



## The Role of State Duties, Protection and Fundamental Rights

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### ABSTRACT

The aim of the paper is to gain insight on fundamental rights enshrined in the constitution of India and the role of State (good governance). An indepth study of journals and texts emphasise that the constitution lays great importance to the life of respect, dignity, equality and non-discrimination and welfare of the vulnerable and weaker section of the society. The constitution lays emphasis on the role of State to ensure that every citizen enjoys a decent standard of living and good quality of life. In short, the Constitution of India guarantees its citizens their basic rights to lead a life of freedom without fear. This paper deals with Fundamental rights (The right to equality, the right to freedom, the right against exploitation, the right to freedom of religion, cultural and educational rights, right to constitutional remedies) enshrined in the Constitution of India and the Role of state to ensure good governance through its proper implementation without discrimination.

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### I. INTRODUCTION

We the people of India need to remind ourselves that we have given ourselves our Constitution and that the document truly is one of the people, for the people, by the people. The Constitution of India emphasizes to protect the rights of its citizens by introducing six rights as Fundamental Rights - Right to Equality, Right to Freedom, Right to Freedom of Religion, Cultural and Educational Rights, Right against Exploitation, and Right to Constitutional Remedies.

The constitution has been meticulously framed to fulfil the socio-economic conditions of a vast country which is home to a population of over 100 crores that is diverse in ethnicity and religion. The ideals of the Constitution focus on equality and liberty to all citizens and promote sense of fraternity amongst all by annihilating differences with regard to religion, caste and creed. These ideals have been assimilated into the various Fundamental rights of the Constitution and compliance to the constitutional norms in word and deed is integral for the social and economic progress of the country.

A fine balance needs to be maintained between the fundamental rights of the citizen and the Role of the State via good governance to ensure a society which exercises highest order of equity and peace. In a democratic country like India, the primary role of the State is to ensure that the fundamental rights of the citizens are secured and well-guarded against violation and the violators punished.

The government functions at different levels National, State and local level comprising of legislature, executive and judiciary and it is this structure that ensures that the faith and aspirations of its people are fulfilled via good governance. The Preamble of the Constitution declares India to be a 'sovereign, socialist, secular, democratic republic'. The term 'democratic' signifies that the Government comes into power and gains its authority by the will of the people. It is the citizen of the country that elects the Government comprising of representatives of the people. Thus it is the people with whom the power to exercise legal as well as political sovereignty vests. It gives sense of feeling that they all are equal 'irrespective of their race, religion, language, sex and culture' (Diwan & Diwan, 1998).

### Objectives

- Critically examine various fundamental rights enshrined in the Indian Constitution.
- To study the role of State / government in protection and enforcement of Fundamental Rights.

### Fundamental Rights in India

The Unique feature of the Constitution of India is that it guarantees its citizens the majority of the human rights in the name of Fundamental Rights which are both enforceable and justiciable. While framing the

rights a balance between liberty of an individual and peace and harmony in the society was given utmost importance. Although these rights are considered to be fundamental and enforceable by courts but they are not absolute. Fundamental rights have gained in meaning and effect due the series of judgements and of their adaptability to changing circumstances.

FUNDAMENTAL RIGHTS OF INDIAN CITIZENS		
S.No	Fundamental Right	Article of Constitution
1	Right To Equality (Article- 14 to 18)	Art. 14- Equality Before Law
		Art. 15- Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth
		Art. 16- Equality of opportunity in public employment
		Art. 17- Abolition of untouchability
		Art. 18- Abolition of Titles
2	Right To Freedom (Article- 19 to 22)	Art 19- Freedom of speech, expression, movement
		Art 20- Protection from conviction for offences
		Art 21- Right to life & Personal Liberty
		Art 22- Protection against arrest or detention
3	Right Against Exploitation (Article- 23 & 24)	Art 23- Protection from trafficking & Forced Labour
		Art 24- Ban on child labour
4	Right To Freedom of Religion (Article- 25 to 28)	Art 25- Freedom to practice one's own religion
		Art 26- Freedom to manage religious affairs
		Art 27- No taxation for promotion of religion
		Art 28- Freedom as to attendance at religious instruction or religious worship in institutions
5	Cultural & Educational Rights (Article 29 & 30)	Art 29- To Protect & Preserve the minorities
		Art 30- Right of minorities to administer educational institutions
6	Right To Constitutional Remedies (Article 32)	Art 32- Remedies for enforcement of rights

The rights have been summarized as follows:

### **Right to Equality (Art. 14-18)**

Right to equality before law states that the State shall not discriminate against any citizen of the country and would ensure equal protection irrespective of caste, creed, religion, gender, place of birth etc within the territory of India. The citizens of the country shall be provided with equal opportunity in matters relating to employment or appointment to any office under the State. The right further directs the state to abolish untouchability and titles. (Sehgal, 2004).

### **Right to Freedom (Art. 19-22)**

The State shall ensure that "all citizens shall have the right to freedom of speech and expression; to assemble peacefully and without arms; to form associations or unions: to move freely throughout the territory of India; to reside and settle in any part of the territory of India; and to practice any profession or to carry on any occupation, trade or business." Further "no person shall be convicted of any offence except for violation of a law at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence."

### **Right against Exploitation (Art. 23-24)**

The right prohibits exploitation, human trafficking and exploitations of similar nature. Our Constitution, coined the term "traffic in human beings" instead of slavery which includes a prohibition not only of slavery but also of traffic in women or children or crippled, for immoral or other purposes (Welch and Leary, 1990).

The Constitutional right states that "No child below the age of 14 years can be employed to work in any factory or mine or engaged in any other hazardous employment." Even begar, forced labour has also been prohibited under the right and the State has to ensure that children are protected as a matter of fundamental rights.

### **Right to Freedom of Religion (Art. 25-28)**

India is a country of many religions and cultures. The right prescribes for freedom of religion for its citizens. They include freedom of conscience and the right to profess, practice and propagate any religion of ones' choice, freedom to manage affairs in matters of religion, State shall not collect any taxes for promotion of any particular religion, in other words the State shall not sponsor any religious teachings nor shall any religious instruction be imparted in State run or government aided (wholly or partially) educational institutions.

### **Cultural and Educational Rights (Art. 29-30)**

The Constitution guarantees to preserve, maintain and promote one's culture, language and educational rights to the minority sections. The minorities shall be given assistance by the State to establish and administer educational institutions of their own to preserve and promote their culture. In other words, these rights, guides the State to protect the rights of minority groups in India.

### **Right to Constitutional Remedies**

The Indian Constitution has not only listed Fundamental Rights, but has also prescribed remedies against their violation. If a citizen feels that one of her/his Fundamental Rights has been violated by an executive order, she/ he may request the Supreme Court to issue the appropriate writ for the restoration of her/his rights- the writs include habeas corpus, mandamus, prohibition, quo warranto, and certiorari. This right can only be suspended only when an emergency has been proclaimed. (Basu, 2007).

### **Role of State (Good Governance)**

Every citizen in a country expects its government to act as welfare State especially when it comes to human rights/ Fundamental rights. The State by guaranteeing good governance tries to ensure social and economic development. The State if fails to fulfil its responsibilities might lead the country towards despair and resentment which might result in conflicts and war. The State would be able to function efficiently when both the representatives of the people as well as the people/ citizens are well informed. The conflict between the citizens and the State arises when the rights are curtailed or suspended. The Constitution of India made the Fundamental rights both enforceable and justiciable. It is for this very reason that the Role of State tends to be of primary importance.

The Role of State is reflected when fair and systematic legal framework is established and the laws are executed without bias or partiality. A transparent governance would generate merit and trust amongst its citizens. A robust information dissemination system would enable direct access to its citizens about the functioning and decision making process of the government. This would not only avoid confusion and but would keep tab on corruption within the public offices and the society at large. In a democratic country like India, the primary role of the State is to ensure that the fundamental rights of the citizens are secured and well-guarded against violation and the violators punished. They should be held accountable for any violation of human/ Fundamental Rights. The State should ensure that the interests of all the stakeholders including minorities are taken into cognizance while taking decisions. This would not only ensure equity but also inclusiveness thereby ensuring participation of all the sections of the society regardless of religion, race, sex, caste, creed etc.

## II. CONCLUSION

Fundamental Rights are the rights provided to the citizens of the country of India and cannot be abridged by the State. An in-depth analysis of the Fundamental Rights and the Role of State (good governance) makes it sufficiently imperative that by conferring the Fundamental Rights to its citizens would ensure just and equitable society as long as the State assumes its responsibility and indulge in good governance at all levels be it national, state or local. Making Fundamental rights justiciable ensures that the citizens can approach the court of law in case of its violation. A conducive environment where peace and harmony prevails and where all sections of the society prosper would only be possible when the government resolves to build a society which is both secular and tolerant.

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