



Fundamental Rights and Fundamental Duties: A Review

Dr.Ravi Sahebrao Dharpawar

Chintamani Arts and commerce college Ghugus Dist Chandrapur Maharashtra

Abstract:

The Fundamental Rights, Directive Principles of State Policy and Fundamental Duties represent sections of the Constitution of India that prescribe the fundamental obligations of the State^o to its citizens and the duties of the citizens to the State. Those sections comprise a constitutional bill of rights guideline for government policy-making and the behavior and conduct of citizens developed between 1947 and 1949 by the Constituent Assembly of India. Credit for the remarkable success of India in establishing itself as a Republic in the face of seemingly insurmountable challenges goes the Fundamental Rights, Directive Principles, and Fundamental Duties. The first and foremost task of a government is to protect the basic rights of its citizens to life, liberty, property, freedom of religious belief and practice, and freedom of association. If that is lacking, economic and social justice will fail. The rights, principles, and duties have provided the stability and balance needed for the Indian ship of state to sail safely through treacherous waters.



Keywords: Constitution, Sections, Government, Credit etc.

Introduction:

The Fundamental Rights (embodied in Part III of the constitution) guarantee civil liberties such that all Indians can lead their lives in peace as citizens of India. The six fundamental rights include the right to equality, right to freedom, right against exploitation, right to freedom of religion, cultural and educational rights and right to constitutional remedies.

Those include individual rights common to most liberal democracies, incorporated in the fundamental law of the land, enforceable in a court of law. Violations of those rights result in punishments as prescribed in the Indian Penal Code, subject to discretion of the judiciary. Neither absolute nor immune from constitutional amendments, the rights have been aimed at overturning the inequalities of pre-independence social practices. Specifically, they resulted in abolishment of untouchability and prohibit discrimination on the grounds of religion, race, caste, sex, or place of birth. They forbid human trafficking and unfree labour. They protect cultural and



educational rights of ethnic and religious minorities by allowing them to preserve their languages and administer their own educational institutions.

All people, irrespective of race, religion, caste or sex, have the right to approach the High Courts or the Supreme Court for the enforcement of their fundamental rights. The aggrieved party may have a case brought before the courts without their request. In public interest, anyone can initiate litigation in the court on their behalf, called "Public interest litigation". High Court and Supreme Court judges can also act on their own on the basis of media reports.

The Fundamental Rights emphasize equality by guaranteeing to all citizens the access and use of public institutions and protections, irrespective of their background. The rights to life and personal liberty apply for persons of any nationality, while others, such as the freedom of speech and expression apply only to the citizens of India (including non-resident Indian citizens). The right to equality in matters of public employment applies only to citizens in India, overseas citizens of India stand outside the protection of the law.

Fundamental Rights primarily protect individuals from any arbitrary State actions, but individuals may have legal action taken against them for violation of fundamental rights. For instance, the constitution abolishes untouchability and prohibits begar. Those provisions act as a check both on State action and actions of private individuals. Fundamental Rights have a relative nature, subject to reasonable restrictions as necessary for the protection of national interest. In the Kesavananda Bharati vs. state of Kerala case, the Supreme Court ruled that all provisions of the constitution, including Fundamental Rights can be amended. The Parliament must preserve the basic structure of the constitution like secularism, democracy, federalism, separation of powers. Often called the "Basic structure doctrine," that decision has taken has become widely regarded as an important part of Indian history. In the 1978 Maneka Gandhi v. Union of India case, the Supreme Court extended the doctrine's importance as superior to any parliamentary legislation. According to the verdict, no act of parliament can be considered a law if it violated the basic structure of the constitution. This landmark guarantee of Fundamental Rights was regarded as a unique example of judicial independence in preserving the sanctity of Fundamental Rights.



The Fundamental Rights can only be altered by a constitutional amendment, hence their inclusion serves as a check on the executive branch, the Parliament and state legislatures. The imposition of a state of emergency may lead to a temporary suspension of the rights conferred by Article 19 (including freedoms of speech, assembly and movement, etc.) to preserve national security and public order. The President can, by order, suspend the right to constitutional remedies as well.

Personal rights

The right to equality constitutes one of the chief guarantees given in Articles 14, 15, 16, 17 and 18 of the constitution. The right serves as the principal foundation of all other rights, guaranteeing equality of all citizens before law, social equality, equal access to public areas, equality in matters of public employment, the abolition of untouchability and of titles. Reservations (i.e, quotas in jobs, education, etc.) can be made for women, children, scheduled castes and scheduled tribes.

The Fundamental Rights prohibit the State from discriminating against anyone in the matters of employment except for the implementation of any mandated quotas, and when the case for specific knowledge has been made. To preserve religious freedom, the holder of an office of any religious institution should be a person professing that particular religion. The right to equality in matters regarding public employment applies only to within India, overseas citizens of India stand beyond the scope of the law. The practise of untouchability has been declared an offence punishable by law. The law prohibits the State from conferring, and citizens of India from accepting, titles from a foreign State. Indian aristocratic titles such as Rai Bahadurs and Khan Bahadurs have been abolished. Military and academic distinctions may be conferred on the citizens of India. Law specifies that recipients of awards such as the Bharat Ratna "cannot be used by the recipient as a title." A ruling by the Supreme Court on December 15, 1995 upheld the validity of such awards.

Articles 19, 20, 21 and 22 state the right to freedom with the view of guaranteeing individual rights considered vital by the framers of the constitution. The right to freedom encompasses the freedom of expression, the freedom to assemble peacefully without arms, the freedom to form associations and unions, the freedom to move freely and settle in any part of the territory of India



and the freedom to practise any profession. Restrictions can be imposed on all those rights in the interest of security, decency and morality. The constitution guarantees the right to life and personal liberty. Protection with respect to conviction for offences, protection of life and personal liberty and the rights of a person arrested under ordinary circumstances reside in the right to life and personal liberty.

The Right to freedom of religion' (covered in Articles 25, 26, 27 and 28) provides religious freedom to all citizens and preserves the principle of secularism in India. According to the constitution, all religions stand equally before the State. Citizens may preach freely, practice and propagate any religion of their choice. Several distinct and often controversial practises, such as the wearing and carrying of kirpans constitutes the profession of Sikhism and stands protected under law. Religious communities can set up charitable institutions of their own, subject to certain restrictions in the interest of public order, morality and health. The law forbids compelling any person to pay taxes for the promotion of a religion nor may a State-run institution present education associated with a particular religion.

Economic and social rights

The cultural and educational rights (given in Articles 29 and 30) represent measures to protect the rights of ethnic and religious minorities. Any community with a language and a script of its own has the right to conserve and develop them. All citizen's enjoy equal opportunity for admission in State or State-aided institutions. All religious and ethno-linguistic communities can set up their own educational institutions to preserve and develop their own culture. In granting aid to institutions, the State must respect all institutions administered by a minorities. The right to education at elementary level has been made one of the Fundamental Rights under right to life and personal liberty by the 86th constitutional amendment of 2002.

The Right against exploitation, given in Articles 23 and 24 provides for the abolition of human trafficking, and the abolition of employment of children below the age of 14 years in dangerous jobs like factories and mines. Child labour represents a violation of the spirit and provisions of the constitution. Begar (forced and unfree labour), practiced in the past by landlords, has been declared a crime punishable by law. Law prohibits trafficking in humans for the purpose of slave



trade or prostitution. Exceptions for employment without payment cover services for public purposes, such as compulsory military conscription.

Fundamental Duties

The 42nd Amendment Act added the Fundamental Duties of citizens in 1976. The ten Fundamental Duties (given in Article 51-A of the constitution) can be classified as either duties towards self, duties concerning the environment, duties towards the State and duties towards the nation. The 86th constitutional amendment added the 11th Fundamental Duty, which states that every citizen "who is a parent or guardian, to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years" in 2002.

Citizens have a moral obligation by the constitution to perform those duties, although non-justifiable, incorporated only with the purpose of promoting patriotism among citizens. Those obligations extend not only to the citizens, but also to the State. International instruments such as the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights make reference to such duties. The Fundamental Duties obligate all citizens to respect the national symbols of India (including the constitution), to cherish its heritage and assist in its defense. It aims to promote the equality of all individuals, protect the environment and public property, to develop "scientific temper," to abjure violence, to strive towards excellence and to provide free and compulsory education

Conclusion:

The Fundamental Rights, Fundamental Duties and Directive Principles are two sides of a coin that serve one purpose, the interest of the citizen. While rights and duties are fundamental and go to the root of how a citizen behaves or acts in the society, the other is a guideline for the State to create and pass laws. The former was provided in the constitution to be enforceable in court while the other was not. Therefore, the decision to enforce a directive principle in court lies in the hands of the aggrieved and it is left for the court to decide whether to adjudicate it or not.

Bibliography:

- [1] Basu, Durga Das (1988), Shorter constitution of India, Prentice Hall of India, New Delhi, ISBN 9780876924082



- [2] Basu, Durga Das (1994), Introduction to the constitution of India, Prentice Hall of India, New Delhi, ISBN 9788120308886
- [3] Bodhisattwa Gautam vs. Subhra Chakraborty; 1995 ICHRL 69 (in English) (HTML). World Legal Information Institute. Retrieved February 16, 2009. Date of ruling December 15, 1995
- [4] Kesavananda Bharati vs. state of Kerala; AIR 1973 S.C. 1461, (1973) 4 SCC 225 (in English). Wikipedia. Retrieved February 16, 2009. In this case, famously known as the "Fundamental Rights case," the Supreme Court decided that the basic structure of the Constitution of India was unamendable.
- [5] Laski, Harold Joseph (1930), Liberty in the Modern State, Harpers and Brothers, New York and London, OCLC: 526127
- [6] Maneka Gandhi v. Union of India; AIR 1978 S.C. 597, (1978).
- [7] O'Flaharty, W.D. & J.D.M., Derrett (1981), The Concept of Duty in Asia; African Charter on Human and People's Right of 1981, OCLC: 3999328