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## AN ANALYSIS OF FUNDAMENTAL FREEDOM

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### ABSTRACT

Fundamental freedom is the key source of human being to exist in the society. It is the inner values which are depicted by the constitution of India for the human beings. As we are living in the democratic era, it's our right to feel free in the society and enjoy it in all aspects. In this research paper we tried to make focus on all types of freedom in general, the word fundamental means pure or basic in nature. So fundamental freedom provides the liberties to the people. These liberties are inherent in nature. The theory of laissez faire was developed by French physiocrats. This theory means let the man free, then he will be able to decide what is good or bad for him. With this ideology we have tried to explain broadly different freedoms which are given in Indian Constitution. Fundamental freedom permits the individuals and groups to express them and to believe in reality that they are free or liberal in all sense.

**Keywords:** Fundamental freedom, Indian Constitution Democracy, Human Rights, personal liberty, preamble.

## Introduction

India is a democratic country. Democracy simply means where the government is of the people, to the people and for people. Before independence India was under the foreign rule, there was no concept of fundamental freedom and fundamental rights. Freedom and rights are correlated with each other. Freedom is wider whereas right is narrow concept as compare to freedom. After independence, the people of India realized that if we want to develop nation, we must have freedom in all respect whether it is political freedom, economic freedom, social freedom, religious freedom and freedom in general. According to Justice Krishna Iyer “the freedom is essential because censorial power lies in the people over and against the government and not in government against and over the people. Fundamental freedoms are required in a democracy as basic liberties. In general, they give guarantee to an individual that he can act, think or do without government interference unless a law says otherwise.

### 1. Historical background

As we know that right to freedom is also fundamental right as contained in Indian constitution. One of persistent demands of our leaders throughout the freedom struggle was constitutional guarantee for human rights of our people. In Pre- independence, the people were brutally struggling to be rebirth into a life of dignity and hope. The past was heavy on their shoulders and future was uncertain. The social and economic exploitation was around there. Social evils such as satipratha, child marriage, child labour, banded labour, illiteracy, superstition gender inequality, bedeviling the society and polity were all over exist in whole society. The vision of socio-economic change through constitution is expressed in its preamble. The preamble expresses idea and aspiration of a renascent India. The preamble with its great words promised<sup>1</sup>-

Justice -social economic and political

Liberty- of thought, expression, belief, freedom of faith and  
worship equality- of status and opportunity and

To promote fraternity, assuring the dignity of individual and unity and integrity of  
nation

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<sup>1</sup> Jain M.P, Indian Constitutional Law (Eight Edition), LexisNexis (2018)

These words may not be read in isolation. It is a way of life that recognizes liberty, fraternity and equality as the principle of life which cannot be divorced with each other. Without fraternity equality and liberty could not become a natural course of things. Without equality, liberty would produce the supremacy of few over many. Without liberty, equality would kill individual initiative. Our constitution is greatly influenced by the Universal declaration of human right which came into force on 10 December 1948<sup>2</sup>. Some right are taken from this document in and mentioned in part 3 of Indian constitution.

## **2. Fundamental freedom under Indian constitution**

Fundamental means natural or inherent in nature. Freedom can be divided in many aspects of the life, for instance social freedom, political freedom, religious freedom and economic freedom.<sup>3</sup> These freedom are generally discussed below-

### **2.1 Freedom against discrimination-**

Article 14 to 18 grants freedom against discrimination. Article 14 describes the idea of equality expressed in preamble of Indian constitution. The other succeeding article 15, 16, 17, 18 lay down specific application of general rules lay down in article 14 itself.

Article 14 can be divided into 2 parts:

- a) Negative concept
- b) Positive concept

Article 14 applies to any person. Any person extends to both citizens and non-citizens & too legal as well as natural persons.<sup>4</sup> Equality before law is negative concept it means the absence of any special privilege in favours of individual and equal subject of all classes to the ordinary law. The positive concept in article 14 is equal protection of law. It means the equality of treatment in equal circumstances. Article 14 permits reasonable classification and restrict the class legislation. The rule of law cannot prevent a certain class of persons from being subject to special laws. Thus, the power to make laws operating differently on different classes of people is given to the state in such way that the principle of equality of civil rights and equal

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<sup>2</sup> Universal Declaration of Human Right, 1948

<sup>3</sup> Jain, M.P. Indian Constitutional Law (Eight Edition) LexisNexis (4 February 2018)

<sup>4</sup> The Constitution of India, 1950, Art 14

protection is obeyed this is being known as the doctrine of reasonable classification. On the other hand class legislation means making of improper discrimination by imposing some privileges on the class of people arbitrarily selected from huge number of persons. Thus class legislation infringes the equal protection whereas reasonable classification is always based on substantial and real distinction.

While traditional concept of equality is based on doctrine of classification, & the new concept is based on doctrine of arbitrariness. Arbitrariness is very anti-thesis of equality .In *E.P. Royappa versus State of Tamil Nadu*<sup>5</sup>; it was held that the concept of equality cannot be restricted within traditional and doctrinaire limits because it is dynamic concept with many dimensions and aspects.

Article 15 provides for a particular application of general principle enshrined in Art 14. If a law violates Art 15 , then it cannot be saved by Art 14 on ground of reasonable classification .However it may be noted that art 15 is available to citizens only. The word discrimination means to make an adverse distinction with respect to distinguish unfavorably from other.

In Art 16, the freedom against discrimination is restricted to employment and appointment under state. Art 15 is more general and deals with all cases of discrimination which do not fall under art 16 as Art 16 is specific in nature. Equality of opportunity admits discrimination with reason which means rational classification for differential treatment having nexus to constitutionally permissible object.

Art 17 abolishes untouchability and its practice in any form. Untouchability is neither defined in the act nor in the Constitution of India.

Untouchability is such social practice which looks down upon certain depressed classes solely on account of their birth and makes any distinction against them on this ground.

## **2.2 Freedom of personal liberty<sup>6</sup>**

Personal liberty is the most important in all fundamental rights. Article 19 to 22 provides with different aspects of this basic right. Art 19 guarantees the following six fundamental freedoms to citizens of India.

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<sup>5</sup> 1974 SCR (2) 348

<sup>6</sup> Supra note 3

- a) Freedom of speech and expression
- b) Freedom of assembly
- c) Freedom to form association
- d) Freedom of movement
- e) Freedom to reside and settle
- f) Freedom of profession, occupation, trade or business

Freedoms describe in art 19 (1) are those great and basic rights which are recognized as the natural rights inherent in status of a citizens. But none of these freedoms is absolute or uncontrolled. Some reasonable restrictions are therein. The restriction must satisfy the following tests

- a) The restriction must be for the purpose mentioned in clauses 2 to 6 of art 19
- b) The restriction must be reasonable

Expression is a matter of liberty and right. The liberty of right to know and thought are the source of expression. The live wire of the democracy is the free speech. The integral part of expansion and fulfillment of individual personality is freedom of expression .In a democratic setup of state, the freedom of expression has more significant role to play, where people are the sovereign rulers<sup>7</sup>. The freedom of speech and expression is required to fulfill the following objectives-

- To discover truth
- For self-fulfillment
- Democratic value
- To ensure pluralism

Article 19 (2) at the same time provides the right to state to impose reasonable restriction

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<sup>7</sup> Ibid

in the interest of:

- Sovereignty and integrity of India
- The security of state
- Friendly relations with foreign state
- Public order
- Decency of court
- Contempt of court
- Defamation
- Incitement of an offence

Within the realm of constitutional law, the freedom to assemble is of special importance. It is restricted by an intersection of constitutional text and criminal procedure code.<sup>8</sup> The reasonable restriction can be imposed on this freedom in the interest of sovereignty and integrity of India or public order. The constitution of India provides to all its citizens the right to form associations, unions or cooperatives societies. Right to form association does not include the right to recognition. Right to form association does not carry right to strike and right to form rival union. Here also as according to art 19(4) empowers the state to impose reasonable restriction in the interest of public order or morality & sovereignty and integrity of India.

The Indian constitution grants to its citizen freedom to move freely throughout the territory of India and to reside and settle in any part of India. The object of this is to remove internal barriers within India or any of its part because the entire territory is one unit so far as the citizens are concerned. The grounds of reasonable restriction are

- In the interest of general public and
- For the protection of interest of scheduled tribe.

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<sup>8</sup> The Code of Criminal Procedure, 1973, Section 129

The Indian constitution also grants the freedom to practice and profession. Any citizen, whose occupation of a place is unlawful, cannot claim fundamental freedom to carry the occupation. The fundamental freedom cannot be availed in justification of an unlawful act. The restriction on this freedom can be imposed in interest of general public. For instance a law relating to professional or technical qualification is necessary for practicing a profession. The professional qualification will be protected under art 19(6) through making law

Art 20 provides the freedom of protection against arbitrary and excessive punishment. One thing is noted here that Departmental punishment would not be taken as punishment in such sense in which the word is used in the constitution. Persons here mean the citizens, non-citizen as well as corporations. Art 20 cannot be suspended even during emergency in operation. Art 20(3) says that the person shall not be forced to be witness against himself.

Art 21 gives protection to life and personal liberty to the extent therein mentioned. It does not recognize the right to life and personal liberty as an absolute right but limits the scope of right itself. This absolute right is restricted by the risk of its being taken away in accordance with the procedure established by law.

Art 22 talks about the safeguard freedom. It provides the freedom against the arbitrary arrest and detention. It provides the freedom of every person who is arrested to be informed of the cause of his arrest. It also provides freedom to consult and to be defended by a lawyer of his choice. Two restrictions on this freedom are given in art 22 itself-

- Any person who is for time being an enemy alien or
- Any person who is arrested or detained under any law providing for preventive detention

### **2.3 Freedom against exploitation<sup>9</sup>**

Art 23 and 24 both deal with freedom against exploitation. Art 23 prohibits traffic in human beings and beggar and other forced labor. Under the old zamindari system, the tenants sometimes forced to render free service to their landlord, even if some remuneration is paid, and then also the labor may be a forced one. It may be noted that Art 23 does not prohibit the

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<sup>9</sup> Jayanta Borah and Sarthak Aryan, The Legal Vidya 2(1), 2021

state from imposing compulsory service for public purposes e.g. social and military services. The exaction from hard labor from convicted prisoners is not forced labor.

Art 24 prohibits employing children below the age of 14 years in any hazardous employment. This is in keeping with human rights concepts and United Nations norms.

#### **2.4 Freedom of religion or religious freedom<sup>10</sup>**

Art 25 to 28 provides freedom of religion. Art 25 and 26 embody the principles of religious tolerance that has been the most significant feature of Indian civilization from the beginning of history. Beside they serve to emphasize the secular nature of Indian democracy that is equal protection to all religions. A secular state does not mean an irreligious state. It only means that in matter of religion it is neutral. The state can have no religion of its own. The state protects all religions between people; it is not concerned with relation of man with God. It is left to the individual's freedom and conscience. Restriction can also be imposing on freedom of religion. In name of religion, no act can be done against public order, morality and health of public. Freedom to practice religion extends only to those activities which are the essence of religion.

Art 27 provides that the person shall not be forced to pay taxes for expenses on promotion or maintenance of any particular religion. He is free to pay the taxes. Art 28 prohibits religious instructions in educational institutions wholly maintained by the state. In case of other institutions recognized and aided by the state; there will be freedom for every person not to participate in religious instruction or worship.

#### **3.4 Cultural and educational freedom<sup>11</sup>**

Art 29 and 30 are made for the minorities so as to enable them to conserve their own language, script and culture and prevent discrimination against minorities on ground of discrimination on basis only of religion, race, language or any of them in educational institution. In past, in some nations minorities were forced to adopt the language and script of ruling majorities. The expression education institution may include a university. Art 30 (1) provides the freedom to all minorities, whether based on religion or language to establish and administer educational institution of their choice. The word establish means to bring into

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<sup>10</sup> Rajeev Dhavan, Am J. Comp. l. 35, 209, 1987

<sup>11</sup> The Constitution of India 1950, Art 29 & 30



existence and therefore if minorities bring into existence an educational institution then they will have right to administer it. The word establish and administer must be read conjunctively. It means the minorities will have right to administer educational institution of their choice but the condition is that they have established them.

Under Art 29 and 30 the freedom is to the minorities only. The expression minority here includes only the section of persons residing in India. It is therefore essential that the persons establishing educational institution must be residing in India. The state only have the power to regulate the minority institution. But where regulation affects the autonomous character of minority institution and unduly interferes with its freedom of administration, the regulation will violate Art 30. Justification of it cannot be given on the basis of public interest because the very nature of grant of freedom of minority cannot be unduly curtailed in name of interest of majority. The regulation must also be made in the interest of institution itself.

### **3. Reasonable restriction<sup>12</sup>**

In any particular circumstances a restriction to be valid must satisfy the following conditions -

#### **3.1 The restriction must be imposed by the state**

The restriction enumerated under clause (2) to (6) of Art 19 is to be imposed by state. The state is defined in Art 12. Hence not only union and states but also local and other authorities are competent to impose restriction. But restriction imposed by the wrongful acts of private individual is not within the purview of Art 19.

#### **3.2 Restriction can be imposed only by the law**

The restriction can only be imposed by law whether subordinate or supreme. The word law here includes acts, ordinances, orders, bye laws, regulations, Notification and rules etc. as provided in Art 13 but it does not include departmental and executive instruction.

#### **3.3 Law must be valid**

The restriction must be imposing by a valid law which is not unconstitutional.

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<sup>12</sup> Bhardwaj Apoorv, R.Gupta's Popular Master Guide, Ramesh Publishing House, New Delhi

### **3.4 The restriction must be reasonable**

The word reasonable implies deliberation and intelligent care. No hard and fast rule can be laid down for ascertaining the reasonableness of restriction. Each case has to be decided in the light of peculiar circumstances of that particular case.

### **3.5 Reasonableness is objective and not subjective**

The test is not whether a judge considers personally a restriction as reasonable or unreasonable but whether a reasonable person in his place would consider them reasonable or not. The reasonableness has to be judged taking into consideration the circumstances under which the restriction is imposed, nature of right, manner, duration and extent of imposition and social interest involved therein.

## **4. Reasonable classification**

The doctrine of reasonable classification is mere judicial test to determine whether there is arbitrariness in the state action if state action in question does not pass the test as laid down by doctrine it is considered arbitrary and since it is arbitrary it will be unconstitutional (as per the principles of Art 14. This ensures that people similarly situated are treated equally. The Supreme Court has maintained that art 14 permits the reasonable classification of persons and objects by the state for the purpose of achieving things that would help in the development of the society. In the case of State of West Bengal versus Anwar Ali Sarkar, the Supreme Court stated the twin test of reasonable classification-

1. Classification must be founded on an intelligent differentia which distinguishes those that are grouped together from others and
2. The differentia must have a rational relation to object sought to be achieved by the Act.

## **5. Case laws on fundamental freedom**

### **1. State of west Bengal versus Anwar ali sarkar<sup>13</sup>**

It is now settled that though the two expressions may be capable of difference in meaning but both have same object that equal justice. The equal protection of laws is

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<sup>13</sup> 1952 SCR 284

corollary of equality before law. It is difficult to imagine a situation when equality before the law can be maintained without equal protection of laws. In practice, therefore both the expressions come to one and the same thing.

## **2. Maneka Gandhi versus union of India<sup>14</sup>**

Art 14 strikes at arbitrariness in state action and ensures fairness and equality of treatment. The principle of reasonableness which legally as well as philosophically is an essential element of equality or non-arbitrariness pervades Art 14 like a brooding omnipotence.

## **3. Bennett Coleman and Co. versus Union of India<sup>15</sup>**

The Supreme Court held that newspaper authority should be free to determine their pages & circulation & any restriction resulting to a loss of advertising revenue would affect circulation and it will cause violation of the freedom of speech.

## **4. Indian Express Newspapers versus Union of India<sup>16</sup>**

The Supreme Court held that the expression "freedom of press is not expressly used in Art 19 but was comprehended within Art 19(1)(a).

## **5. Himat Lal Shah versus Commissioner of Police<sup>17</sup>**

The then Chief Justice Sikri observed that there is no fault with necessity of prior permission as according to him the right which flows from Art 19(1)(b) is not right to hold a meeting at any place and time. This right can be regulated.

## **6. Kameshwar Prasad versus State of Bihar<sup>18</sup>**

The question was that whether any form of demonstrations by government employees was prohibited by making rule. The court held that a government servant will not lose her or his fundamental rights and that rule which is prohibiting demonstrations in any way violates Art 19(1)(b).

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<sup>14</sup> AIR 1978 SC 597

<sup>15</sup> 1973 SCR (2) 757

<sup>16</sup> 1985 SCR (2) 287

<sup>17</sup> 1973 SCR(2)266

<sup>18</sup> 1962 SCR Supl. (3) 369

### **7. Satwant Singh versus asst. passport officer, New Delhi<sup>19</sup>**

The supreme court followed the interpretation of personal liberty given by it in Kharak Singh case and held that while right to move throughout territory of India is guaranteed by Art 19(1)(d) whereas right to travel abroad is included in personal liberty in Art 21.

### **8. People`s union for civil liberties versus union of India<sup>20</sup>**

It has been held that right to privacy is a part of right to life and personal liberty in Art 21. Though right to privacy by itself is not explicitly covered in constitution of India yet India is a signatory of declaration of Human Right 1948, Art 12 of it and similarly Art 17 of international covenant on civil and political right, 1966 talk about the right to privacy.

### **9. Ramji lal modi versus state of U.P<sup>21</sup>**

The validity of section 295 –A of Indian penal code was upheld on the ground that by making punishable the deliberate and malicious intention of violating or outraging the religious feeling of any class of citizens. It imposes the restriction in the interest of public order.

## **7. Conclusion**

Thus we can say that freedom is essential to live with dignity. If we do not have freedom than what will make different us from animals. When a person have freedom to do what he or she wants to do he can more contribute in the development of himself or herself as well as the development of our nation too. But we do not have absolute or excessive freedom because if freedom will absolute then there may be a situation of disturbance in Nation. No one will respect the freedom to other .Everyone will think about its own freedom .So the power is given to state to restrict these freedom so that development with no disturbance is possible in nation with the states regulation. But these restrictions must be based on reasonable classification.

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<sup>19</sup> 1967 SCR (2) 525

<sup>20</sup> AIR 1997 SC 568

<sup>21</sup> 957 SCR 860