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## History Of Fundamental Rights Included Under Part III Of The Constitution

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In early 1215, English people were guaranteed with ancient liberties in the written form of document known as Magna Carta by King John. This was the very first document which guaranteed liberties to people. After this, in 1689, Bill of Rights was written for consolidating important rights and liberties for English people. Fundamental rights enshrined under part III of the constitution are known as Magna Carta of India.

In France, natural, inalienable rights and sacred rights of man are declared in France Declaration of Rights of Man and the Citizen, 1789. Following the spirit of the Magna Carta of the British and the Declaration of Rights of Man and the Citizen, the Americans incorporated Bill of rights in their Constitution.[1]

When the framing of Indian Constitution was going on, makers of the Indian Constitution took the inspiration from this American Bill of Rights, and incorporated Fundamental Rights guaranteeing liberties to its citizen. Though the American Bill of Rights consist very few provisions, Indian Constitution has elaborated fundamental rights most comprehensively yet by any other Country. As discussed earlier, Fundamental Rights are considered very important against any encroachment of the power delegated to their Government in the State.

Since early 1700, human thinking has been evolving around human being has some natural, basic, inalienable rights. Certain rights which are elementary rights such as right to life, right to personal liberty, freedom of speech, Freedom of religion and many more are inviolable in nature as we cannot think without having those rights, human life can be termed as human life.

Through the time, these rights got recognition which already exist in nature itself and got the protection of law. Many countries through various documents and provisions has provided these rights as basic and fundamental which cannot be taken away unless there is due process of law.

In **West Virginia State Board of Education V/s. Barnet**[2] Jackson, J. explaining the nature and the purpose of Bill Of Rights observed:

"The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials to establish them as legal principles to be applied by the Courts. One's right of life, liberty and property, to free speech, a free press, freedom of worship and assembly and other fundamental rights may not be submitted to vote, they depend on the outcome of no elections."

The chapter on Fundamental Rights, contained in Part III of the Indian Constitution, was not

incorporated as a popular concession to international sentiment prevalent after the conclusion of the Second World War. It was the ardent desire and persistent demand of our freedom fighters and Founding Fathers that a future Constitution of India should contain a guarantee of fundamental entitlements for the people of India.[3]

A Bill of Rights, Part III enumerating Fundamental Rights, is a constant reminder that the powers of the State are not unlimited and that human personality is priceless.

In this chapter researcher has covered how fundamental rights got recognized and got the protection of law for the violation of same through judicial authority all across the world.

## **History Of Fundamental Rights**

As we have discussed earlier, in 1215 English people were being assured with certain liberties through Magna Carta by King John. It was being very first written document of then ancient liberties which recognized the civil liberties of people. Then in 1689, Bill of Rights was written for consolidating important rights and liberties for English people. After in 1789.

The Declaration of the French Revolution provided that:

"the aim of all political association is the conservation of the natural and inalienable rights of man."

The underlying idea in entrenching certain basic rights is to take them out of the reach of the transient political majorities. It has, therefore, come to be regarded as essential that these rights be entrenched in such a way that they may not be violated, tampered or interfered with by an oppressive government.

With this end in view, some written Constitutions guarantee a few rights to the people and forbid governmental organs from interfering with the same. In that case, a guaranteed right can be limited or taken away only by the elaborate and formal process of the constitutional amendment rather than by ordinary legislation. These rights are characterized as fundamental rights.[4]

For the origin of fundamental rights if we scientifically study this there is no history as such that how it came into existence. These rights are so natural and basic in nature that they exist on their own. It's just we; human being recognized its existence and gave it legal protection for its violation.

For e.g. unless and until there is right to life we wouldn't have existed or without freedom of speech and expression I myself won't have been writing this research paper. All this is because the existence of fundamental rights and legal protection given to it by Apex Court. The various courts of different countries have worked on giving protection to these fundamental rights from time to time.

Various declarations, Constitutions of different countries have provided for Fundamental rights through the time of its existence and have given legal protection to it.

## **English Bill of Rights**

As discussed earlier, English people were assured with the ancient liberties by their King John. In 1215, Magna Carta, first written document which guaranteed these people liberties was written.

Magna Carta is a cornerstone of the individual liberties that we enjoy, and it presents an ongoing challenge to arbitrary rule. But over time, while not envisaged at the time of its drafting, Magna Carta has for many been seen not only as a foundation of liberty, but also one of democracy. And this broader notion of the wider significance of Magna Carta makes it especially relevant today.

It is perhaps easiest to think of Magna Carta in two ways: first, as a document of historical and legal

significance; and secondly, as a principle underlying how we live, through equality under the rule of law and through accountability. Magna Carta matters both for what it said in 1215 and, perhaps more significantly now, for what it has come to symbolize.[5]

The Bill of Rights is later developed Act in 1689 which guarantees English citizens rights and liberties. It is considered as most important document in guaranteeing civil liberties after the Magna Carta.

The Bill of Rights 1689 is an English Act of Parliament with the full title An Act Declaring the Rights and Liberties of the Subject and Settling the Succession of the Crown and also known by its short title, the Bill of Rights. It is one of the basic documents of English constitutional law, alongside Magna Carta, the 1701 Act of Settlement and the Parliament Acts. It also forms part of the law of some other Commonwealth nations, such as New Zealand. A separate but similar document applies in Scotland: the Claim of Right.[6]

## **American Bill of Rights**

After the Magna Carta in 1215, English Bill of Rights in 1689, France Declaration of Rights of Man and the Citizen, the Americans incorporated Bill of rights in their Constitution.[7] After getting freedom from the despotic English monarchy, the American people wanted strong guarantees that the new government would not trample upon their newly won freedoms of speech, press and religion, nor upon their right to be free from warrantless searches and seizures. So, the Constitution's framers heeded Thomas Jefferson who argued:

"A bill of rights is what the people are entitled to against every government on earth, general or particular, and what no just government should refuse, or rest on inference." [8]

The American Bill of Rights is inspired by Jefferson and drafted by James Madison. It was adopted in 1791. The Constitution's contained 10 amendments only. These first ten amendments became the law of the land.

The rights that the Constitution's framers wanted to protect from government abuse were referred to in the Declaration of Independence as "unalienable rights." They were also called "natural" rights, and to James Madison, they were "the great rights of mankind." [9] Although it is commonly thought that we are entitled to free speech because the First Amendment gives it to us, this country's original citizens believed that as human beings, they were entitled to free speech, and they invented the First Amendment in order to protect it. The entire Bill of Rights was created to protect rights the original citizens believed were naturally theirs, including:

## **Freedom of Religion**

Freedom of religion includes the right to exercise one's own religion, or no religion, free from any government influence or compulsion.

## **Freedom of Speech, Press, Petition, and Assembly**

Freedom of speech and freedom of press are given separately. Unlike the Indian Constitution provision for freedom of press has been made individually. Even unpopular expression is protected from government suppression or censorship.

## **Privacy**

Right to privacy included in the American Bill of Rights includes, the right to be free of unwarranted and unwanted Government interference into one's personal and private affairs, papers, and possessions.

## **Due Process of Law**

Due process of law is the right to be treated fairly by the Government whenever the loss of liberty or property is at stake with the due process of law without arbitrariness.

## **Equality before the Law**

Equality before the law includes the right to be treated equally before the law, regardless of social status.

The extension of the Bill of Rights to protect individuals from abuse not only by the federal government, but also from state and local governments remains an unsettled aspect of Constitutional interpretation.

Originally, the protections were solely meant to limit the federal government, but with the fourteenth amendment's guarantee in 1868 that no state could deprive its citizens of the protections in the Bill of Rights this original view began to be expanded. To this day the Supreme Court has not definitively decided if the entire Bill of Rights should always be applied to all levels of government. [10]

## **Universal Declaration of Human Rights**

Universal Declaration of Human Rights (UDHR), foundational document of international human rights law. It has been referred to as humanity's Magna Carta by Eleanor Roosevelt, who chaired the United Nations (UN) Commission on Human Rights that was responsible for the drafting of the document.

As a result of the experience of the Second World War the Universal Declaration of Human Rights, was adopted by the UN General Assembly on 10 December 1948. With the end of that war, and the creation of the United Nations, the international community vowed to never again allow atrocities like those of that conflict to happen again.

World leaders decided to complement the UN Charter with a road map to guarantee the rights of every individual everywhere. The document they considered, and which would later become the Universal Declaration of Human Rights, was taken up at the first session of the General Assembly in 1946.

The Assembly reviewed this draft Declaration on Fundamental Human Rights and Freedoms and transmitted it to the Economic and Social Council "for reference to the Commission on Human Rights for consideration . . . in its preparation of an international bill of rights."

The Commission, at its first session early in 1947, authorized its members to formulate what it termed "a preliminary draft International Bill of Human Rights". Later the work was taken over by a formal drafting committee, consisting of members of the Commission from eight States, selected with due regard for geographical distribution.[11]

The UDHR comprises 30 articles that contain a comprehensive listing of key civil, political, economic, social, and cultural rights. Articles 3, through 21 outline civil and political rights, which include the right against torture, the right to an effective remedy for human rights violations, and the right to take part in government. Articles 22 through 27 detail economic, social, and cultural rights, such as the right to work, the right to form and to join trade unions, and the right to participate freely in the cultural life of the community. Apparently, the UDHR's provisions highlight the interrelated and interdependent nature of different categories of human rights as well as the need for global co-operation and assistance to realize them.

One factor contributing to the UDHR's moral authority is precisely that it transcends positive international law. Indeed, it enunciates general moral principles applicable to everyone, thus universalizing the notion of a fundamental baseline of human well-being. Despite its shortcomings, including a preoccupation with the state as the main perpetrator of human rights violations-which has marginalized human rights problems stemming from socially and culturally sanctioned abusive behavior and violence, whose perpetrators are often no state actors such as individuals, families, communities, and other private institutions-the UDHR was and remains the key reference point for international human rights discourse.[12] More than any other instrument, the UDHR is responsible for making the notion of human rights nearly universally accepted.

International human rights law lays down obligations which States are bound to respect. By becoming parties to international treaties, States assume obligations and duties under international law to respect, to protect and to fulfill human rights.

The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfill means that States must take positive action to facilitate the enjoyment of basic human rights.[13]

Through ratification of international human rights treaties, Governments undertake to put into place domestic measures and legislation compatible with their treaty obligations and duties. The domestic legal system, therefore, provides the principal legal protection of human rights guaranteed under international law. Where domestic legal proceedings fail to address human rights abuses, mechanisms and procedures for individual and group complaints are available at the regional and international levels to help ensure that international human rights standards are indeed respected, implemented, and enforced at the local level.[14]

## **Subsequent Developments as to Indian Constitution**

Fundamental Rights are included in part III of the Constitution of India. The aim of having a declaration of fundamental rights is that certain elementary rights, such as, right to life, liberty, freedom of speech, freedom of faith and so on, should be regarded as inviolable under all conditions and that the shifting majority in Legislature of the country should not have a free hand interfering with these fundamental rights.[15]

The inclusion of Chapter of Fundamental Rights in the Constitution of India is in accordance with the trend of modern democratic thought the idea being to preserve that which is an indispensable condition of a free society.

Seven fundamental rights were originally provided by the Constitution ♦ the right to equality, right to freedom, right against exploitation, right to freedom of religion, cultural and educational rights, right to property and right to constitutional remedies. However, the right to property was removed from Part III of the Constitution by the 44th Amendment in 1978.

The purpose of the Fundamental Rights is to preserve individual liberty and democratic principles based on equality of all members of society. Dr B. R. Ambedkar said that the responsibility of the legislature is not just to provide fundamental rights but also and rather, more importantly, to safeguard them.

### **The first demand for fundamental rights came in the form of the:**

"Constitution of India Bill, in 1895. Also popularly known as the Swaraj Bill 1895, it was written during the emergence of Indian nationalism and increasingly vocal demands by Indians for self-government. It talked about freedom of speech, right to privacy, right to franchise, etc. he

development of such constitutionally guaranteed fundamental human rights in India was inspired by historical examples such as England Bill of Rights (1689), the United States Bill of Rights and France's Declaration of the Rights of Man.

In 1928, the Nehru Commission composing of representatives of Indian political parties proposed constitutional reforms for India that apart from calling for dominion status for India and elections under universal suffrage, would guarantee rights deemed fundamental, representation for religious and ethnic minorities, and limit the powers of the government.

In 1931, the Indian National Congress (the largest Indian political party of the time) adopted resolutions committing itself to the defense of fundamental civil rights, as well as socio-economic rights such as the minimum wage and the abolition of untouchability and serfdom. Committing themselves to socialism in 1936, the Congress leaders took examples from the constitution of the erstwhile USSR, which inspired the fundamental duties of citizens as a means of collective patriotic responsibility for national interests and challenges.[16]

When India obtained independence on 15 August 1947, the task of developing a constitution for the nation was undertaken by the Constituent Assembly of India, composing of elected representatives under the presidency of Rajendra Prasad. While members of Congress composed of a large majority, Congress leaders appointed persons from diverse political backgrounds to responsibilities of developing the constitution and national laws.

Notably, B. R. Ambedkar became the chairperson of the drafting committee, while Jawaharlal Nehru and Sardar Vallabhbhai Patel became chairpersons of committees and sub-committees responsible for different subjects. [17]

A major development during that period having significant effect on the Indian constitution took place on 10 December 1948 when the United Nations General Assembly adopted the Universal Declaration of Human Rights and called upon all member states to adopt these rights in their respective constitutions.

The Fundamental Rights were included in the 1st Draft Constitution, the 11nd Draft Constitution, and the 111rd and final Draft Constitution, being prepared by the Drafting Committee.[18]

## **Conclusion**

Magna Carta is the first documentary assurance to these fundamental rights. These rights cannot be created but they exist in nature which is natural. Various countries have included these rights in their bill of rights in different forms of documents. These rights cannot be taken away from any of the human being as they hamper living of human life.

## **End-Notes:**

1. Supra 3
2. 319 US 624 : 87 Led 1928
3. Expansion And Protection Of Fundamental Rights By Judicial Interpretation And Intervention, by J. Sorabjee available at <http://docs.manupatra.in/newsline/articles/Upload/F2CAF29C-8860-457A-8FDF-3E146E26F002.pdf> last seen on 23/12/2021.
4. Rajib Hassan, The Origin And Concept Of Fundamental Rights In The Constitutions Of Us Uk And India: A Comparative Analysis, available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2296804](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2296804) last seen on 23/12/2021.
5. Justin Fisher, Why Magna Carta Still matters today, available at <https://www.bl.uk/magna-carta/articles/why-magna-carta-still-matters-today> last seen on 24/12/2021.