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## FUNDAMENTAL RIGHTS IN INDIA: CONSTITUTIONAL TEXT, JURISPRUDENTIAL TRENDS, AND NEW FRONTIERS

~ *Ashish Kumar Swain*

### ABSTRACT

*Fundamental Rights, contained in Part III of the Constitution of India, sit at the centre of Indian constitutionalism. Covering personal liberty, equality, freedom of expression, protection from exploitation, religious freedom, and cultural and educational autonomy, these rights reflect the founding generation's resolve to build a just and democratic social order. This article looks at the doctrinal foundations of Fundamental Rights through a historical and jurisprudential lens, following their development from the Constituent Assembly debates to major Supreme Court decisions such as Kesavananda Bharati v. State of Kerala (1973), Maneka Gandhi v. Union of India (1978), and K.S. Puttaswamy v. Union of India (2017). It examines the scope and limits of these rights, the reasonable restrictions framework, and the role of the judiciary in upholding constitutional guarantees. The article also takes stock of pressing contemporary concerns, including digital surveillance, the use of sedition laws against dissenters, and the friction between national security and individual freedoms. The conclusion drawn is that while the constitutional text is well-crafted, consistent judicial vigilance and legislative restraint are necessary to keep these rights meaningful in practice.*

### INTRODUCTION

Few provisions in the Indian Constitution carry as much moral and political weight as the Fundamental Rights set out in Part III. When Dr. B.R. Ambedkar described the Right to Constitutional Remedies as "*the very soul of the Constitution and the very heart of it,*"<sup>1</sup> he was pointing to something that went beyond legal draftsmanship. For the framers, these rights

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<sup>1</sup>Constituent Assembly Debates, Vol. VII, 17 December 1946 (Dr. B.R. Ambedkar).

were the clearest expression of the break from colonial subjugation, a written commitment that the Indian State would not treat its citizens the way the British had.

The Constituent Assembly drew on several traditions when drafting Part III. The influence of the American Bill of Rights is visible in the justiciability of the provisions; the Irish Constitution shaped the Directive Principles that sit alongside the rights; and the principles of the Universal Declaration of Human Rights (1948) ran through many of the debates. The result was a set of rights enforceable directly before the High Courts under Article 226 and the Supreme Court under Article 32. Over the seventy-odd years since, the courts have expanded these rights considerably, while successive governments have periodically tested their limits.

This article works through the constitutional text of Part III, looks at the major rulings that have shaped how these rights are understood today, and considers the challenges they face at present. The argument, put simply, is that the strength of any rights framework depends less on how well the provisions are written and more on whether the institutions responsible for enforcing them actually do so.

## **CONSTITUTIONAL FRAMEWORK OF FUNDAMENTAL RIGHTS**

Part III of the Constitution (Articles 12 to 35) sets out six categories of Fundamental Rights. Article 12 defines "the State" to include the Government and Parliament of India, the Government and Legislature of each State, and all local or other authorities within the country. Courts have read this definition broadly over the years to bring public sector undertakings and other State instrumentalities within its scope, which has proved important in extending the reach of these rights.

Article 13 is the provision that gives Part III its teeth. It declares void any law that takes away or abridges the rights conferred by Part III. In *State of Madras v. V.G. Row*,<sup>2</sup> the Supreme Court made clear that whether a restriction on Fundamental Rights is valid is a matter for the court to decide, not the legislature. That ruling set the tone for judicial review of rights-limiting legislation and remains good law.

## **THE SIX CATEGORIES**

**Right to Equality (Articles 14-18):** Article 14 provides equality before the law and equal protection of the laws. Over time, courts have read into it a requirement that any legislative classification must rest on a real and intelligible distinction that bears a rational connection to

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<sup>2</sup>*State of Madras v. V.G. Row*, AIR 1952 SC 196.

the law's purpose. Articles 15 and 16 prohibit discrimination and ensure equal access to public employment. Articles 17 and 18 abolish untouchability and titles, two specific legacies of colonial and caste-based hierarchy that the framers were determined to erase.

**Right to Freedom (Articles 19-22):** Article 19 lists six freedoms available to citizens: speech and expression, peaceful assembly, forming associations, movement, residence, and choice of occupation. Each comes with the possibility of State restriction on grounds set out in the sub-clauses. Articles 20, 21, and 22 deal with protections for those accused or convicted of offences, the guarantee of life and personal liberty, and limits on arrest and detention. Of these, Article 21 has had the most expansive history, as courts have used it to recognise a wide range of rights not explicitly named in the text.

**Right against Exploitation (Articles 23-24):** These provisions ban trafficking, forced labour, and the employment of children under fourteen in factories, mines, and other hazardous work. Given the scale of bonded labour and child employment that existed at the time of the Constitution's adoption, these were not merely symbolic provisions.

**Right to Freedom of Religion (Articles 25-28):** These Articles protect freedom of conscience and the right to profess, practise, and propagate religion, subject to public order, morality, and health. The question of which religious practices the State may regulate and which it may not has been litigated extensively. Courts have generally confined protection to *essential religious practices*, though determining what qualifies as essential has itself been a source of sustained controversy.

**Cultural and Educational Rights (Articles 29-30):** These provisions are aimed specifically at protecting minorities. Article 29 allows any group with a distinct language, script, or culture to conserve it. Article 30 gives religious and linguistic minorities the right to set up and run educational institutions of their choice, a provision whose scope has been debated in several major cases.

**Right to Constitutional Remedies (Article 32):** This provision allows any person to approach the Supreme Court directly for enforcement of their Fundamental Rights through writs of habeas corpus, mandamus, certiorari, prohibition, and quo warranto. Without it, the other rights would be aspirational at best. Its suspension during the Emergency of 1975-77 demonstrated precisely how vulnerable the rest of Part III becomes when Article 32 is taken away.

## **JUDICIAL EVOLUTION OF FUNDAMENTAL RIGHTS**

### **EARLY TENSIONS: PARLIAMENT VERSUS JUDICIARY**

The relationship between Parliament and the judiciary over Fundamental Rights got off to a troubled start. In *Shankari Prasad v. Union of India*,<sup>3</sup> decided in 1951, the Supreme Court took the view that Parliament's power to amend the Constitution under Article 368 was wide enough to include amending Fundamental Rights. That position held for some years. Then in *Golaknath v. State of Punjab*,<sup>4</sup> a bench of eleven judges reversed course in 1967 and held that Fundamental Rights could not be amended by Parliament at all. The political response was swift: Parliament passed the 24th, 25th, and 29th Constitutional Amendments in an effort to reassert its authority, setting the stage for the most significant constitutional case in Indian history.

### **THE BASIC STRUCTURE DOCTRINE**

In *Kesavananda Bharati v. State of Kerala*,<sup>5</sup> decided in 1973 by a bench of thirteen judges, the Supreme Court reached a compromise of sorts. By a majority of seven to six, it held that Parliament does have the power to amend the Constitution, including its Fundamental Rights provisions, but that it cannot use that power to destroy the Constitution's basic structure. Among the elements the Court identified as part of that basic structure were the supremacy of the Constitution, the republican and democratic form of government, secularism, separation of powers, judicial review, and the protection of Fundamental Rights. The doctrine has operated since as a check on constitutional amendments that threaten individual liberties.

### **MANEKA GANDHI AND THE EXPANSION OF ARTICLE 21**

For the first three decades after independence, Article 21 was read narrowly. The ruling in *A.K. Gopalan v. State of Madras*<sup>6</sup> treated the right to life and personal liberty as little more than a protection against arbitrary physical detention. That changed fundamentally in *Maneka Gandhi v. Union of India*.<sup>7</sup> Justice Bhagwati, writing in 1978, held that any procedure used to deprive someone of life or liberty must itself be fair, just, and reasonable. This brought substantive due process into Indian law and opened Article 21 to a much wider range of claims. In the years

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<sup>3</sup>*Shankari Prasad v. Union of India*, AIR 1951 SC 458.

<sup>4</sup>*Golaknath v. State of Punjab*, AIR 1967 SC 1643.

<sup>5</sup>*Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461 (Sikri CJ).

<sup>6</sup>*A.K. Gopalan v. State of Madras*, AIR 1950 SC 27.

<sup>7</sup>*Maneka Gandhi v. Union of India*, AIR 1978 SC 597 (Bhagwati J).

that followed, courts read into it the right to livelihood, health, education, a speedy trial, free legal aid, and the right to live with basic dignity.

### **THE RIGHT TO PRIVACY**

For much of the twentieth century, privacy had no clear standing as a Fundamental Right in India. That changed in 2017 when a nine-judge bench in *K.S. Puttaswamy (Retd.) v. Union of India*<sup>8</sup> unanimously held that privacy is a right protected under Articles 14, 19, and 21. The Court departed from earlier decisions in *M.P. Sharma v. Satish Chandra* (1954) and *Kharak Singh v. State of U.P.* (1962) that had refused to recognise privacy as a constitutional guarantee. The *Puttaswamy* judgment now provides the constitutional foundation for challenges to State surveillance programmes, mandatory biometric databases, and the data practices of both government agencies and private corporations.

### **REASONABLE RESTRICTIONS AND THE DOCTRINE OF PROPORTIONALITY**

The rights in Part III were never conceived as absolute. Articles 19(2) to 19(6) allow the State to impose reasonable restrictions on the six freedoms listed in Article 19, on grounds such as sovereignty, public order, decency, and the rights of others. The question of what counts as a reasonable restriction has kept courts busy for decades. An important constitutional boundary was drawn in *Minerva Mills Ltd. v. Union of India*,<sup>9</sup> where the Supreme Court struck down the 42nd Amendment's attempt to place Directive Principles above Fundamental Rights. The Court held that keeping the two in balance is itself part of the Constitution's basic structure, meaning that neither social welfare goals nor individual rights can completely override the other.

The proportionality framework was given clearer shape in *Modern Dental College and Research Centre v. State of Madhya Pradesh*,<sup>10</sup> where the Court laid down a four-part test for evaluating restrictions on rights. A measure must serve a legitimate purpose; it must be rationally connected to that purpose; it must interfere with the right as little as possible to achieve the goal; and the benefit gained must be proportionate to the harm done to the right. This test has brought Indian constitutional review closer to the approaches used in European and Commonwealth human rights courts.

### **CONTEMPORARY CHALLENGES TO FUNDAMENTAL RIGHTS**

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<sup>8</sup>*K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

<sup>9</sup>*Minerva Mills Ltd. v. Union of India*, AIR 1980 SC 1789.

<sup>10</sup>*Modern Dental College and Research Centre v. State of Madhya Pradesh*, (2016) 7 SCC 353.

## **1. DIGITAL SURVEILLANCE AND THE RIGHT TO PRIVACY**

The right to privacy recognised in *Puttaswamy* quickly ran into real-world tests. Reports that Pegasus spyware had been used to target journalists, opposition politicians, and rights activists in India<sup>11</sup> brought the question of State surveillance to the fore. The Supreme Court responded by appointing a technical committee to look into the matter, which was itself a signal that the courts were prepared to scrutinise executive conduct in this area. However, India still lacks a comprehensive data protection law. Until one is enacted, citizens have no clear statutory remedy when their personal data is collected, stored, or misused, whether by the State or by private companies.

## **2. THE SEDITION LAW DEBATE**

Section 124A of the Indian Penal Code, 1860 makes sedition a criminal offence. It was originally a colonial instrument used against independence activists, and its continued use after independence has attracted persistent criticism. In recent years, it has been applied against journalists, students, and civil society members in circumstances far removed from any genuine threat to the State. In *S.G. Vombatkere v. Union of India*,<sup>12</sup> the Supreme Court in 2022 directed that all pending proceedings under the provision be kept in abeyance while its constitutionality is re-examined. The case draws attention to a wider tension in Indian law between legitimate security concerns and the right to criticise the government, a right the Court has on many occasions described as fundamental to democratic life.

## **3. PREVENTIVE DETENTION AND PERSONAL LIBERTY**

Legislation such as the Unlawful Activities (Prevention) Act, 1967 and the National Security Act, 1980 allows for detention without trial for extended periods. Courts have held that rights including the presumption of innocence, access to bail, and a fair hearing are implicit in Article 21.<sup>13</sup> Critics point to cases where individuals, including academics, lawyers, and activists, have spent years in custody under these laws before their trials have even begun. Whatever the merits of the individual cases, the pattern raises genuine questions about whether the procedural safeguards in Article 22 and the broader protections of Article 21 are being observed in practice.

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<sup>11</sup>Pegasus Project, Forbidden Stories & Amnesty International, *Pegasus: The New Global Weapon for Silencing Journalists* (2021).

<sup>12</sup>*S.G. Vombatkere v. Union of India*, Writ Petition (Civil) No. 682 of 2021 (Supreme Court of India, order dated 11 May 2022).

<sup>13</sup>M.P. Jain, *Indian Constitutional Law* (8th edn, LexisNexis 2018) 1212.

#### **4. FREEDOM OF RELIGION AND MINORITY RIGHTS**

Religious and linguistic minorities have specific constitutional protections under Articles 25 to 30. These are under strain. Anti-conversion laws passed in several States, litigation over the Places of Worship (Special Provisions) Act, 1991, and the revocation of Jammu and Kashmir's special status under Article 370 have all generated legal disputes about the boundaries of religious freedom and minority rights.<sup>14</sup> The courts have not always spoken with one voice on these matters, and much turns on how broadly or narrowly the doctrine of essential religious practices is applied. How the judiciary navigates these questions over the coming years will go a long way towards determining what constitutional pluralism actually means in India.

#### **CONCLUSION**

Part III of the Constitution of India is not a fixed document. It has grown through judicial interpretation, sometimes dramatically, and it has been tested by executive and legislative action, sometimes severely. What the history of Fundamental Rights in India shows is that a written guarantee is only as strong as the willingness of institutions to give it effect. The basic structure doctrine emerged precisely because courts were not prepared to allow Parliament to amend rights out of existence. The expansion of Article 21 happened because judges were prepared to read the provision purposively rather than literally.

The challenges discussed in this article are not abstract. Real people are affected when surveillance goes unchecked, when sedition laws are used against critics, when bail is denied for years, or when minority institutions face regulatory pressure. Meeting these challenges requires more than good judgments, though those matter greatly. It also requires a legislature willing to enact laws that respect constitutional limits, an executive that treats rights as genuine constraints on its power, and a legal profession that brings difficult cases before courts even when doing so is uncomfortable.

India's constitutional project remains unfinished in the best sense of that word. The Fundamental Rights in Part III are a framework within which that project continues, carrying forward the founding promises of a republic committed to justice, liberty, equality, and fraternity.<sup>15</sup> Keeping that promise requires ongoing effort from every part of the constitutional order.

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<sup>14</sup>H.M. Seervai, *Constitutional Law of India* (4th edn, Universal Law Publishing 1991) Vol. II, 1478.

<sup>15</sup>Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press 1966) 50.