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## **FUNDAMENTAL RIGHTS AS FUNDAMENTAL HUMAN FREEDOMS**

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### **Abstract**

The paper focuses on the aspect that, as far as, the relationship between Directive Principles and Fundamental Rights is concerned, the Directive Principles of State Policy have to conform and to run as subsidiary on the Fundamental Rights and also that how the position of the Indian Judiciary is somewhere in between the Courts of England and the United states is also discussed. But our Constitution unlike the American Constitution does not recognize the absolute supremacy over the legislative authority in all respects formulated the restricted field of Constitutional imitations. Our Parliament and State Legislature are supreme in their respective legislative fields and in that wider field there is no scope for the Court in India to play the role of Supreme Court of the United States. As long as there is no infringement of any Fundamental Right to the extent conferred by the provisions in part III of the Constitution, there can be no objection, the State acting in accordance with the Directive Principles set out in part-IV but subject to legislative and executive powers and limitations conferred on the State under different provisions.

*Keywords: Constitution, Judiciary, Fundamental Rights.*

## **Introduction**

The State should have to provide facilities and opportunities to ensure development and to eliminate all obstacles for development by appropriate, economic and social reforms and also for development of Fundamental Rights through judicial process so as to eradicate all social injustice. The principles are embedded as integral part of our Constitution in the Directive Principles of State Policy. The same, therefore, stand elevated to inalienable fundamental human rights and in this case the court has held that though the right to work cannot be claimed as Fundamental right but once a person is appointed to post or an office be under the State or Private agency, it has to be dealt as per public-element.<sup>1</sup> Thus, as aforesaid, provisions in the Constitution, the socio-economic development through judicial process with respect to inter-relation between Fundamental Rights and Directive Principles of State Policy are fully justified in this submission.

## **Six Fundamental Rights**

The six fundamental rights apperceived by the Indian constitution are:

1. Right to Equality: Which includes Equality afore law, enjoiment of discrimination on grounds of religion, race, caste, gender<sup>2</sup> or place of birth, and parity of opportunity in matters of employment, abolition of untouchability and abolition of designations. Right to Equality is provided from Article 14 to Article 18 of Indian constitution.
2. Right to Freedom: Which includes liberation of verbalization and expression, assembly, sodality or amalgamation or cooperatives, kineticism, residence, and right to practice any vocation, right to life and liberty, auspice in veneration to conviction in offences and auspice against apprehend and detention in certain cases. Right to liberation is provided from Article 19 to 22 of constitution.
3. Right against exploitation: Which precludes all forms of coerced labour, child labour and traffic of human beings. It is provided under Articles 23 and 24 of Indian constitution.
4. Right to Freedom of religion: Which includes liberation of conscience and free vocation, practice, and propagation of religion, liberation to manage religious affairs, liberation from

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<sup>1</sup> There are many feminist groups who demand gender justice. They have both despair and hope regarding the role of religious communities, role of state, role of law and even the utility of Uniform Civil Code. Read 'introduction' of "Uniform Civil Code" by Arundhuti Roy Chaudury, Pub By Indian Social Institute, New Delhi, 1998 (publication No. 76/98).

<sup>2</sup> Justice V.R.KrisnaIyer in his "Book Review" on DinanthRaina's Uniform Civil Code and Gender Justice, The Hindu, 21st October, 1996 (open page).

certain taxes and liberation from religious injunctive authorizations in certain scholastic institutes. Article 25 to 28 enumerates the right to liberation of religion.

5. Cultural and Education rights: Preserve the right of any section of denizens to conserve their culture, language or script, and right of minorities to establish and administer inculcative institutions of their cull. Article 29 and Article 30 of Indian constitution provides for cultural and edifying rights.

6. Right to constitutional remedies: Which is present for enforcement of Rights. It is provided under Article 32 of Indian constitution.

### **Fundamental Rights and Women**

Status of women in different human societies of the world is different. In almost all the present and contemporary societies, it is discriminatory & prejudicial. Nearly all human societies in different parts of the world are male-dominated. Males are active part and females are only a passive part of the different society, only a thing of enjoyment of males and in some societies they are only chattels contractible, saleable & endowed with the duty to serve males & elder females having no material & worthwhile rights.<sup>3</sup> In theory, they are respectable, but in practice they are subjects of cruelty, ill treatment & all sorts of misbehavior of males.

### **Obligatory Directive Principles**

The Directive Principles impose certain obligation on the state to take positive action in certain directions in order to promote the welfare of the people and achieve economic democracy. These principles give directions to the legislatures and the executive in India as regards the manner in which they should exercise their power.

The core of the commitment to the social revolution lies in Parts III and IV, in the fundamental Rights and in the Directive Principles of state policy. These are the conscience of the Constitution". The duties imposed on the State by part III (Fundamental Rights) are essentially negative in character. By the mandate contained in this Part, the State is asked

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<sup>3</sup> A section of scholars and activists are of the opinion that women's rights cannot be bargained away at the alter of community identity and thuds one should implement Uniform civil code. There is a need to undermine the centrality of the religious communities and focus attention on multiple and overlapping patriarchies. According to this stream of thought, the rights of women can never be actualised within the religious communities. This is mainly because religious communities are largely patriarchal in nature and therefore inimical to the interests of women (SangarKumKum 1995. Politics of Diversity : Religious Communities and Multiple Patriarchies, Economic and political weekly, 23 December, 1995).

not to do certain things. The breach of these mandates is made justifiable. The mandates in Part IV (Directive Principle) are positive mandates. There under, the State is directed to take certain positive steps for the advancement of the society. The views of the Supreme Court of India on the relation between the fundamental rights and the directive principles of state policy have undergone changes from time to time.

The primary sources are taken in the form of legislations;<sup>4</sup> Secondary sources are available and have been utilized in the form of peregrine judgments, journals, periodicals, magazines and articles. While studying the meaning and inception of liberation of religion, the researcher explored the provisions of different enactments, articles, journals and definitions given by different jurists and academicians in order to project a clear picture on the subject of research study. According to the requirements of time, interpretation given by the Apex Court of India as well as that of different courts of peregrine countries has been elaborately discussed. Accentuation has been mainly made to cover all germane areas for the study of the subject, which till now has not been explored to the desirable extent.

## **Conclusion**

Fundamental rights for Indians have withal been aimed at overturning the pre-independence gregarious practices. Concretely, they have withal been used to abolish untouchability and thus preclude discrimination on the grounds of religion, race, caste, sex, or place of birth. They additionally enjoin trafficking of human beings and coerced labour (a malefaction). They withal bulwark cultural and edifying rights of ethnic and religious minorities by sanctioning them to preserve their languages and withal establish and administer their own inculcation institutions. They are covered in Part III (Articles 12 to 35) of the Indian Constitution.

Fundamental Rights is a charter of rights contained in Part III of the Constitution of India. It ensures civil liberties such that all Indians can lead their lives in tranquility and harmony as denizens of India. These include individual rights prevalent to most liberal democracies, such as Equality before law, liberation of verbalization and expression, religious and cultural

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<sup>4</sup> Various aspects of law on sexual harassment and its implementation have come under severe criticism from the Indian women's movement in recent years. One of the biggest problems has been that women's complaints of rape, molestation or sexual harassment are routinely disbelieved. Refusal to file complaints has been documented as a serious socio-architect meaning whilst reading what define as crimes into legal definitions of crime.

liberation and halcyon assembly, liberation to practice religion, and the right to constitutional remedies for the bulwark of civil rights by betokens of writs such as habeas corpus. Infringement of these rights result in penalizations as prescribed in the Indian Penal Code or other special laws, subject to discretion of the judiciary. The Fundamental Rights are defined as fundamental human freedoms that every Indian denizen has the right to relish for a felicitous and harmonious development of personality. These rights macrocosmically apply to all denizens, irrespective of race, place of birth, religion, caste or gender. Aliens (persons who are not denizens) are withal considered in matters like Equality afore law. They are enforceable by the courts, subject to certain restrictions. The Rights have their inceptions in many sources, including England's Bill of Rights, the Cumulated States Bill of Rights and France's Declaration of the Rights of Man.

The supreme court of India has recently directed the centre and states to enact legislation to make registration of marriages compulsory irrespective of religion<sup>5</sup>. If this direction is respected and implemented by the centre and states, the rights of both men and men and women would be protected. Many social evils which arise due to personal laws of various religions could be effectively checked by the compulsory registration of marriages. In other words, this is an important step for gender justice. It will protect and empower the women. Its secular character unifies different religious communities who, in due course, would be prepared to accept the Constitutional mandate of a Uniform civil code which requires a unification of all civil laws covering marriage, divorce, in heritance maintenance, etc. A Uniform civil code is necessary to ensure gender justice. But, various personal laws come in the way of Uniform Civil Code and gender justice. The judiciary in India has made some contribution in ensuring gender justice towards a Uniform Civil Code.

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<sup>5</sup> The Editorial of the Hindu dated 15/02/2006 says “Compulsory registration will have for reaching benefits. Child marriage which continues to be practised in many countries (although prohibited by 1929 Act) will be drastically curtailed, ensuring the girl child the right to be free and wholesome childhood. Parents will no longer be able to sell their girl children into marriage for economic reasons and because of social compulsory. Cases of desertion and polygamy are likely to fewer as there would be documentary proof of marriage. A marriage certificate can be used in a court by women in vulnerable situations to assert their rights as spouses”.

### References

- 1) Basu D.D (2004) Introduction to the Constitution of India, 19th Edition, Wadhwa and Company, Law publishers, Nagpur.
- 2) Deogaonkar S.G. (1980) Problems of Development of Tribal Areas, Leeladevi Publications, Delhi-110035.
- 3) Jayachandran C.S (1997) The Constitution of India, Published by Centre for Legal Education & Development Studies, Thiruvananthapuram
- 4) Johari J.C (1995) The Constitution of India, A Politico-Legal Study, Sterling Publishers New Delhi – 110020
- 5) Vaid .N.K. (2004) Who Cares For Tribal Development, Mittal Publications, New Delhi-110059.
- 6) Vyas N.N and Mann R.S (ed) ( 1980), Indian Tribes In Transition, Rawat Publications, Jaipur

### Websites

- 1) [http://en.wikipedia.org/wiki/Independence\\_of\\_the\\_judiciary](http://en.wikipedia.org/wiki/Independence_of_the_judiciary).
- 2) <http://www.h.cour.gov.au/speeches.kerbyj.indialt.htm>
- 3) <http://www.legalserviceindia.com/article/116-Separation-Of-Powers.htm>.

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