

B.A.LL.B. V SEMESTER
SUBJECT : CONSTITUTIONAL LAW INDIA-I
CODE : BL-5003

TOPIC : FUNDAMENTAL RIGHTS

CONCEPT OF FUNDAMENTAL RIGHTS :

As early as 17th century the human thinking has been veering around certain essential, basic and inalienable rights to be ensured to every human.

The concept of human rights can be traced back to the natural law philosopher such as Locke and Rousseau.

Declaration of French revolution 1789 was regarded as concrete political statement on human rights. It was inspired by Lockean philosophy declared .

“Aim of all political parties is the conservation of natural and inalienable rights of man.”

The concept of human rights protect the individual from excess of state. It protect from arbitrariness and in justice .

So there is need to secure use certain basic and fundamental rights to every citizen . these basic rights are to be ensured in such way that they cannot be violated , tampered or interfered by an oppressive government .

So with this view some written constitution ensured basic rights and restrict government from taking away or violates these rights can be taken away by an elaborated and formal process of constitution amendment rather than ordinary legislation .

The fundamental rights have dual purpose

- (1) That these rights are justifiable and can be enforce through courts.
- (2) These rights gives limitation to the power of the government .

As S .C observed in case of chairman Railway Board V . Chandrima Das air 2000 sc 988 that “ fundamental rights is to safe guard the basic human rights from the vicissitude of political controversy and to place them beyond the search of the

political parties who by virtue of majority may come to form government at the centre or in the state .

The modern way of guaranteeing these rights is U.S.A constitution . it make fundamental rights justice able and enjoy able through instrumentality of courts .

FUNDAMENTAL RIGHTS OF INDIA

= The political association in India are demanding rights against the British rule.

= the Indian society was divided in to various fragments like caste , religion , region , culture etc . So to provide sense of security to every citizen rights are granted .

Fundamental rights in India a part from granting rights safe grand the Interests of minorities , outlawing discrimination to protecting religious Freedom to culture rights .

Article 12-35 pertains fundamental rights of the people . fundamental rights are divided in seven hands

- (1) Right to equality (art 14-18)
- (2) Right to freedom (art 19-22)
- (3) Right against exploitation (art 23-24)
- (4) Right to free do may religion (art 25-28)
- (5) Culture and educational right (art 29-30)
- (6) Right to property (art 31a , 31b, 31c)
- (7) Right to constitution remedies (art 32)

Justifiability OF FUNDAMENTAL RIGHTS.

Art 13 is the article that give teeth to the fundamental rights. Art 13 declare that there can not be pre and post constitutional legislation enacted that take away or abridges right conferred Under part III i.e. fundamental rights .

Art 13 makes judiciary and more importantly apex court as guardian and interpreter of the fundamental rights. It also imposes obligation on the courts to declare the legislation void that is inconsistent with rights conferred under part III of the constitution .

The role of the judiciary has been bolstered With the power of judicial review to keep check and balance of the power of the other two organs of the state .

In U.S. constitution there is no specific provision unlike Indian constitution of judicial review . the principle was laid down by MARSHALL C. J. in the case of Marbury V . Madison.

Suggested reading

- (1) Constitution of India , H.M. SREEVAI
- (2) Indian constitutional law M.P. JAIN
- (3) Constitution of India ,D.D. BASU

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