the ultra vires order or decision. While prohibition is available at an earlier stage ,certiorari is available at a later stage, on similar grounds.

e) Quo warranto: It is a proceeding whereby the court enquires in to the legality of the claim which a party assents to a public office , and to oust him from its enjoyment if the claim be not well founded. The fundamental basis of the proceeding of quo warranto is that the public has an interest to see that an unlawful claimant does not usurp a public office.

Thus Article 32 provides a guaranteed remedy for the enforcement of fundamental rights and this remedial right is itself made fundamental by being included in Part III. The court is, constituted the protector and guarantor of the fundamental rights. The Indian Constitution by providing this right , that is, by making that remedial right itself a guaranteed fundamental right has gone a step further than most of the constitutions of the world.

