

RESTRICTIONS ON FUNDAMENTAL RIGHTS

Under the constitution, the state can put some restrictions on the operation of Fundamental Rights but it is for the courts of law to see whether the restrictions imposed are justified or not. But in India these rights have been divided into two categories. Some rights are available to the citizens alone, while others are available to all those living in this country, whether they are citizens or not. Thus, whereas freedom of speech, assembly and expression come under the first category, in the second category fall right against exploitation and freedom of religion, etc.

Fundamental Rights in India are a guarantee against the state action but in some cases, these restrictions are also against specific class of persons or against all persons within the territory of India. Article 15(2) prohibits discrimination on grounds of religion, race, caste and sex, etc., whereas Article 17 forbids practice of untouchability in any form. Under Article 23 beggary is forbidden, whereas Article 24 prohibits employment of children below the age of 14 in any factory or mine. These are such restrictions which are against private individuals. On the other hand, there are provisions which deal with the state e.g. under Article 14 it is provided that the

state shall not deny to any person equality before law whereas Article 15 says that state shall not discriminate against any citizen on grounds of religion, race, caste and sex. Whereas Article 16 ensures equality of opportunity, Article 18 prohibits the state on conferring any titles. The state in India has been conferring titles like Bharat Ratna, Padam Vibhushan, Padam Bhushan and Padam Shri on the citizens of India for their meritorious services on the plea that these did not infringe Art. 18 of the Constitution. But in 1977, when Janata Government came to power it dispensed with such titles on the ground that these were not in keeping with spirit of Article 18 of the Constitution. In 1980, when Janata Government was ousted from power these honours were again bestowed on the citizens and Mother Teresa was awarded Bharat Ratna in that year. Since then every year these honours/titles are being conferred on the citizens of India.

The 'state' can amend, modify or abridge Fundamental Rights. Under Article 12 of the Constitution an effort was made to define the term 'state'. It was then said that the state in India shall mean government and Parliament of India, government and legislatures of the states and all local and other authorities within the Union of India, any departmental organ of the Government of India, any public authority exercising statutory powers, but state excludes judiciary and hence the judgments of the courts cannot be challenged on the ground that these contravene Fundamental Rights." D.D. Basu is of the view that "The Courts, like any other organ of the state, are limited by the mandatory provision of the constitution and they can hardly be allowed to over-ride the fundamental rights under the shield that they have, within their jurisdiction, the right to make an erroneous decision."

Fundamental Rights, as provided in Part III of the Constitution, do not provide constitutional remedy, in case of their infringement by private individuals, except as otherwise provided.

In the case of *Behram Khursid Pesikada Vs. State of Bombay*, it has been held that the 'Doctrine of Waiver' enunciated in America

cannot be applied in India. The court held the view that the Fundamental Rights as incorporated in the constitution are not primarily for individual benefit but have been put in the constitution as a matter of public policy. The courts have maintained that it is not open to an individual to relieve the state of an obligation imposed upon the state by Article 14 of the constitution.

Under the Constitution fundamental rights can be suspended and it is left to the courts to put reasonable restrictions on them. The Parliament can restrict or even abrogate by law to the members of the armed forces, with a view to ensuring proper discharge of their duties and enforcing discipline among them.

After the passing of Forty-Fourth Constitution Amendment Act (Articles 35 and 359) it is provided that Article 19 of the constitution will only be suspended when there is emergency in the country due to actual outbreak of war or threat of external aggression and not on the ground of apprehended armed rebellion.

Then comes the power of the Parliament to take away Fundamental Rights guaranteed by the Constitution to the citizens of India. The Constitution has devoted a part to Fundamental Rights, which are available to the citizens and other living in India. Parliament has a right to amend the Constitution. A question, therefore, arises whether by a constitutional amendment can Parliament amend fundamental rights or even take away these rights? In other words, are Rights above the amending powers of Parliament or not. In the famous *Golak Nath* case it has been held by the Supreme Court that under Article 368 of the Constitution, Parliament cannot modify, restrict or impair Fundamental Rights. But the position was again reviewed in the case of *His Holiness Kesavananda Bharti Vs. State of Kerala and Others*. In this case a Bench of 13 judges of Supreme Court held that the Constitution invested the Parliament the right to alter, abridge or abrogate Fundamental Rights guaranteed by the Constitution. In this way the Parliament, by a constitutional amendment can curtail, suspend or modify these Rights. In this very case the court held the view that the Parliament could not

change basic structure of the Constitution. But in the view of the court fundamental rights do not come under the orbit of basic structure. The court, however, did not specify as to what was covered under basic structure. It was left undefined or unspecific. Articles 31 and 32 and 358 and 359 of the Constitution which deal with Fundamental Rights were touched by Forty-Second Constitution Amendment Act, whereas Forty-Fourth Constitution Amendment Act again touched these Articles of the Constitution. In this way, the Parliament has amended these Rights and can even put restrictions on these as well in the way it likes.

But again in May, 1980 the Supreme Court held that the Parliament has not got unlimited rights to amend the Constitution. In the view of the Court the Parliament by a constitutional amendment cannot provide that the courts have no right to interfere in certain matters.

The Constitution provides that no law of the land shall be against Fundamental Rights. In this regard the term law is very wide. It includes not only the laws in force but also the ordinances, orders, bye laws, rules, regulations, notifications, customs and usages having the force of law.