

Essay on Fundamental Rights (Bedrock of Indian Democracy)

"Our protection against all kinds of fanaticism, extremism, dictatorship, none of whom can be trusted with unlimited power over others, lies not in their forbearance but in constitutional limitations, as Fundamental Rights, on their powers."

Our Constitution guarantees fundamental rights to the citizens which are to be looked upon as inalienable rights of an individual, which every human being is entitled to enjoy if he is to maintain his dignity and self-respect. These are basic rights essential for the realization of the highest good of a citizen. Any violation of these rights can be questioned in a court of law. These are in the form of basic and essential freedoms which every citizen enjoys individually and collectively also. These are guaranteed in the form of six broad categories of "fundamental rights", under Article 12 to 35 of our Constitution. These are Right to equality:

Right to Equality:

- Equality before the law and equal protection of the law [].
- Prohibition of discrimination on grounds of religion, etc. [].
- Equality of opportunity regarding employment [].
- Abolition of untouchability [].
- Abolition of titles [].

Right to Freedom:

- Freedom of speech and expression; assembly; association; movement; residence and settlement; profession [].
- Protection in respect of conviction for offenses [].

Protection of life and personal liberty [].

Protection against arrest and detention in certain cases [].

Right against Exploitation:

Prohibition of traffic: in human beings and forced labor [].

Prohibition of employment of children in hazardous employment [].

Right to Freedom of Religion:

Freedom of conscience and free profession, practice and propagation of religion [].

Freedom to manage religious affairs [].

Freedom as to payment of taxes for promotion of any particular religion [].

Freedom as to attendance at religious instructions in certain educational institutions [].

Cultural and Educational Rights :

Protection of language, script, or culture of minorities [Art. 29].

Right of minorities to establish and administer educational institutions [].

Right to Constitutional Remedies:

Remedies for enforcement of the fundamental rights conferred by this part- writs of habeas corpus, mandamus, prohibition, certiorari, and quo warranto [].

Some of the rights can be enjoyed by any person, whether he is a citizen of India or not, such as fundamental rights provided under

Art. 14, 18, 20 to 25, 27, 28 and 32. While others are available only for the citizen of India viz. Art. 15, 16, 19 etc.

Art. 12 mentions the authorities against which fundamental rights are available. Art. 13 lays down that any law passed by a legislature or a law already in existence, if inconsistent with the guarantee of fundamental rights will be void.

Art. 12: In this Part, unless the context otherwise requires, “the State” includes the Government and Parliament of India and Government and the Legislature of each of the States and all local or other authorities within the territory of India.

: (1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, to the extent of such inconsistency, be void. (2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void. (3) In this article, unless the context otherwise requires—

(a) “Law” includes any ordinance, order, bye-law, rule, regulation, notification, custom, or usage having in the territory of India the force of law.

(b) “Laws in force” includes laws passed or made by a legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas. (4) Nothing in this Article shall apply to any amendment of this Constitution made under Article 368.

Ever since its adoption, the chapter on fundamental rights in the constitution has been under criticism, both in India and outside. The critics argued that some important rights such as the right to work, the right to education, etc. were not included in this chapter. It was also pointed out that the spirit of the whole chapter was spouted by taking away much of the freedoms or rights provided through the insertion of many preventive provisions such as preventive detention, suspension of the right to constitutional remedies, etc. It was alleged that what has been given under one head was taken away by inserting provisions under another head. Some critics also alleged that the fundamental rights are couched in such legal language which is not easily understood. They asserted that the provisions of most of the fundamental rights are hedged in with so many exceptions, explanations, and qualifications that it becomes very difficult to understand what exactly is available to an individual.

But whatever is argued by the critics in respect to the fundamental rights, provided under the Constitution does not hold much, if we could imagine the circumstances and the situation of the country in 1950, when the Constitution came into force. Right to education, right to work, etc. were not included in the chapter of fundamental rights. As we know, these rights are enforceable in the court of law. If we analyze the economic conditions that prevailed at that time we could well realize that it was impossible to provide work and education to every citizen at that point in time. So far the provisions in respect of preventive detention and suspension of constitutional remedies are concerned these were necessary for the existence and safety of the republic as envisaged by the makers of the Constitution. Against the criticism of the shape of language, it is well justified that simple language is not itself a virtue and in general legal documents are couched in a language in order to make things crystal clear from a legal point of view.

Why Fundamental Right-Guaranteed?

The very purpose of guaranteeing the fundamental right was to keep them beyond the reach of an absolute majority of legislature and officials in government and to establish lawful principles to be applied by the courts. The constitutional framers well envisaged the danger of a despotic ruler coming into power with an absolute majority and so the fundamental rights were kept out of the purview of the legislature to a great extent and the courts were given the powers to safeguard these basic rights.

The idea of incorporating the chapter of fundamental rights, in the Constitution was welcomed by all the political thinkers and constitutionalists in the country. The American Bill of Rights had a positive impact on Indian thinking in respect to incorporating the chapter of fundamental rights in the Constitution. When the Constituent Assembly met for the first time in 1946, no member opposed the idea and every member was excited and thrilled for incorporating such an important chapter in the Constitution.

The concept of fundamental rights limits the power of the government and prevents the executive and the legislature from becoming authoritative or dictatorial and also it provides an opportunity for the individual for self-development. Constitutions that didn't contain a provision, are resulted in dictatorial rule. Hence the philosophy and concept underlying the fundamental rights are that constitutional limitations on the power of the government are the only way of ensuring and safeguarding the basic human freedoms and so the dignity and self-respect for the individuals. The success or failure of democracy depends largely on the extent to which civil liberties and basic rights are enjoyed by the citizens. A democracy must aim at the highest development of the individual. Only a free society wherein individuals feel dignified enjoy basic rights can

assure the all-round and quick progress of its members and thus of the nation itself. Herein lies the importance of fundamental rights.