

Perspective View on Fundamental Rights

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ABSTRACT: *The fundamental rights were included in the Constitution of India with a lot of enthusiasm, as the American idea of the 'Bill of Rights' was one of the inspiring factors while the Indians were struggling against the Britishers for freedom. Even during an alien rule the Indian nationalists were making demands for inclusion of a Bill of Rights in the Government of India Act of 1935. But their demand could not get fulfilled as the concept of a written list of rights was not popular among the Britishers. They believe that the rights are created by the Parliament. Sir John Simon, the chairman of the Simon Commission opposed the idea of inclusion of a bill of rights in the constitution. He was of the view that the concept of the British Constitution implied the sovereignty of the Parliament. All rights in Britain originate therefore, from Parliament. Secondly, the necessity of fundamental rights arises only where autocracy rules.*

KEYWORDS: *Bill, Constitution, Committee, Fundamental rights, Government, Freedom, Guidelines.*

INTRODUCTION

As the Indian nation got its Constituent Assembly in 1946, there was a strong demand for inclusion of a chapter on fundamental rights in the proposed constitution. A separate committee was formed under the chairmanship of Sardar Patel along with some other members particularly representing the minorities. This Committee submitted its report to the Drafting Committee, which prepared the Part on fundamental rights on the recommendations of the fundamental rights Committee. though there were such a lot of constitutions in the international having the essential rights, and the UN become additionally at the same time busy in making ready the list of inalienable rights of the man, but the framers of the Indian charter cautiously decided on the rights to confer the status of fundamental rights on the ones rights [1]. Peculiar social material of India, having standard issues like un-touch ability, caste based totally ratings in society, diversities primarily based on numerous factors like language, faith, subculture, level of development and so on. Were saved in mind while making ready the listing of the fundamental rights. Element III, which offers with those rights was given the region of prominence inside the constitution. This element became not most effective 'justiciable' but additionally immune from any encroachment by means of the government in future (Article 13). The makers of our charter attempted their fine to clarify the provisions of the fundamental rights and the limits for the entertainment of these rights. The difference became also made among the citizens of India because the residents and the non-residents as the two phrases 'residents' and 'folks' have been utilized in different rights [2].

The Right to Constitutional Remedies in case of any infringement on these rights is made itself a fundamental right (Article 32). This Article was considered as the heart and soul of the Constitution. The importance of this Article can be measured from the views expressed by the chairman of the Drafting Committee before the Constituent Assembly about its importance. Dr. Ambedkar said, "if anyone was asked to name the particular Article in this Constitution as the most important without which this Constitution would be a nullity, I could not refer to any other Article except this one. It is the very soul of the Constitution and the very heart of it and I am glad that the House has realized its importance. Hereafter, it would not be possible for any legislature to take away the writs which are mentioned in this Article" [3].

After much debate, these rights were accepted by the Constitutional Assembly as the Basic Rights at the dawn of independence. But the fact remains that these rights have been accepted, and in Indian politics and culture they have not evolved. Naturally, these privileges had at too many times created inconsistencies with their social structure and political aims since the beginning of the Constitution. That is why a large number of changes have been made to the Fundamental Rights Portion. These inconsistencies were also the product of the very first amendment of the Constitution, adopted by the same Constituent Assembly (working as the Provisional Parliament of the Union) [4].

The Third Part of Indian Constitution begins with the definition of the word 'State'. It includes the Government and Parliament of India, Governments and Legislatures of the States and other authorities under the control of the Government. This Article stands intact till date and no alteration has been made in it. This Article stands as following:

Art.12- Definition. In this Part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India [5].

This Clause, which determines, for the purposes of Part III, the definition of the word 'State' (dealing with fundamental rights), has remained unchanged since the Constitution began. The scope of this Article was held flexible by including in the meaning of the word 'Government' the words 'other authorities'. It has been interpreted by different decisions of the courts according to the existence of these 'other authorities'. Some were declared as 'Government' by the 'other authorities' and others were declared as 'not the State'. The test applied by the Judiciary to determine the question is mainly based on financial assistance by the Government, control of the Government in the administration of the body, monopoly status conferred on the body, and nature of functions of the body etc. The authorities declared as 'State' in various judgments included the Rajasthan Electricity Board, Nationalized Banks, and Delhi Transport Corporation etc. The other authorities declared as 'not the State' included the Board of Control for Cricket in India [6].

Art.13- Laws inconsistent with or in derogation of the fundamental rights

(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, shall, 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, byelaw, 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 [7].

The responsibility for safeguarding fundamental rights was assigned to this post. The paramount importance of human rights must be guaranteed. It provided for the enforceability of all the laws in effect to the degree that they were inconsistent with fundamental rights. It had prevented the State in clause from creating any legislation in the future that was inconsistent with fundamental rights. The third clause was intended to make it clear that all potential types of legislation are included in a 'law' by naming them as ordinance, order, bye-law, rule, regulation, notice, custom or usage, etc. In the original Constitution, there was no mention of the word 'amendment' in this article. It had on many occasions contributed to a conflict between the Judiciary and the Parliament [8]. The first amendment, along with the incorporation of the 9th Schedule, incorporated Article 31A and Article 31B into Section III. In the Supreme Court, the amendment was challenged on the basis that Parliament has no jurisdiction to make an amendment to that section.

However, the Supreme Court upheld the validity of the first amendment on the basis that Article 13 prevents the State from creating any 'rule' against fundamental rights, but that amendment does not fall under the definition of 'law' used in that Article,' as it is within the scope of Parliament due to the constituent power conferred on the Parliament under Article 368. But this Supreme Court ruling was overruled by the Court itself in 1967 in the famous case of Golak Nath⁴. In this case, the Supreme Court held that the word 'rule' in Article 13 also refers to an amendment[9]. There is no substantive distinction between the enactment of a statute and of a constitutional amendment. Requirements for a 2/3 majority in Parliament and approval by half

of the State Legislature are given solely as additional security mechanisms for a slim majority in Parliament to regulate a hasty decision.

The presence of such external safeguards would not make anything other than a statute a constitutional amendment. Term ‘law’ used in Article 13 includes a constitutional law also, and a constitutional amendment is nothing else than a constitutional law. The Court also held that Article 368 does not confer any constituent power on Parliament. It provides for procedure only to amend those parts or Articles of the Constitution, which are amendable. As Article 13 had forbidden the State from making any law against fundamental rights, so naturally no amendment can be done by the Parliament in these rights. If Parliament thinks it necessary it can summon a Constituent Assembly again for which it is empowered under residuary powers. This decision led to a serious clash between the Parliament and the Judiciary [10].

CONCLUSION & DISCUSSION

The demands of the nationalist leaders of India during the British rule and the discussions of the Constituent Assembly, it can be inferred that the issue of the fundamental rights was taken with utmost care. But as the Constitution started working, there arose some contradictions between the fundamental rights of the citizens and the rights of the society as a whole. It resulted in the clash between the judicial decisions and the acts of Parliament. Due to these contradictions the Part on fundamental rights was amended from time to time, rather it is the Part which has been amended more frequently than any of the other Part of the Constitution.

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