



**A REFERENCE TO THE INDIAN
CONSTITUTION'S FUNDAMENTAL
RIGHTS WITH SPECIAL EMPHASIS
ON FREEDOM OF EXPRESSION,
CENSORSHIP AND ITS LEGAL
VALIDITY**

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ABSTRACT

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INTRODUCTION

The Constitution of India is one of the largest and most important written constitutions in the world. Our Indian Constitution holds a very auspicious, unique and great place in the history of our country. The most important reason for this is that it created a sovereign republic, the modern state of the Union Republic of India. The history of our Constitution also offers some insights into the state affairs that happened prior to our Independence. Our Indian Constitution is a result of persistent efforts by several hundred people for several years to draft and enact our Constitution which was successfully completed on 26, January 1950

As a result of this our Indian Constitution is one of the grandest and most comprehensive documents which consist of all aspects on how to run the nation in future. Our Indian Constitution is not only famous for being the longest one in the world but also famed

and renowned for containing all aspects, all minute details for the purpose of governing the Indian state. Before the Independence of the country, India mainly consisted of two entities:- The British government administered territories and the princely states (kingdoms). It is the establishment of this Indian Constitution which led to the end of such two distinctions and paved the way to create the now known Union Republic of India. The Constitution of India is in the pattern or model of *lex locio* otherwise known as the parent of all laws in India.

According to this Indian Constitution gives the authority and power of command to all laws of Indian Parliament and Legislative Assemblies of the States. The Indian Constitution grants authority and power of command to legislature, executive and judiciary which is known as the three pillars of the Indian state. If there was no Constitution or if the existence of Indian Constitution is challenged the situation of the country would be so worse and would be difficult and different from the current situation. If India was without a Constitution, we can surely say that we would not be even having our administrative machinery to run our country on a day today basis. Even the fundamental rights which we brand as the most important characteristics and duties of the people would not exist without the existence of our Constitution. The History Of Indian Constitution drew on a very large, wide and longer history of antecedent documents drafted either by the British Indian Government as a legislation for the governing and administration of their territories in British India or were the ones drafted by the Freedom Fighters as a result of their aspirational political movements. So we can categorize the preceding documents of



Indian Constitution as British documents and Indian documents in origin. The British Government of India Acts of 1919 and 1935 left an unparalleled and exceptional significance and trace on our Indian Constitution of India 1950. The Swaraj Bill of 1895 and the Nehru Report of 1928 had an indisputable and similar effect in shaping and drafting the structure and content and nature of Indian constitutional design.

FUNDAMENTAL RIGHTS IN INDIAN CONSTITUTION

Fundamental rights in the Indian Constitution are those rights which are mandatory and essential for the development of intellectual, moral and spiritual aspects of Indian citizens. These rights are fundamental or mandatory or essential for the existence and full development of individuals with mature character and personality. This is why they are called 'Fundamental rights'. Under the British Government civil liberties were cut down like weeds for several times and for long durations. In the year 1919 the most notorious Rowlatt Act came into power that curbed the minute democratic activities the state had and it gave vast power to the British government, police and authority to arrest and put them in detention without trials or proper proceedings that too even without warrant and for warrantless searches and seizures as well as restrictions on even peaceful public gatherings, and deep censorship of media, press and publications. In 1928, the Nehru Commission and In 1931, the Indian National Congress adopted resolutions for the defence of fundamental rights. The task of developing a constitution for the nation was undertaken by the Constituent Assembly of India, composed of elected representatives.

The Constituent Assembly first met on 9 December 1946 under the temporary presidency of Sachchidanand Sinha. Later, Dr. Rajendra Prasad was made its president. B.R. Ambedkar became the chairperson of the Drafting Committee, while Jawaharlal Nehru and Sardar Vallabhbhai Patel became chairpersons of committees and subcommittees responsible for different subjects. A notable development during that period having significant effect on the Indian constitution took place on 10 December 1948 when the United Nations General Assembly adopted the Universal Declaration of Human Rights and called upon all member states to adopt these rights in their respective constitutions. These Fundamental Rights of Indian Constitution include individual rights which are common and applicable to most people which consist of rights such as equality before the law, freedom of speech, freedom of expression, freedom for religious and cultural activities, freedom of peaceful assembly, freedom to practice religion, right to constitutional remedies. Fundamental rights are applicable universally to all Indian citizens. It is valid and applied to every Indian citizen irrespective of sex, race, ethnicity, caste, wealth, place or any other identity. Violation of the fundamental rights is punishable also. Even Though other rights as per the Indian constitution are also valid rights protected by the judiciary, fundamental rights have a special status that if the fundamental right is violated citizens can approach the Supreme Court of India directly. (according to article 32) On analysing why we need Fundamental rights in our Constitution we find that the purpose of the Fundamental Rights is to preserve and uphold the individual liberty and democratic principles based on some ideas like



equality. According to Dr Ambedkar, he said that the responsibility of the legislature is not just to provide fundamental rights but also and rather, more importantly, to safeguard them. The Fundamental Rights act as limitations on the powers of the legislature and executive.

This barrier or limitation is clearly described in Article 13 of our Indian Constitution. Not only this The Indian Constitution also has provisions that gives authority and power to command for the Supreme Court Of India and High Court Of States to interfere in such cases where violation of Fundamental Rights can be seen directly on their own and have the power to annul or void the order of central or state government or executive immediately on the notice The Fundamental Rights of Indian Constitution are rights or essentials which are largely enforceable against the State which according to Article 12 not only includes the legislative and executive branches of the federal and state governments but also include the local administrative authorities and officials and other agencies, institutions and staffs which discharge public functions or that consist of governmental characters. There are certain rights in the Fundamental Rights which are not only against State or Government but also against individuals who violate others are also included. Fundamental Rights which are in such nature are as those in Articles 15, 17, 18, 23, 24 which can be also turned against private individuals. One of the most important characteristics of our Fundamental Rights in our Indian Constitution is that some rights according to Articles 14, 20, 21, 25 can be applicable to any person of any nationality upon their presence in Indian soil. But most of the Rights enshrined in the Fundamental Rights such as those Rights described under

Articles 15, 16, 19, 30 are not applicable for foreigners and are applicable only for the Indian Citizens.

The Fundamental Rights are not absolute and are not available all the time. The Fundamental Rights Of Indian Constitution are also subject to reasonable restrictions which may be necessary for the protection and safety of national or public interest in certain scenarios or situations. In a verdict of the Supreme Court which was also overruling a previous decision of 1967, held the view that the Fundamental Rights could be amended. But the Supreme Court said then such an amendment would be a subject to judicial review if in the case such an amendment violated the basic structure of the Indian Constitution at any phase or part. According to the Indian Constitution The Fundamental Rights can be removed, improved or even changed by a constitutional amendment. In such a case the amendment has to be passed by the Indian Parliament with a two-thirds majority of each House of Parliament. One of the rarest chances in which The Fundamental Rights could be suspended is through the imposition of a state of emergency by order of the Indian President.

In such a case the Fundamental Rights may have to face temporary suspension. Even Though even during the time The Fundamental Rights Of Articles 20 and 21 cannot be suspended at any time or situation. The President may by order can also suspend the right to constitutional remedies also. This also led to force the common people from approaching the Judiciary or even the Supreme Court for the enforcement of any of the Fundamental Rights described in our



Indian Constitution except The Article 20 and Article 21 in the time or during the period of the emergency. According to the Indian Constitution the Parliament can also restrict the application of the Fundamental Rights to members of the Indian Armed Forces and in the police and other security forces in order to ensure proper and efficient functioning and discharging of their duties and for the better and successful maintenance of discipline, obedience and order, by a law made under and according to Article 33 of our Indian Constitution.

These Fundamental Rights are enshrined in the Part III (Articles 14 to 32) of the Indian Constitution. The Rights have their origins in different countries and areas and sources like British Bill of Rights, Bill of Rights of United States of America and the Declaration of the Rights of Man from France. There were 7 fundamental rights which were originally provided by the Indian Constitution. However later in 1978 The Right to Property was removed from the Fundamental Rights of Indian Constitution by the 44th Amendment.

There are six fundamental rights now in the Indian constitution

- Right to equality (Articles. 14-18)
- Right to Freedom (Articles. 19-22)
- Right Against Exploitation (Articles. 23-24)
- Right to Freedom of Religion (Articles. 25-28)
- Cultural and Educational Rights (Articles. 29-30), and
- Right to Constitutional remedies (Articles. 32)

1. Right to Equality (Articles 14 – 18)

Right to equality is one of the most important Rights that our Indian Constitution gives us. The Right To Equality guarantees us equal rights for everyone, irrespective of anything including religion, sex, caste, race or place of birth. The Right also ensures us equal employment opportunities in the government sector and insures against discrimination by the State in matters of employment on the basis of caste, religion, etc. This right also includes the abolition of titles as well as untouchability.

2. Right to Freedom (Articles 19 – 22)

Right to Freedom is one of the most important rights and should be cherished by any modern and civilized democratic country in the world. The Indian Constitution guarantees freedom to all of its citizens. The Right To Freedom includes many rights such as:

- a. Freedom of speech
- b. Freedom of expression
- c. Freedom of assembly without arms
- d. Freedom of association
- e. Freedom to practise any profession
- f. Freedom to reside in any part of the country

Some of these rights are subjected to certain conditions of state security, safety, public morality and decency, defence and friendly relations with foreign countries. This means that the State has the right to impose reasonable restrictions on these rights also.

3. Right against Exploitation (Articles 23 – 24)

The Right Against Exploitation put an efficient prohibition of trafficking of human beings, begar, and other forms of forced labour. The Right Against Exploitation also



prohibited the employing of children in factories as The Indian Constitution prohibits the employment of children under 14 years in hazardous conditions.

4. Right to Freedom of Religion (Articles 25 – 28)

The Right To Freedom Of Religion is a great characteristic of our Indian Constitution. It shows the secular nature of Indian Constitution and the Indian Political System. Our Indian Constitution gives equal respect and treats all religions equally. The Indian Constitution envisionage the freedom of conscience, profession, practice and propagation of any religion in India under the authority of Indian Constitution. That is why India as a State, has no official religion. Every person has the right to freely practice his or her faith, establish and maintain religious and charitable institutions.

5. Cultural and Educational Rights (Articles 29 – 30)

The Cultural And Educational Rights is one of the most important features of Indian Constitution. The Cultural And Educational Rights protect the rights of religious, cultural and linguistic minorities, by facilitating them to preserve their heritage and culture. Educational rights are for ensuring education for everyone without any discrimination.

6. Right to Constitutional Remedies (32 – 35)

According to BR. Ambedkar The Right To Constitutional Remedies is the Heart and Soul Of The Indian Constitution. As a result of this right the Constitution guarantees remedies if citizens fundamental rights are violated by anyone. The government cannot

change upon or curb anyone's rights which are entertainment and given and described by our Indian Constitution. When these rights are violated by chance by anyone, the aggrieved\ victimized party can approach the courts demanding justice. Citizens can even go directly to the Supreme Court which can issue writs for enforcing fundamental rights.

The History of Censorship In India

The History Of Censorship In India also started from the same time from the establishment of the Bengal Gazette in calcutta in 1784 which was also the first press or media in India. The founder of Bengal Gazette was jailed and fined by the British East India Company.

Censorship, regulations or restrictions are rules enforced by the jurisdiction of law by and under the guidance of a government. It is touted to be introduced as Guidelines for medias inorder to maintain law and oeder. This kind of regulations or restrictions via law, rules or procedures, can have various goals, for example intervention to protect a stated "public interest", or encouraging competition and an effective media market, or establishing common technical standards.

The principal targets of such censorships are the press, radio and television, but may also include film, recorded music, cable, satellite, storage and distribution technology (discs, tapes etc.), the internet, mobile phones etc.

History of Censorship, Regulations and Restrictions can be seen from the:

1. Censorship of The Press Act, 1799
2. Licensing Regulation, 1823
3. Press Act Of 1835



4. Licensing Act of 1857
5. Registration Act of 1867
6. Vernacular Press Act, 1878
7. Telegraph Act, 1885
8. The Newspaper (Incitement to Offences) Act, 1908
9. Indian Press Act, 1910
10. Indian Press (Emergency Powers) Act, 1931
11. Defence of India Act
12. Press Enquiry Committee, 1947
13. Press (Objectionable Matters) Act, 1951
14. Press Commission under Justice Rajadhyaksha
15. 1976 Emergency And Press Censorship.

The Censorship is directly affecting the legal framework and significance and existence of Indian Constitution and its availability is questioned several times as unconstitutional on the basis of constitutional frameworks and laws and rights guaranteed. On Analysing the Legislations made by various Governments we find that Governments always been afraid of independent media, expressions and words of free thinking people and tried to maintain a Hegemony or firm control over them to protect their biased interests even threatening the laws and constitution and its frameworks which guarantee press liberty and independent journalism and unbiased media and freedom of speech and expression. Article 19 to 22 of Indian Constitution's Fundamental Right guarantee this kind of freedom of speech, expression and media rights from the clutches of state and state terrorism.

WHY FREEDOM OF SPEECH AND EXPRESSION IS SO IMPORTANT AS A NEGATIVE EFFECT

The Freedom of Speech And Expression is one of the most important things that we have to discuss in contemporary situations. The subject of Freedom of speech and expression is what the individuals or society wants to speak on contemporary issues. As a result we have to say that Censorship or any means of regulations or restrictions is actually curtailing the Freedom Of Expression And Speech which we have as a Fundamental Right in our Constitution. It means as a Fundamental Right, no one or not even Government could or should curtail it. (Including free press activities and Media Regulation) Elaborating on this point we have to say that "To Freedom of speech and expression is one of the most important characteristics of a democratic government and a civilized society. The Freedom of speech and expression is an essential factor for the proper functioning of the democratic process. The freedom of speech and expression is regarded as the first condition of liberty which also consists of the freedom to do any jobs and the freedom to be part of a free and unbiased press or media.. The free and unbiased press and media has a great position in the hierarchy of Indian Constitution to maintain and make sure that all liberties that were given by our Indian Constitution are enjoyed by every Indian Citizen and any violations are not occurring to the rights entertained by the Indian constitution. It has the responsibility to protect all the other liberties described in the constitution. It has been truly said that without a free and unbiased media we cannot fulfill the characteristics of the Fundamental Rights or to fulfill our personality development and character on a full scale. In a democratic country Freedom of Speech And Expression opens the platform for free discussion of issues. Freedom of speech plays



a crucial role in the formation of public opinion on social, political and economic matters. Freedom of Speech and Expression, just as Equality Rights guarantee the life and liberty that have been very broadly construed by the Supreme Court from the 1950s itself. The Right To Freedom Of Expression And Speech also includes the right to propagate or publish the views of other people otherwise this freedom would not include the freedom of the press which includes

- (i) It helps an individual, to attain self-fulfilment;
- (ii) It assists in the discovery of truth;
- (iii) It strengthens the capacity of an individual in participating in decision making; and
- (iv) It provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change. All members of society should be able to form their own belief and communicate them freely to others.

Freedom of speech and expression has been held to be basic and indivisible for a democratic polity. It's said to be the cornerstone of the functioning of democracy. It is the foundation of a democratic society. It is essential to the rule of law and liberty of citizens.

In order to maintain this Fundamental Right of Freedom Of Expression And Speech we have to ensure the realization of a free and unbiased Media. For that purpose media have to be not only unbiased and free, they have to be totally free from the clutches of state and state regulations that curb the power and freedom of media as a whole. Unregulated and unbiased and free media and press is a

need for Freedom of Speech and Expression that guarantee civil liberty that every citizens of the nation should enjoy according to our constitution. It has been rightly observed by the Hon'ble Supreme Court of India in the case of Romesh Thappar vs The State Of Madras (1950) that the freedom of speech and expression lay at the foundation of our constitution. Therefore freedom of speech is of paramount importance in a democracy. In Order to maintain that freedom and right a free media and press is needed in the country Hence it is concluded here that the freedom of speech in India has been a boon granted to us by the Constituent Assembly. However, in the current scenario, the boon which has been granted to us is used in such a way that it imposes a hindrance in the life of the citizens. The use of social media and other websites for the purpose of sending messages to the citizens must be under scrutiny as there could be a possibility of the freedom of speech being used for dangerous purposes. The very essence of a democratic nation lies in public discussions and debates which can help the government and authorities mend its way of functioning so that the citizens can have the feeling that the State is indeed a welfare state and is working for the welfare of its citizens. Therefore a careful and knowledgeable use of the freedom to speak and disseminate correct information will help create a better society and the dream of a Welfare State will be realized.

CONCLUSION

Fundamental rights are different from ordinary legal rights. This is evident from the provision for Indian citizens to approach the Supreme Court directly bypassing subordinate courts to demand justice if the Fundamental Right is violated and it is not possible if only a legal right is violated.



Fundamental rights can be amended by the Parliament by a constitutional amendment but it becomes law only if the amendment does not alter the basic structure of the Constitution.

Fundamental rights can be suspended during a national emergency. But, the rights guaranteed under Articles 20 and 21 cannot be suspended.

The application of fundamental rights can be restricted in an area which has been placed under martial law or military rule. Fundamental rights are very important because they are like the backbone of the country. They are essential for safeguarding the people's interests.

According to Article 13, all laws that are violative of fundamental rights shall be void. Here, there is an express provision for judicial review. The SC and the High Courts can declare any law unconstitutional on the grounds that it is violative of the fundamental rights. Article 13 talks about not just laws, but also ordinances, orders, regulations, notifications, etc.

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