



Importance of Fundamental rights under Indian Constitution

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Abstract: According to Article 15 of the Indian Constitution “The state shall not discriminate against any citizen on grounds only of religion, caste, sex, place of birth or any of them”. But why the society through dictates and judgment determine the identity of an individual and do gender inequality. These individuals who faces these challenges due to personalities and sexual orientations are later on categorized as ‘others’. They are basically abandoned by families and ridiculed by negative comments after that they have no other option than to beg or sing at wedding. Various rights have been given to the third gender but due to gender inequality and thinking of people these rights are not much active in society. LGBTQ has not been given that position that the other gender has got. Many developments has been made in society but despite these development and awareness contribution, major problems still plague this section of society. The paper aims to act as an expose when it comes to make-believe cases of being LGBTQ and third gender. Through my research paper, I want to aim at discrimination the third gender is suffering. Major Problems are still being faced by this section of society. In addition to this, I will also focus on the social and legal position of the third gender and LGBTQ.

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Introduction:

The Fundamental Rights in India enshrined in the Part III of the Constitution of India guarantee civil liberties such that all Indians can lead their lives in peace and harmony as citizens of India. These include individual rights common to most liberal democracies, such as equality before law, freedom of speech and expression, freedom of association and peaceful assembly, freedom to practice religion, and the right to constitutional remedies for the protection of civil rights by means of writs such as habeas corpus. Violations of these rights result in punishments as prescribed in the Indian Penal Code, subject to discretion of the judiciary. The Fundamental Rights are defined as basic human freedoms which every Indian citizen has the right to enjoy for a proper and harmonious development of personality. These rights universally apply to all citizens, irrespective of race, place of birth, religion, caste, creed, colour or sex. They are enforceable by the courts, subject to certain restrictions. The Rights have their origins in many sources, including England's Bill of Rights, the United States Bill of Rights and France's Declaration of the Rights of Man.

The six fundamental rights are:

1. Right to equality
2. Right to freedom
3. Right against exploitation
4. Right to freedom of religion
5. Cultural and educational rights
6. Right to constitutional remedies

Rights literally mean those freedoms which are essential for personal good as well as the good of the community. The rights guaranteed under the Constitution of India are fundamental as they have been incorporated into the *Fundamental Law of the Land* and are enforceable in a court of law. However, this does not mean that they are absolute or that they are immune from Constitutional amendment.

Fundamental rights for Indians have also been aimed at overturning the inequalities of pre-independence social practices. Specifically, they have also been used to abolish untouchability and hence prohibit discrimination on the grounds of religion, race, caste, sex, or place of birth. They also forbid trafficking of human beings and forced labour. They also protect cultural and educational rights of ethnic and religious minorities by allowing them to preserve their languages and also establish and administer their own education institutions.

Right to Equality

This right includes the equality before the Law which implies a prohibition of discrimination on the basis of caste, creed, color or sex, equal protection of the law, equal opportunity in public employment and abolition of untouchability and titles. It also states that every citizen shall have equal access to all public places.

To provide equal opportunities there will be no reservation in government services except in the case of scheduled caste, scheduled tribes, and other

backward classes and for war widows and physically handicapped person. This right was made to abolish untouchability which was practiced in India for decades.

Right to Freedom

This right includes the right to freedom of speech, freedom of expression, and freedom to form unions and associations. It also includes freedom to travel anywhere in India, freedom to live in any part of India, and the freedom to choose any profession of their interest.

This right also states that any citizen of India has the full right to purchase, sell and hold property in any part of the country. According to these rights, people will have the liberty to indulge in any trade or business. This right also defines that a person cannot be convicted twice for the same offense and it also cannot be compelled to stand as a witness against oneself.

Right against Exploitation

This right includes the prohibition of any form of forced labor. Children who are below the age of 14 years are not allowed to work in mines or factories where the risk of life is involved. According to these rights, no person has the right to exploit the other person in any way.

Therefore human trafficking & begging have been made legal offenses and those found involved are to be penalized. According to this rights slavery and traffic among women and children for dishonest purposes has been declared an offense. Payment of minimum wage against the labor is defined and no compromise is allowed in this regard.

Right to Freedom of Religion

These right states that there will be full freedom of conscience for all citizens of India. All people shall have equal right to freely adopt, practice and spread the religion of their choice. The state shall not hinder in any religious affairs of any individual in any manner. In this, all religions have a right to establish and uphold institutions for religious and charitable purposes. Also, they will be free to manage their own affairs with respect to these rights.

Cultural and Educational Right

This right is one of the most important rights as education is the primary right of each child. According to this right, all are free to follow the culture of their choice. Also, all are free to get the education of their choice.

No individual will be denied admission in any of the educational institutes on the basis of their culture, caste or religion. According to this, all the minorities have the right to establish their own educational institutes.

Right to Constitutional Remedy

This right is a very special right given to all the citizens. According to this right, a citizen has the power to go to the court in case of denial of any of the fundamental rights. The court stands as a guard for anybody against the breach of these rights.

If the government forcefully or intentionally does injustice to any individual or if a person is imprisoned without any reason or by the unlawful act then this right allows the person to go to the court for getting justice against the actions of the government.

Significance and characteristics

The Fundamental Rights were included in the constitution because they were considered essential for the development of the personality of every individual and to preserve human dignity. The writers of the constitution regarded democracy of no avail if civil liberties, like freedom of speech and religion were not recognized and protected by the State. According to them, "democracy" is, in essence, a government by opinion and therefore, the means of formulating public opinion should be secured to the people of a democratic nation. For this purpose, the constitution guaranteed to all the citizens of India the freedom of speech and expression and various other freedoms in the form of the Fundamental Rights.

All people, irrespective of race, religion, caste or sex, have been given the right to move the Supreme Court and the High Courts for the enforcement of their Fundamental Rights. It is not necessary that the aggrieved party has to be the one to do so. Poverty stricken people may not have the means to do so and therefore, in the public interest, anyone can commence litigation in the court on their behalf. This is known as "Public interest litigation". In some cases, High Court judges have acted on their own on the basis of newspaper reports.

These Fundamental Rights help not only in protection but also the prevention of gross violations of human rights. They emphasize on the fundamental unity of India by guaranteeing to all citizens the access and use of the same facilities, irrespective of background. Some Fundamental Rights apply for persons of any nationality whereas others are available only to the citizens of India. The right to life and personal liberty is available to all people and so is the right to freedom of religion. On the other hand, freedoms of speech and expression and freedom to reside and settle in any part of the country are reserved to citizens alone, including non-resident Indian citizens. The right to equality in matters of public employment cannot be conferred to overseas citizens of India.

Fundamental rights primarily protect individuals from any arbitrary State actions, but some rights are enforceable against individuals. For instance, the Constitution abolishes untouchability and also prohibits *begar*. These provisions act as a

check both on State action as well as the action of private individuals. However, these rights are not absolute or uncontrolled and are subject to reasonable restrictions as necessary for the protection of general welfare. They can also be selectively curtailed. The Supreme Court has ruled that all provisions of the Constitution, including Fundamental Rights can be amended. However, the Parliament cannot alter the basic structure of the constitution. Features such as secularism and democracy fall under this category. Since the Fundamental Rights can only be altered by a constitutional amendment, their inclusion is a check not only on the executive branch, but also on the Parliament and state legislatures.

A state of national emergency has an adverse effect on these rights. Under such a state, the rights conferred by Article 19 (freedoms of speech, assembly and movement, etc.) remain suspended. Hence, in such a situation, the legislature may make laws which go against the rights given in Article 19. Also, the President may by order suspend the right to move court for the enforcement of other rights as well.

Critical Analysis

The **Fundamental Rights** have been criticised for many reasons. Political groups have demanded that the right to work, the right to economic assistance in case of unemployment, old age, and similar rights be enshrined as constitutional guarantees to address issues of poverty and economic insecurity, though these provisions have been enshrined in the directive principles of state policy. The right to freedom and personal liberty has a number of limiting clauses, and thus have been criticized for failing to check the sanctioning of powers often deemed "excessive". There is also the provision of preventive detention and suspension of Fundamental Rights in times of Emergency. The provisions of acts like MISA (*Maintenance of Internal Security Act*) and NSA (*National Security Act*) are a means of countering the fundamental rights, because they sanction excessive powers with the aim of fighting internal and cross-border terrorism and political violence, without safeguards for civil rights. The phrases "security of State", "public order" and "morality" are of wide implication. The meaning of phrases like "reasonable restrictions" and "the interest of public order" have not been explicitly stated in the constitution, and this ambiguity leads to unnecessary litigation. The freedom to assemble peaceably and without arms is exercised, but in some cases, these meetings are broken up by the police through the use of non-fatal methods.

"Freedom of press" has not been included in the right to freedom, which is necessary for formulating public opinion and to make freedom of expression more legitimate. Employment of child

labour in hazardous job environments has been reduced, but their employment even in non-hazardous jobs, including their prevalent employment as domestic help violates the spirit and ideals of the constitution. More than 16.5 million children are employed and working in India. India was ranked 88 out of 159 in 2005, according to the degree to which corruption is perceived to exist among public officials and politicians worldwide. The right to equality in matters regarding public employment shall not be conferred to Overseas citizens of India, according to the *Citizenship (Amendment) Bill, 2003*.

Amendments

Changes in Fundamental Rights require a Constitutional amendment which has to be passed by a special majority of both houses of the Parliament. This means that an amendment requires the approval of two-thirds of the members present and voting. However, the number of members voting should not be less than the simple majority of the house — whether the Lok Sabha or Rajya Sabha.

- The right to property was originally included as a fundamental right. However, the 44th Amendment passed in 1978, revised the status of property rights by stating that "No person shall be deprived of his property save by authority of law" to further the goals of socialism.
- The right to education at elementary level has been made one of the Fundamental Rights under right to life and personal liberty by the 86th constitutional amendment of 2002.

Conclusion

The Indian Constitution is a document rich with human rights jurisprudence. This is an elaborate charter on human rights ever framed by any country in the world. Part III of the Indian Constitution is the most essential part relating to human rights. The Judiciary in India plays a significant role in protecting human rights. The Indian Courts have now become the courts of the poor and the struggling masses and left open their portals to the poor, the ignorant, the illiterates, and the downtrodden or for every countryman. Fundamental rights play a very significant role in the life of any citizen. These rights can defend during the time of complexity & difficulty and help us grow into a good human being and that's why all the rights are the needs of people. Social activists have also started assisting victims of human rights violations in their respective areas to approach various forums for justice. Students under the programme are also getting involved in human rights advocacy in their respective villages. But beside those initiatives the government has also some responsibility to assure the physical protection that is enshrined in our Constitution. A large number of students have come

out with striking revelations of change in their perception and behavior as a result of the HRE program in their schools. Even substantial efforts are therefore crucial to eradicate the social disparities and guarantee of getting quality education on an equal basis. To closing down, there is an utmost need for realizing that provision for universal access of those facilities for ground level development and a fundamental condition in the process of creating India as a developed society.

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