



FUNDAMENTAL RIGHTS: THE MAGNA CARTA OF INDIA

*By Saumya Pratibha Tirkey
From Faculty of Law, ICFAI University,
Jharkhand*

INTRODUCTION

The Indian constitution is unique in its content and spirit. The constitution contains not only the fundamental principles of governance but also detailed set of rules and regulations guiding the administration of a country. Though the Constitution of India has been borrowed from almost every Constitution of the world, it has several silent features that distinguish it from the Constitutions of the other countries. DR. B.R Ambedkar proudly proclaimed that the Constitution of India has been framed after “ransacking all the known Constitution of the world”.

The Fundamental Rights are enshrined in Part III of the Constitution. Article 12 to 35 contains a long list of Fundamental Rights. This philosophical part of the Constitution derives the inspiration from the American Constitution that is from bill of rights. Part III of the Constitution is very well been described as the **Magna Carta** of India. “Magna Carta” is the charter of rights issues by King John of England in 1215 under pressure from the barons. This Magna Carta is the evidence of their success and the first written document relating to the fundamental rights of citizens. The Fundamental Rights are meant for promoting the idea of political democracy. The Fundamental Rights were deemed essential for protecting the rights of the people against the encroachment of the

power given to them by the government. They are limitations upon all the powers of the government, legislative and the executive.

In **M. Nagraj v. Union of India** the Supreme court said “It is a fallacy to regard fundamental rights as a gift from the State to its citizens. Individuals possess basic human rights independently of any constitution by reason of basic fact that they are members of the human race. These fundamental rights are important as they possess intrinsic value. Part-III of the Constitution does not confer fundamental rights. It confirms their existence and gives them protection. Its purpose is to withdraw certain subjects from the area of political controversy to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts”.

FEATURES OF FUNDAMENTAL RIGHTS

The incorporation of a chapter of Fundamental Rights in the Constitution of India is in accordance with the modern democratic thought, to provide basic human rights to the people which is fundamental in the governance of the society. These fundamental rights are justiciable in nature, that is, they are enforceable by the courts for their violation. The aggrieved person can directly move to the supreme court and can issue the writs of **habeas corpus, mandamus, prohibition, certiorari and quo warranto** for the restoration of his rights. These rights are not sacrosanct and can be repealed or curtailed by the parliament through the Constitutional Amendment act. The Fundamental Rights are guaranteed by the Constitution to all the persons without



any discrimination with the aim to uphold the dignity and integrity of the individual.

However, the Fundamental Rights are not absolute and subject to reasonable restrictions. The state can impose reasonable restrictions on them but whether such restrictions are reasonable or not is decided by the courts. They can also be suspended during the operation of National Emergency except the rights guaranteed under Article 20 and 21.

CLASSIFICATION OF FUNDAMENTAL RIGHTS

The Fundamental Rights as incorporated in the Indian Constitution can be classified under following heads:

- Right to equality (Article 14-18)
- Right to freedom (Article 19-22)
- Right against exploitation (Article 23-24)
- Right to freedom of religion (Article 25-28)
- Cultural and educational rights (Article 29-30)
- Right to constitutional remedies (Article 32-35)

The 44th Amendment has abolished the right to property as a fundamental right as guaranteed by Article 19(1)(f) and Article 31.

RIGHT TO EQUALITY

Article 14 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 article 14 uses two expressions “equality before the law” and “equal protection of law”. The concept of ‘equality before law’ is of British origin

while the concept of ‘equal protection of laws’ has been taken from the American Constitution. The first concept implies “the absence of any special privilege in favour of individuals and the equal subject of all classes to the ordinary law of land administered by ordinary law courts”. The second concept implies “equality of treatment in equal circumstances, both in the privileges conferred and liabilities imposed by the laws”. Thus, the former is a negative concept while the latter is a positive concept. In the **state of West Bengal v. Anwar Ali Sarkar**, Patanjali Shastri, the former chief justice rightly held that the second expression is the corollary of the first and it is difficult to imagine a situation in which the violation of the equal protection of laws will not be the violation of the equality before law. The Supreme Court held that the ‘Rule of law’ as embodied in Article 14 is a basic feature of the constitution and hence it cannot be destroyed even by an amendment. However, the rule of equality before law is not absolute and there are constitutional and other exceptions to it.

Article 15 provides that the state shall not discriminate against any citizen on grounds only of religion, caste, sex, race or place of birth. **Article 16** provides for equality of opportunity for all citizens in matters of employment or appointment to any office under the state. No citizen can be discriminated against or be ineligible for any employment or office under the state on grounds of only religion, race, caste, sex, descent, place of birth or residence. **Article 17** abolishes untouchability and forbids its practice in any form. The enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law. The Supreme Court held that the right



under Article 17 is available against private individuals and it is the constitutional obligation of the state to take necessary step to ensure that these rights are not violated.

Article 18 provides for the abolition of titles, in 1996 the Supreme Court upheld the constitutional validity of the national awards such as Bharat Ratna, Padma Vibhushan, Padma Bhushan and Padma Sri. It ruled that these awards do not amount to titles within the meaning of Article 18 that prohibits only hereditary titles of nobility such as Maharaja, Raj Bahadur, Rai Saheb, Rai Bahadur etc.

RIGHT TO FREEDOM

Personal liberty is the most important of all fundamental rights. Article 19 to 22 deal with different aspects of this basic right. **Article 19** guarantees to all citizens the six rights. These are:

- Right to freedom of speech and expression.
- Right to assemble peaceably and without arms.
- Right to form associations or unions or co-operative societies.
- Right to move freely throughout the territory of India.
- Right to reside and settle in any part of the territory of India.
- Right to practice any profession or to carry on any occupation, trade or business.

These six freedoms are however not absolute. The former chief justice, Patanjali Shastri, in **A.K Gopalan** case observed that “man as a rational being desires to do many things, but in a civil society his desires have to be controlled, regulated and reconciled with the exercise of similar desires by other individuals”. Therefore, the guarantee of each of the above rights is restricted by the

Constitution itself by conferring power upon the state to impose reasonable restriction as may be necessary in the larger interest of the society.

Article 20 grants protection against arbitrary and excessive punishment to an accused person. This article contains three main provisions:

- No ex-post facto laws: No person shall be convicted of any offence except for violation of a law in force at the time of commission of the act, nor subjected to a penalty greater than that prescribed by the law in force at the time of the commission of the act.
- No double jeopardy: No person shall be prosecuted and punished for the same offence more than once.
- No self-incrimination: No person accused of any offence shall be compelled to be a witness against himself.

Article 21 declares that no person shall be deprived of his life or personal liberty except according to the procedure established by law. This right is available to both the citizens and non-citizens. In **Menaka Gandhi v Union of India**, Supreme Court ruled that the right to life and personal liberty of a person can be deprived by a law provided the procedure prescribed by that law is reasonable, fair and just.

Article 21(A) mentions that the state shall provide free and compulsory education to all the children of the age of six to fourteen years. This provision makes only elementary education a fundamental right and not the higher education. This article is a major milestone in the country’s goal to achieve ‘Education for All’.



Article 22 grants protection against arrest and detention. This article does not cover arrest under the orders of the court, civil arrest, arrest on failure to pay the income tax, and deportation of an alien. They apply only to an act of a criminal or partly-criminal nature or some activity prejudicial to public interest. First part of Article 22 grants protection to persons who are arrested or detained under an ordinary law and second part deals with the arrest and detention under a preventive detention law. This protection is available to both citizens and aliens.

RIGHT AGAINST EXPLOITATION

Article 23 prohibits traffic in human beings, beggar (forced labour) and other similar forms of forced labour. It protects the individual not only against the state but also against private persons. The expression 'traffic in human beings' include (a) selling and buying of men, women or children like goods (b) immoral traffic in women and children (c) prostitution (d) devadasis (e) slavery. To punish these acts the parliament enacted the Immoral Traffic(prevention) Act, 1956.

The term beggar means compulsory work without remuneration and compelling a person to work against his will. The term force here refers not only physical or legal force but also force that arises from the compulsion of economic circumstances that is working for less than minimum wage. Article 23 also provides for an exception to this provision. It permits the state to impose compulsory service for public purposes, as for example military service or social services for which no remuneration shall be paid.

Article 24 says that no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment. The fundamental right against exploitation guaranteed to all citizens prohibits child labour in mines, factories, and hazardous conditions.

RIGHT TO FREEDOM OF RELIGION

Article 25 guarantees equally to all person the freedom of conscience, the freedom to profess, practice and propagate religion to all citizens. Article 25 covers not only religious beliefs (doctrines) but also religious practices(rituals).

According to **Article 26** every religious denomination has the following rights, subject to morality, health and public order.

1. The right to form and maintain institutions for religious and charitable intents.
2. The right to manage its own affairs in the matter of religion.
3. The right to acquire immovable and movable property.
4. The right to administer such property according to the law.

Article 25 guarantees rights of individuals, while Article 26 guarantees rights of religious denominations or their sections.

Article 27 of the Constitution, lays that no person shall pay the taxes, the proceeds of which are directly used for the promotion or maintenance of any particular religious denomination. This provision prohibits only levy of tax and not a fee.

Article 28 says that no religious instruction shall be provided in any educational institution wholly maintained out of the state fund however this provision shall not apply



to an educational institution administered by the state but established under any endowment or trust.

CULTURAL AND EDUCATIONAL RIGHTS

Article 29 protects the interests of the minorities by making a provision that any section of citizens residing in any part of India having a distinct language, script or culture have the right to conserve the same. Article 29 mandates that no discrimination would be done on the ground of religion, race, caste, language or any of them.

Article 29 grants protection to both religious minorities as well as linguistic minorities. However, the Supreme Court held that the scope of this article is not necessarily restricted to minorities only, as it is commonly assumed to be. This is because of the use of words 'section of citizens' in the article that includes minorities as well as majority.

Article 30 of the Indian Constitution states the right of minorities to establish and administer educational institutions of their choice. The protection under article 30 is confined only to minorities (religious and linguistic) and does not extend to any sections of citizens as given under Article 29. The right under Article 30 also includes the right of a minority to impart education to its children in its own language.

RIGHT TO CONSTITUTIONAL REMEDIES

Article 32 confers the right to remedies for the enforcement of fundamental rights of an aggrieved citizen. This implies that the right

to get the Fundamental Rights protected is in itself a fundamental right. This is why Dr. B.R Ambedkar called Article 32 as the most important article of the Constitution "an article without which this constitution would be a nullity. It is the very soul of the Constitution and the very heart of it"

The aggrieved person can directly move to the Supreme Court by appropriate proceedings for the enforcement of the fundamental right. The Supreme Court has the power to issue directions or orders or writs for the enforcement of any of the fundamental rights. However, Article 226 also confers power upon the high courts to issue writs. The right to move to the Supreme Court for the enforcement of fundamental right should not be suspended except as provided by the Constitution. Thus, the Constitution provides that the President can suspend the right to move to any court for the enforcement of fundamental rights during the national emergency.

Thus, when the Fundamental Rights of a citizen are violated, the aggrieved party has the option of moving either the high court or the supreme court directly.

THE SCOPE OF WRITS

The Supreme Court (under Article 32) and all the high courts (under Article 226) can issue the writs. No other courts except the Supreme Court and high court can issue the writs. These writs are borrowed from the English law where they are known as prerogative writs.

- **Habeas Corpus:** It literally means "to have the body of". It is an order issued by the court to a person who has detained another person



to produce the detained person before the court. If the detention is found to be illegal then the court would set the detained person free. This writ can be issued both against private individuals or the public authorities. However, this writ cannot be issue when the detention is lawful and by a competent court.

- **Mandamus:** It literally means “we command”. This writ is issue by a court to a public official asking him to perform his duty which he has failed or refused to perform. However, this writ can be issued only against public officials, courts or tribunals and the government and therefore it cannot be issued against private authorities.
- **Prohibition:** It literally means to “to forbid”. It is issue by a court higher in authority to a court lower in authority from exceeding its jurisdiction which it does not possess. It is available only against judicial or quasi-judicial authorities and not against administrative or legislative authorities.
- **Certiorari:** It literally means to “be certified or to be informed”. It is issued by a court higher in authority to a lower court to transfer a case pending with itself to the court higher in authority or to squash the order given by the lower court in a case. This writ is issued on the grounds of excess of jurisdiction or lack of jurisdiction or error of law. Writ of certiorari can be issued against judicial, quasi-judicial as well as against the administrative authorities.
- **Quo-warranto:** In its literal sense it means “by what authority or warrant”. Through this writ, the court enquires into the legality of a claim of a person to a public office. This writ tries to prevent illegal possession of a public office by any individual. It is the person

against whom writ of quo warranto is directed, is required to show by what authority the person is entitled to hold the office.

CONCLUSION

Fundamental Rights are those rights which are guaranteed by the constitution of India to their civilians or citizens of the country that they can live their life with respect, dignity, and in an equal term. In the case of **Menaka Gandhi v. Union of India** AIR 1978, Justice Bhagwati said that “these rights represent the values that are cherished by the people of this country since the Vedic ages and are made to create conditions in which every human being can develop his personality to the fullest. These rights are necessary for a human being for attaining full social, intellectual, and spiritual status. These Fundamental rights ensure the dignity and respect of individuals in the country. They constitute the foundation of democratic system in the country”.

However, these Fundamental Rights should be amendment time and again so that these Fundamental Rights are in accordance with the modern democratic society and to protect the rights and the dignity of the citizens.
