



A STUDY OF CONSTITUTION OF INDIA

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ABSTRACT

The purpose of the paper is vision on the constitution of India is grounded on the principles of the fraternity, liberty, justice and equality. For completing goal, we have taken on a brief study of all the journals and the books which are connected with the necessities of the constitution manifest great esteem for the human dignity, pledge to equality and non-discrimination and, apprehension for the weaker section in the society. Additionally, the constitution makes it compulsory for the Govt. to protect and promote freedoms, and to guarantee every citizen a decent standard of the living. In other words, the Indian Constitution promises the rudimentary human rights to every citizen of India. This article dealt with the general Constitutional Laws of India and the amendments made into the Constitution of India. The article also exposes approximately the schemes for consciousness of the above-mentioned goals are confined in the Fundamental Rights enshrined in Part III and Part IV of the Constitution. "The right to freedom", "the right against exploitation", "the right to freedom of religion", "cultural and educational right", "right to constitutional remedies" and special necessities connecting to positive classes are some of the constitutional necessities guaranteeing human rights.

KEYWORDS: *Constituent Assembly, Adequate Safeguards, Ex-Post Facto Laws, Justifiable.*

1. INTRODUCTION

The Constitution of a country lays down the elementary structure of the political system under which, its public are to be administered. It creates the foremost organs of the state legislature, judiciary and executive defines their powers, demarcates their errands and controls their associations with each other and with the individuals. However, each constitution signifies the revelation and value of its formation at the rear and is grounded on the political and economic ethos and, the faith and objectives of the people. So prominently it can be renowned that the framing of the constitution of independent democratic nation is accomplished by the people for the persistence of in view of and espousing of the constituent assembly. India converted independent on 15th Aug 1947 rendering to Independence of India Act, 1947 ratified by the British Parliament. It completes an establishment for the setting up of the two independent regions in India, to be identified as India and Pakistan.

Thus, India end to end with Pakistan acquired novel international character. Nevertheless, both the new states were continual to be directed by the Govt. of India Act, 1935. The job for formulating the Constitution of India was assigned to the Constituent Assembly which met for the 1st time on 9th Dec, 1946. The assembly selected several teams to draft the dissimilar articles of the Indian Constitution. The information of these boards formed on the basis, which a draft of the novel Constitution of India was ready in Feb 1948. Its ultimate shape

was given on 26th Nov, 1949 originated into the force on 26th Jan, 1950. The Preamble of the Indian Constitution states India to be a "sovereign, secular, socialist and the democratic republic". The term "democratic" signifies that the Govt. gets its expert witness from will of the persons. The Govt. is voted through the people and, it is a body of the senates of the people. Thus, the power to workout legal in addition to political sovereignty vests in the individuals. It gives a sense that they all are alike "irrespective of their race, religion, sex, language and culture".

2. OBJECTIVES

- ❖ To study a diversity of provisions of the Indian Constitution "promoting and upholding" the human rights.
- ❖ Disapprovingly examine numerous rights enshrined in the Indian Constitution.

3. A REVIEW ON FUNDAMENTAL RIGHTS IN THE INDIAN CONSTITUTION

Investigate envisions the critical appraisal on the "fundamental rights and directive principles" of the state policy of the Indian constitution. Though, it strongminded the leeway of recital of the fundamental rights by the persons in the independent state like India.



4. HUMAN RIGHTS AND DEBATES IN THE CONSTITUENT ASSEMBLY

A written pledge of Fundamental Rights in the Indian Constitution, envisioning a Constituent Assembly for enclosing the constitution of India was known by the Cabinet Mission in the year 1946. To this end, a commendation was made to arrangement an Advisory Committee for reporting to the Assemblage on Fundamental Rights. As per the proposal of the Cabinet Mission plan, the Constituent Assembly nominated to form the Advisory Committee on 24th Jan, 1947. Sardar Patel had its chairman. The committee was to report to the Indian Assembly on list of the Fundamental Rights, the clauses for the defense of minorities etc. The sub-committee on Indian Fundamental Rights with Acharya Kripalani as the chairman had one of the sub-committees set of connections by the Advisory Committee.

This sub-committee met for the 1st time on 24th Feb, 1947, to discourse the drafted list of rights ready by Dr. B.R. Ambedkar, B.N. Rau, K.T. Shah, K.M. Munshi, Harnam Singh and the Congress Proficient Committee, along with miscellaneous notes and also memoranda on numerous aspects of rights. These lists were prolonged and comprehensive, as they were conveyed by the explanatory memoranda and they confined both negative, as well as positive rights taken from diverse sources, from both in the interior the country and outside. Balancing separate liberty with communal control, the former for satisfying specific personality and the latter for the peace and stability of the society was a very complicated problem. In spite of disagreement on procedure, there was only just any alteration on principles. So, it was unquestionable that the Fundamental Rights should be justiciable. The Rights to Freedom, requirements removing untouchability, defense against double jeopardy, by the ex-post facto laws, equality beforehand the law, the right to freely practice religion and the defense of minorities were all accepted. The English device of privilege writs, or instructions in the form of writs was the great legal method, which was comprised within the rights to secure them. Right to constitutional medications was also accepted (Lutz and Burke, in the year 1989). Though a few revisions were recognized, the content of rights and basic principles continued intact.

The rights were painstaking to be the fundamental and enforceable by the courts but they couldn't be absolute. They could be limited by the assigning provision to the specific right and by providing for the rights to be on hold in confident circumstances. Individual liberty, right to the equality, elementary freedoms etc. were passed by certain limitations. The 7 Fundamental Rights had close semblance with human rights preserved in many international human rights documents. Members alike K.M. Munshi, K.T. Shah and Ambedkar were in favor of a more energetic communal programme. So, they contended on a stated time limit within which entirely the directive principles must be made justiciable. Throughout the argument on the Draft constitution (Nov-Dec, 1948) there were

2 types of the opinions - that the directives didn't go far sufficient towards launching a socialist state and, that they should have positioned greater stress on certain institutions and principles, central to the Indian practice and, to Hindu thought, principally those overestimated by Gandhi's teaching.

The amendments for growth of village life and economy and, the panchayat system of village group, making the elevation of cottage industries a govt. accountability, making it obligatory upon the government to stop the slaughter of cattle and, to progress the methods of "animal husbandry and, agriculture", amendments are calling for the nationalization of the numerous industries are manifest of these opinions. Though, most of these amendments were chosen down or withdrawn by their originators. So, the directive principles of the state policy were accepted as the part IV of the Indian Constitution by the Indian Assembly. Fundamental human rights in the logic of civil liberties with their modern attribute and, overtone is a growth more or less similar to the development of the constitutional govt. and the parliamentary institutes from the time of British rule in our country India. The motivation of their growth clearly came out of confrontation to the foreign rule when the British resorted to random acts for instance brutal stabbings on unprotected poor Indians. Nationalist Movement and, the birth of the Indian National Congress (INC) were the straight results.

The freedom movement was principally focused in contradiction of racial insight and, to fortifying basic human rights for all that the people regardless of race, creed, sex, colour, place of the birth in the matter of entree to the public places, offices and the services. The history of national struggle for the basic human rights can be outlined back to the creation of the Indian National Congress (INC), which strived to express the spectrum of the human rights back in the year 1895, when an unidentified author drafted the Indian Constitution Bill. Nevertheless, the first proper document came into presence in the year 1928, with the Report of Motilal Nehru. The rights counted by the Motilal Nehru Report - free elementary education, protection of motherhood, living wages, welfare of children -were a pioneer of the fundamental Rights and the Directive Principles of the State Policy, which were preserved in the Constitution of India 22 years later. Most significant announcement on the human rights came in the pages of the Objectives Resolution stimulated by Jawahar Lal Nehru in the year 1946. In the "Objective Resolution", it was promised to draw up a constitution for the nation in which "will be surefire and the secured to all the nation state, where adequate safeguards would be only if for the minorities, backward and, tribal areas and miserable and other classes".

The Resolution also replicated the anxiety of the formation fathers to integrate and implement the basic principles articulated in the Worldwide Declaration of the Human Rights; the Assembly combined in the Indian Constitution the element of most of these rights. The two parts: -the Fundamental Rights and, the Directive Principles of the Indian Constitution between them enclosed practically the whole field of the Worldwide



Announcement of Human Rights. Briefly, the “Objective Resolution” forms the basis for the combination of numerous requirements of the Constitution.

5. THE PREAMBLE AND HUMAN RIGHTS

The Preamble to the Indian Constitution is of highest importance and the Constitution should be recite and interpreted in the light of the impressive and noble vision stated in the preamble. The Preamble of the Indian Constitution declares: "We the people of India, having solemnly resolved to constitute India into a sovereign, secular socialist, democratic republic and to secure to all citizens: Justice, social, economic and political; Liberty of thoughts, belief, faith expression and, worship; Equality of status and of opportunity; and to promote among them all; Fraternity assuring the dignity of the individual and the unity and, integrity of the nation...". Briefly, the Preamble succinctly sets out Quintessence of the human rights, which signifies the goals of the people, who have established the Indian Constitution (Sharma, 2003).

6. FUNDAMENTAL RIGHTS AND HUMAN RIGHTS

An exceptional feature of the Constitution of India is that a great part of the human rights is baptized as the Fundamental Rights, and the right to impose Fundamental Rights itself has been complete a Fundamental Right. The Fundamental Rights in the Constitution of India establish the Magna Carta of the individual liberty and the human rights. The Fundamental Rights under the Articles 14-31 of the Constitution deliver individual right based on the “right to equality”, “right to freedom”, “right against exploitation”, “right to freedom of religion”, “right to cultural” and, “educational rights”.

These are negative rights which are made enforceable in contradiction of the state, if violated. These rights can be summated up in dissimilar categories:

6.1 RIGHT TO EQUALITY (ART. 14-18)

Right to equality is the keystone of human rights in the Indian Constitution. While the Article 14 states that "the state shall not deny to any person equality before the law and equal defense of the laws in the interior the territory of India," the Article 15 verves to much more exact particulars that "the state shall not discriminate against any citizen on the grounds of religion, caste, sex, race, place of birth or any of them be subject to the any disability, liability, restriction or condition with regard to (a) admittance to shops, public restaurants, hotels and the places of the public entertainment. "Whereas, Article 16 says that "there shall be equal opportunity for all the citizens in matters relating to employment or the appointment to in the least office under the state." Article 17 and 18 directs the state to eliminate un-touchability and titles separately.

6.2 RIGHT TO FREEDOM (ART. 19-22)

The rights to freedom under the articles 19-22, are the depth of the human rights in our India. Meaningfully, Article 19 states that "all citizens shall have the right to freedom of speech and expression; to assemble peacefully and without arms; to form associations or unions: to move freely all over the territory of India; to reside and settle in any part of the territory of India; and to practice any profession or to carry on any occupation, trade or business." While, Article 20 states that "no person shall be convicted of any offence except for violation of a law at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence." Though, the most significant article of human freedom is specified in the Article 20, which states that "no person shall be deprived of his life or personal liberty apart from according to the procedure established by law."

6.3 RIGHT AGAINST EXPLOITATION (ART. 23-24)

The Constitution under the Articles 23-24, computes a list of rights that proscribes exploitation, human trafficking and the similar such exploitations. The Article 23 excludes traffic in the human beings and beggar and, other forms of forced labour. Our Indian Constitution, as a replacement for of using the word 'slavery' used a more comprehensive expression "traffic in human beings", which comprises a prohibition not only of captivity but also of traffic in women or children or crippled, for immoral or the other purposes.

Article 24 of the Indian Constitution proscribes the employment of the children below 14 years of the age in any factory or mine or in any other hazardous employment. Thus, compulsory labour is prohibited and the children have been nearing extinction as a matter of the fundamental rights.

6.4 RIGHT TO FREEDOM OF RELIGION (ART. 25-28)

The Part III of the Indian Constitution under the Articles 25-28 recommend for certain spiritual freedoms for the citizens. They comprise freedom of scruples of free chase of profession, practice and spread of religion, freedom to manage the religious affairs, freedom to payment of taxes for the promotion of any specific religion and the freedom as to attendance at religious instruction or religious worship in the certain educational institutions. In brief, these are vigorous rights of religious minorities in India.

6.5 CULTURAL AND EDUCATIONAL RIGHTS (ART. 29-30)

Article 29 and 30 of the Constitution guarantees certain cultural and the educational rights to the “minority sections”. While Article 29 promises the right of any of section of the citizens residing in any part of the country having a different language, script or culture of its own, and to marmalade the same, Article 30 delivers that "all minorities, whether based on religion or



language, shall have the right to establish and administer educational institutions of their choice". In brief, these are important rights, as far the protection of human rights of minority groups in a majority society as India.

6.6 RIGHT TO CONSTITUTIONAL REMEDIES

Chapter III of the Constitution of India relating to the Fundamental Rights has a measure of judicial defense and sanctity in the matter of the enforcement of these rights. Under the Article 32, every person has been given a right to move to the Supreme Court by suitable proceedings for the enforcement of the rights conferred by Part III. Clause 2 of this Article empowers the Supreme Court to issue directions, or writs, with writs in the "nature of habeas corpus, prohibition, quo warranto, mandamus and certiorari". This right can't be adjourned excluding when a proclamation of emergency is in force.

6.7 DIRECTIVE PRINCIPLES OF STATE POLICY

The Part IV of the Indian Constitution commonly recognized as the Directive Principles of the State Policy make available a long list of human civil and the economic rights for the people of India. They form the bedrock of human rights in the India. The main determination of this charter of the positive rights is to guarantee social, political and economic justice to all by laying down basic principles of governance. These principles are envisioned to be kept in mind both by the legislatures in ratifying laws and by the executive establishments in enforcing laws. Even though these principles are not enforceable by any Court up till now they are fundamental in the governance of the country and it shall be duty of the State to apply these principles in making laws for the general welfare of their men, women and children. These rights are:

- Providing adequate means of livelihood (Article 39 (a)).
- Equal pay for equal work for both men and women (Article 39(d))
- Adequate protection of the health and strength of workers, men and women (Article 39(e)).
- Equal Justice and free legal aid (Article 39 A).
- Living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities (Article 43).
- Free and compulsory education for children (Article 45).
- Increasing the level of nutrition, the standard of living and improving public health (Article 47).
- Prohibiting the slaughter of cows and calves and other milk and draught cattle (Article 48).

7. CONCLUSION

A bottomless analysis of the Fundamental Rights and the Directive Principles make it sufficiently strong that between Constitution and its inferences, nearly the whole field of the worldwide declaration of the human rights are covered. Above and beyond, the Constitution of India, through these 2 parts (Part III and IV) has made a novel effort to balance between the

enforceable rights and non-enforceable rights, allowing them to complement each other on the fundamental governance of the country. Lastly, both these rights are inter-related and vital for the nourishment of others.

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