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A Comparative Analysis of the: Bill of Rights {USA} & Fundamental Rights {India}

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Abstract: ***The Bill of Rights in the United States and the Fundamental Rights enshrined in the Indian Constitution serve as the cornerstone of civil liberties in their nations. While both frameworks aim to safeguard individual freedoms and ensure democratic governance, they somewhat differ in scope, implementation, and constitutional interpretation.***
This paper explores their similarities and distinctions by analyzing their historical evolution, legal framework, judicial interpretations, and impact on governance and society, as most people believe that they are the same.
So, is the Bill of Rights of the USA & Fundamental Rights of India the same, or is there any difference between them?

I. INTRODUCTION

The protection of fundamental freedoms is a hallmark of democratic societies. The United States Bill of Rights, the first ten amendments to the U.S. Constitution, and the Fundamental Rights enshrined in Part III of the Indian Constitution play a crucial role in ensuring civil liberties. While the U.S. framework emphasizes limiting government overreach, India's approach balances individual rights with socio-economic justice. This paper compares these two legal frameworks, highlighting their origins, structures, and functions to understand their role in shaping governance, judiciary, and citizen rights.

II. THE BILL OF RIGHTS: A HISTORY

The first ten amendments to the U.S. Constitution, ratified in 1791, form the Bill of Rights. Drafted by James Madison, these amendments list specific prohibitions on governmental power, responding to concerns from several states advocating for stronger constitutional protections for individual liberties.

The Bill of Rights was influenced by historical documents such as:

- The Virginia Declaration of Rights (by George Mason)
- Magna Carta
- The Petition of Right
- The English Bill of Rights
- The Massachusetts Body of Liberties

A. Key Provisions of the Bill of Rights

1) First Amendment: Protects freedom of speech, religion, press, assembly, and petition.
2) Second Amendment: Grants the right to bear arms.
3) Fourth Amendment: Protects against unreasonable searches and seizures.
4) Fifth Amendment: Protects against self-incrimination, double jeopardy, and guarantees due process.
5) Eighth Amendment: Prohibits excessive bail, fines, and cruel and unusual punishment.

The U.S. Bill of Rights primarily focuses on **negative rights**, preventing government encroachment on individual freedoms.

B. What are the 10 Amendments that are called the "Bills of Rights"?

1) Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

2) Amendment II

A well-regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

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3) Amendment III

No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

4) Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall be issued, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

5) Amendment V

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

6) Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defences.

7) Amendment VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

8) Amendment VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

9) Amendment IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

10) Amendment X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

III. FUNDAMENTAL RIGHTS: A HISTORY

The Fundamental Rights in India, enshrined in Part III (Articles 12-35) of the Indian Constitution, are rooted in the Doctrine of Natural Rights. The Supreme Court has acknowledged that Fundamental Rights are the modern equivalent of natural rights.

Originally classified into seven categories, the Fundamental Rights now include six, following the 44th Amendment (1978), which removed the Right to Property.

Current Fundamental Rights in India

1) Right to Equality (Articles 14-18): Prohibits discrimination and abolishes untouchability.
2) Right to Freedom (Articles 19-22): Includes freedom of speech, movement, assembly, profession, and personal liberty.
3) Right against Exploitation (Articles 23-24): Prohibits human trafficking, forced labour, and child labour.
4) Right to Freedom of Religion (Articles 25-28): Ensures religious freedom and state neutrality in religious matters.
5) Cultural and Educational Rights (Articles 29-30): Protects minority rights to establish and manage educational institutions.
6) Right to Constitutional Remedies (Article 32): Empowers citizens to directly approach the Supreme Court or High Courts for rights violations.

Unlike the U.S. Bill of Rights, India's Fundamental Rights include both negative and positive rights, allowing government intervention for socio-economic justice.

#1 Right to Equality (Art. 14-18)

Article 14 represents the idea of equality, which states that the state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. The equality before law is guaranteed to all without regard to race, colour, or nationality.

Leading Cases- *Sheo Shankar v/s M.P. state of government*[1],
Indira Nehru Gandhi v/s Raj Narain[2]

(Article 15): Non-discrimination on grounds of religion, race, caste, sex, or place of birth

The Article 15 states that the state shall not discriminate against any citizen on grounds only of religion, caste, sex, place of birth, or any of them and would not be subject to any disability, liability, restriction, or condition. Nothing in this article shall prevent the state from making any special provisions for women and children. Nothing in this article or in sub-clause (G) of clause (1) of Article 19 shall prevent the state from making any special provision by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or Scheduled Tribes.

(Article 16): Equality of opportunity in public employment

Article 16 states that no citizen shall on grounds only of religion, race, caste, sex, descent, place of birth, residence, or any of them, be ineligible for, or discriminated against in respect of any employment or office under the state.It empowers Parliament to make a law prescribing any requirement as to residence within that state or UT prior to employment or appointment in that state or UT. It empowers the state to make special provisions for the reservation of appointments or posts in favor of any backward classes of citizens.

Leading Case - Indira Sawhney v. Union of India (1992)[3]

(Article 17): Abolition of Untouchability

Article 17 abolishes Untouchability and forbids its practice in any form. Untouchability refers to a social practice which looks down upon certain oppressed classes solely on account of their birth and makes any discrimination against them on this ground.

(Article 18): Abolition of Titles

Article 18 abolishes all titles and prohibits the state to confer titles on anybody whether a citizen or a non-citizen. However, military and academic distinctions are exempted from the prohibition.

#2 (Article 19): Right to Freedom

The Right to Freedom guarantees to the citizens of India six Fundamental Freedoms:

- Freedom of Speech and Expression,
- Freedom of Assembly,
- Freedom to form associations,
- Freedom of Movement,
- Freedom to reside and to settle, and
- Freedom of profession, occupation, trade, or business.

Leading Cases- Bi joe v/s State of Kerala (National Anthem Case)[4] , PUCL v/s UOI[5]

(Article 20): Protection in respect of Conviction for Offences

Article 20 provides protection against arbitrary and excessive punishment to any person who commits an offence.This article has taken care to safeguard the rights of persons accused of crimes. Moreover, this article cannot be suspended even during an emergency in operation under Article 359.

(Article 21): Protection of Life and Personal Liberty

Article 21 states no person shall be deprived of his life or personal liberty except according to procedure established by law. However, Article 21 puts a limit on the power of the State given under Article 246, read with the legislative lists. Thus, Article 21 does not recognize the Right to Life and Personal Liberty as an absolute right but limits the scope of the right itself.

Leading Cases- Maneka Gandhi vs UOI[6]

[1]AIR nag.58
[2]AIR 1975 SC 2299
[3] AIR 1993 SUPREME COURT 477
[4]1986 3 SC 615
[5]AIR 1997 SC 568
[6] 1978 AIR 597, 1978 SCR (2) 621

(Article 22): Safeguards against Arbitrary Arrest and Detention

Firstly, Article 22 guarantees the right of every person who is arrested to be informed of the cause of his arrest; secondly, his right to consult, and to be defended by a lawyer of his choice. Thirdly, every person arrested and detained in custody shall be produced before the nearest Magistrate within a period of twenty-four hours and shall be kept in continued custody only with his authority.

Leading Cases -A.K. Gopalan v. State of Madras (1950)[7], D.K. Basu v. State of West Bengal (1995)[8]

#3 (Articles 23-24): Right against Exploitation

Article 23 prohibits traffic in human beings, women, children, beggars or other forced labour militate against human dignity. Article 24 prohibits employing children below the age of 14 years in any hazardous profession. This right followed the human rights concepts and United Nations norms.

Leading Cases- Haridwar Singh v/s Bagun Sumbrui and Ors[9]

#4 (Articles 25-28): Right to Freedom of Religion

Articles 25 and 26 embody the principles of religious tolerance and serve to emphasize the secular nature of Indian democracy, i.e. equal respect to all religions. Article 25 offers freedom of Conscience and Free Profession, Practice and Propagation of Religion whereas Article 26 helps to manage religious affairs, which is subject to public order, morality and health, every religious denomination or any section.

Article 27 provides freedom not to pay taxes for religious expenses on promotion or maintenance of any particular religion. Article 28 prohibits religious instructions in educational institutions wholly maintained by the state.

Leading Cases- Durgah Committee, Ajmer v/s Syed Hussain Ali[10](Durgah Committee Case)

#5 (Articles 29-30): Rights to minorities (cultural and educational rights)

Article 29 provides protection of interests of minorities. A minority community can effectively conserve its language, script, or culture by and through educational institution. Article 30 states rights of minorities whether based on religion or language to establish and administer educational institutions.

The 44th Amendment has abolished the Right to Property as a Fundamental Right guaranteed by Article 19 (f) and Article 31 of the Constitution. It is now only a Legal Right under article 300-A, gives protection against executive action but not against legislative action.

Leading Case-T.M.A. Pai Foundation v. State of Karnataka[11], St. Stephen's College v. University of Delhi[12]

#6 (Articles 32-35): Right to Constitutional Remedies

Rights in order to be meaningful must be enforceable and backed by remedies in case of violation. This article guarantees the right to move Supreme Court by appropriate proceedings for the enforcement of Fundamental Rights and deals with Supreme Court's power to issue order or writs for the enforcement of Fundamental Rights. Article 33 empowers Parliament to modify the application of Fundamental Rights to the armed forces or forces charged with maintenance of public order.

On the other hand, Article 35 lays down that the power to make laws to give effect to certain specified Fundamental Rights shall vests only with the Parliament and not with State Legislatures.

Leading Case-H.S. Verma v/s T.N. Singh, C.M. U.P.[13] , Jamalpur Arya Samaj v/s Dr. Ram[14]

IV. LEGAL FRAMEWORK AND STRUCTURE

A. Bill of Rights (USA)

Comprises of 10 amendments to the U.S. Constitution, with a strong emphasis on limiting federal power. Key amendments include:

1) *First Amendment:* Protects freedoms of speech, religion, press, assembly, and petition against government interference.
2) *Second Amendment:* Grants the right to bear arms, which remains a highly debated issue in contemporary American society.
3) *Fourth Amendment:* Protects against unreasonable searches and seizures, ensuring privacy rights.
4) *Fifth Amendment:* Safeguards against self-incrimination, double jeopardy, and guarantees due process.
5) *Eighth Amendment:* Prohibits excessive bail, fines, and cruel and unusual punishment.

[7] AIR 1950 SUPREME COURT 27
[8] AIR 1997 SUPREME COURT 610
9 25 Feb 1972
10 1961 AIR 1402, 1962 SCR (1) 383
11 (2002) 8 SCC 481
[12] 1992 AIR 1630
[13] 1971 AIR 1331 OR 1971 SCR 1
[14] AIR 1954 PATNA 297

Primarily focuses on negative rights that prevent government encroachment on individual liberties rather than obligating the state to act positively.

B. Fundamental Rights (India)

Contained in Articles 12 to 35 of the Indian Constitution, classified into six broad categories:

1) *Right to Equality (Articles 14-18):* Prohibits discrimination based on caste, sex, religion, or place of birth and abolishes untouchability.
2) *Right to Freedom (Articles 19-22):* Includes freedom of speech, movement, assembly, profession, and personal liberty protections.
3) *Right against Exploitation (Articles 23-24):*Prohibits human trafficking, forced labor, and child labour.
4) *Right to Freedom of Religion (Articles 25-28):*Ensures religious freedom and state neutrality in religious matters.
5) *Cultural and Educational Rights (Articles 29-30):* Protects the rights of minorities to establish and manage their educational institutions.
6) *Right to Constitutional Remedies (Article 32):* Empowers citizens to directly approach the Supreme Court or High Courts for rights violations, termed the "soul of the Constitution" by Dr. Ambedkar.

Unlike the U.S. Bill of Rights, Fundamental Rights in India include both negative and positive rights, allowing the government to intervene for social justice.

V. INTERPRETATION AND ENFORCEMENT

1) *Judicial Review in the USA*

- The U.S. Supreme Court plays a pivotal role in interpreting the Bill of Rights through judicial review.
- Established in “Marbury v. Madison” (1803), which set the precedent for the judiciary's power to strike down unconstitutional laws.
- The doctrine of "incorporation" extends protections to state governments via the Fourteenth Amendment, ensuring uniformity in rights protection.
- Landmark cases such as *Brown v. Board of Education* (1954) advanced civil rights by declaring racial segregation unconstitutional.

2) *Judicial Review in India*

- The Indian Supreme Court and High Courts ensure Fundamental Rights are protected against executive and legislative encroachments.
- Article 32 allows direct access to the Supreme Court for rights violations, unlike in the U.S.
- Kesavananda Bharati v. State of Kerala (1973) established the "Basic Structure Doctrine," preventing amendments from altering the Constitution’s fundamental character.
- Judicial activism, seen in cases like Maneka Gandhi v. Union of India(1978), expanded personal liberty protections.

VI. KEY DIFFERENCES AND SIMILARITIES

Feature	Bill of Rights (USA)	Fundamental Rights (India)
Nature	Primarily negative rights limiting government action	Combination of negative and positive rights, allowing state intervention for social justice
Enforceability	Enforced through judicial review, applies to federal and incorporated state actions	Enforced through courts with the additional remedy of Article 32

Amend-ability	Requires a complex ratification process involving Congress and states	Can be amended by Parliament, subject to Basic Structure Doctrine
Scope of Rights	Individual-centric	Balances individual and group rights (e.g., minority protections)
Judicial Review	Conducted by the U.S. Supreme Court	Conducted by the Supreme Court and High Courts
Right to Constitutional Remedies	No explicit provision	Explicitly guaranteed under Article 32

VII. IMPACT ON GOVERNANCE AND SOCIETY

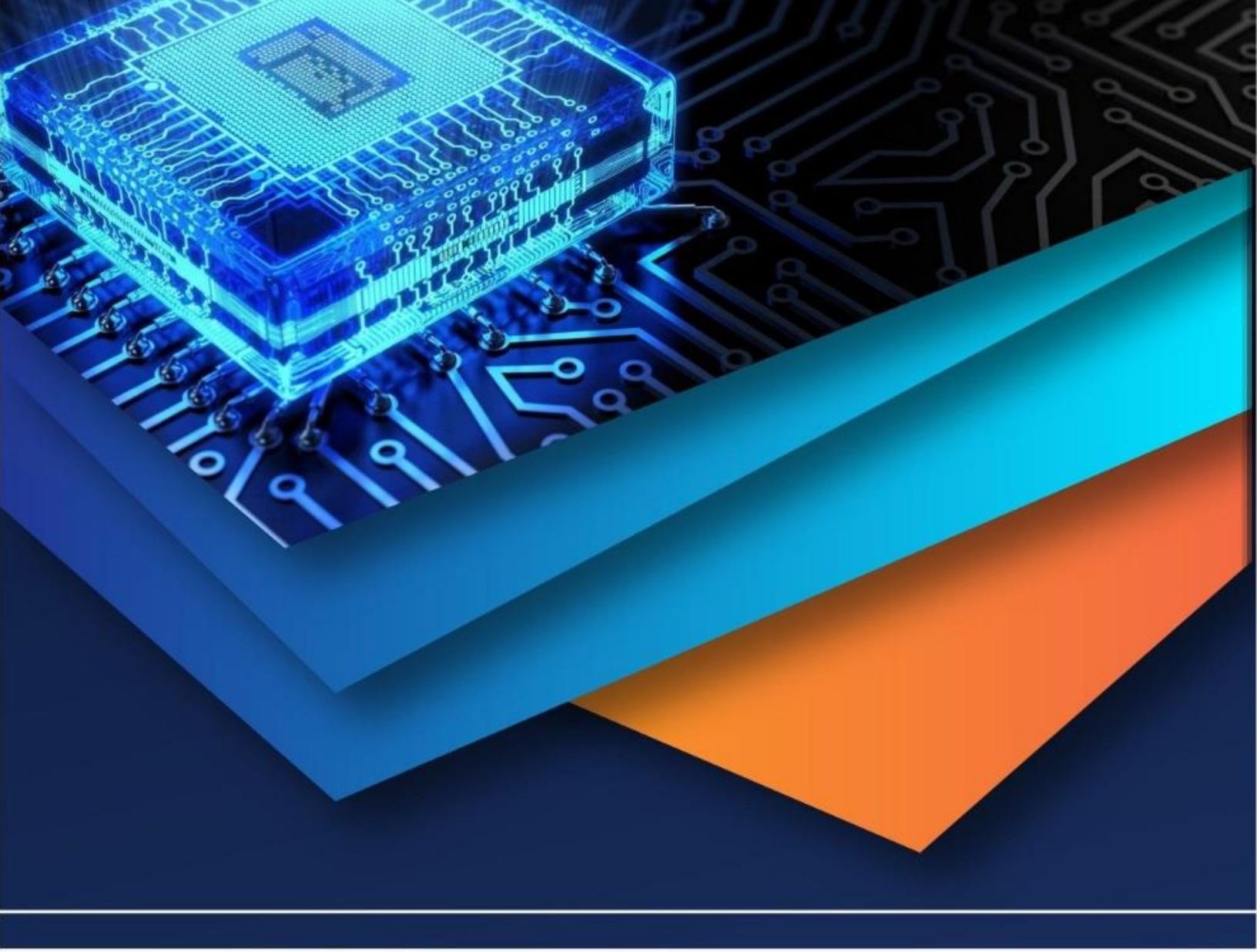
1) The Bill of Rights ensures a government limited in power, fostering a culture of individualism and federalism.
2) Fundamental Rights in India integrate civil liberties with socio-economic justice, aiding affirmative action policies like reservations for disadvantaged groups.
3) The U.S. primarily focuses on civil and political rights, while India includes economic and cultural rights, reflecting its post-colonial commitment to social reform.
4) American jurisprudence has expanded rights through judicial interpretations, while Indian courts have actively reshaped rights through judicial activism.

VIII. CONCLUSION

Both the U.S. Bill of Rights and India's Fundamental Rights are pillars of democratic governance, ensuring government accountability and protecting individual freedoms. However, India's broader framework, encompassing both negative and positive rights, reflects its focus on social justice and inclusivity. While the U.S. emphasizes limited government intervention, India's system allows state action to correct historical injustices. Despite their differences, both systems continue to evolve through judicial interpretation, shaping their respective democracies.

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