

# A Comparative Study of Fundamental Rights in India and Canada

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**Abstract:** *This paper deals with a comparative study of fundamental rights in India and Canada. The framers of Indian constitution has referred variety of constitutions from the different parts of the world to give a appropriate rights for maintain the peace and harmony to be safeguarded as fundamental rights. At the same time the British rule was sore because most of the rights are based upon the notion of the rulers. Hence the people of India had vested an absolute right as to protect their life and liberty. Each country they have their own fundamental rights according to their constitution. On this paper the researcher makes a comparative study on the fundamental rights between India and Canada to find out the importance of fundamental rights given in both the countries to analyze more information regarding to fundamental rights in detailed manner.*

**Keywords:** absolute right, dignity, Bill of rights, civil and political rights, democracy.

## 1. Introduction

We live in the world where every person wants to personal rights for to live a life with dignity. Among such rights like fundamental rights are the most important one. It plays a vital role in every citizen's life. Fundamental rights are usually defined as an absolute right a citizen of a country possesses that cannot come under the majority of circumstances be taken from the citizen. And also fundamental rights are a group of rights that have been recognized by the Supreme Court as requiring a high degree of protection from the government encroachment.

A fundamental right in India guarantees civil liberties such that all Indians can laid their lives in peace and harmony to the citizen. So it was considered an essential for the development of the personality of every individual and to preserve human dignity on the other hand a fundamental rights in Canada is one of the part of Canadian constitution. All Canadians enjoy certain rights based on Canadian's tradition of democracy and respect for the human dignity and freedom.

As a part of this project the researcher had done a research on the comparison between fundamental rights in India and Canada. More information about the fundamental rights in the both countries is following.

### Objectives of the Study

- To know about the fundamental rights in India
- To know about the fundamental rights in Canada
- To make a comparative study of fundamental rights in India and Canada

### Hypothesis

As both the Canadian and Indian constitution have their own fundamental rights based on the necessity. On which the Indian constitution have the majority on fundamental rights. Moreover the framers of the Indian constitution made a special article (art 32 & 226) for the victims whose fundamental rights were violate. That's why it has a greater

importance then the fundamental rights mentioned under Canadian constitution.

## 2. Fundamental Rights in India

People in democratic countries possess and enjoy certain rights, which are protected by judicial system of the country concerned. Their violation, even by the State also, is not allowed by the courts. India respects the rights of the people, which is listed in our Constitution, under the heading "Fundamental Rights". [1] It has been considered as one of the salient features of our Constitution. The Fundamental Rights are defined as basic human freedoms by which every citizen of India has the right to enjoy for a proper and harmonious development of personality. These rights are apply to all citizens, irrespective of race place of birth, religion, caste or gender.. it was enshrined in part III of our constitution of India.

These rights are ensuring the fullest physical, mental and moral development of every citizen. They include those basic freedoms and conditions which alone can make a life worth living and meaningful. It was created a feeling of security to all citizens especially the minorities in the country like India. So these fundamental rights are not only in protection but also give the prevention of gross violations of human rights.

The Fundamental Rights (India) are,

1. Right to Equality
2. Right to Freedom
3. Right against Exploitation
4. Right to Freedom of Religion
5. Cultural and Educational Rights
6. Right to Constitutional Remedies
7. Right to life

Recently by the 86th Amendment Act, the Right to Education has been included in the list of Fundamental Rights under Article 21(A). However the Right to Property was removed by the 44th Amendment Act, 1976. [2] Later it has been made a legal right.

**1) Right to equality:** This includes equality before law and equal protection of law, prohibition of discrimination on grounds of religion, race, caste, gender or place of birth, and abolition of titles and untouchability. Right to equality is an important right provided for in Articles 14, 15, 16, 17 and 18 of the constitution of India. It provides the equal privileges and opportunities to all citizens of India without any discrimination.

**2) Right to freedom:** Article 19 of Indian constitution guarantees as the right to freedom as a fundamental right, the following six freedoms are:

#### **Six Fundamental Freedoms**

- a) Freedom of speech and expression.
- b) Freedom to assemble peacefully without arms.
- c) Freedom to form associations or unions.
- d) Freedom to move freely throughout the territory of India
- e) Freedom to reside and settle in any part of the territory of India.
- f) Freedom to practice any profession or to carry on any occupation, trade or business [3]

**3. Right to life:** according to Article 21 of the constitution of India guarantees the right to life and personal liberty to every citizen of India.

**4. Right against exploitation:** This prohibits all forms of forced labour, child labour and traffic of human beings. The right against exploitation, addressed in Articles 23 and 24 of the constitution of India, provides for two provisions, namely the abolition of trafficking in human beings and beggar and abolition of employment of children below the age of 14 years in dangerous job in hazardous industries like factories, mines, etc

**5. Right to freedom of religion:** This includes freedom of conscience and free profession, practice, freedom to manage religious affairs, freedom from certain taxes and freedom from religious instructions in certain educational institutes. It was covered in Articles 25, 26, 27 and 28 of Indian constitution, provides free of religion to all citizens of India. [4] The objective of this right is to strengthen to the principle of secularism in India. According to the Constitution of India, all religions are equal before the State and no religion shall be given preference over the other. This right was not an absolute right. It can be restricted on the grounds of public order, morality, peace and health. The state shall not impose restrictions in arbitrarily.

**6. Cultural and Educational rights:** Preserve the right of any section of citizens to conserve their culture, language or script, and right of minorities to establish and administer educational institutions of their choice. According to Articles 29 and 30 of Indian constitution deals with cultural and educational rights, to protect the rights of the minorities. Any community which has a language and a script of its own has the right to protect and develop it. No citizen can be discriminated against for admission in State or State aided institutions.

**7. Right to constitutional remedies:** According to article 32 to 35 of Indian constitution deals with right to constitutional

remedies. It empowers every citizens have a right to move a court of law in case of any denial of the fundamental rights. If the court will finds that it is not, the person will have to be freed. This procedure of asking the courts to safeguard the citizens' fundamental rights can be done in various ways. Especially the court can issue several types of writs based on the offence. These writs are namely habeas, mandamus, prohibition, quo warranto and certiorari. When a national or state emergency is declared, this right is suspended by the appropriate central government. [5]

### **3. Fundamental Rights in Canada**

According to the constitution of Canada was founded upon principals that recognized the supremacy of god and the rule of law. The Canadian Charter of Rights and Freedoms is one of the major parts of the Canadian Constitution. The Constitution is a set of laws containing the basic rules about how the country shall operates to maintain the peace and harmony within the country. In Canada often simply the charter, is the BIL OF RIGHTS entrenched in the Canadian constitution. The bill of rights only a federal statute, it can be amended through the legislative process and the laws. The charter guarantees mainly for civil and political rights enacted on 1960.hence most of the rights can be exercised by legal persons certain few rights belong exclusively to natural persons. [6]. The citizens of Canada have certain fundamental rights, which includes

Equality rights  
Democratic rights  
Mobility rights  
Languages rights  
Minority of education rights  
Legal rights

### **4. Fundamental Rights in Canada**

**1) Equality rights:** equal treatment before the law, and equal protection and benefit of the law without discrimination. According to section15 of Canadian constitution guarantees the right to equality to all the citizens of Canada. So the equality rights between India and Canada, India has more effective than Canadian constitution.

**2) Democratic rights:** generally such rights are subjected to right to participate in political activities, to vote and to be elected to political office. According to section 3 of the Canadian constitution deals with democratic rights. This includes every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein.

**Section 4** states that the maximum duration of legislatures is fixed for five years.

**Section 5** states that Annual sitting of legislative bodies. This contains There shall be a sitting of Parliament and of each legislature at least once every twelve months. In democratic rights not expressly mentioned under Indian constitution, it shall be viewed only the preamble itself. But the constitution of Canada openly recognized the democratic rights to all the citizens of Canada.

**3) Legal rights:** generally the legal rights of people in dealing with the justice system and enforcement of law are protected, namely

**Section 7 -** Canadian constitution deals with Life, liberty and security of person. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice. [7]

**Section 8 -** Search or seizure

Everyone has the right to secure against unreasonable search or seizure.

**Section 9-** Detention or imprisonment

Everyone has the right to freedom from arbitrarily detained or imprisoned.

**Section 10-** Arrest or detention

Everyone has the right on arrest or detention. Generally it has been a right to legal counsel and the guarantee of habeas corpus.

**Section 11 -** Proceedings in criminal and penal matters

Everyone has the right in criminal and penal matters like the right to presumed innocent until proven guilty.

**Section 12 -**Treatment or punishment

Everyone has the right not to be subjected to cruel and unusual treatment or punishment.

**Section 13-** Self-crimination

**Section 14-** Interpreter

A party or witness in any proceeding who does not understand or speak the language in a court proceeding.[8] According to the comparison of legal rights between India and Canada, both of will prevail. But under Canadian constitution the legal rights are somewhat expressly recognized in detailed manner.

**4) Mobility rights:** According to section 6 of the Canadian constitution states that protect the mobility rights of Canadian citizens, such as include the right to enter and leave Canada, and to move to and take up residence in any province. It was not so much interested or viewed under Canadian constitution compare to Indian constitution.

**5) Language rights:** generally, the people have the right to use either the English or French languages in communications with Canada's federal government and certain of Canada's provincial governments. According to section 16- 22 of Canadian constitution deals with language rights. In India it was not elaborately discussed under part III of the constitution. But it was recognized by various judicial interpretations.

**6) Minority language education rights:** according to section 23 of Canadian constitution deals with the minority language and educational rights. In general, French and English minorities in every province and territory have the right to be educated in their own language. [9]

## 5. Fundamental Freedoms Under Canadian Constitution

All Canadians also enjoy fundamental freedoms of religion, thought, expression, peaceful assembly, and association. The Supreme Court of Canada also wants to narrowly interpret the bill of rights and the Court was unwilling to declare laws inoperative. The relative ineffectiveness of the Canadian Bill of Rights motivated many to improve rights protections in Canada. Charter sets out those rights and freedoms that the Canadians believe this are necessary in a free and democratic society. Some of the rights and freedoms contained in the Charter are:

Section 2:

- freedom of expression and the right to a democratic government
- The right to live and to seek the employment anywhere in Canada
- legal rights of persons accused of crimes Aboriginal peoples' rights
- right to equality, including the equal status of men and women
- The right to use either of the official languages of Canada
- The rights of protection of Canada's multicultural heritage.

These rights are just similar to the constitution of India. Whereas not contained the total subject matter which is in the Indian constitution.

## 6. Conclusion

In generally Fundamental rights has played vital role in both countries .these rights are universally apply to all citizens without any discrimination. They are enforceable by courts and legislature subject to certain restrictions. Hence the right to constitutional remedies given to under Indian constitution by article 32 has no equivalent to the Canadian constitution. The supreme court of India was very powerful body in the initial stage of Indian constitution than the Supreme Court of Canada. So Finally when the researcher analyze both the Indian and Canadian fundamental rights and came to know that both the fundamental rights of those countries are suitable for the citizens to bound accordingly.

## References

- [1] Bakshi P.M., The Constitution of India, universal law publishing co, New Delhi, 1991.
- [2] <http://www.insightonindia.com> accessed on 05/06/2017
- [3] Bakshi P.M., The Constitution of India, universal law publishing co, New Delhi, 1991.
- [4] <http://www.thehansindia.com> accessed on 07/06/2017
- [5] Pylee M.V. Indians Constitution, s.chand and company publication, New Delhi, 1999, p.63
- [6] <http://www.rediff.com> accessed on 13/06/2017.
- [7] Hogg. Peter.W, .Constitutional law of Canada, insomniac press Publication, New Delhi 2003, p.686.
- [8] <http://www.mapsofindia.com> accessed on 18/06/2017
- [9] <http://www.dnaindia.com> accessed on 19/06/2017