

individual is a necessary condition for the maintenance of freedom. It is for the maintenance of individual dignity that all the citizens of India have been given Fundamental Rights without any distinction.

FUNDAMENTAL RIGHTS

A part of the Constitution is devoted to Fundamental Rights, which Indians can enjoy during normal times. These Rights can, however, be snatched away from citizens during emergencies. The Rights, among other things, include right to freedom of assembly, association, faith, expression, etc. These are justifiable and courts of law are competent to declare any law, which is violative of these rights as unconstitutional or *ultra-vires* of the constitution, if need be. Such an action can be taken only if an appeal is made by a citizen to review a law or an executive order, which in his opinion is *ultra-vires* of the constitution.

Inclusion of fundamental rights as a constitutional guarantee as said above is comparatively of recent origin. It was felt after French Revolution and the U.S. struggle for freedom that nations of the world should seriously think of giving some basic rights to their people. It was in 1789 that French National Assembly adopted the Declaration of Rights of Man. The Constitution of the USA also incorporated a chapter on Fundamental Rights. In 1945, Universal Declaration of Human Rights was made, which was adopted by the General Assembly of UNO on December 10, 1948, which included social, economic, political and cultural rights of the people. In India, it was in Nehru Committee Report of 1928, that suggestion was made for the inclusion of religious and cultural rights as basic rights of the citizens. Simon Commission which visited India to review India's constitutional progress did not favour the idea of inclusion of Fundamental Rights in the constitution. So was the view point of Joint Parliamentary Committee on Indian Constitutional Reforms (1933-34). Sapru Committee Report on Constitutional Proposals (1945), however, supported the idea of inclusion of Rights in our Constitution. Constitution makers in India were guided by

public sentiments and national demand in this regard and accordingly a chapter on Fundamental Rights was added to the constitution.

PECULIAR FEATURES OF FUNDAMENTAL RIGHTS

In India Fundamental Rights have some peculiar features. Whereas in some respects these are in accordance with the Rights extended to the people of other countries, in other respects these differ from them as well. The Rights guaranteed to the people are not absolute. Each right is conditioned by certain duties. There is no Right which has no corresponding obligations. It is, however, worth remembering that the constitution has very extensively elaborated rights and the courts of law have very little to twist these to suit to their convenience or take shelter of duties.

Another feature of these rights is that these are justifiable. It implies that the Rights are above everything in the land. All the executive actions or laws passed by our legislatures must be in conformity with fundamental Rights. If any law passed by the executive government is considered against any of the Fundamental Rights the citizens have every right to approach the court of law which have the power of judicial review. If the courts, after examination, are satisfied that a particular law passed by the legislature, is not in conformity with the constitution and violates a Fundamental Right that can be declared unconstitutional or *ultra vires* of the Constitution.

Then another feature is that Fundamental Rights have been very much elaborated. It is said that these have been so much elaborated that no other constitution has discussed these in such a great length and with such minute details, as Constitution of India. It is said that "it is unique feature of the Indian Constitution that it sets out in the Constitution itself the most elaborate declaration of human rights yet framed by any state."

Fundamental Rights as embodied in our constitution can be divided into two broad categories, namely those which impose certain restrictions of negative character on the state without

conferring special privileges on the citizens. Then there are positive rights which confer privileges on the people, e.g. Article 18 desires that the state will not to confer any special titles on the citizens. Art. 17, similarly abolishes untouchability. These can easily be covered in the former category. Right liberty, equality or freedom to express or worship come under the second category.

Then another feature of these rights is that these make a distinction between the citizens and the aliens. Whereas rights to freedom to worship and equality before law are available even to aliens right to freedom and speech and assembly is available only to the citizens. Thus all rights are not available to all living in India. Similarly there are certain rights which are denied to a particular section (s) of society e.g. armed forces personnel do not enjoy political rights.

Then another feature of our rights is that these are available only against the state and not against any private party. If state violates any right the aggrieved party can seek redress through courts of law but if some violation is by an individual, he or she will have to take recourse to ordinary law of the land.

One of the most important and significant feature of our Rights is that these can be suspended. It is peculiar in the sense that no constitution of the world has made any such provision. According to our constitution as soon as state of emergency is declared in the country Fundamental Rights stand suspended and the courts of law are debarred to enforce these. It is this provision which was very vehemently and bitterly opposed in the Constituent Assembly. The opposition felt that it was the darkest day of our history when a provision was made for denying Fundamental Rights to our people. In the words of H. V. Kamath, "If we get peace in that state it will be the peace of the grave and the void of the desert. When the tempests blow, the weight of this great negation will be so very heavy that the whole edifice will collapse." Dr. Ambedkar, however, felt that the inclusion of such a provision was essential to save the country from disruptive elements and also a guarantee to the people

to have maximum freedom. In his own words, "This provision is absolutely necessary. It will save democracy from danger and extinction."

Not only in emergencies, but even in normal times Articles 33 and 34 of the Constitution empower the Parliament to decide about applicability and extension of fundamental rights to the people working in the armed forces or engaged in services responsible for the maintenance of peace and order. To that extent the application of fundamental rights can be suspended by an Act of Parliament. Under emergencies, the people are denied to take shelter under the roof of judiciary in so far as Fundamental Rights are concerned. These also stand suspended when the people are arrested under Preventive Detention Act, which empowers the state to arrest a person for his being a danger to the security of the state.

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