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The Evolution of Human Rights in India

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ABSTRACT

The Constitution of India lays down the basic structure of a nation's polity that is built on the foundations of noticeable fundamental values. The vision of our founding fathers and primary objective of India which they wanted to achieve through the Constitution are contained in **the Preamble, the Fundamental Rights and the Directive Principles of State Policy**. Based on the Objective Resolution (that defined the aim of the Constituent Assembly) moved by late Prime Minister of India Shri Pandit Jawaharlal Nehru in 1946, our Constitution gave institutional expression to these fundamental commitments : equality, sovereignty, liberty , democracy and a cosmopolitan identity. The **Universal Declaration of Human Rights (UDHR)** was adopted by the United Nation General Assembly in 1948. This UDHR declaration represents the first global expression of human rights to which all human beings are entitled. It is described as the "International Magna Carta". The Universal Declaration of Human Rights is a landmark document in the history of human rights. It begins, for the first time, fundamental human rights to be universally protected and it has been translated into over 500 languages. It is universally recognized that Human right and Fundamental Freedoms are the birth right of all Human being. The objective of study is to investigate the Historical Development of Human Right and analyze the philosophical thinking.

KEYWORDS

The Preamble, the Fundamental Rights and the Directive Principles of State Policy, Right, Equality, Liberty , Democracy, Sovereignty.

DEFINITION

Human rights are rights that every human has by virtue of his or her human dignity.

Human rights are the summation of individual and collective rights laid down in constitution of all State and international law.



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Human rights are universal , inalienable & inviolable , indivisible and interdependent.

Human Rights are rights to which all humans are entitled merely by virtue of being humans.They derive from the intrinsic dignity of human beings. They are essential for human survival and development.

Fundamental Rights is contained in Part III (Articles 12 to 35) of Constitution of India. The development of constitutionally promised human rights in Constitution of India was inspired by remarkable examples such as **England's Bill of Rights (1689), the United States Bill of Rights and France's Declaration of the Rights of Man.**

Rights are norms and rules of interaction between people. They place limitations and obligations upon the actions of the state and individuals or groups.

Rights are defined as claims of an individual that are essential for the development of their own self and that are recognized by society or State. These are legal, ethical, and social principles of freedom and are the fundamental normative rules and regulation about what is allowed to people, according to some legal system, social convention, or ethical theory. Rights are being regarded as established pillars of society and culture. Rights are what we want others to do for us whereas the duties are those acts which we should do for others.

Thus, a right comes with an obligation to show respect for the rights of other human beings. If we have the right to enjoy public facilities such as education or transport or health services, it becomes our duty to allow others to avail the same. If we have the right to freedom, it becomes our duty not to misuse and harm others.

FUNDAMENTAL RIGHTS AS HUMAN RIGHTS

Fundamental Rights are very essential for the well being of every citizen. People across the world have always struggled against injustice, exploitation and inequality for the creation of better surroundings, better living conditions and preservation of the human dignity. Efforts to avail such rights to all human beings have been made at the global level also by recognising various rights which are popularly known as Human Rights. The **General Assembly of the United Nations(UNGA) adopted Human Rights in 1948** and enshrined them in **Universal Declaration of Human Rights**.

Some of the Human Rights are: Equality before Law, Right to Education, Right to Marriage and Family, Freedom of Thought, Conscience and Religion, Freedom from Discrimination, Right to Life, Liberty and Personal Security, Right to Free Movement, Right to Peaceful Assembly and Association and Right to



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Participate in the Cultural Life of the Community. If we carefully examine the above mentioned rights, you will realise how important the Human Rights are. Many of the Human Rights have found place in the Chapter on Fundamental Rights(Part-3) in the Constitution of India. The Human Rights which could not find place under the Fundamental Rights have been included in the Chapter on Directive Principles of State Policy(Part-4). Moreover, the National Human Rights Commission was founded in 1993 by the Government of India to guarantee that the Indian citizens also enjoy those rights. Human rights are fundamental, universal, and absolute : fundamental because of they are inalienable; universal because of they belong to all humans everywhere; and absolute because of they are basic to a real living.

Human Rights in India

Fundamental Rights are mentioned in Part III of the Constitution from Articles 12 to 35. The framers of the Constitution of India achieved inspiration from the Constitution of USA (i.e., Bill of Rights). Part III of the Indian Constitution is rightly described as the Magna Carta of India. It contains a very long , detailed and comprehensive list of 'justiciable' Fundamental Rights.

The Fundamental Rights are guaranteed by the Constitution of India to all persons without any discrimination like religion, race, caste, place of birth, sex. They uphold the equality & the dignity of the individual, the larger public interest and unity & integrity of the nation. The Fundamental Rights are meant for promotion of the ideal of political democracy. It prevent a despotic as well as authoritarian rule in the country, and protect the liberties and freedoms of the people against an invasion by the State. They operate as limitations on the tyranny of executive and arbitrary laws of legislature. In short, they aim at establishing 'a government of laws and not of human'. The Fundamental Rights are named so because they are guaranteed and protected by the Constitution of India that is, the fundamental law of the land. They are 'fundamental' in the sense that they are so essential for holistic development (intellectual, material, moral and spiritual) of human beings.

The Preamble, the Fundamental Rights(Part 3)and the Directive Principles of State Policy(Part 4) reflect the principles and provisions of the Universal Declaration of Human Rights (1948).

The four ideals of the Preamble are aimed at the promotion and encouragement of human rights.

They are as under:

Justice in social, economic and political spheres



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Liberty of thought, expression, belief, faith and worship

Equality of status and opportunity

Fraternity assuring the dignity of the individual

The Fundamental Rights under Part-III of the Constitution contain an elaborate list of civil and political rights divided into six categories:

- (1) Right to equality
- (2) Right to freedom
- (3) Right against exploitation
- (4) Right to freedom of religion
- (5) Cultural and educational rights
- (6) Right to constitutional remedies

The Directive Principles of State Policy (Part-IV of the Constitution) comprise socio-economical and cultural rights. It can be categorised into three broad categories, viz.,

- (1) Socialistic Principles
- (2) Gandhian Principles
- (3) Liberal-Intellectual Principles

Besides the Fundamental Rights included in Part-III, there are certain other rights contained in other parts of the Constitution—for example, the right to property (Article 300-A) in Part-XII of the Constitution.

In the course of time, the Supreme Court has also expanded the scope of human rights as mentioned in the Fundamental Rights. It declared a number of human rights as an essential and integral part of fundamental rights, though they have not been specifically mentioned in Part-III of the Constitution. Such fundamental rights are right to health, right to speedy trial, right against torture, right to privacy, right to travel abroad, right to free legal aid, and so on.

In apart from these, the various laws enacted by the Parliament and the State Legislatures contain a number of human rights, particularly for the vulnerable sections of the society. Some such laws are the Bonded Labour System (Abolition) Act, the Protection of Civil Rights Act, the Persons with Disabilities Act, the Minimum Wages Act, etc.

The Protection of Human Rights Act (1993) defines human rights in India as the rights relating to life, liberty, equality and dignity of the individual protected and guaranteed by the Constitution or represented in the International Covenants and enforceable by courts in India. **The International Covenant on Civil and**



Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations(UNGA) on December/1996 and such other Covenant or Convention adopted by the General Assembly of the United Nations(UNGA) as the Central Government may, by notifications, specify.

The Indian Government also acceded to these two International Covenants on April/1979.

The Indian Constitution and the laws of Central and state legislatures not only consist of various human rights but also provide for the establishment of national and state commissions for the protection and promotion of these rights.

FEATURES OF FUNDAMENTAL RIGHTS

- Fundamental rights are not absolute but qualified. The state can impose reasonable restrictions on them. However, whether such restrictions are reasonable or not is to be decided by the judiciary. Thus, they strike a balance between the rights of the individual and society as a whole, between individual liberty and social control.
- All of them are available against the arbitrary & illegitimate action of the state. However, some of them are also available against action of private individuals.
- Some of them are negative in character i.e., place limitations on the authority of the State, while others are positive in nature, conferring certain privileges on the persons.
- They are justiciable means, allowing persons to move the courts for their enforcement, if and when they are violated.
- They are defended and guaranteed by a highest Court of India.
Hence, the aggrieved person can directly go to the Supreme Court, without by way of appeal against the judgement of the high courts.
- They are not sacrosanct or permanent. The Parliament can repeal or abrogate them but only by way of constitutional amendment act and not by an ordinary act. Moreover, this can be done without affecting the 'basic structure/part' of the Constitution.
- They can be suspended during the operation of a National Emergency(Article 352) except the rights guaranteed by Articles 20 and 21. Further, the six fundamental rights of Indian Constitution guaranteed by Article 19 can be suspended only when emergency is declared on the grounds of war or external aggression (that is, external emergency) and not on the ground of armed rebellion (that is, internal emergency).



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- Their scope of operation is limited by Article 31-A, Article 31-B and Article 31-C.
- The applicability of fundamental rights to the members of armed forces, para-military forces, Central & State police forces, various intelligence agencies and analogous services can be restricted or abrogated by the Parliament (Article 33).
- Their application can be limited while martial law is in force in any area. Martial law means 'military rule' imposed under abnormal situations to restore law and order (Article 34). It is different from the national emergency.
- Most of the fundamental rights are directly enforceable/self-executory while some of them can be enforced on the basis of a law made for giving effect to them. Such a law can be made only by the Parliament of India and not by state legislatures so that uniformity throughout the country is ensured (Article 35).

SIGNIFICANCE OF FUNDAMENTAL RIGHTS

- ✓ They constitute the backbone of democratic system in the country.
- ✓ They provide an indispensable conditions for the material and moral protection of man.
- ✓ They serve as a bulwark of individual liberty.
- ✓ They facilitate the rule of law in the country.
- ✓ They protect the interests of minorities and weaker sections of society.
- ✓ They strengthen and protect the secular fabric of the Indian State.
- ✓ They check the absolutauthority of the government.
- ✓ They lay down the foundation stone of fraternity, equality and justice.
- ✓ They make sure the dignity and respect of individuals.
- ✓ They facilitate the participation of human beings in the political and administrative process.



Fundamental Rights available to All	Fundamental rights available to both citizens and foreigners (except enemy aliens)	FR available only to citizens and not to foreigner
Article 17 and Article 18	Article 14, 20, 21, 21A, 22, 23,24,25,26,27,28	Article 15, 16, 19, 29 and 30

FUNDAMENTAL RIGHTS IN THE INDIAN CONSTITUTION

During freedom struggle of India, well-known leaders of the Indian freedom movement had realised the importance of rights and demanded that the British rulers should respect rights of the people. Pandit Motilal Nehru committee had demanded a bill of rights as far back as in 1928. When India became free and independent and the Constitution was being prepared, there were no two opinions on the inclusion and protection of rights in the Constitution. The Constitution listed the rights that would be specially protected and enforced. They are called as ‘fundamental rights’.

The word ‘fundamental’ suggests that these rights are so important that the Constitution has separately listed and protected. The Fundamental Rights are extremely important that the Constitution itself ensures that they are not violated by the government.

Fundamental Rights are completely different from other rights available to us. While ordinary legal rights are protected and enforced by ordinary law of Legislature/Judiciary, Fundamental Rights are protected and guaranteed by the constitution of the country. Ordinary rights can be amended by the Central legislature(Parliament) by ordinary procedure of law making, but a fundamental right may only be changed by amendment of the Constitution itself. Besides this, no organ of the government including Judiciary can act in a manner that violates them.

Judiciary has an immense powers and responsibility to protect the fundamental rights of India from violations by actions of the government. Actions of Executive and legislative organ can be declared illegal by the judiciary if it violate the fundamental rights or restrict them in an unreasonable manner. However, fundamental rights ain’t absolute or unlimited rights. Union government can put reasonable restrictions on the exercise of fundamental rights of India.



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It is a fallacy to consider fundamental rights as a gift from the State to its citizens. Individuals possess basic human rights independently of any Constitution as they are members of the human race. These fundamental rights are important as they possess inherent value.

Part III of the Constitution does confer fundamental rights and confirms their existence and gives them protection and enforcement. The fundamental rights were contained in the constitution of India because they were considered indispensable for an overall development of every individual and to preserve human dignity. These fundamental rights guarantee civil and political freedom to all the citizens of India to allow them to live in harmony and peace. These basic rights that every Indian citizen has the right to enjoy, irrespective of their caste, creed and religion, place of birth, race, color or gender.

Article 13 (1) of the Indian Constitution declares that all laws in force in the India immediately before the enforcement of the Constitution, in so far as they are inconsistent with the provisions of Fundamental Rights guaranteed under Part III of the Indian Constitution, shall to the extent of such inconsistency be null & void.

Article 13(2) restricted the right of the State in making laws. The State is not to make any law which takes away or abridges the rights conferred by Part III (Fundamental Rights of India) and if such law is made then to the extent of conflict, it would be null and void. The term 'law' as specified in Article 13(3), includes custom or usage has the force of law. Further 'law in force' includes law passed or made by a Legislature before the enforcement of the Constitution.

Fundamental Rights are having so importance than any other legal rights. Inclusion of certain rights in the Part III of the Constitution makes them distinct from other ordinary legal rights in following ways:

(a) Fundamental Rights cannot be diluted by any other ordinary legislation made by the Legislature. It can only be diluted or abridged by amendment of the Constitution itself. And as ruled by the Supreme Court of India in many judgments, basic Structure doctrine of the Constitution cannot be altered. On the other hand, any other legal right may be diluted by ordinary law.

(b) As mentioned in Article 13(2), no law made by legislature can be made which takes away or abridges any of the fundamental right guaranteed in Part III of Constitution of India.

Dr. Ambedkar considered the right to constitutional remedies (Article 32) as '**heart and soul of the constitution**'. It is so because this Article 32 gives a citizen the right to approach a High Court or the Supreme Court of India to get any of the fundamental rights restored in case of their violation. The Supreme Court and the High Courts could issue orders and give directives to the government of India for the



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enforcement and protection of rights.

These special orders issued by the court are known as **writs**.

Habeas corpus: the court can order an arrested person should be presented before it. It can also order to set free an arrested person if the manner or grounds of arrest are unlawful or unsatisfactory.

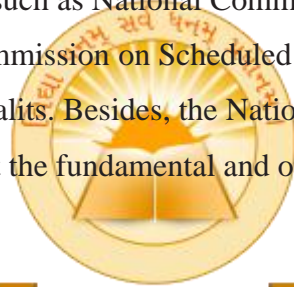
Mandamus: It is issued when the court finds that a particular office holder is not doing legal or lawful duty and thereby is infringing on the right of an individual.

Prohibition: It is issued by a higher court (High Court or Supreme Court) when a lower court considered a case beyond its jurisdiction.

Quo Warranto: the Judiciary finds that a person is holding office but is not entitled to hold that office, it issues this writ and restricts that person from acting as an office holder.

Certiorari: The court orders a lower/subordinate court or another authority to transfer a matter pending before it to the higher authority or court.

Apart from the judiciary, Various Bodies such as National Commission on Minorities, the National Commission on Women, the National Commission on Scheduled Castes, etc. These institutions protect the rights of SC, ST, women, minorities or Dalits. Besides, the National Human Rights Commission(NHRC) has also been established by law to protect the fundamental and other kinds of rights.



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Part III: Fundamental Rights

Right to Equality

- √ Equality before law
 - equal protection of laws
- √ Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth
 - equal access to shops, hotels, wells, tanks, bathing ghats, roads etc.
- √ Equality of opportunity in public employment
- √ Abolition of Untouchability
- √ Abolition of titles

Right to Freedom

- √ Protection of Right to
 - freedom of speech and expression;
 - assemble peacefully;
 - form associations/unions;
 - move freely throughout the territory of India;
 - reside and settle in any part of India;
 - practise any profession, or to carry on any occupation, trade or business.
- √ Protection in respect of conviction for offences
- √ Right to life and personal liberty
- √ Right to education
- √ Protection against arrest and detention in certain cases

Right against Exploitation

- √ Prohibition of traffic in human beings and forced labour
- √ Prohibition of employment of children in hazardous jobs

Right to Freedom of Religion

- √ Freedom of conscience and free profession, practice and propagation of religion
- √ Freedom to manage religious affairs
- √ Freedom to pay taxes for promotion of any particular religion
- √ Freedom to attend religious instruction or worship in certain educational institutions

Cultural and Educational Rights

- √ Protection of language, culture of minorities
- √ Right of minorities to establish educational institutions

Right to Constitutional Remedies

- √ Right to move the courts to issue directions/orders/writs for enforcement of rights

How to amend the Constitution

Similar to ordinary law: simple majority in Parliament: **as mentioned in some articles**

Special majority in Parliament in both Houses separately: **as per article 368**

Special majority + Legislatures of half the states: **article 368**



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Recent Judgement of Supreme Court on Fundamental Rights

Right To Privacy (2017)

The Supreme Court of India disclosed the right to privacy as a Fundamental Right protected under the Indian Constitution.

Sabarimala Verdict

In a 4-1 majority decision, the Supreme Court on September 2018 lifted the ban, which it termed as a violation of women's right to practice religion.

Reservation in Promotion is not a Fundamental Right

The Supreme Court has ruled that reservation in promotion is not a fundamental right and the states cannot be compelled to make laws in this regard for Scheduled Castes (SC) and Scheduled Tribes (ST).

According to Article 16 (4) and 16 (4A) of the Constitution, vesting a discretion on the state government to consider providing reservation, if the circumstances so warrant.

The State can't be directed to give reservations for appointment in public/government posts.

The State is not bound to make a reservation for SCs and STs in matters of promotions of public offices.

The State is authorised to exercise its discretion and to make provisions, it has to collect quantifiable data depicting 'inadequacy of representation of such class in public services or government jobs. Articles 16 (4) and 16 (4A) of the Constitution didn't confer individuals with a fundamental right to claim reservations in promotion.

Reservation for EWSs in Public Employment

The Supreme Court has provided 10% reservation for Economically Backward Section (EWS).

103rd Constitutional Amendment Act:

It introduced an economic reservation (10% quota) in jobs and admissions in education institutes for Economically Weaker Sections (EWS) by amending the Articles 15 and 16. It added Article 15 (6) and Article 16 (6).

It was enacted to promote the welfare of the vulnerable sections of society beyond the 50% reservation



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policy for Scheduled castes (SCs), Scheduled Tribes (STs) and Socially and Educationally Backward Classes (SEBC).

It enables both Centre and the states to provide reservation to the EWS of society. It provides for 10% reservation in government jobs and educational institutions for EWS, by amendment of Articles 15 and 16.

In order to give effect to this provision, the Union government issued an order (in 2019) providing 10% reservation to the Economically Weaker Sections (EWSs) in civil posts and services in the Government of India. The benefit of such reservation can be availed by the citizen belonging to EWSs who are not covered under any of the existing schemes of reservation for SCs, STs and OBCs.

Conclusion

Fundamental Rights of Part III of the Constitution are so important natural rights necessary for development of human beings. They are enforceable through court of law. No law under Article 13 can be made which takes away or abridges any fundamental rights. As per Jotirao Phuley, a radical social reformer from Maharashtra, rights include both freedom and equality. During the Indian national movement, this idea of rights was sharpened and expanded to constitutional rights. Indian Constitution reflected this long tradition and listed the fundamental rights. Since 1950, the judiciary has functioned as an important protector and guarantor of rights. Judicial interpretations have expanded the scope of rights in many dimensions. Rights enforce limitations on the functioning of the Central and state government and ensure democratic governance of the country.

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