



THE FUNDAMENTAL RIGHTS IN ENGLAND, USA, AND INDIA

Aakanksha Milind Alai

Pursuing LLM From Modern Law College,Pune

ABSTRACT:

The importance of fundamental rights is paramount in any parliamentary or presidential system of governance across the globe. This significance is exemplified by historical documents such as the Magna Carta of England, the Bill of Rights of the USA, and the Fundamental Rights in India. In any democratic nation, adherence to the rule of law is essential, and fundamental rights serve as the cornerstone in ensuring this principle. They are the essence of any constitution, rendering a constitution devoid of fundamental rights feeble and ineffective. This project aims to explore the crucial role of fundamental rights and conduct a comparative analysis among three distinct nations. The objective is to delve into the origin, necessity, and historical development of fundamental rights in England, the USA, and India. The primary focus lies in understanding why individuals felt compelled to establish written guarantees of fundamental rights that are immune to governmental violation. Given the utmost importance of fundamental rights, it is imperative to compare a parliamentary system like England with its absence of a codified constitution, a presidential system like the USA with its concise constitution, and India, which boasts the world's lengthiest constitution.

Since the early seventeenth century, there has been a shift in human thought towards the belief that individuals possess inherent, fundamental, natural, and unalienable rights or freedoms. It is understood that it is the responsibility of the state to acknowledge and uphold these rights and freedoms, allowing them to flourish, thereby preserving human liberty, fostering personal development, and promoting a vibrant social and democratic existence. This project endeavors to conduct a comparative analysis of the concept of fundamental rights in the United States, the United Kingdom, and India.

The origins of human rights can be traced back to Natural law philosophers such as Locke and Rousseau, who pondered over the existence of inherent human rights and advocated for their preservation through the concept of the 'Social Contract'.

According to Locke, individuals are inherently entitled to perfect freedom and unrestricted enjoyment of all the rights and privileges bestowed by the Law of Nature. He believed that every person has a natural inclination to safeguard their life, liberty, and property against the encroachments of others.

In English history, the people sought assurance from King John for the preservation of their ancient liberties, leading to the signing of the Magna Carta in 1215, which stands as the first written document outlining the basic rights of citizens. Subsequently, the Bill of Rights of 1689 was enacted, consolidating significant rights and liberties of the English populace.

Similarly, the Declaration of the French Revolution in 1789 emphasized the importance of political association in preserving the natural and inalienable rights of humanity.

Keywords:- Magna Carta, Bill of Rights,Fundamental Rights, Rule of Law, French Revolution.

INTRODUCTION:-

Since the early seventeenth century, there has been a notable shift in human thought towards the belief that individuals possess certain essential, basic, natural, and unalienable rights or freedoms. It is widely recognized that it is the duty of the state to acknowledge and uphold these rights and freedoms, allowing them to thrive without constraint. This acknowledgment is vital for the preservation of human liberty, the cultivation of individual personality, and the advancement of a vibrant social and democratic life.

This project aims to conduct a comparative analysis of the concept of fundamental rights in the United States, the United Kingdom, and India. The concept of human rights is often attributed to Natural law philosophers such as Locke and Rousseau. These philosophers deliberated on the existence of inherent human rights and advocated for their preservation through the notion of a 'Social Contract'.

According to the natural law philosopher Locke: Man is born “with a title to perfect freedom and an uncontrolled enjoyment of all the rights and privileges of the Law of Nature,” and he has a natural influence – all the rights and privileges of the Law of “to preserve his property that's, his life, liberty, and estate against the injuries and attempts of other men.”

The English populace demanded assurance from King John to uphold their ancient liberties. The Magna Carta of 1215 stands as evidence of their success and is a seminal document. It marks the first written record concerning the basic rights of citizens. Furthermore, the Bill of Rights of 1689 was

drafted to consolidate all the essential rights and freedoms of the English people. The Declaration of the French Revolution, 1789 provides, “the aim of all political association is that the conservation of the natural and inalienable rights of man.”

Déclaration des droits de l'homme et du citoyen de, 1789; The Declaration of the Rights of Man and of the Citizen by France's National Constituent Assembly in 1789. The Declaration from the French Revolution is recognized as a pivotal document for human civil rights. Initially composed by the Marquis de Lafayette in collaboration with Thomas Jefferson, it underscores the doctrine of natural rights, asserting that the rights of individuals are universally applicable. This principle serves as the foundation for ensuring freedom and equality under the law for all citizens

The constitution serves as a document that establishes boundaries on governmental authority and ensures the operation of a democratic system wherein all individuals are entitled to certain rights. It is crucial to examine the evolution of rights during a time when the right to life was not guaranteed by kings and autocrats. The emergence of the Magna Carta, Bill of Rights, and fundamental rights represents a pivotal moment in human history, sparking significant societal and lifestyle changes. The suffering endured under slavery and other forms of oppression is incomprehensible, yet it ignited a rebellion against monarchs, rulers, and parliaments, highlighting the importance of people's willpower. The demand for basic human rights in England prompted various social and political reforms, shifting the focus towards meeting the needs of the populace and enhancing their quality of life. This study delves into historically significant events that have paved the way for a better world for future generations. Through a comparative, critical, and comprehensive analysis, it seeks to elucidate the concept and importance of fundamental rights in England, the USA, and India.

THE HISTORY BEHIND THE DEMAND OF RIGHTS OF AN INDIVIDUAL :

Understanding present circumstances often requires delving into past events. One significant event occurred in 539 B.C. when the armies of Cyrus The Great, the first king of ancient Persia, conquered Babylon. His actions laid the groundwork for humanity, as he liberated slaves, proclaimed the right of individuals to choose their religion, and advocated for equality among all people, regardless of race. These decrees were inscribed on a baked-clay cylinder in Akkadian language using cuneiform script, famously known as The Cyrus Cylinder,² regarded as the world's first charter of human rights. The principles outlined in this cylinder are reflected in the first four Articles of the Universal Declaration of Human Rights. This revolutionary concept swiftly spread across regions like India, Greece, and eventually Rome. It led to the emergence of the concept of natural law, an unwritten law that people began to adhere to in their daily lives. Roman law, based on rational ideas derived from nature, further developed this notion. Numerous written instruments emerged as a result of these advancements.

The Great Magna Carta of 1215; The Petition of Right in 1628; The US Constitution 1787; The French Declaration of the Rights of Man and of the Citizen, 1789 and The US Bill of Rights of 1791.

These written and tangible instruments serve as guiding lights for many contemporary human rights documents. The Magna Carta is often regarded as the first document to enumerate rights for the people. In 1215, the people of England faced humiliation from their rulers during times of war or crisis, as their rights could be suspended arbitrarily in the name of statehood. Consequently, they voiced their dissent and demanded a uniform written document outlining basic rights that could not be suspended at the ruler's discretion. Thus, the Magna Carta of 1215 was introduced in England, following the granting of the Great Magna Carta by King John on June 12, 1215. This event sparked a global demand for rights among the populace, with the Bill of Rights being one outcome. In America, citizens demanded a written instrument outlining their rights, leading to amendments to the US Constitution in 1791 and the creation of the Bill of Rights. Both the Magna Carta and the Bill of Rights exemplify colonial struggles against monarchy and parliament. India, as a newly independent nation, drew inspiration from the Magna Carta and was significantly influenced by the American Constitution. In 1947, India adopted the idea of fundamental rights from the American Constitution, tailoring it to suit the country's needs. The principle of equality, stemming from the demand for rights from rulers or parliaments, holds paramount importance in people's lives, serving as the cornerstone upon which other rights are built. The guarantees provided in the Bill of Rights hold significant legal weight, binding authorities to uphold these rights.

MAGNA CARTA: AN INTRODUCTION :

The Magna Carta of England, also known as the Great Charter, stands as the pivotal historical event that laid the foundation for constitutional rule in the English-speaking world today. This document, which secures English political liberties, was drafted at Runnymede and signed by King John on June 15, 1215, under pressure from rebellious barons.³

In 1066, William, Duke of Normandy in France, launched an invasion of England and emerged victorious over the Anglo-Saxons at the Battle of Hastings. This pivotal event marked several significant occurrences for the world: the demise of feudalism, the establishment of a centralized government in England, and the evolution of democracy.

Henry II (1154-1189), a descendant of William Duke, introduced the Jury Trial System as a means of administering royal justice. Under this system, legal decisions made by royal justices served as precedents for future cases. Over time, England became unified under a single legal system known as

¹ Jennings, Jeremy. “The Déclaration Des Droits De L'homme Et Du Citoyen and Its Critics in France:

Reaction and Idéologie.” *The Historical Journal*, vol. 35, no. 4, 1992, pp. 839–859. *JSTOR*, <https://www.jstor.org/stable/2639441> Accessed 1 April 2024

² <https://www.humanrights.com/course/lesson/background-of-human-rights/the-background-of-human%02rights.html> viewed on 1-4-2024 08.03

³ <https://www.britannica.com/topic/Magna-Carta> viewed on 2-4-2024 08:03.

Common Law, as it applied uniformly across the kingdom. Upon Henry II's death, his son Richard ascended to the throne. King John, Richard's successor, engaged in a costly and unsuccessful war with France, prompting him to raise taxes to cover war damages. This decision sparked discontent among English nobles and the populace. In 1215, in response to the growing unrest, the angered nobles rebelled and compelled King John to grant guarantees of certain traditional political rights. They presented their demands to him in written form, known as the Magna Carta, establishing the principle of governance by law and serving as a cornerstone of democratic government.

The fundamental concept behind the Magna Carta was to uphold the principle of "Rule of Law," which necessitates obedience to the law even by the king. It enshrined various rights, including the church's freedom from governmental interference, the property rights of all free citizens, and protection from excessive taxes. Additionally, it safeguarded the rights of widows, granting them the autonomy to choose not to remarry and ensuring their ownership of property. These provisions laid the groundwork for principles such as due process and equality before the law. Furthermore, the charter prohibited practices such as bribery and official misconduct.

The Magna Carta, often referred to as the Great Charter, stands out as one of the most significant legal documents in the history of modern democracy. It marked a pivotal moment in the establishment of freedoms.

Another significant milestone in the development of human rights occurred in 1628 with the introduction of the Petition of Rights by the English Parliament. This statement of civil liberties was directed towards King Charles I. The Parliament's refusal to fund the king's unpopular foreign policy led to his government resorting to coercive measures such as extracting forced loans and quartering troops in private residences as a cost-saving measure. The arbitrary arrest and imprisonment of those who opposed these policies fueled intense hostility towards Charles and George Villiers, the Duke of Buckingham, within the Parliament. Consequently, Sir Edward Coke initiated the Petition of Rights, which rested on four key principles. These principles included the requirement for parliamentary consent before levying taxes, the prohibition of imprisoning individuals without specifying the cause (reaffirming the right of habeas corpus), the prevention of soldiers from being billeted upon citizens, and the prohibition of martial law during times of peace.

BILL OF RIGHTS:-

On July 4, 1776, the United States Congress proclaimed independence, with Thomas Jefferson serving as the primary author of the Declaration. This document marked the formal assertion of independence from Great Britain. Initially distributed as a printed broadsheet for public consumption, it was subsequently issued in various forms as the Declaration of Independence. The declaration centered on two primary themes: individual rights and the right to revolution.

The original constitution drafted in 1787 lacked any fundamental rights, a notable criticism of the USA Constitution at the time. Written during the summer in Philadelphia, the United States Constitution of 1787 served as the foundational law for the federal system of government in the USA. It also stood as a landmark document in the Western world, notably as the oldest written national constitution still in practice, outlining the principles of government organization and their jurisdiction along with the basic rights of citizens. The amendments to the constitution, popularly known as the Bill of Rights, were ratified on December 15, 1791, imposing limitations on the federal powers of the US government.

The aim of the Bill of Rights was to safeguard the rights of all individuals, including citizens, residents, and visitors within the territory of America. It sought to protect fundamental freedoms such as freedom of speech and religion, the right to bear arms, the freedom to assemble, and the freedom to petition. Additionally, the Bill of Rights prohibited certain actions such as unreasonable search and seizure, cruel and unusual punishment, and compelled self-incrimination. It also barred Congress from enacting laws that would infringe upon freedom of religion and ensured that the government could not deprive anyone of life, liberty, or property without due process of law.

Moreover, the Bill of Rights had a profound impact on the judicial system. For instance, it prohibited double jeopardy, guaranteed a speedy and impartial trial, and mandated that any capital punishment must be preceded by an indictment from a grand jury.

The primary aspect of the USA constitution prohibits the suspension of the writ of habeas corpus except in instances of rebellion or invasion.⁴

The USA constitution additionally bars both state and federal bills of attainder and ex-post facto laws.⁵ It mandates that all crimes must be tried by a jury in the state where they were committed⁶ and imposes restrictions on the definition, trial, and punishment of treason.⁷ Furthermore, it forbids titles of nobility⁸ and religious tests for holding office,⁹ guarantees a republican form of government in every state¹⁰, and ensures that each citizen enjoys the privileges and immunities of citizens in other states.¹¹

In 1789, James Madison presented 12 amendments to the First Congress. Ultimately, ten of these amendments evolved into what we recognize today as the Bill of Rights. Dissatisfaction arose among the populace due to the limited guarantees provided in the main body of the constitution. In response, the Congress of the United States introduced 12 amendments to address these concerns. Of the 12 amendments proposed, 10 were ratified. These significant amendments, listed in order, include:

⁴ Article I, section 9, The Constitution of United States of America.

⁵ Article I, section 9, 10, The Constitution of United States of America.

⁶ Article III, section 2, The Constitution of United States of America.

⁷ Article III, section 3, The Constitution of United States of America.

⁸ Article I, section 9, The Constitution of United States of America.

⁹ Article IV, The Constitution of United States of America..

¹⁰ Article IV, section 4, The Constitution of United States of America.

¹¹ Article IV, section 2, The Constitution of United States of America.

The First Amendment stipulates that Congress is prohibited from enacting laws pertaining to the establishment of religion or impeding its free exercise. Additionally, it prohibits Congress from passing any legislation that infringes upon the freedom of speech and press. Furthermore, it guarantees the right to assemble and petition for grievances, ensuring that Congress cannot interfere with these rights.¹²

The Second Amendment asserts the people's right to bear arms, stemming from historical opposition to a standing army. The Third Amendment prohibits the involuntary quartering of soldiers in private residences. The Fourth Amendment protects against unreasonable searches and seizures, requiring warrants to be issued only upon probable cause and directed at specific individuals and locations. The Fifth Amendment mandates grand jury indictments for major crimes, prohibits double jeopardy, and ensures due process of law, including the protection against self-incrimination and deprivation of life, liberty, or property without just compensation. The Sixth Amendment guarantees the right to a speedy public trial by jury, notification of charges, confrontation of witnesses, and legal counsel. The Seventh Amendment extends the right to a trial by jury to civil cases. The Eighth Amendment prohibits excessive bail, fines, or cruel and unusual punishment. The Ninth Amendment safeguards unenumerated rights of the people. The Tenth Amendment reserves powers not delegated to the United States to the states or the people.

These amendments introduced significant changes to both the American people and the Constitution. Following the American Civil War, the Thirteenth Amendment abolished slavery. The Fourteenth Amendment, ratified in 1868, grants citizenship to all persons born or naturalized in the United States, prohibits states from infringing on the privileges or immunities of citizens, and guarantees due process of law for all individuals.

FUNDAMENTAL RIGHTS:-

The fundamental rights enshrined in the Indian Constitution stand as its primary feature. The framers of the Constitution exhibited immense ambition during the drafting process. It took exactly two years, eleven months, and seventeen days to craft the world's most extensive yet meticulously detailed constitution: the Constitution of India of 1950.

Part III of the Constitution of India contains the fundamental rights guaranteed to both citizens and non-citizens. India attained independence in 1947 after enduring various forms of brutal torture and atrocities under British rule. Discrimination and inequality were rampant practices enforced by the British rulers. Mahatma Gandhi, upon his arrival in India in 1915, resolved to combat these injustices through protests and satyagraha movements, ultimately leading to India's long-awaited independence in 1947. The Indian National Congress had long advocated for these rights and played a crucial role in drafting the country's constitution, showing a positive attitude towards the inclusion of fundamental rights. Given India's diversity with its many religions, cultures, and linguistic groups, providing fundamental rights was imperative to instill a sense of security and confidence among the populace. Although the framers of the Indian Constitution drew inspiration from the US Constitution while drafting fundamental rights, they adapted them to suit the needs of India and its people at the time.

Part III, Articles 12 to 35 of the Constitution of India detail the fundamental rights. These rights, bestowed upon every citizen and non-citizen, are inviolable in nature. There are six fundamental rights guaranteed to all individuals in India: the Right to Equality, Right to Freedom, Right against Exploitation, Right to Freedom of Religion, Cultural and Educational Rights, and Right to Constitutional Remedies.

The fundamental rights outlined in Part III of the Constitution of India are not absolute; they are subject to reasonable restrictions aimed at ensuring state security, public morality, decency, and friendly relations with foreign countries. Part III of the Constitution encompasses both positive and negative rights. Negative rights impose limitations on state action or prohibit the state from certain acts, while positive rights grant citizens the freedom enshrined in the Indian Constitution.

A distinctive feature of fundamental rights is the provision allowing individuals to directly approach the Supreme Court of India if their fundamental rights are infringed, as stipulated in Article 32 of the Indian Constitution. This provision is considered a fundamental aspect of the Indian Constitution's basic structure¹³, as established in the landmark *Kesavananda Bharati v. State of Kerala* case,¹⁴ commonly known as the "Fundamental Rights Case."¹⁵ During times of national emergency, most fundamental rights can be suspended, except for those protected under Article 20 and Article 21 of the Constitution. These rights, safeguarded by Article 20 and 21, remain unaffected and cannot be suspended under any circumstances.

RIGHTS COMPARISON BETWEEN ENGLAND, USA AND INDIA :

An examination comparing England, USA, and India is essential for understanding the importance of fundamental rights.

The Magna Carta of England, the Bill of Rights of the USA, and the fundamental rights of India all share a foundational principle: the right to equality and freedom from discrimination. This common principle forms the bedrock upon which the entire concept of rights is built.

Unlike the US Constitution, the Indian Constitution does not explicitly include the freedom of the press. While freedom of speech and expression is

¹² <https://www.whitehouse.gov/about-the-whitehouse/our-government/the-constitution> viewed on 1-04-2024 08:03

¹³ Kumar, Virendra. "BASIC STRUCTURE OF THE INDIAN CONSTITUTION: DOCTRINE OF CONSTITUTIONALLY CONTROLLED GOVERNANCE [From Kesavananda Bharati to I.R. Coelho]." *Journal of the Indian Law Institute*, vol. 49, no. 2007, pp. 365–398. *JSTOR*, <https://www.jstor.org/stable/43952120> Accessed 1 April 2024.

¹⁴ AIR 1973 SC 1461 : (1973) 4 SCC 225.

¹⁵ Menon, N.R. Madhava. *Journal of the Indian Law Institute*, vol. 53, no. 4, 2011, pp. 678–681. *JSTOR*, <https://www.jstor.org/stable/45148584>. Accessed 2 April 2024

guaranteed under Article 19(1)(a) of the Indian Constitution, the explicit mention of freedom of the press is absent. However, through judicial pronouncements, the right of the press is recognized in India.

In contrast to India, where petitions may be directly filed in the Supreme Court under Article 32 for constitutional remedies in cases of fundamental rights violation, in the US Constitution, petitions may be filed with the Government. The Second Amendment of the US Constitution grants the right to bear arms, whereas in India, the right to bear arms is restricted and subject to government regulations.¹⁶

The concept of due process of law, ensuring that no person's life and liberty can be deprived without following the due process, is granted by the US Constitution. In India, no person shall be deprived of the right to life and personal liberty except according to the procedure established by law.

While the right to property was once common in both the US and Indian constitutions, it was repealed in the Indian Constitution in 1978. However, it remains a fundamental right in the US Constitution, ensuring that no property can be taken away without just compensation.

The Eighth Amendment of the US Constitution prohibits denying bail, imposing excessive fines, or inflicting cruel and unusual punishment on the accused, similar to the rights enshrined in Article 21 of the Indian Constitution.

In England, although there is no written constitution, the rights of people are still protected. The history of human rights in England dates back to ancient laws derived from common law and statutes such as the Magna Carta, Bill of Rights of 1689, and the Human Rights Act of 1998.

The Human Rights Act of 1998 in England outlines various human rights under different articles, including the right to life, freedom from slavery and forced labor, right to a fair trial, freedom of thought, belief, and religion, freedom of expression, right to education, and abolition of the death penalty. This Act incorporates rights provided within the European Convention of Human Rights, enabling citizens to address violations of their rights within British courts. It requires all public bodies to respect and protect human rights as outlined in the Act.

CONCLUSION:-

It is widely recognized that many of the rights enshrined in the Indian Constitution have been influenced by provisions found in the US Constitution. Additionally, several rights explicitly stated in the US Constitution have been incorporated into Indian law through various Supreme Court judgments. However, it's crucial to note the stark contrast in the flexibility of these two constitutions. The US Constitution is notably rigid, evidenced by its mere 27 amendments over a span of 225 years, whereas the Indian Constitution has undergone numerous amendments in its 70-year history, showcasing its adaptability.

The concept of human rights took root in the UK long before it did in India, thus granting its citizens fundamental rights earlier than their Indian counterparts. However, the comprehensive codification of these rights into domestic law occurred in India half a century before the UK. The fundamental rights enshrined in the Indian Constitution, while upholding universally applicable rights, also address India's unique diversity by providing rights specific to its context.

In conclusion, while the progress of human rights in these two countries may differ due to historical and cultural factors, it is evident that both nations are committed to safeguarding fundamental freedoms and ensuring justice for their citizens.

¹⁶ In case of the US, the word “government” has a wider connotation and encompasses not only the executive, but also the higher judiciary.