



# COMPARATIVE STUDY OF FUNDAMENTAL RIGHTS IN INDIA AND USA

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## ABSTRACT

In today's world, fundamental rights are necessary, and each person has rights that make his or her life easier. The rights that are granted to an individual by the constitution are what constitute a person's fundamental right. The fundamental rights of people in two nations, India and the United States of America, will be discussed in this paper. There will be a discussion about how both countries ensure that the country's laws are properly enforced and understand the needs of its citizens. There will be a discussion about how India and the United States of America share fundamental rights. The few rights that exist in the two nations are also going to be the subject of discussion. Understanding the differences between the two major democracies in the world is the primary objective of this paper.

Keywords: Fundamental rights; Freedom; America; India.

## INTRODUCTION

Any person's fundamental rights are always important. It has been observed that each nation's constitution guarantees its citizens a unique set of fundamental rights. To enable its citizens to lead better lives, every nation grants them fundamental rights. However, it has been demonstrated that democratic governments have significantly more fundamental rights than autocratic ones. This difference is primarily due to the fact that a democratic government is elected by the people of the country, which means that it also works to grant rights to its citizens. The individual's fundamental rights are not given any weight in an autocratic government. The fundamental rights that each nation guarantees to its citizens will be the subject of discussion in this paper. India, which is the largest democracy in the world, and the United States of America, which is the world's oldest democracy, will be compared. The fundamental rights that are afforded to the people of these two nations will be the subject of the comparison. The time period during which these two nations made changes to their fundamental rights will be the subject of a discussion.

## **AMERICA FUNDAMENTAL RIGHTS**

In 1787, the first draft of the American constitution was written. However, it is essential to keep in mind that the American constitution did not contain any fundamental rights for its citizens in the first place. People in the country were very critical of this lack of fundamental rights<sup>1</sup>. The press provided another illustration of fundamental rights in the form of the British Magna Carta and the French Declaration of the Rights of Man. Because the people of these two nations had fundamental rights, the powerful American government was compelled to consider drafting those rights. In 1791, ten amendments to the American Constitution included the Bill of Rights. As a result, the Americans were the first to make the Bill of Rights a part of the Constitution.

## **INDIA AND FUNDAMENTAL RIGHTS**

India's fundamental rights history is very different from America's. Till 1947, the British ruled India. However, the majority of India's leaders and congress during British colonial rule demanded fundamental rights from the British. Prior to independence, they were more concerned with obtaining the country's citizens' much-desired fundamental rights. The fact that British citizens were violating their human rights was the primary motivation for the demand for fundamental rights. As a result, they were seeking rights that could help them live better lives. The leaders of India began working on the constitution shortly after the country gained independence in 1947. They were also aware that the very first constitution had to include individual rights.<sup>2</sup> It would not be incorrect to assert that the Indians' circumstances under colonial rule made them aware of the significance of people's rights. The people's fundamental rights were included in the first draft of the constitution after independence. In the very first constitution, the creation of the people's fundamental rights was motivated by yet another factor. Because Indian society is divided into numerous religious, cultural, and linguistic groups, it was necessary to declare fundamental rights to instill confidence and security in the populace.

## **SIMILARITIES**

The people of India and the United States of America have a lot in common when it comes to their fundamental rights. The fact that many of the rights in the Indian constitution are derived from those in the United States constitution is the primary reason for the similarity. In order to ensure that no significant rights were left out, the fundamental rights in both nations were regularly amended. Freedom of speech is one of the fundamental rights that have been observed in both nations in common. Both countries' constitutions guarantee individuals freedom of speech and empower individuals by providing ample opportunities to address the challenges or issues they face<sup>3</sup>. It has also been observed that the country's government ensures that these rights are exercised and that no one in the country is prevented from exercising them.

## **FREEDOM OF SPEECH**

The right to equality, freedom of speech, and assembly, among others, are additional rights. It has been observed that citizens of both nations are provided with ample opportunities to live their lives to their full potential and are spared any obstacles. One thing that has been noticed about democratic governance is that it gives people the chance to live better lives. This is one of the factors that contributes to a person's quality of life, and both India and the United States of America make it a point to ensure that they make sufficient adjustments on a regular basis in order to provide their citizens with the best possible way of life. India is home to dozens of communities, whereas America is a nation of diverse cultures. The natural world recognizes the right to religious freedom and ensures that no one

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<sup>1</sup> Madison, J. (2022). Notes of Debates in the Federal Convention of 1787. Ohio University Press

<sup>2</sup> Sharma, B. K. (2022). Introduction to the Constitution of India. PHI Learning Pvt Ltd.

<sup>3</sup> Pohjonen, M., & Udupa, S. (2017). Extreme speech online: An anthropological critique of hate speech debates. International Journal of Communication, 11, 19.

is compelled to practice a particular religion or that they can do so without difficulty. In both countries, even minorities have the authority to practice their religion and ensure that they are safe from harm<sup>4</sup>.

## **DIFFERENCES**

The majority of people are aware of the many similarities between fundamental rights in India and the United States. However, there are also some differences between the two fundamental rights. Because these differences are so insignificant, the majority of people are unaware of the disparity in fundamental rights between these two nations.

## **ORIGIN OF FREEDOM OF THE PRESS**

It is believed that the current system relies heavily on press freedom. When compared to an autocratic government like China, press freedom is quite high in a democratic nation. It was discovered that the United States' constitution did not include press freedom as a major component<sup>5</sup>. The First Amendment guarantees press freedom, but India's Article 19(1)(a) makes it implicit in freedom of speech and expression. This significant distinction demonstrates that the Indian constitution recognizes the significance of press freedom and ensures that they are protected by the appropriate section.

## **PETITION TO THE SUPREME COURT**

The petition to the supreme court is also regarded as an important factor in the current situation and a personal right. However, this necessity has been viewed differently in India and the United States of America. In contrast to the United States, where the term "government" has a broader connotation and encompasses not only the executive but also the higher judiciary, petitioning the Supreme Court is a fundamental right in India. It would not be incorrect to assert that India's approach to the petition is superior. Because it is the highest court in the nation, they are aware of the significance of a person anticipating the Supreme Court. It demonstrates that India has been successful in providing fundamental rights to those in dire need.

## **RIGHT TO BEARING ARMS**

The country's use of weapons to kill innocent people is one of the most frequently covered topics in the media. The high number of shootings in the country is attributed to the fact that the majority of Americans now own firearms. This is due to the fact that the right to keep and bear arms is a fundamental right under the Second Amendment to the United States Constitution<sup>6</sup>. Because of this, a person can have weapons and their home without being questioned. In contrast, the situation is different in India, where not only are arms strictly regulated but there is also no such fundamental right. Since people do not have the right to bear arms, there have never been any shootings in the country. Only those with a valid license can keep their arms. One factor that has contributed to reducing the number of unnecessary killings in India is this.

## **RIGHT OF PROPERTY**

It is thought that a property right is an important part of the world right now. The significance of the right to importance has also been recognized by both nations. The right to property, on the other hand, is treated differently in each nation. In 1978, India abolished the Right to Property as a fundamental right. In a welfare state, it remained a human right and a constitutional right under Article 300A<sup>7</sup>. Article 300 A of the right to property states that only the government has the authority to take away an individual's immovable property. It is still a fundamental right in the United States because no property can be taken away without just compensation.

<sup>4</sup> Mustafa, F., & Sohi, J. S. (2017). Freedom of religion in India: current issues and supreme court acting as clergy. *BYU L. Rev.*, 915.

<sup>5</sup> Lada, G. (2018). The USA president Donald Trump's freedom of press policy in American mass media.

<sup>6</sup> Schelling, T. C. (2020). Arms and influence. In *Arms and Influence*. Yale University Press.

<sup>7</sup> Bindu, G. K. (2021). CONSTITUTIONAL RIGHT TO PROPERTY-A REVISIT. *National Journal of Real Estate Law*, 4(2), 8-15.

## **BAIL TO ACCUSED**

In India and the United States of America, bail can be granted in a variety of ways. It has been noted that the United States Constitution's 8th Amendment stipulates that an accused person shall not be denied bail, that the imposed fine shall not be excessive, or that cruel punishment shall not be inflicted. Because of the Supreme Court's well-established precedents under Article 21<sup>8</sup>, these rights are also available to Indians.

## **CONCLUSION**

According to the above discussions, both India and the United States of America provide their citizens with fundamental rights in their own unique ways. It has been observed that the fundamental rights granted to individuals in India and the United States of America share few similarities. This is because the Indian constitution borrows many rights from the United States constitution. However, the country is currently experiencing some events as a result of significant differences in fundamental rights. In the United States, having arms is a fundamental right; however, in India, it is not regarded as a significant fundamental right. In contrast, bail is granted to an individual in each nation in a different manner. It would not be incorrect to assert that the world's largest and oldest democracy views many issues from a different angle.

## **REFERENCES**

- Bindu, G. K. (2021). CONSTITUTIONAL RIGHT TO PROPERTY-A REVISIT. National Journal of Real Estate Law, 4(2), 8-15.
- Lada, G. (2018). The USA president Donald Trump's freedom of press policy in American mass media.
- Madison, J. (2022). Notes of Debates in the Federal Convention of 1787. Ohio University Press.
- Mustafa, F., & Sohi, J. S. (2017). Freedom of religion in India: current issues and supreme court acting as clergy. BYU L. Rev., 915.
- Nishad, U. (2021). Bail A Right of Accuseae on the Discretion of the Court: A Study Within the Ambit of Indian Criminal Justic System. Journal homepage: www. ijrpr. com ISSN, 2582, 7421.
- Pohjonen, M., & Udupa, S. (2017). Extreme speech online: An anthropological critique of hate speech debates. International Journal of Communication, 11, 19.
- Schelling, T. C. (2020). Arms and influence. In Arms and Influence. Yale University Press.
- Sharma, B. K. (2022). Introduction to the Constitution of India. PHI Learning Pvt Ltd

<sup>8</sup> Nishad, U. (2021). Bail A Right of Accuseae on the Discretion of the Court: A Study Within the Ambit of Indian Criminal Justic System. Journal homepage: www. ijrpr. com ISSN, 2582, 7421.