

According to Lock. Man is born with the title to protect freedom and uncontrolled enjoyment of all the rights and privileges of the law of nature. He has the power to preserve his property that is his life, liberty and estate against the injuries and attempt of other men.

A right is essentially an entitlement or a justified claim. It denotes what we are entitled to as citizens, as individuals and as human beings. Rights have been claimed as the conditions that we collectively see as a source of self-respect and dignity. For example, the right to livelihood may be considered necessary for leading a life of dignity. Another ground on which rights have been claimed is that they are necessary for our well-being.

In modern times, it is widely accepted that the right to liberty is the very essence of a free society, and it must be safeguarded all times.

This entrenchment of fundamental rights serve a dual purpose. From one point of view, they are justiciable right on the people which can be enforced through the courts against the government. From another point of view, the fundamental rights constitutes restriction and limitation upon the government action, whether it is taken by the centre or state or a local government. Entrenchment of fundamental rights also mean that these rights cannot be taken away by ordinary law. If any law which tries to take away these kinds of fundamental rights can be declared as an unconstitutional or ultra vires.

The modern trend of guaranteeing fundamental rights to the people can be traced back to the Constitution of United States. However, the original Constitution of United States did not contain such rights. Consequently, it was in 1791 that a Bill of Rights was incorporated in the US Constitution.

Again, much emphasis to these rights was granted by UN Charter of Human Rights. The concept of fundamental right thus represent trend in the modern democratic thinking. Also, while interpreting the fundamental rights provision in the Indian Constitution, that Supreme Court has drawn from various international declarations on human rights.

But on the other hand, there is a lack of written declaration of fundamental rights in countries like Britain. In Britain, the orthodox doctrine of sovereignty of Parliament prevail and there does not envisage legal check on the power of Parliament. Though there is a strong prevalence of rule of law which makes that executive is answerable to the code for any action, but there is no such legal restraint on the power of Parliament. However, this British model could not be duplicated elsewhere as Britain is a small and homogeneous nation having deep rooted democratic traditions.

Even though the need for having a written set of right was quite failed in the Britain. Ultimately, the British Parliament enacted the Human Rights Act in 1998. The purpose of this act is to give effect to the rights and freedoms guaranteed under the European Convention on Human Rights.

In the in the countries having the federal setup, the chances of violation of these rights are not only at the central but also at the state level and hence the return sets of fundamental rights becomes important.

When India was under the process of getting independence, there was less debates on the matter of having a written sets of fundamental rights in our Constitution. Almost all of the members of the Constituent Assembly could agree to this that our Constitution should have a strict and specific set of fundamental rights in written format. This exact time is specific declaration served multiple purpose to our Constitution.

Firstly, we were coming out of a long era repression under the British rule where there were lack of such rights, and the largest party then was quite open about having these rights in our constitution.

Secondly, the Indian society is fragmented, and it was necessary to declare fundamental rights to give to people a sense of security and confidence. Hence, it was thought necessary to have certain right which could be enforced against the government. Which might become arbitrary at times.

though the democracy was being introduced in India, yet the democratic traditions were lacking and there was an inherent danger that the majority in the legislature may enact the laws which may be oppressive to individuals or minority groups. And such a danger could be minimised only by having a Bill of Rights in the Constitution.

Also, these fundamental rights in our Constitution. Are the consequence of the declaration of preamble to our Constitution. Part II of Indian Constitution protects the substantive as well as procedural rights. These rights serves two aspects. Firstly, they act as a restriction on the powers of the legislature and secondly, they provide conditions for fuller development of our people, including their individual dignity.

The fundamental rights under Part 3 of our Indian Constitution guaranteed certain basic civil rights and freedom to all and also fulfil the important function of giving a few safeguard to minorities, outlawing discrimination and protecting religious freedom and cultural rights. These fundamental rights are put as the part of basic structure of our Constitution. They are inherent and cannot be extinguished by any constitutional or statutory provisions. Any law that abrogates or abridges the rights would be violative of the doctrine of basic structure.

It should also be pertinent to note that fundamental right cannot be read in the isolation, but it should be read along with the Directive Principles and Fundamental Duties. The directive principles, which are the rights providing for socio economic justice, are actually made a non-justiciable in nature and shall be enforced according to the economic capacity of the state.

However, one of the challenges while interpreting the applicability of these fundamental right to ensure a balance between individual liberties and social control. Far through various judicial interpretations and constitutional amendment, it is settled principle that in the area of non-economic matters like freedom of speech or right to life, the line has been shifting in favour of the individual, while in the area of economic matters the line has been constantly shifting in favour of the social control.

Features of Fundamental Rights:

1. Claim of Citizens against state: A person can claim Fundamental Rights against the state subject to the state imposing some permissible restrictions in the interests of social control. The grounds for imposing these restrictions on Fundamental Rights are expressly mentioned in the Constitution itself and, therefore, these rights can be abridged only to the extent laid down.

As the Fundamental Rights constitute by and large a limitation on the government, the most important problem which the courts have been faced with while interpreting these rights has been to achieve a proper balance between the rights of the individual and those of the state or the society as a whole, between individual liberty and social control.

On the whole, however, one could say that in the area of non-economic matters, like freedom of speech or the right to life, the line has been shifting in favour of the individual, while in the area of economic matters, the line has been constantly shifting in favour of social control. This has been achieved both by judicial interpretation as well as constitutional amendments.

2. Restriction upon state: These rights, in substance, constitute inhibitions on the legislative and executive organs of the state. No law or executive action infringing a Fundamental Right can be regarded valid. In this way, the Constitution demarcates an area of individual freedom and liberty wherein government cannot interfere.
3. They are enforceable by the courts: The Constitution provides an effective machinery in Arts. 32 and 226 for the enforcement of these Rights. Without due enforcement, these Rights will be of not much use. The judiciary ensures an effective and speedy enforcement of these rights.
4. Balance between freedom and social control: These Fundamental Rights have been conceived in a liberal spirit and seek to draw a reasonable balance between individual freedom and social control.
5. Rights are correlative with the duties.

Earlier there were 7 fundamental rights, now we have 6. Right to property was a fundamental right but was removed in 1978 by 44th Amendment Act. It was made a legal right under Article 300-A.

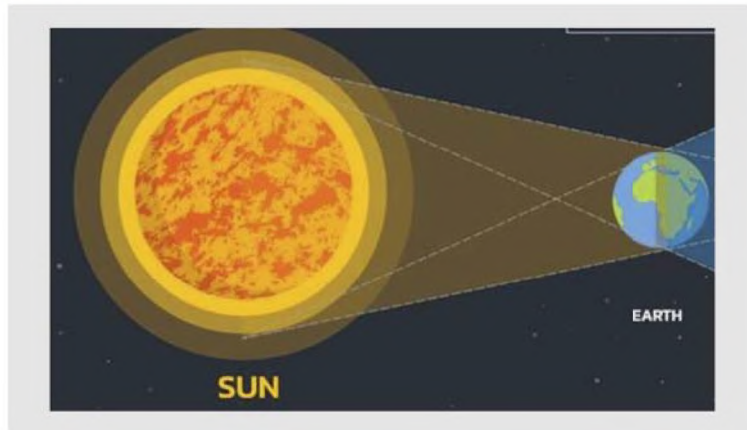
Article 13:

- (1) *All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.*
- (2) *The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.*

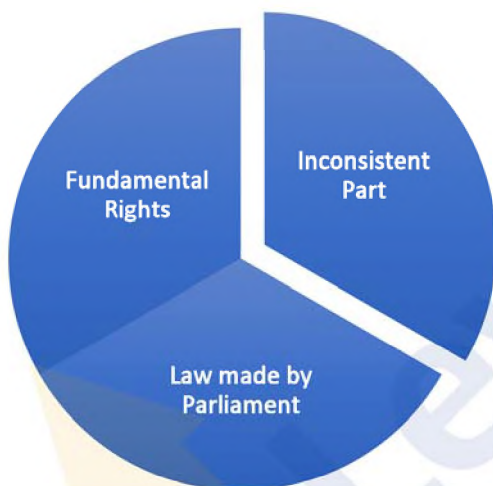
"law" includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

- (3) Nothing in this article shall apply to any amendment of this Constitution made under article 368. This provision was added by 24th Amendment Act 1971.

Doctrine of eclipse



- Bhikaji Narain Dhakras and Ors v. State of Madhya Pradesh (1955)
- was the case where this legal doctrine was formally pronounced by the Supreme Court judges, the doctrine was used in principle in certain other previous cases.



Doctrine of Severability: "to the extent of contravention"- only to the repugnant provision of the law in question shall be treated by the courts as void, and not the whole statute.

Later, 42nd Amendment Act, 1976 was passed by the Parliament. Amendment added clause 4 and clause 5 to Article 368. Article 368(4) provided that no Constitutional Amendment shall be called in any court on any ground. Article 368(5) provided that there shall be no limitation whatsoever on the constituent power of the Parliament.

Minerva Mills V. Union of India

Supreme Court struck down clauses (4) and (5) of Article 368 inserted by the 42nd amendment. Justification for the deletion of the said clauses was based on the destruction of Basic Structure. The Court was satisfied that 368 (4) and (5) clearly destroyed the Basic Structure as it gave the Parliament absolute power to amend Constitution. Limitation on the amending power of the Parliament is a part of the Basic Structure explained in Kesavanandascase.

Equality: Equality is a powerful moral and political ideal that has inspired and guided human society for many centuries. As a political ideal the concept of equality invokes the idea that all human beings have an equal worth regardless of their colour, gender, race, or nationality.

The concept of equality implies that all people, as human beings, are entitled to the same rights and opportunities to develop their skills and talents, and to pursue their goals and ambitions.

- Political Equality: would normally include granting equal citizenship to all the members of the state and this in turn brings with it certain basic right as voting, movement and association and freedom of belief.
- Social Equality: people belonging to different groups and communities also have a fair and equal chance to compete for those goods and opportunities. This can be achieved by avoiding social discrimination and exclusion.
- Economic Equality: economic inequality exists in a society if there are significant differences in wealth. Absolute equality of wealth or income has probably never existed in a society however with equal opportunities, inequalities may continue to exist between individuals but there is the possibility of improving one's position in society with sufficient effort.

Equality is part of Basic Structure of the Constitution:
M. Nagaraj v. Union of India, (2006)

Notions of Equality:

Marx argued that the root cause of entrenched inequality was private ownership of important economic resources such as oil, or land, or forests, as well as other forms of property. Therefore, to tackle inequality in society we need to go beyond providing equal opportunities and try and ensure public control over essential resources and forms of property.

Liberals uphold the principle of competition as the most efficient and fairway of distributing resources and rewards in society. They believe that while states may have to intervene to try and ensure a minimum standard of living and equal opportunities for all, this cannot by itself bring equality and justice to society. Competition between people in free and fair conditions is the most just and efficient way of bringing Equality.

Ensuring Equality: first step towards bringing about equality is, of course, ending the formal system of inequality and privileges. (Absence of privileged classes).

This is why our Constitution prohibits discrimination on grounds of religion, race, caste, sex or place of birth. Our Constitution also abolishes the practice of untouchability, formal equality or equality before law is necessary but not sufficient to realise the principle of

equality. Sometimes it is necessary to treat people differently in order to ensure that they can enjoy equal rights.

When we wish to eliminate inequalities that are deeply rooted, it is necessary to take some more positive measures to minimise and eliminate entrenched forms of social inequalities. Most policies of affirmative action are thus designed to correct the cumulative effect of past inequalities.

Affirmative action can however take many forms, from preferential spending on facilities for disadvantaged communities, such as, scholarships and hostels to special consideration for admissions to educational institutions and jobs. In our country we have adopted a policy of quotas or reserved seats in education and jobs to provide equality of opportunity to deprived groups, and this has been the subject of considerable debate and disagreement.

