

Fundamental Rights in India and the United States - A Comparison

The concept of fundamental rights is an important one for the UPSC exam since it forms a crucial part of the Constitution of India. It is a vital concept of democracy. In this article, you can get a comparison of the fundamental rights, as present in the Indian and American polity, for the [IAS exam](#).

The Idea of Fundamental Rights

The concept of human rights can be traced back to Natural Law philosophers, such as Locke and Rousseau. The Natural Law philosophers philosophized over such inherent human rights and sought to preserve these rights by propounding the theory of 'Social Contract'. According to 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 by nature a power – "to preserve his property that is, his life, liberty and estate against the injuries and attempts of other men."

As early as in 1215, the English people exacted an assurance from King John for the respect of the then ancient liberties. **Magna Carta** is the evidence of their success which is a written document. This is the first written document relating to the fundamental rights of citizens. In 1689, the **Bill of Rights** was written consolidating all-important rights and liberties of the English people. The [Declaration of the French Revolution](#), 1789 provided that, "the aim of all political association is the conservation of the natural and inalienable rights of man."

Fundamental Rights in the United States and India

The modern trend of guaranteeing [fundamental rights](#) to the people may be traced to the Constitution of the USA.

- The original constitution as drafted in the year 1787 did not contain any fundamental right.
- There was trenchant criticism of the US Constitution on this point.
- Following the spirit of the Magna Carta of the British and the Declaration of the Rights of Man and the citizens of France, the Americans incorporated the Bill of Rights in their Constitution in the year 1791 in the form of ten amendments and thus the Americans were the first to give the Bill of Rights a constitutional status.

Coming to India, a few good reasons made the enunciation of the fundamental rights in the Constitution rather inevitable.

- Firstly, the main political party, the Congress, had for long been demanding these rights against the British rule.
- During the British rule in India, human rights were violated by the rulers on a very wide scale.
- Therefore, the framers of the Constitution, many of whom had suffered incarceration during the British regime, had a very positive attitude towards these rights.
- Secondly, Indian society is fragmented into many religions, cultural and linguistic groups and it was necessary to declare fundamental rights to give to the people a sense of security and confidence.

Also read: [Difference between Presidential and Parliamentary Form of Government](#)

Comparison

- Freedom of press is explicitly given under the First Amendment while in India it is implicit in [freedom of speech](#) and expression under Article 19(1)(a).
- Petition to the Supreme Court is a fundamental right in India, whereas in the US, it is the government that is petitioned (in case of the US, the word “government” has a wider connotation and encompasses not only the executive, but also the higher judiciary).
- Under the Second Amendment of the US Constitution, the right to bear arms is a fundamental right while in India the situation is totally different because not only is there no such fundamental right, arms in India is strictly regulated.
- In the United States, no person’s life and liberty can be deprived without following the due process of law, in India on the other hand the life and personal liberty can be taken away only according to the procedure established by law.
- India did away with the Right of Property as a fundamental right in the year 1978 but in the United States it still remains a fundamental right as no property can be taken away without just compensation.
- Further, the 8th Amendment to the US Constitution says that [bail](#) shall not be denied to an accused, the imposed fine should not be excessive and inflicted punishment shall not be cruel. These rights are also made available to Indian people because of well-established precedents pronounced by the Supreme Court under Article 21.
- Furthermore, the Ninth Amendment of the United States Constitution provides that absence of certain rights from the Constitution or statutes does not mean that people do not have these rights, this is in consonance with Locke’s theory. In India, there is no such article which means that Indians only enjoy the rights that are provided for in statute books, this is in line with the theories propounded by Austin and Bentham.

Conclusion

It is elementary knowledge that many of the rights that are present in the Indian Constitution have been borrowed from the Constitution of the United States. In addition, some of the rights that were explicit in the US Constitution were brought in by way of various Supreme Court judgements. However, it must be noticed that the United States Constitution is very rigid which is evident from the fact that it has been amended only 27 times in the last 225 years while the number of amendments in the Indian Constitution in the last 70 years is proof of its flexibility.

