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ANALYSIS OF FUNDAMENTAL RIGHTS IN INDIA

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ABSTRACT

Fundamental rights are given under the Constitution of India i.e. codified under Part III of the Constitution, which guarantee every individual has liberty that gives freedom from the state for the unfair treatment or any arbitrary action performed through the state.¹ In India the Constitution of India was influenced by the different Countries system, also through the United States Bill of Rights. These were having the important and basic rights such as rights relating to equality, freedom, protection from exploitation, freedom of religion, cultural and educational rights, and constitutional remedies etc.²

This research paper studies the origin, development, and importance of the Fundamental Rights in India. It will also explain how the Hon'ble Supreme Court of India has done the wider interpretation of laws through case laws such as going to case of A.K. Gopalan v. State of Madras following to the wider protection of laws given in the case of Maneka Gandhi v. Union of India. It also discusses the basic structure doctrine developed in the case of Kesavananda Bharati v. State of Kerala.

This paper will also further explain the relationship between the Fundamental Rights and Directive Principles of State Policy and the concept of what does the reasonable restrictions means and the protections of rights during the emergency period furthermore it will also discuss the modern problem and issues such as privacy, internet freedom, digital rights, surveillance, and access to justice.

¹ INDIA CONST. pmb.; see also Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 50 (Oxford University Press 1966).

² INDIA CONST. arts. 12–35, pt. III.

The main argument of this research paper is how the Fundamental Rights have developed through Constitutional Provisions and judicial decisions and precedents. This shows the Judicial Active role for protecting the liberty, equality, dignity, justice and democratic values with in India.

I. Introduction

The Constitution of India was adopted on the 26th November 1949 and it came into force on the 26th January 1950. It has developed India as a sovereign, democracy based on justice, liberty, equality, and fraternity.³

In the Constitution of India, the most important part of the Constitution is Part III, which contains Fundamental Rights under Articles 12 to 35⁴. Fundamental Rights are completely different from the ordinary legal rights as the Constitution itself protect it. As per Article 32⁵ of the Constitution, it gives right to every individual to approach the Supreme Court for the enforcement of the Fundamental Rights. As per the Article 226⁶ High Courts have power to issue the writs for the enforcement of the Fundamental Rights and for the legal rights also.

Article 13 explains what the Law is it also provides any law which is inconsistent with the Fundamental Rights will be declared void till the extent of the inconsistency. This addition of Fundamental Rights was having the impact from the Britishers rule. During the colonial period society and every individual faces restriction such as civil liberties, freedom of speech, political activities, and personal liberty. The framers of the Indian Constitution wanted to provide us with the protection with the individual rights.⁷

The Constitution is an instrument which is attempted for the combination of the democracy along with the social change this was described by the Granville Austin⁸ so the Fundamental Rights are not only about individual freedom, these are also connected with the equality, social justice, human dignity, and democratic government.

This research paper will also discuss the historical background, different types of Fundamental Rights, landmark Judgments of the Supreme Court, the relationship between Fundamental

³ INDIA CONST. pmb1.

⁴ INDIA CONST. arts. 12–35, pt. III.

⁵ INDIA CONST. art. 32.

⁶ INDIA CONST. art. 226.

⁷ Constituent Assembly Debates, Vol. VII (1948), discussions concerning Fundamental Rights.

⁸ GRANVILLE AUSTIN, THE INDIAN CONSTITUTION: CORNERSTONE OF A NATION 50 (1966).

Rights and Directive Principles, what does the reasonable restrictions, Emergency provisions, and modern challenges for the Fundamental Rights.

II. Historical Background of the Constitution and Constitutional Framework

India before independence the main idea existed before that to protect civil liberties. As per the Nehru Report of 1928 along with the different resolution of the Indian National Congress that supported the protection for the basic civil liberties. When the Constituent Assembly started working during 1946, an Advisory Committee on the Fundamental Rights, Minorities and Tribal and Excluded Areas were formed under the leadership of the Sardar Vallabhbhai Patel also the Sub-Committee for the Fundamental Rights was also formed under the J.B. Kripalani.⁹ The Indian Constitution was finally codified into the main two classification to deal with the Rights and Social goals.

Part III of the Constitution deals with the Fundamental Rights, these rights can be enforced through courts under Article 32 and 226.

Part IV of the Constitution it contains the Directive Principles of State Policy. These given laws cannot be enforced through Courts but as per the Article 37¹⁰ it declares them as the fundamental for the governance of the Country.

Fundamental Rights are there from Articles 12 to 35.¹¹

As per the Article 12 it explains what is “The State” for the purposefulness Under the Fundamental Rights. Article 13 talks about the laws which violate the Fundamental Rights so it gives protection against such laws. Therefore, the main question arises whether the Parliament can amend Fundamental Rights became an important constitutional issue. This question took the Hon’ble Supreme Court with landmark Judgments and led to the development of the basic structure doctrine.

III. Classification of the Fundamental Rights Under the Constitution i.e. Part III

A. Right to Equality: Articles 14 – 18

⁹ Constituent Assembly Debates, Vol. VII (1948), discussions of the Advisory Committee and Fundamental Rights Sub-Committee.

¹⁰ INDIA CONST. art. 37.

¹¹ INDIA CONST. arts. 12–35, pt. III.

Article 14 of the Constitution says that it guarantees equality before the law and equal protection of law.¹² Equality does not mean that every person must be treated the same way as everyone is treated. Different groups can be treated differently if there is need for a reasonable basis for treating them with the protection. The Hon'ble Supreme Court has developed the concept of reasonable classification in the case of *State of West Bengal v. Anwar Ali Sarkar*¹³ the court held that the classification is valid only when there is reasonable need for the special protection and there must be proper purpose for the law and connection

Article 15 to 18 is the strength to the right to equality

As per the Article 15¹⁴ it prohibits the discrimination on the grounds such as religion, race, caste, sex and the place of birth also by giving the special law or any provision for the marginalised groups.

Article 16¹⁵ guarantee equal opportunity in public sector for the employments along with the reservations for the marginalised sector.

As per the Article 17¹⁶ it abolishes Untouchability.

As per the Article 18¹⁷ it abolishes titles, but there are exceptions for military and academic.

The Hon'ble Supreme Court in the case of *Indra Sawhney v. Union of India*¹⁸ has discussed the reservation. The Court has led the reservation for the socially and educationally backward classes due to their historic disadvantage, this judgment also discussed the fifty per cent reservation i.e. led to the principle recognised by the Court. Therefore, as per Article 14 there is the broad interpretation for treating everyone equally i.e. for considering the marginal and weaker section of the society.

B. Right to Freedom: Article 19-22

Article 19(1) grants 6 freedoms along with the reasonable restriction

1. Freedom of speech and expression;

¹² INDIA CONST. art. 14.

¹³ *State of West Bengal v. Anwar Ali Sarkar*, AIR 1952 SC 75.

¹⁴ INDIA CONST. art. 15.

¹⁵ INDIA CONST. art. 16.

¹⁶ INDIA CONST. art. 17.

¹⁷ INDIA CONST. arts. 18.

¹⁸ *Indra Sawhney v. Union of India*, 1992 Supp (3) SCC 217.

2. Freedom to assemble peacefully and without arms;
3. Freedom to form associations or unions and co-operative societies;
4. Freedom to move freely throughout India;
5. Freedom to reside and settle in any part of India; and
6. Freedom to practise any profession or carry on any occupation, trade, or business.¹⁹

These freedoms are not the absolute in nature; the Constitution itself allows the state to impose the reasonable restriction for the specific purpose given under the Constitution.²⁰

In the Landmark case of *Shreya Singhal v. Union of India*,²¹ the Hon'ble Supreme Court has struck down the provision of IT Act, 2000 i.e. Information Technology Act, 2000 under the section 66A that was the violative of the fundamental right under Article 19(2).²²

Article 20 to 22 grants further protections

As per the Article 20²³ it protects the person against the following:

Article 20(1) it states the retrospective criminal punishment;

Article 20(2) it protects the person from the double jeopardy; and

Article 20(3) it protects the person from being compelled self-incrimination.

Article 21 it protects life and personal liberty that has a very wider scope i.e. under Right to life the Hon'ble Supreme Court has led so many things such as Right to safe Environment, Right to health, Right to privacy, Right to live with dignity, Right to shelter and housing, Right to food etc these list are exhaustive in nature.

Article 22²⁴ provide safeguards for the arrest and detention also it provides provision for the preventive detention. In the landmark case of *D.K. Basu v. State of West Bengal*²⁵ where the Hon'ble Supreme Court held the guidelines related to arrest and detention to protect the people from the custodial abuse and violation of Article 21 i.e. personal liberty.

¹⁹ INDIA CONST. art. 19(1).

²⁰ INDIA CONST. arts. 19(2) to (6).

²¹ *Shreya Singhal v. Union of India*, (2015) 5 SCC 1.

²² INDIA CONST. arts. 19(2).

²³ INDIA CONST. arts. 20.

²⁴ INDIA CONST. arts. 22.

²⁵ *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416.

C. Right against Exploitation: Articles 23-24

As per the Article 23 it prohibits human trafficking of the human beings also for the forced labour. In the Landmark case also known as the Bonded labour case i.e. *Bandhua Mukti Morcha v. Union of India*,²⁶ the Hon'ble Supreme Court held that to release all the bonded labour along with the compensation granted to them.

As per the Article 24 it prohibits the hazardous work or employment for the children below the age of fourteen years such as the place of factory, mines or any hazardous place. These codify laws are there for the State to take the role to protect the vulnerable sections of the society.

D. Right to Freedom of Religion: Articles 25-28²⁷

Articles 25 to 28 deal with the religious freedom to be follow in India.²⁸

As per Article 25 of the Constitution every person has freedom to choose and follow along with the practice, but this freedom is subject to the public order, morality, health etc.

Article 26 protects the rights of the religious places to manage their denominations from the affairs and these are subject to the constitutional limitations.

Article 27 it protects the people to pay the taxes for promoting or maintaining a particular religion, they cannot compel or bound to pay.

As per the Article 28 it states that religious instruction in educational institutions.

In the landmark case where the term Secularism was discussed i.e. in the case of *S.R. Bommai v. Union of India*,²⁹ where the Hon'ble Supreme Court held that Secularism is a part of the basic feature of the Constitution. Therefore, the Constitution of India itself guarantee's religious freedom by maintaining the equality, public order and Constitutional Morals.

E. Cultural and Educational Rights: Articles 29 & 30³⁰

Article 29³¹ it protects the right of separate section of citizens that are having different language and culture to protect it.

²⁶ *Bandhua Mukti Morcha v. Union of India*, (1984) 3 SCC 161.

²⁷ INDIA CONST. arts. 25–28.

²⁸ INDIA CONST. arts. 25–28.

²⁹ *S.R. Bommai v. Union of India*, (1994) 3 SCC 1.

³⁰ INDIA CONST. arts. 29–30.

³¹ INDIA CONST. art. 29.

Article 30 of the Constitution it gives religious and rights to minorities for establishing their educational institution of their choice and preference.

In the case of T.M.A. Pai Foundation v. State of Karnataka,³² the Hon'ble Supreme Court held that and consider the minority rights and the balance between the institutional body and any reasonable state regulation. Therefore, these are the provision to protect the Indian culture and different diversity.

F. Right to Constitutional Remedies: Article 32

Article 32³³ of the Indian Constitution it gives the persons to approach the Supreme Court for the enforcement of the Fundamental Rights. The Supreme Court can issue the following Writs that are: Habeas Corpus, Mandamus, Prohibition, Certiorari, and Quo Warranto.

Dr. B.R. Ambedkar has said that Article 32 is the “heart and soul” of the Constitution as it provides a remedy for the enforcement of the Fundamental Rights.³⁴

Article 226³⁵ gives the wider Jurisdiction to the High Courts as they can not only issue the writs for the enforcement of the fundamental rights but for the other legal rights. The main distinction is that Article 32 is itself a Fundamental Right, but as per the Article 226 the High Court has broader scope and remedy through their respective High Courts.

During the Emergency period, Article 359³⁶ it gives right to approach the courts for the enforcement of specified Fundamental Rights through the Presidential Order.

Thus, after the Forty-Fourth Amendment, the right to approach to court for the enforcement of Article 20³⁷ and 21³⁸ it cannot be suspended under the Article 359 apart for these Fundamental Rights all other rights are suspended.

IV. Judicial Interpretation and Enforcement of Fundamental Rights

A. The initial Approach i.e. in the case of A.K. Gopalan

³² T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481.

³³ INDIA CONST. art. 32.

³⁴ Dr. B.R. Ambedkar, Constituent Assembly Debates, Vol. VII, 4 Nov. 1948.

³⁵ INDIA CONST. art. 226.

³⁶ INDIA CONST. art. 359.

³⁷ INDIA CONST. art. 20.

³⁸ INDIA CONST. art. 21.

Initially in this case the Constitutional approach was narrower in the case of *A.K. Gopalan v. State of Madras*,³⁹ the Hon'ble Supreme Court held the relationship between Articles 14, 19, and 21 will be treated them as separate rights.

The Hon'ble Court also done the interpretation in the Article 21 regarding the "procedure established by law", but later on this approach was changed in the Landmark case of *Maneka Gandhi v. Union of India*.⁴⁰

B. Amendments of Fundamental Rights and Development of the Basic Structure Doctrine

The major issue for the amendment was whether the Parliament could amend the Fundamental rights or not?

In the *Golak Nath v. State of Punjab*,⁴¹ case the Hon'ble Supreme Court held that Parliament could not amend the Fundamental Rights given under the Article 13(2). The Parliament led the Twenty-Fourth Constitutional Amendment Act, 1971, which clarified and clear that Parliament has power to amend the Constitution.⁴²

This issue was challenged in the case of *Kesavananda Bharati v. State of Kerala*⁴³, where the thirteen-judge Bench by a majority of 7:6 ratio that the parliament has the wide power to amend the constitution including the Fundamental rights but Parliament can not amend or alter the basic structure of the Constitution. The doctrine does not bar any constitutional amendments but it prevents the amendments which destroy the basic structure of the Constitution.

In the *Minerva Mills Ltd. v. Union of India*⁴⁴ the Hon'ble Supreme Court has made clear between the Fundamental Rights and Directive Principles of State Policy they both are separate to each other.

C. The Expansion of Personal Liberty

In the case of *Maneka Gandhi v. Union of India*, Hon'ble Supreme Court held that the term "procedure established by law" under Article 21 must be fair, just, and reasonable. It also made the clear relationship between the Articles 14, 19, and 21 i.e. called as "golden triangle" of the Constitution.

³⁹ *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27.

⁴⁰ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

⁴¹ *I.C. Golak Nath v. State of Punjab*, AIR 1967 SC 1643.

⁴² The Constitution (Twenty-Fourth Amendment) Act, 1971.

⁴³ *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225.

⁴⁴ *Minerva Mills Ltd. v. Union of India*, (1980) 3 SCC 625.

The Hon'ble Court later on expanded the Article 21 through several case laws and different aspects of life such as right to safe environment, health, right to life, right to have food, right to sleep, right to privacy, right to education etc.

In the case of *Olga Tellis v. Bombay Municipal Corporation*,⁴⁵ the Hon'ble Court held the connection between the livelihood and the right to life.

In the case of *Justice K.S. Puttaswamy (Retd.) v. Union of India*,⁴⁶ also known as "Right to Privacy" case the nine-judge Bench held the Right to Privacy under the ambit of Article 21.

In another landmark case on the section 377 of the Indian Penal Code i.e. in the case of *Navtej Singh Johar v. Union of India*,⁴⁷ the Hon'ble Supreme Court has declared Unconstitutional Section 377 of the Indian Penal Code

In the case related to Sexual Harassment at work place i.e. in the case of *Vishaka v. State of Rajasthan*⁴⁸, the Hon'ble Supreme Court has passed the guidelines related to the sexual harassment at the workplace by seeing the Fundamental Rights under the Articles 14, 19, and 21 and relevant international obligations and laws.

These landmark cases show the Judicial Activism how the Hon'ble Supreme Court has expanded the enforcement of the Fundamental Rights.

V. Critical Analysis

The enforcement and the development of the Fundamental Rights within India it shows how the judiciary has played an active role through the case laws.

This shift was from the case of *A.K. Gopalan*⁴⁹ to *Maneka Gandhi*⁵⁰ it changed the understanding of personal liberty and due process of law, also initially Articles 14, 19, and 21 were treated more separate and later, the Hon'ble Court has recognised that these rights are closely connected and should be read together.

The broad expansion of Article 21 has allowed to have connect with the different aspects of dignity, privacy, livelihood, and personal liberty.

⁴⁵ *Olga Tellis v. Bombay Municipal Corporation*, (1985) 3 SCC 545.

⁴⁶ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

⁴⁷ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

⁴⁸ *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241.

⁴⁹ *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27.

⁵⁰ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

Another question was there that the Judicial body must have the limits within the Judicial power the Court should protect the Constitutional rights but must respect the role of Parliament and the executive i.e. Separation of Power.

Conclusion

Fundamental Rights are given under Part III of the Indian Constitution are there for to protect the liberty, equality, dignity, and individual freedom in India.

Article 21 has developed in several aspects through case laws such as Vishaka, Puttaswamy, and Navtej Singh Johar, the Hon'ble Supreme Court has done the strengthening in the protection of dignity, privacy, equality, and other aspects of personal liberty i.e. sleep, health, food, environment etc.

The Part III of the Constitution has to protect the Individual freedom also by allowing the public interest this led the Constitution to balance the rights such as liberty, equality, dignity, and justice is the meaningful for the lives of people.