

KNOW YOUR RIGHTS

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ABSTRACT

Every citizen of the nation has to know the common rights that has been enacted for them by the legislature and individual has to be aware for their basic rights. There are some major fundamental rights that has been discussed under this chapter and they are also known as the basic rights which are enjoyed by every citizen of our country. These rights are described in the various terms such as right to equality, right to freedom and expression, right to educational and cultural rights and the protection of life and personal liberty. These rights are discussed with various instances or aspects which are necessary for every individual to know about these aspects which can be used at the time of violation of fundamental rights. There are various instances which can be seen at the time of violation in which individual ignores their right or don't have the basic knowledge of law to protect them from these violations so under this chapter the protection from the various violations has been discussed and the role of the state to protect the rights of the citizens also discussed under this chapter. Rather than the fundamental rights various other rights are also discussed with various instances and they can be described as the constitutional rights, moral rights and the consumer rights. As compare to the fundamental rights of the citizen these rights also play an important role in our constitution or in any individual's life. These rights are guaranteed to every citizen of the nation and discrimination can't be done on the basis of sex, caste creed or religion. These are rights are necessary for everyone to live a peaceful life with all basic necessities and they cannot be taken away from any individual as they lay down the basic structure of our constitution without this it cannot be possible for the laymen to live a dignified life.

FUNDAMENTAL RIGHTS

INTRODUCTION

Being a democratic nation, the Indian constitution plays an important role by protecting the fundamental rights of its citizens and also by laying the democratic or political structure from

which the people are governed. The enactment of laws in their respective jurisdictions can be done by their parliament and state legislatures. The power that has been given to them is not absolute in nature but also the constitution vest in the judiciary. If a law is made by the parliament or by the state legislature and it is violating any provision of the constitution then Supreme Court has the power to declare the law as invalid. The realization of justice has been based on the rules and regulations or the law that has been amended for the benefits of the citizens of our country. The justice realization depends upon the quality of the legal system that has been accommodated and the quality of the system is measured through the fairness of the laws and with respect for human rights. Supreme Court protects the fundamental rights of the citizens when the legislative body fails to perform its duties. India has been committed to the rule of law as it does not differentiates the promotion of human rights and right to life and liberty is the most necessary rights among the other human rights because existence and protection of life are at the precedent condition for the enjoyment of other human rights. These rights are so much necessary even at the time of emergency they cannot be suspended.

Among the other rights these rights are the most important ones, Right to life and liberty is a fundamental right as no one can take away this right except the state and the procedure that has been established by the law. It has been said that no one can violates the fundamental right, if it will be violated then Supreme Court is the guardian of the rights as our rights will be protected by the court but in the criminal law there have been some instances when the accused faced the risk of losing his personal liberty at the various stages. At the beginning of the stage it has been clarified that the accused loses his personal liberty where the arrest is made by the police in pursuant of registration of FIR against him. As soon as the FIR has been lodged against the person in any matter the first action that has been done by the police officials is of arrest, at this stage the personal liberty of the person has been taken away. At another stage when the arrest has been made and the accused have to be represented in the court within the twenty four hours of the arrest and the bail has been denied by the court because of the continuance of the investigation at this stage when the assurance has been given by the counsel, the accused will give all the information and will not leave the state then also court denies the bail then the personal liberty has been taken away. In the last stage when the personal liberty has been taken away when the suspension of the sentence and the bail has been denied by the court after the conviction in a pending appeal. The Indian constitution constitutes the magna carta of individual

rights and liberty or freedom. The rights which have been enforced by our constitution are known as the fundamental rights and there are the various rights that have been not a part of Part III of the constitution and differentiate as the constitutional rights. The rights which have been described as fundamental rights are the right to equality, right to liberty, right to freedom, right to cultural and educational rights etc.

RIGHT TO EQUALITY

The doctrine of equality is the most important element under the fundamental right of our constitution and also for the legal system, being a democratic country it is very important to know about the basic structure relating to the right to equality. As our country is more titled towards the socialist system so this right applies to both citizens and non-citizens who are residing here. All the necessary steps relating to the protection of the rights of all the individuals whether they are from undeveloped cities or from backward society or they are lacking from education these things have been taken care off by our legislation and in relation with these instances the right has been protected. The Part III of the Indian constitution guarantees the fundamental rights relating to sex, caste, religion or gender and they are known as the basic fundamental rights. Under this right two points have been focused as stated that an individual right to equality before the law or equal protection of the law has been guaranteed under this article. It does not mean if the equality has been guaranteed under this article so it will outright the equality among the individuals which impractically to accomplish at that extent.

The famous author Dr. Jennings has stated in their definition about equality and he has mentioned that equality before the law among the individuals only be applied when the law is ought to be equivalent and will be applied similarly among the individuals. The basic meaning of this definition is that if the person has a privilege to sue anybody then he can also be sued for the same instance or any other crime he has done and this will be applied to all the individuals in our country hence it will be same for all the residents and there will be no discrimination can be done among the persons relating to caste, sex, race, religion or any political impact. As we know the equality before the law is a similar part of the rule of law that has been given by the famous jurist author dicey. It has stated in its rule of law that no men should be exempted from rules and regulations of law that have been given by the legislators and everyone has to follow each

individual under the same rule of law and no one will be exempted from that rule of law. The dicey has given the three rules relating to the rule of law and under these three only two rules are applicable for the Indian laws and are similar to the rule of equality. It has been stated under the first rule about the absence of arbitrary power as it says under no instance the use of the power can overshadow the supremacy of law and the person will be punished which means that except for the breach of law or rules and regulations that has been defined by the legislators the person cannot be punished.

Equality before the law is another rule that has been stated by dicey and it is also similar to article 14 which talks about equality. It has been stated under this rule of law that it will apply to all the sections of the society no one will be exempted and everyone should follow the ordinary rules that have been drafted by the legislation. There are various exceptions that have to be dealt with under this article as equality before the law does not mean that powers that are given to the public authorities are similar to the private citizens of the nation for an instance suppose that a police officer can arrest an individual for breaching the law but a private individual cannot arrest anybody. This instance cannot be considered as an infringement of law because these things are categorized by the courts in the various judgments. But it does not mean that public officers cannot be arrested they can be, but through the medium of court. The rule of the law has also been categorized by the various classes as for a military individual there are the military laws or for a medical person they work according to the rules of the medical council of India.

There are also exceptions for the president and State governors as they cannot be liable to any court it has been stated under article 361¹ of the constitution. It has been also noticed that the powers that have been conferred to the statutory bodies in India are wide at the discretionary extent and the powers that have been given on the name of ministers and other executive bodies are being misused on the name of these ministers and other executive bodies. Even the conduct of these certain individuals has been seen in the society and also administered by unique guidelines which were laid out by their professions such as legal counsellors, medical attendants and much more. These specific categories of people dealt with the special instances rather than common individuals or residents. Mentioning about equality under the constitution it has been seen in the various instances the women have faced gender inequality whether in marital homes

¹ Article 361 of Indian Constitution: Protection of President and Governors and Rajpramukhs

or at their workplace so after seeing the various instances relating to the inequality for women after the judicial decision of **R.S Singh Vs State of Punjab**² and after the reading of Anuj Garg it has been shown that various unfair decisions have been given by the court.

After R.S Singh decision the law that has been enforced by the legislators for the protection of women by enacting the Domestic violence act, 2005 which focuses upon the protection of women and various instances have been covered under this act. But instantly after the enactment it was challenged under the court of law and the question was raised against it that it only benefits the women and it will be discrimination against those men who will be falsely charged by women as they will be punished under this act because no protection was given under this act. Then it has been stated by the court that there are some provisions are given and some amendments have to be done which will be protecting men also for the wrongdoing act by women.

ARTICLE 21: PROTECTION OF LIFE AND PERSONAL LIBERTY

“No person shall be deprived of his life or personal liberty except according to procedure established by law³”. The motive of article 21 is to prevent the invading of personal liberty and dignity of an individual except to the procedure that has been established by the law. This right is so much necessary for the citizens for their existence and without this they cannot live as human beings. All the aspects of life which makes the person’s life complete have been included under this right. This article has given the widest interpretation through many judgments as compared to the other articles or the other fundamental rights. It includes many other rights of the citizen like privacy has been included under this article as there are so many rights which have been included under this article as without these rights the person’s life is unworthy as these are the basic rights which are essential and unavoidable. It have been clarified that this right is provided against the state only as for example if an act of the individual invades someone privacy or liberty then such violation would be fall under article 21 and the remedy would be provided under article 226 of the constitution or under the general law that has been established by the constitution.

² AIR 1972 PH 110

³ Article 21 of Indian Constitution.

This article includes both the citizens and non-citizens of the country. According to constitutional provisions those individuals who come merely as a tourist that personal liberty or the protection of life will be covered under these provisions. They also have rights in the country. The traditional interpretation of article 21 that has been given by the Supreme Court in the case of **A.K Gopalan V. Union of India**⁴ was that the procedure established by the law can deprive a person of his right to life. At the earlier stage the understanding of this provision was narrower and procedural. It has to be demonstrated by the state that the interference of the individual is accorded with the procedure and laid down by properly enacted law or not. It did not matter that the law was just and fair. In the present case the guarantee for the due process of law that has been declined with the substantive content. There are various dimensions that has been covered under article 21⁵ are as follows

- **Right to live with human dignity**

An Individual's life is connected with human dignity and having own jurisprudential value related to the constitutional framework is a fundamental right. Dignity refers to the individual honor and its own merits for the life. In common it is used for the protection of the status and honor of the individual, without honor and self-respect person cannot live in society. Everyone has their value and respect in society and they are living for that only. It attaches with the behavior and role of the individual that he plays to live his dignified life. It has always conveyed with deserving of respect and honor of the individuals. It is closely connected with contemporary society relating to the honor of the person or group. In constitutional framework it is used in the preamble as it means to assure the dignity of the individual with the integrity of the nation. It is attached to the integrity of an individual when he does not enjoy the rights and dignity does not exist at all. It can be said that the dignity of the citizen can be ensured when every individual of the society has a feeling that he or she is a respectable member and no one can harass and insult him or her on the basis of caste, creed, sex and status. It is protecting the civil, political and social rights of the individual so that the individual cannot be discriminated against the society in any manner. He has all the rights to live with their value and self-owned place that he has made

⁴ AIR 1950 SC 27

⁵ *Id*

for him in society. In **Maenka Gandhi vs. Union of India** ⁶the decision of the seven judge bench overruled Gopalan's case and this case becomes the starting point for the evolution of law which related to the judicial intervention for the individual human rights cases and under this case the court was also laid down the principle for depriving the right to life of an individual must be fair and reasonable and it has to be according to the procedure that has been established by law. The right to life is the most valuable fundamental right of the citizen and it has been also stated by the court of law that this right has its inherent jurisdiction over all aspects of life and has its different norms to protect the right to life and live with dignity. This right also denotes the significance of human existence and is widely known as the highest fundamental rights. The obligation has been imposed by article 21 to safeguard the right to life of every person and preservation of human life at the paramount importance. The state has the primary duty to protect the right under article 21 with a wider meaning which also includes the right to life with human dignity and if this right will be taken off then the individual cannot live as a human being and it also includes all those aspects of life which gives a fair meaning to live. Justice Krishna Iyer has given importance to the right to life and also said that the right to life does not mean about the mere existence of life living a dignified life.

In the case of **Munn V. Illinois** ⁷Supreme Court stated the term "Life" is being more important than the mere animal existence which means that this provision equally prohibits the removing of the body by amputating any body part or any organ which means to the destruction of the body or the soul of an individual and it breaks him to live a normal life with the outer world. Justice Bhagwati after listening to the interpretation of life in the way of not amputation it has been stated that the mere existence of life can be beyond the animal existence and the right to life includes the right to live with dignity and integrity in society. There are various necessities of life that goes along with it such as clothing and shelter and various other facilities that have to be provided to an individual. Everyone in society should be treated with equality and no discrimination has to be done on the basis of sex, caste, religion, color.

⁶ 1978 AIR 597, 1978 SCR (2) 621

⁷ 94 U.S. 113 (1876),

In **Peoples Union for Democratic Rights v. Union of India**⁸ it has been held that non-payment of minimum wages to the workers that have been employed in various Projects in Delhi and by not giving them payments was a denial to them of their right to live with basic human dignity and it is a violation of fundamental right under Article 21 of the Constitution. The justice has stated that the rights and benefits that have been conferred on employers that have been employed by a contractor under various sections of labor laws or codes. The Court held that non-implementation by the private contractors that have been engaged for constructing a building for holding Asian Games in Delhi, and non-enforcement of these laws by the State Authorities of the provisions of these laws was held to be a violation of the fundamental right of workers to live with human dignity that has been mentioned under article 21 of the Indian Constitution.

- **Right to livelihood**

The right to livelihood is come out from the right to life which means no person can live without the means of living and if this right is not treated as a part of the right to life then it'll be easier to deprive the fundamental right of an individual. If this fundamental right would be deprived for any individual then there right to life will be meaningless and his/her living in the society will be impossible in such circumstances. In the case **Olga Tellis v. Bombay Municipal Corporation**⁹ the payment dwellers approached the Supreme Court regarding this situation and it was stated by the court under article 21 of the Indian constitution the right to life has given a wide meaning, which does not mean that life cannot be taken away or extinguished in such instances when death sentence has been given to an accused it does not mean that state is violating the fundamental right of an accused. In relation to the right to life it is an equally important constitutional right which is the right to livelihood and without this right no person can live without the means of livelihood. The court stated that article 39(a)¹⁰ and 41¹¹ of the constitution provides the state to secure to the citizens and gives them adequate means of livelihood and right to work. If any individual has faced deprivation of his right to live hood without any procedure that has been established by the law it would be considered as infringement of the fundamental right which is conferred by the Constitution.

⁸ 1982 AIR 1473, 1983 SCR (1) 456

⁹ AIR 1986 SC 180

¹⁰ Article 39A of Indian Constitution: free legal aid to the poor and weaker sections of the society and ensures justice for all

¹¹ Article 41 of Indian Constitution: Right to work, to education and to public assistance in certain cases

Article 21 of the constitution does not deprive the right to life and personal liberty of an individual for that matter on right to livelihood and this article also insist that if the deprivation of the right of an individual is done then it would be according to the procedure of law which must be fair and reasonable. If any individual will be deprived of the right to livelihood without any fair and reasonable manner then it will deprivation of the right under Article 21 of the Indian constitution and it will be declared void. In **M. J. Sivani v. State of Karnataka & Ors**¹² the court stated that article 21 protects livelihood but it does not means that its deprivation can be extended too far or projected to the avocation, business or trade that will be injurious to the public interest or it affects the public moral or public order. It was stated by the court about the regulation of video games or prohibition of some video games will not come under Article 21 nor is the procedure which unfair or unjust.

EDUCATIONAL AND CULTURAL RIGHTS (ARTICLE 29-30)

The right is known as the key development of humanity which means the future of the nation or any country depends on the nature of the education system that has been provided to the society by its nation or by the government. The members of the constituent assembly know the importance of education but due to the lack of resources across the nation they could not provide this right as a fundamental right but mention in the directive principles of state policy. It has to be seen as a human right as an instrument for a social change that emancipates human beings and it leads an individual to liberation from occurrence. The United Nations has also recommended various meets for the re-enforcement in the various provisions that have been provided across the nations to give the right of children to free and compulsory education. Education is the only important key for the nation which creates an educated society and also prepares the coming generation for a bright future and also enables the individual to impel the capacity of the collective. The right to education act 2009 also states about free and mandatory education to elementary level students, under section 19¹³ of this act the various provisions related to drinking water, food, playground and ramps for the children who are facing disabilities and for implementing these measures the government has mentioned in the various guidelines also. There can be some discretion can be given to the school authority based on the state's economic

¹² AIR 1995 SC 1770

¹³ Section 19 of Right to education act, 2009: Norms and standards for school

status or if the school is situated under the urban pockets of the state and there is no availability of playground then the school cannot be shut down due to these measures and more harm can be done to the education system of our nation. Under section 12¹⁴ of the act it has been stated that some percent of seats in all the institutions of the state whether it is government or private or any other, has to be kept vacant so that the students from economically weaker section do not face any difficulty at the time of admission and no discrimination can be done by the schools on the basis of the financial status of the student.

Under Article 46¹⁵ of the constitution, it has been stated about the promotion of education by the state and also stated about the economic interest to the weaker section that has been surviving in our country, the promotion of the education system among these sections is very necessary because the future of our nation depends on them. Also under article 45 of the constitution the importance of education has been given as it has been stated as the basic necessity of life or for democracy. To bring the stability among the democracy, social integrity and also to eliminate the social evils from the society it is important to key give education to all the youngster and to all the individuals and it has to be mandated among the nation. In **Mohan Jain vs. State of Karnataka**¹⁶ the case was known as the *captivation fee case* in which the court has stated that the right to education has to be a fundamental right under article 21 of the Indian constitution it has been also stated that this right to education cannot be denied to any citizen by charging them higher fees known as *captivation fee*. The instances in this case were that the petitioner has challenged the validity of the notice that has been issued by the government the Karnataka Education Institution (Prohibition of Captivation Fee) Act 1984 that has been passed to regulate the tuition fee that has to be charged by the private medical colleges in the state. The two judge bench held in the judgment that the right to education at all levels across the nation is a fundamental of a citizen under Article 21 of the constitution and by charging the higher fees for the admissions that have meant to be low in the government institutions is illegal and it will be amounting to a denial of the fundamental right and also it will be violative under article 14 of the constitution for being unfair and unjust.

¹⁴ Section 12 of Right to education act, 2009: Extent of school's responsibility for free and compulsory education.

¹⁵ Article 46 of Indian Constitution: Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections

¹⁶ 1992 AIR 1858

In **Unni Krishna vs. State of Andhra Pradesh**¹⁷ the court has stated that the decision after the correction has been given by the court in Mohini Jain case, in which there was five judge bench and the ratio of the judgement was 3:2 in which it was held that right to education is a fundamental right under article 21 of the constitution as it has been stated that this right directly flows from right to life. But the court overruled the mohini case judgement and held that right to free education is available only for the children until have achieved the age of fourteen years but along with this the court also stated that it is based on the obligation of the state to provide education which will be limited to the state economy capacity and development. The obligation that has been created is present under article 41 and 46¹⁸ of the constitution and it has been stated that these obligations can be discharged by the state by establishing their own institution on the respective places that have been allotted to the state for the specific purpose or they can also grant affiliation to the private institutions. The Supreme Court in a specific manner has interpreted various provisions of part III and IV of the Indian constitution and has made the right to education a fundamental right. The doctrine of waiver cannot be applied to fundamental rights and also under this right because every child has a right that can't be waved off.

Under Article 21A of the constitution the specific target was children from a particular age group which was minor and at the elementary level so the right to education can be enforced at the mandatory stage and no rights of the children can be waived off. The important aspect that has been mentioned under the article related to education is to ensure the basic education of elementary level and it is not supposed to be related to any religious practice or any kind of specialized topic that will create harmony among the children. There are some instances in which some of the institutions have been established by religious minorities and they only chose to give specialized education among the children's whoever take the admissions in these schools and they only talks about some specific language or only one religion on which their school is based but in the practical situation such institutions has the right to do so. Supreme Court in various cases has stated that under article 30¹⁹(1) of the constitution related to the establishment of schools and it is clearly stated that these schools will not only focus on religious things but also focuses on formal school education.

¹⁷ 1993 AIR 2178

¹⁸ *Id at 15*

¹⁹ Article 30 of Indian Constitution: Right of minorities to establish and administer educational institutions.

It has been stated in the constitution that there are no express restrictions related to the educational scenario but the judicial interpretation has not issued any binding order that minorities will have to open such institutions which could serve both the purposes and the court has also presumed that ordinarily all the minorities would have to wish themselves by giving the modern education among their children and this does not mean that religious education should not be given to them, it is also necessary to give all types of education to make them honorable citizens. In **TMA Pai Foundation vs. State of Karnataka**²⁰ the formulation of the scheme under Unni Krishnan case has been done and it was meant to be unreasonable restriction under article 19²¹(6) of constitution it has been resulted into the shortfalls of revenue and making it difficult for the educational institutions to run in a specific manner without any shortage. All the order and directions that has been issued by the state in the direction Unni Krishnan's case was held to be unconstitutional. The court has also observed the right to administer and establishment of the institutions which includes the right to admit students with a reasonable fee structure so the governing body can be constituted and the staff can be appointed and necessary disciplinary actions can be taken.

RIGHT TO FREEDOM

The right to freedom mainly consist of speech and expression, to practice any religion etc. In this aspect we will be covering the wide aspect related to freedom and also be covering most areas of law which is necessary for an individual to live with human dignity. Basically right to freedom of speech and expression is stated under article 19²² of the Indian constitution it states that all individuals or citizens have the right to freedom of speech and expression. It means that an individual can express their views by speaking, writing or by any other mode he will be able to express it. Basically it includes an individual's expression through any medium which is necessary to express it and this can also be done by the medium of press or media or by the newspapers. The propagation of the ideas with a free mind is the necessary objective and this can be done through the press itself. Basically these ideas are secured by the freedom of circulation

²⁰ W.P 1297 of 1984

²¹ Article 19 of Indian Constitution: Protection of certain rights regarding freedom of speech etc.

²² *Id at 21*

and the liberty of circulation is as much as important as the liberty to the publication and without it the publication would be of little value even the freedom of speech and expression includes the liberty of the propagation and it is not only dependent on the individuals views only. This also includes the right to propagation or the right of publication in which the publication of individual's views has to be done to express it among the nation otherwise if it is not included in the fundamental right then it cannot be included as freedom and would also not include the freedom of press as the fundamental right. Among with these rights the reasonable restriction are also imposed under article 19²³(2) of Indian constitution so that expressions or speech or any other thing that has been included under the freedom of speech and expression can make irrelevant allegations against the judiciary.

It is necessary to note that these restrictions can be placed as much as by an action of the state by its inaction which means that it is the failure on the part of the state to guarantee this fundamental right to all the citizens rather than irrespective of circumstances and the class or the society to which they belong and this right would be constituted as a violation under article 19(1) (a) of the constitution. It has been stated that this right is regarded as the most basic right among the other rights that have been mentioned under the elements of democracy which allows the individuals to participate socially in the political process of the country. This right as a greater extent is giving a wider scope to the individual life for living with dignity with a cast experience of political and social life and also this right is only available to the Indian citizens not for the foreign nationals. The right is not absolute in nature and allows the government to enact laws and impose restrictions in the interest of the integrity of the nation. It has been mentioned under the preamble of the constitution that the citizens of India have declared the solemn for the protection of liberty and expression among the nation. The state is also under an obligation that creates the conditions in which all the citizens can be effectively and efficiently enjoy the rights that have been given to them whether as a constitutional right or by the means of fundamental rights. In **Romesh Thappar v State of Madras**²⁴ the Supreme Court has stated that freedom of speech and expression under article 19 of the constitution also includes the freedom to propagate the ideas which have been ensured by the freedom of publication and it has been also stated that

²³ *Id at 21*

²⁴ AIR 1950 SC 124

publication is the little value without the circulation. It has been also observed that article 19²⁵(2) of the constitution is not absolute and reasonable restrictions can be imposed under this right for certain reasons which can affect the sovereignty and integrity of the country. This has been said that this also includes the right to express the individual views by expressing and the opinions on any issue whether it will be done by writing or by words of mouth.

The Indian constitution has made a secular system for protecting the religion of all the citizens that are residing in the nation with equal regards but under the framework of the constitution the enhancement related to the protection of their religious beliefs has been done in a progressive manner and the state has done under the consistent way. The state has also approached towards the religion in these constitutional provisions that have been provided by the legislators so the principle distance can be maintained among the religion. The states intervention in religious beliefs is based on substantive values such as public order, morality or integrity of the state. The progress will only be done if there will be some betterment of the society otherwise not. In the context of the religious beliefs the Indian courts have given the judicial definition of the religion that has been protected under the secular provisions of the constitution and they have also protected the matters of religion under the same provisions from which the matters of secular interest are based or related to the religious practices which were liable to maintain the social reforms and the common good among the nation or the society. Our constitution guarantees every citizen to practice any religion or they can follow any religion of their choice as there are many religions that have been practiced in our nation according to this right they have to protect and spread peace among or through their religion and if there is disharmony has been done in the religious beliefs then it is the duty of the state to protect the harmony of the religion and punish the offenders who have been using the belief of the citizens gaining benefits by creating the disharmony among the citizens.

Religion is a matter of belief or faith among the citizens and the constitution has known the importance of it and has given it as a fundamental right and also protecting it. Being a secular nation the country has protected the religious beliefs or the state can introduce religious reforms and can protect the minority by formulating some policies on the religious beliefs. Our nation has always followed the concept of neutrality and positive roles towards religious beliefs. For

²⁵ *Id*

relating to the secular state in the case of **S. R. Bommai v. Union of India**²⁶, the court has stated that secularism is the basic element or feature of the constitution and has also observed that politics and religion cannot be mixed because if the state follows the unsecular regulations of policies then it will be contrary to the constitutional provisions and being in a secular country all are equal and should be treated in an equal manner and follows the right to equality. Freedom of religion has been guaranteed under the fundamental rights to all the citizens of the country and relating to the religion while mixing up with the political nature then it has no place in the matters of state.

CONSTITUTIONAL RIGHTS

INTRODUCTION

The fundamental rights are the basic rights that have been granted to every citizen of India without any discrimination of their caste, sex, creed or religion and these are guaranteed under Part III of the constitution. But the constitutional rights differ from the fundamental rights of the constitution as these are the supreme rights are guaranteed under the constitution which means if any law contradicts these rights then it will be declared null or void by the constitution. These rights are not basic in nature and do not apply to every citizen as they are not similar to the fundamental rights. The rights which are not covered under Part III are known as the constitutional rights such as the right to property, right to vote, legal drinking age, right to drive a vehicle etc. there are various aspects that are cover under the constitution and depends on the age of the person and those rights are the constitutional rights. If an individual has attained the age of majority which has been mentioned by the legislation then rights can be conferred by an individual and he is free to enjoy those rights without any restriction but it has to be enjoyed under the law provisions and no violation of these rights has to be done by any citizen. These rights can be interpreted and created by the law depending on the various instances or from case to case basis. For an example Right to property has been stated under article 300A of the constitution which means it is not the fundamental right as it can be taken away if the legislators have signed the act then it will be taken away from an individual after the authority of law has

²⁶ AIR 1994 SC 1918

been given. If the legislators have signed an act under this right then it will be enforceable and the right will be legally valid. In the earlier instances this right was the fundamental right before signing the act but now it can be taken away because it is not the fundamental right.

RESTRICTIONS AND LIMITATIONS UNDER CONSTITUTIONAL RIGHTS

There are some limitations that have been imposed on the state by the various provisions of the Indian constitution and due to these provisions the rights of an individual gave rise to the corresponding aspects which can be enforced in the court of law if the legislative or the executive body of the nation will violate these rights. Under article 256²⁷ it has been stated about the levying of the tax which can only be collected by the authority of law so this provision confers the rights on an individual which will not be subjected to arbitrary taxation by any executive and if any tax has been levy on an individual by the executive without any legislative sanction then the relief can be made from the court of law otherwise no action can be taken upon the levying of the tax. It has been also stated by the court of law, if the tax has been levied from an individual without any legal sanction then it has to be refunded because it will violate article 265²⁸ of the constitution. The new provision has been mentioned in regarding this aspect which is under Article 300A of the constitution and under article 301 it has been stated about the trade and commerce throughout the territory of India and various provisions related to it have been mentioned under this article. This states about the restriction on the trade, if the legislation or executive impose any restrictions upon the freedom of trade which has not been mention under Part XIII of the constitution and the individual has been affected by those restrictions then he can challenge the action that has been taken by the legislators in the court of law and the appropriate proceedings can be conducted for resolving the issue.

²⁷ Article 256 of Indian Constitution: Obligation of States and the Union

²⁸ Article 265 of Indian Constitution: Taxes not to be imposed save by authority of law

MORAL RIGHTS**INTRODUCTION**

The moral rights or the rights are defined by the society on which an individual is being judged or the character of a person defines their moral values in a society. It is decided by the society that the person has gained his moral values in a good manner or not and the behavior of the person plays an important role in a society from which it has been seen he has gained good rights or not. An individual choices is mostly dependent on his decisions that are taken in their life and it is mostly dependent on the larger extent on the moral rights he or she bears. In normal terms these rights defines the good and bad or right or wrong of the person's life which leads them to live with dignity and maintain some social integrity in the society. The moral rights are so much necessary for the human beings which leads them to good decision making, if the moral values that has been bear by an individual are good since childhood. There are various instances which can give the best examples of an individual for judging that he has gained some good moral values in his life or not, it can be stated from the initial stage by helping other individuals who are in difficulty it does not mean you see a person in a difficulty and you left it from there, you have to help an individual at that extent you are capable off. You don't have to hurt anybody without any reason because it doesn't means to be good to hurt somebody and it not only includes human beings but also those creatures that has been made by god. If you hurt or cheat someone then it seems to be wrong in a society and it is against the moral values that has been taught to you since your childhood. We have seen many instances during the adult age, individuals doesn't respect their parents or grandparents calling by their name or using foul language in front of them thinking of it they seem to be cool in nature. But it seems to be so much disrespectful for a person who hears those words or language who have taught you their whole life and given good moral values and also helps you to survive at your difficult times and manage to resolve all the problems that has been faced you and what you give at your extent is some foul language, disrespect that has not to be expected by them.

ASPECT OF MORAL RIGHTS UNDER INDIAN SOCIETY

In our Indian society the parents are known as our gods of the society for their children so it means if you disrespect your parents you are disrespecting your god and society will judge you as a bad guy who never learned to give respect to their own parents. In our childhood we always learn from the quote “*you give respect, you take respect*” this only means if you give good things to society then as a result you will also receive something good. The Indian society has given the higher values to the moral values from the earlier times as they give the higher regard to the culture they follow. From childhood the individuals are taught about their culture to follow the tradition of their culture as they have to represent their society in the nation and they are taught right and wrong as per the society standards. The first lesson that has been taught to the individuals are of being a good moral character as they have to maintain their good moral and in the culture that has been followed in India smoking, drinking is being taboo in the society especially for the girls. But due to the advancement of tradition and time most of them are not following their culture and women on the name of equality are also being indulged in such activities that will dishearten the Indian society and they are reflecting the bad morale in the society. But there are some exceptions and every society has so this does not mean the wrongful activities that has been done by some of the individuals will lead the society to wrong direction there are also some good individuals who maintain their good morale’s in the society giving their best for the good of the society.

CONSUMER RIGHTS**INTRODUCTION**

If we look out at the growing of the economy among the nation and would take into the consideration of the International aspects also then there are many business practices are running across the nation and in relation to that we have to notice about the consumer protection rights because the consumer is giving the huge amount of money in exchange of the goods whether they are buying from the domestic market or from the international markets they are expecting the better quality of the products in exchange of the amount of money they are spending. But to the developments and innovations that have been taking place affects the quality, availability and

safety of goods and services that have been provided by the companies. But to do these developments the customers have faced exploitation many times in the form of quality, high prices, and the services that have been provided by the companies, black marketing and much more. The consumer protection act 2019 has covered the various new aspects of law and various amendments have also been done under this act and more transparency among the consumer, retailer channel has been given under this act with various penalties. The transaction for the purchasing of goods that have been done under this act would be covering both offline and online mode of shopping. The CPA, 1986 aims to protect the rights and interest of the consumers and but the provisions and the frameworks that have been present in the 1986 act has suffered from some limitations. Despite having these provisions and limitations this act fails to protect the consumers from unsurplus exploitation that has been faced by them and other violations that have been committed by the companies against the consumers.

INSTANCES OF CONSUMER PROTECTION ACT

The main issue that has been raised under this act was that the product liability which has been resolved under the present act of 2019 that has been enacted by the legislation. At the time of this act various allegations have been made against Maggie's noodles and various defects that has been found in the Volkswagen cars which have raised the alarm relating to the ineffectiveness of the laws also caused harm to the consumers so in seeing of these problems it was also felt by the legislators to do some amendments and introduce new laws under the act so that the liability can be imposed upon the manufacturers, dealers and the distributors which are dealing with such products. The new act focuses on the complaints that have been done by the consumers related to online platforms such as e commerce websites. It has been also stated by the court that the interest of the consumer has to be kept in the primary place and the consideration is an essential commodity that has to be available to a common man at a fair price and this has to be the priority over the other things. The consumer has various rights under this act as they are right to be heard, to seek redressal, right to information, right to protection, right to consumer education. As these are the basic rights which can be avail by the consumers and various changes are also done under this. From right to be heard means if the consumer has been exploited by the retailer or any other company than it should be heard by the competent authorities or he can file a suit against that

company and take the matter to the redressal agencies so that justice can be done. Every consumer has the right to seek information of the product he is purchasing from the store, every minute detail has to be given to the consumers no information has to be kept hidden from them. There are various agencies and forum has been enacted for the consumer where he can seek justice related to the exploitation matter and compensation has been decided under the new act with various other matters so that burden of courts should be kept low. The major changes that have been done in the act are on the pecuniary jurisdiction, ADR and other changes that are mentioned under this act. In pecuniary jurisdiction, the limit for the jurisdiction at the district forum has been increased up to Rs. 1crore, the limit for the jurisdiction at the State commission is Rs.1crore to 10crore, and the limit for the jurisdiction at the national consumer redressal commission is 10crore and more.

The review power has been given to three of the commissions which were not present in the previous act. Along with this the mediator will be appointed at the initial stage of the case and it has to be resolved with the help of the mediator, if the case is not settled by mediation then it will further go on the respected forum. The 2019 Act also provides for filing of Complaints before the District Forums electronically in accordance with the rules which are yet to be prescribed by the Government. The product liability has also been introduced in the act in which the product seller and manufacture will be liable if they sold the defected product to the consumer and they have to compensate for any harm caused to a consumer by such defective product. The ground commonly was taken by E-commerce websites that they only act as aggregators which will now not be answerable before the court anymore and the liability will be on the manufacturers for the defective product. The section 69 is also added in the act which is stating about the coadunation of delay. If the court finds out that the fake complaint has been filed by the consumer then they have to pay Fifty thousand fine. The consumer can also file the case in their own jurisdiction if the consumer have bought the product from the other city.

There are various benefits that have been gained by the consumers under this act they were:

- The consumers are protected against the exploitation that has been done by the companies or against the marketing of the goods and which are harmful to the dignity of an individual

- The consumers integrity and sovereignty are guaranteed under the goods that have been chosen by them as they have been entitled to a speedy and inexpensive relief that has been given to them with various commissions under this act
- The appellate authority is available for the consumers to protect certain rights and they are also availing the legislation for their right to safety, right to choose and they have to be heard before the appellate authority
- For the arbitrary trade practices the penalties have been imposed and also the compensation amount has been given before each tribunal for deciding the case.
- The act has also proposed the various provisions for the product liability for instance if the product has defected then the service provider or the dealer is responsible for the product, he has to give the amount back without any deductions or provide the new product to the consumer.



BRILLOPEDIA