

FUNDAMENTAL RIGHTS

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Introduction:

- F. Rights constitutes an integral and an inseparable part of the constitution.
- Part III of the constitution deals with the F. Rights of the citizens of India running from Art. 12 to 35.
- Part III has been regarded as the “Magna Carta” of the people of India.
- Nehru considered these rights as the “conscience of the constitution” during the Constituent Assembly debates.

Meaning of F.Rights:

- A f. Right is an interest protected by the higher law of the country.
- According to Basu, “..... A Fundamental Right is one which is protected by and guaranteed by the written constitution of the state.”
- Rights become fundamental when they made a part of the constitution.
- These rights cannot be altered without making an amendment to the constitution.

Features of F. Rights:

- Following are some of the important features of the F. rights enshrined in our constitution –
 1. These are justiciable in the courts of law,
 2. These are not unlimited rights,
 3. These can be suspended during the period of emergencies,
 4. It makes difference between citizens and non-citizens,
 5. Positive and negative rights,
 6. These rights constitutes an integral part of the constitution,
 7. Amendability of these rights,

1. Integral Part of the constitution:

- These rights are an integral part of the constitution and hence cannot be taken away by ordinary legislation.
- These rights are fundamental in the sense that any law passed by any legislature in the country would be declared null and void if it is derogatory to the rights guaranteed by the constitution.

2. Most comprehensive and detailed:

- The chapter on F. Rights in the constitution is the most comprehensive and detailed one.
- It enumerates the fundamental rights guaranteed to the Indian citizen in a comprehensive manner.
- Each right included in this chapter has elaborate set of limitations and reservations.
- Original constitution has provided for six categories of fundamental rights with reasonable restrictions and limitations.

3. Negative & Positive rights:

- Some of the Fundamental rights are negative in character which places limitation on the authority of the state.
- Abolition of untouchability, abolition of titles are examples of negative rights.
- Positive rights are those which confers certain privileges on the persons.
- Eg. Right to liberty, worship, equality, etc. are positive rights.

4. Rights are justiciable:

- All rights are justiciable.
- In case if any of the rights has been violated the affected person can move the court for the enforcement of his rights.
- The judiciary is the jealous guardian of the fundamental rights of the citizens.

5. Restrictive nature of rights:

- No rights are absolute.
- Every right is permitted under certain limitations and reasonable restrictions imposed in the larger interest of the community.
- In some cases the constitution itself imposed reasonable restriction while in other cases the state may impose restrictions on the enjoyment of rights.

6. Rights suspendable:

- During the operation of a national emergency, the president may suspend all or any of the fundamental rights including the right to move the courts.

7. Draws a distinction between citizens and non-citizens:

- Only citizens are allowed to enjoy all fundamental rights.
- Not all rights are guaranteed to all or every persons.
- For example, rights relating to protection of life, religion, right against exploitation are guaranteed to every person whether citizen or aliens.
- This means that our constitution makes a distinction between citizens and aliens in the matter of enjoyment of fundamental rights.

8. No natural or unenumerated rights:

- Unlike the US constitution our constitution does not allow any scope for any fundamental rights that is not enumerated in the constitution.
- The chapter on fundamental rights is not based on the theory of natural rights.
- Natural rights are said to belong to man by nature even before the state or constitution came into existence.

9. Fundamental rights are amendable:

- Fundamental rights are not sacrosanct or permanent.
- The parliament can amend them but cannot be abrogated because that will violate the basic structure of the constitution.

Conclusion:

- The most striking feature of Part III of our constitution is that they seek to strike a balance between a written guarantee of individual rights and the collective interests of the community, says D.D. Basu.
- Economic rights are conspicuously absent in the list of fundamental rights enshrined in our constitution.
- Again primacy is given to Part IV of the constitution than that of the Part III of it.