



A CRITICAL ANALYSIS OF FUNDAMENTAL RIGHTS AND LEGAL RIGHTS

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Introduction

Public peace is most importance for the national growth and development. To achieve public harmony and tranquility, well settled and certain law is required. 'Law' confers the acts or things which should or should not be done. Doing otherwise is the violation of that particular law. To do or don't a particular act or thing confers an obligation or duty for oneself. 'One's duty is the right of another'. If somebody is not doing his duties, then definitely hitting rights of another body. The suffered person got the right to knock the doors of justice. These Rights can be widely distinguished into two categories on the basis of their origin and power (i) Fundamental Rights (ii) Legal Rights.

Fundamental Rights are distinct from the legal rights on many accounts. They got origin and authority straight way from Indian Constitution. The Constitution guarantees their protections. In case of any infringement of any of these rights, the Supreme Court or the concerned High Court can be knocked directly through Writs. These privileges are not available to the legal rights.

Constitutional Rights and Statutory Rights

We know 'Constitution of India-Supreme to All.' Constitution is the parent of all statutory authorities including Parliament of India and State Legislatures. Fundamental Rights are 'special' because they got their origin and authority straightway from the Constitution of India itself. So, they are also called as 'Constitutional Rights'. They have been recognized as Fundamental Rights because they are fundamental and basic for one's existence and development. The Constitution not only declares them as 'fundamental rights' but also guarantees their protection. These unique features and remedies are not available in case of legal rights. These legal right have been emanated and got authority from a statutory Act, passed by the Parliament of India or the State Legislatures. This is also the reason as why the legal rights are also called as 'Statutory Rights'. For instance, right to life is a fundamental right, but right to property is a legal right.



Concept of Fundamental Rights and Legal Rights

Fundamental Rights have their origin directly from the Indian Constitution. They are enshrined as Articles 14 to 32 in Part III of the Constitution. But the legal rights have emanated either from the Central Acts or the State Acts. The Central Acts are passed by the parliament for whole of India except where specifically excluded as (State of J&K). The state Acts are passed by the State Legislatures for enforcement in that State. Although any other State may adopt another State's Act through rectification in its own legislature.

Quantity, Quality and Depth of Fundamental Rights and Legal Rights:

The Fundamental Rights are very few but legal rights far more than fundamental rights. But it does not reduce the importance of the Fundamental Rights. Rather it indicates the superiority of Fundamental rights over the legal Rights. It indicates the depth of the fundamental rights. It shows the wide amplification of the fundamental rights. For instance, Article 21 relates to the protection of life and personal liberty of a person.

Article 21

"No person shall be deprived of his life or personal liberty except according to procedure established by law."

Though this Article has smallest number of words in compare to all other Articles of Part III of Indian Constitution, but perhaps this Article has the largest amplitude. The phrase 'No person' in the Article stands for any person at any place within the territory of India. It includes the persons other than the Citizens of India. 'Life' does not confine to the stale physical life only, but also all other things which make the life meaningful, e.g. Right to go abroad¹, Right to get passport² Right to speedy trial³ Right to health⁴ Right to get legal aid⁵ etc have been held by numerous judicial pronouncements to be the part of this Article 21. In *People's Union for Civil Liberties V. Union of India*⁶ and numerous other judgments⁷ it has been held that these rights cannot be curtailed except according to the procedure established by law. For instance right to privacy is a part of the fundamental right to life and personal liberty. It is available to all the persons residing or settling or living or moving anywhere within the territory of India. Nobody can interfere with the privacy of a person. Even any authority or the department of a Government can interfere only for sufficient cause



and that two according the procedure established by law. Even a woman of easy virtue is entitled to her privacy and no one can invade her privacy rights of privacy even of prostitute.⁸

Most of the legal rights are enforced against private persons: But fundamental rights are enforced mostly against the State (as in Article 12) including the Government of India, State Governments etc. But it doesn't mean that the fundamental rights can't be enforced against private persons. Fewer numbers of fundamental rights doesn't affect their depth. Their penetration is far deeper than ordinary legal rights. They are more prominent and powerful than the legal rights. They can be knocked directly in the superior Courts. On the other land, the legal rights can be knocked in ordinary Courts through ordinary procedure. In case of any inconsistency in between the fundamental rights and the legal rights, the later have to give way to the former. Even the Constitutional Courts (Supreme Court or High Court) empowered by the Article 13 can declare the entire or any part of the parent statutory Act as being ultra virus the Constitution and set aside it to the extent of such an inconsistency.

The Constitutional Courts ensure the protection of those rights. The Supreme Court under Article 32 and the High Courts under Article 226 of Indian Constitution has the sufficient powers to issue writs in this regard.

Fundamental rights are enshrined as Articles 14 to 32 in part III of the Indian Constitution. But their smaller number doesn't affect their importance. They are extra-ordinary in nature. Their protection is ensured and guaranteed by the Constitution itself. Both the Supreme Court as well as the High Courts has powers to issue writs. Both the Courts can issue writs for the protection of fundamental rights. But the High Court has additional powers to issue writs even in cases of deficiency or insufficiency of ordinary law for protecting any legal right.

Specification of Fundamental Rights and Legal Rights Fundamental Rights

Part III of the Constitution of India includes fundamental rights under Articles 14 to 32. These are given below -

Right to Equality: Articles 14 to 18

Right to Freedom: Articles 19 to 24



Right to Freedom of Religion: Articles 25 to 28

Cultural and Educational Rights: Articles 29 to 30

Saving of Certain Laws: Articles 31 A to 31 C

Right to Constitutional Remedies: Articles 32.

Legal Rights

Practically, it is not feasible to write down all the legal rights here. The word 'section' or 'Sub-section' is used in case of the statutory Act. The Civil Procedure Code (1908.), Criminal procedure Code (1973), Indian Penal Code (1860), The Industrial Disputes Act. (1947), The Dowry Prohibition Act, (1962) etc. are examples of the Central Acts (applicable to whole of India except the State specifically excluded). The Delhi Rent Control Act, U.P. Industrial Disputes Act, East Punjab Urban Rent Restriction Act, Rajasthan Public Trust Act etc. are examples of the State Acts.

Protection of Fundamental Rights

Indian Constitution provides extra-ordinary powers to the Superior Courts. The High Courts and the Supreme (Apex) Court have been sufficiently empowered in this regard. Article 32 of Indian Constitution itself guarantees the protection of Fundamental Rights.

Article 32

“(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this part is guaranteed.

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this part.

(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other Court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).

(4) The right guaranteed by these Articles shall not be suspended except as otherwise provided by this Constitution.”

So, we can see that Clauses (1) &(4) of Article 31 guarantees the protection of fundamental rights enshrined in Part III of the Constitution (Articles 12 to 35). Clause(2) enshrines the types of writs on



basis of their nature-(i) Writ of habeas corpus,(ii)Writ of mandamus, (iii) Writ of prohibition,(iv) Writ of quo warranto, (v) Writ of certiorari. Clause(2) further empowers the Supreme Court to issue any of the above writ or direction or order which ever is required for enforcing and protecting the Fundamental Rights entrusted in Part III. Clause(3) of the Article 32 grants supplementary powers to the Parliament to extend these powers of the Supreme Court to any other Court also. It goes without saying that assignment of such a power to any Court other than the Apex Court is in addition to the Supreme Court and not in derogation or substitution of the Supreme Court. It means this power of the Supreme Court can not be derogated by the parliament by making any amendment. It clearly points out that this power of the Supreme Court to protect and enforce the fundamental rights is absolute. In brief, Article 32 is a gem to the Indian Constitution. It not only guarantees the protection of fundamental rights, but also empowers the Apex Court of the country to take action against any case of infringement of any fundamental right.

Not only the Supreme Court, but also the High Courts are the protectors of the Fundamental Rights, Article 226 of the Constitution of India provides such powers to the High Courts.

Article 226

“(1) Notwithstanding anything in Article 32, every High Court shall have powers, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of beaus corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(2) The power conferred by clause (1) top issue directions, orders or writs to any Governments authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

(3) Where any party against whom an interim order whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause(1), without



(a) *Furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and*

(b) *Giving such party an opportunity of being heard, Makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, shall vacated.*

(4) *The power conferred on a High Court by this Article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of Article 32.”*

Right of the High Court's

We know that the Supreme Court empowered by Article 32 has the powers to do all essential for the protection of the Fundamental Rights enshrined in part III of the Constitution. Likewise the High Court can do all essential things to protect the Fundamental Rights enshrined in Part III of the Constitution. Article 226 empowers every High Court to issue directions or orders or writs in any reported case of infringement of any fundamental right conferred by Part III. Not only this, the High Court has larger sphere in compare to the Supreme Court.

While the powers of the Supreme Court confined to Fundamental Rights, the powers of the High Courts are far more. This power of the High Courts are far more. This power of High Court extends to the rights other than Fundamental Rights. I means such powers is extended to some legal rights' enforcement as well. Of course, this facility is not available to enforce all the legal rights. The statutory law (Act) which confers the legal right provides the protection of that legal right too. Still if any Act confers the legal right but is silent about its protection, then the ordinary laws provide the required protection. Further if that ordinary law is not sufficient to protect any particular legal right, then extraordinary remedies are always rest with the concerned High Court. It is in consonance with famous doctrines of 'Damnum Sine Injured (loss or damage without infringement of right) and 'Injuria Sine



Damnum' (infringement of rights without any loss or damage) which state 'where there is right, there is remedy'. It is not necessary that there should be any damage for knocking the courts of Law, but the infringement of legal right is essential.

Extra-ordinary powers of the High Court's and Supreme Court

For protecting the infringement of any fundamental right of a citizen, the superior courts have sufficient extra-ordinary powers. Supreme Court under Article 32 and High Courts under Article 226 of the Indian Constitution have such powers. The process, power and authority of doing so, is commonly known as 'writ jurisdiction'. This jurisdiction cannot be knocked in each & every case. It cannot be knocked in an ordinary case. It cannot be knocked for enforcing any legal right, specifically in case of the Supreme Court. In case of High Court, writ jurisdiction can be knocked where there either no remedy is available or where there is a remedy but it is not sufficient.

Conclusion

Fundamental rights basic and fundamental for the survival, existence and continuance of an individual as well as a community. It is essential for maintaining public peace, harmony and democracy. The Constitution of India not only declares them as fundamental, but also ensures guarantees their protection. The Constitution itself provides special powers to the High Court and Supreme Court to protect those rights. This special treatment is not available to ordinary legal rights. Usually infringement of any ordinary legal right is not so serious, alarming and urgent matter as the infringement of any of the fundamental right. Thus the fundamental rights are very essential and pious.

References

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