



# FACULTY OF JURIDICAL SCIENCES

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# Lecture-7



- **Fundamental Rights**

While US has incorporated the “Bill of Rights”, India has incorporated “Fundamental Rights” in its Constitution. However, the American Constitution has provided additional human rights, which are not to be explicitly found in the Indian Constitution.

1. Freedom of press is explicitly provided under the 1st amendment of the US Constitution, while in India it is implicitly read under the Article 19[1][a], freedom of speech and expression. Petition to the Supreme Court is a fundamental right in India, where as in US it is the government that is petitioned (In case of US, the word “government” has a wider connotation and encompasses not only the executive, but also the higher judiciary).
2. The Americans have a right to keep arms and guns for the protection of their life and property. This was provided under the 2nd amendment. Therefore, guns and arms are sold like any other commodity in US without legal hassles, whereas in India it is a total contrast, because apart from not being a fundamental right, it is a highly regulated legal right.

5<sup>th</sup> amendment to the US Constitution guarantees that an accused will be tried for criminal offence with a system of “Grand Jury”. Grand Jury means that common people are selected by the government randomly, representing the community. They play a part in deciding the guilt of the accused persons. The number of persons selected to be in the grand jury varies from 6 to 12, or even more, if the case is controversial.

On the other hand, in India criminal trials are adjudicated by the Judges only.

Further, in US, no person’s life and liberty shall be deprived without “due process” of law.

1. Due process means that the content and procedure of law must be just, fair, and equitable, which will be decided by the judiciary.
2. Legislative power of depriving a person’s liberty is restricted and scrutinized and evaluated by the judiciary.

In India, a person’s life and liberty shall be deprived according to the “procedure established by law”.

1. The word “procedure established by law” gives wide discretionary power to the legislature to restrict the liberty.
2. Nevertheless, the Supreme Court in Maneka Gandhi case (even though the court did not use the word due process) held that the procedure established by law must be fair, just and equitable.

The Indian Parliament deleted the Right to Property from the list of Fundamental Rights in 1978. Whereas, in US, the right to property is still a fundamental right and no property shall be acquired without just compensation.

A person accused of crime enjoys certain explicit rights under the 6th Amendment to the US Constitution: speedy and public trial, notice of accusation, compulsory process of obtaining witness in his favor and assistance of legal counsel of his choice.

All these rights in India are not expressly mentioned in the Constitution. Nonetheless, these rights are provided by the Supreme Court by broadly interpreting the Right to Life and Liberty under Article 21.

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.

9<sup>th</sup> Amendment to the US Constitution is quite important because it says that mere enumeration of certain rights in the Constitution shall not be interpreted to deny the other rights retained by the American people.

In spite of the statutory rights in the Constitution people enjoy other rights, which are given by nature. The American Constitution is highly influenced by Locke's philosophy of inalienable natural rights of human being.

The Indian Constitution, on the other hand, does not contain any such notable Article. Therefore, Indians enjoy only those rights recognized by the Constitution, which are based on the philosophy of Austin and Bentham's theory of law.

- **Distribution of Legislative Power**

### **India**

Seventh Schedule of the Indian Constitution distributes the legislative power between the Central and State governments. The Central and State governments have exclusive power to make laws on 97 and 66 subjects, listed in the Union and State list respectively. On the 47 matters of Concurrent list both the Centre and State can make laws. In case of conflicting laws, law of the Centre would prevail.

97<sup>th</sup> subject in the Union list says that any subject, which does not belong to any other list would automatically confer power to the Parliament to make a law regarding that subject. Thus, our constitution makers have created stronger Central and weaker State governments, which depend on the Central government for the financial assistance.

### **US**

It is quite contrary in the case of US, where no elaborative mechanism is provided. Few expressly mentioned subjects are with the federal and rest of the matters with State governments.

### **Emergency and Suspension of Writs**

In India, an emergency can be declared on the ground of War and Armed Rebellion. During such emergency all fundamental rights except the right to life can be suspended. The American Constitution does not use the phrase of emergency but says that in case of Rebellion and Invasion of Public Safety, the writ of Habeas Corpus can be suspended.

# MCQ

**1) What is the minimum age for the eligibility to be a Presidential candidate?**

- a) 30
- b) 28
- c) 21
- d) 35

**2) Who is regarded as the head of the Indian state?**

- a) Prime Minister
- b) President
- c) Chief Justice of India
- d) None of the above

**3) The executive actions of the government are carried out under whose name?**

- a) Cabinet
- b) Prime Minister
- c) President
- d) Both (b) and (c)

**4) Who among the following is NOT directly participating in the election of the President?**

- a) the elected members of Lok Sabha and Rajya Sabha
- b) the elected members of the legislative assemblies of the state
- c) the elected members of the legislative assemblies of the Union Territories of Delhi and Puducherry
- d) Both elected and nominated members of the State legislative council

**5) What is the official term of the President's office?**

- a) 5 years
- b) 10 years
- c) 3 years
- 4) 4 years