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ANALYSIS OF FUNDAMENTAL RIGHTS IN INDIA

-KANAV GUPTA

Part III of the Constitution, which includes Articles 12 to 35 holds India's Fundamental Rights.¹ These rights can be enforced directly against the State through courts². This is different from the justiciable Directive Principles found in Part IV³. The Fundamental Rights were partly inspired by the American Bill of Rights. They were originally divided into seven categories. Now, there are six after the 44th Amendment removed property from Part III in 1978⁴.

The Right to Equality is Article 14 in Part III that says that "the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." This combines two ideas: "equality before law," which's a negative guarantee taken from Dicey's rule of law, and "equal protection of the laws, " which is a positive American-influenced guarantee that people in similar situations should be treated the same⁵. Since a welfare state must classify people for taxation, reservation, or licensing, courts accept classification as long as it is based on an "intelligible differentia" that has a "rational nexus" to the law's purpose^{6 7}. Later, a broader test was added, saying that arbitrary State action is itself a form of inequality. Articles 15 to 18 explain this further. Article 15 prohibits "discrimination based on religion, race, caste, sex or place of birth." Allows special "provisions for women,

¹¹ INDIA CONST. pt. III, arts. 12–35

² Id. art. 32

³ Id. pt. IV

⁴ Constitution (Forty-Fourth Amendment) Act, 1978, § 6 (India)

⁵ INDIA CONST. art. 14

⁶ A.V. DICEY, INTRODUCTION TO THE STUDY OF THE LAW OF THE CONSTITUTION 193–94 (10th ed. 1959)

⁷ State of W. Bengal v. Anwar Ali Sarkar, A.I.R. 1952 S.C. 75 (India)

children and underprivileged groups”⁸. Article 16 gives “equality of opportunity for jobs with reservations”⁹. Article 17 “removes untouchability in any form”. Article 18 stops “titles except for academic ones.”¹⁰

The Right to Freedom includes Articles 19 to 22 and protects civil liberties. Article 19(1) gives six freedoms, now seven since 1978¹¹. These are “speech and expression, peaceful assembly, forming associations, movement and residence anywhere in India, practising any profession or trade”. None of these are clauses 19(2) to 19(6) allow "reasonable restrictions" based on things like “public order, security, decency and contempt of court.” The State must prove both necessity and proportionality¹². Article 20 protects “people facing prosecution with three guarantees: no punishment for an act that was not illegal at the time, no punishment for the offense more than once, and no one can be forced to be a witness against themselves”¹³. Article 22 gives “arrested people the right to know the reason for arrest, to consult a lawyer, and to be brought before a magistrate within 24 hours. It also allows for detention with procedural safeguards”¹⁴. Article 21 states that "no person shall be deprived of his life or personal liberty except according to procedure established by law.”¹⁵ Courts once saw this narrowly, thinking any legal process was enough, no matter how harsh. Articles 14, 19 and 21 were separate. This changed when the Court said the procedure itself must be fair, just, and reasonable, linking the three articles into the "golden triangle." This change is why Article 21 now includes privacy, dignity, livelihood, a clean environment, and health as aspects of "life," each interpreted as part of the right.^{16 17}

Before 1978, there was a category. The Right to Property under Article 31.¹⁸ Which protected “every person from losing property unless by law with compensation for forced acquisition”.

⁸ INDIA CONST. art. 15

⁹ INDIA CONST. art. 16

¹⁰ INDIA CONST. art. 17

¹¹ Id. arts. 19–22

¹² INDIA CONST. art 19

¹³ Id. art. 20

¹⁴ Id. art. 22

¹⁵ Id. art. 21

¹⁶ Maneka Gandhi v. Union of India, (1978) 1 S.C.C. 248 (India)

¹⁷ K.S. Puttaswamy v. Union of India, (2017) 10 S.C.C. 1 (India)

¹⁸ INDIA CONST. arts. 19(1)(f), 31

This was different from Article 19(1)(f)s freedom to own property. Repeated land-reform cases made property the changed fundamental right, leading Parliament to add Articles 31A and 31B and the Ninth Schedule to protect agrarian laws. The ongoing conflict with Directive Principles about resource use eventually led the 44th Amendment to remove both Article 19(1)(f) and Article 31, making property an ordinary right under Article 300A.^{19 20}

The Right against Exploitation includes Articles 23 to 24, which “stop the trade of humans and forced labour and stop children under 14 from working in factories, mines or dangerous jobs”.²¹ The Right to Freedom of Religion, found in Articles 25 to 28, guarantees “freedom of thought and the right to practice, spread and worship any religion with some limits for order, morality and health. It also allows religious groups to manage their affairs and stops religious education in State-funded schools”. These rules help build India's secularism.²² Cultural and Educational Rights, in Articles 29 to 30, protect the “right of any group of citizens to keep a language, script or culture. It also allows religious and language minorities to start and manage their schools”.²³

Article 32 is the last in Part III. Is what Dr. B.R. Ambedkar called the Constitution's "heart and soul " because it makes all other rights real rather than just words.²⁴ It lets people go directly to the Supreme Court, which can use five court orders: habeas corpus, to bring a detained person before the court; mandamus, to make a public official do their duty; prohibition, to stop a court or body from acting beyond its powers; certiorari, to cancel an order made without the right to do so; and quo warrant, to question someone's right to hold a public office. Because Article 32 is itself a right, Parliament cannot change it through regular laws²⁵. It can only be stopped when the Constitution allows it, like when an Emergency is declared under Article 359.²⁶

¹⁹ Id. arts. 31A–31B

²⁰ INDIA CONST. art. 300A; Constitution (Forty-Fourth Amendment) Act, 1978 (India)

²¹ INDIA CONST. arts. 23–24

²² Id. art. 25–28

²³ Id. arts. 29–30

²⁴ INDIA CONST. art. 32; Constituent Assembly Debates, vol. VII (Dec. 9, 1948)

²⁵ INDIA CONST. art. 32(2)

²⁶ Id. art. 359

A tricky point to remember: removing Article 31 left property without the Article 32 way to get help so claims must go through Article 226 or regular court cases. Whether this was an exchange for fair sharing of resources or a quiet loss of protection against the State is still a real debate.²⁷

²⁷ Id. art. 226