Chapter 1

Fundamental Rights – General Aspects.
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i) Rights – Meaning

‘Right’ in the ordinary sense of the term means, a number of things, but it is generally taken to mean the standard of permitted action within a certain sphere.

The word ‘right’ in ordinary English usage, not only means a lawful entitlement; it also means a just entitlement.

According to Austin, right is a faculty which resides in a determinate party or parties by virtue of a given law and which avails against a party or parties other than the party or parties in whom it resides, According to him, a person can be said to have a right only when another or others are bound or obliged by law to do something or forbear in regard to him. It means right has always a corresponding duty.
The human person possesses rights because of the very fact that it is a person, a whole, master of itself and of its acts, and which consequently is not merely a means to an end, but an end, an end which must be treated as such. The dignity of the human person? The expression means nothing if it does not signify that by virtue of natural law, the human person has the right to be respected, is the subject of rights, possesses rights. These are things which are owed to man because of the very fact that he is man.¹

As H.J. Laski observes, “rights are those conditions of social life without which no man can seek, in general, to be himself at his best”.²

Rights are what we may expect from others, and others from us, and all genuine rights are conditions of social welfare. Thus the rights any one may claim are partly those which are necessary for the fulfillment of the functions that society expects from him.

They are conditioned by correlative to his social responsibilities.³

Salmond defines rights from a different angle he says a right is an interest recognised and protected by a rule of right. It is any interest respect for which is a duty, and disregard of which is a wrong.⁴

'Right' in its narrow sense constitutes the correlative of duty, but in its generic sense it includes not only right stricto sensu, but "any advantage or benefit conferred upon a person by a rule of law." Dias says that the word 'right' has undergone successive shifts in meaning⁵ and Hohfeld gives four different meanings of the word 'right'. One is right stricto sensu, the other is liberty, the third is power and the fourth is immunity⁶. In its strict sense 'right' is defined as interest which the law protects by imposing corresponding duty on others.

'Liberty' is exemption from the right of another and its correlative is 'no-right' and in the same way 'power' is ability to change the legal relations of another and its correlative is liability. Similarly,

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3 R.N. Gilchrist, Principles of Political Science, Madras, 1952
4 Salmond on Jurisprudence, P.J. Fitzgerald, 12th Ed., 4th Impression, 1965
5 Dias on Jurisprudence, 1976 ed., pages 33-34
6 Hohfeld, "Fundamental Legal Concepts as Applied to Legal Reasoning"
'immunity' is exemption from the legal power of another and the correlative of immunity is disability. To illustrate, where there is a right stricto sensu in A, there is a correlative duty in B to do X. Similarly, where A has liberty to do X., there is a correlative no-right in B to interfere in regard to it. The correlative of power in A is liability in B as regards X and similarly, where there is immunity in A from the legal power of B, its correlative is disability in B as regards X. These are the four different jural relationship recognised by law and they are comprehended within the generic term 'right.'

ii) Concept of Legal Rights:

The word rights can be classified as legal rights and moral rights. Rights and duties are either moral or legal. A moral or natural right is an interest recognised and protected by a rule of morality, an interest the violation of which would be a moral wrong, and respect for which is a moral duty. A legal right, on the other hand, is an interest recognised and protected by a rule of law, an interest the violation of which would be a legal wrong done to him whose interest it is and respect for which is a legal duty.

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7 State of Karnataka Vs. Union of India, AIR 1978 SC 68, Para.202
8 Shorter Oxford English Dictionary
Holland defines legal right as the capacity residing in one man of controlling, with the assent and assistance of the state and actions of others. It is clear that Holland follows the definition given by Austin.

The Supreme Court has, in State of Rajasthan Vs. Union Of India observed:

“In a strict sense, legal rights are correlative of legal duties and are defined as interests which law protects by imposing corresponding duties on others.”

"RIGHT" is an interest recognised and protected by moral or legal rules. It is an interest the violation of which would be a legal wrong. Respect for such interest would be a legal duty.

That is how Salmond has defined the "Right". In order, therefore, that an interest becomes the subject of a legal right, it has to have not merely legal protection but also legal recognition. The
elements of a "LEGAL RIGHT" are that the "right" is vested in a person and is available against a person who is under a corresponding obligation and duty to respect that right and has to act or forbear from acting in a manner so as to prevent the violation of the right. If, therefore, there is a legal right vested in a person, the latter can seek its protection against a person who is bound by a corresponding duty not to violate that right.\(^\text{10}\)

The legal right of an individual may be founded upon a contract or a statute or an instrument having the force of law.

Section 101 of the Evidence Act lays down the general rule about the burden of proof.

'whoever desires any Court to give judgment as to any legal right or liability department on the existence of facts which he asserts, must prove that those facts exist'.

In Halsbury's Laws of England\(^\text{11}\), Fourth Edition, Volume I, paragraph 89, it is stated that the purpose of an order of mandamus

\(^{10}\) Mr. 'X' Vs. Hospital 'Z', AIR 1999 SC 495, Para.14

"is to remedy defects of justice; and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual."

There must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by someone who has a legal duty to do something or to abstain from doing something.\textsuperscript{12}

"The right of effective access to justice has emerged with the new social rights. Indeed, it is of paramount importance among these new rights since, clearly, the enjoyment of traditional as well as new social rights presupposes mechanisms for their effective protection. Such protection, moreover, is best assured by a

workable remedy within the framework of the judicial system. Effective access to justice can thus be seen as the most basic requirement - the most basic 'human right' - of a system which purports to guarantee legal right." \(^{13}\)

Human rights are a form of moral rights in being the rights of all people at all times and in all stations.

10\(^{th}\) December is a Human rights day. It was on the right of 10\(^{th}\) December 1948 that the Assembly of the U.N. adopted and proclaimed the universal declaration of Human rights.

iii) **Legal rights and Fundamental rights:**

Men in all ages have valued liberty highly, although they have given it different meanings. In ancient Greece, society was divided into freemen and alones and the latter had no rights. The Greek thinkers, in fact, accepted slavery as something natural. In the middle ages, liberty could be exercised only by the feudal lords,

\(^{13}\) M. Cappelletti, Rabeis Z (1976) 669 at p. 672.
while the common people lived as villains or serfs, these serfs, were no better than slaves.

The basic rights of man arise from the concept of a free man. An ideal man is more conscious of his duties than his rights; the ordinary individual citizen is often deprived in his life by a series of intrusions in his individual freedom by executive or state action. Interference in his freedom by other individuals, when it transgresses the law of the land, gives him a cause of action against such individuals in the freedom of the ordinary courts of the land. But if the transgression is by the State, the citizen is helpless unless there is a guaranteed charter of freedom, which envisages remedies even against the state. It is not every freedom that has to be safeguarded. What are basic or fundamental rights of man have to be protected.

Fundamental rights are the modern name for what have been traditionally known as natural rights. As one author points it, they are moral rights, which every human being everyone at all times ought to have simply because of the fact that in contradistinction with other beings, he is rational and moral. They are the
primordial rights necessary for the development of human personality. They are the rights, which enable a man to chalk out his whole life in the manner he likes best.

Various theories have been advanced regarding the origin and nature of fundamental right. Of these the earliest is the doctrine of *jus naturale*. According to this theory, every fundamental right is inherent in man. It existed prior to the origin of the State, and the State cannot violate it but must recognize and protect it. The theory is based upon two assumptions. In the first place, it presupposes a state of nature in which man was absolutely independent. This was prior to the birth of any kind of social or political organization. Secondly, it is also founded upon the concept of a contract by virtue of which man surrendered a portion of his independence but retained certain specific rights. This residue of independence comprises his fundamental rights which are superior to the State.

Locke and Wolff were the most prominent exponents of the theory, but it was Blackstone who transplanted it from the realm of political philosophy to the domain of jurisprudence. In his
discussion of the question of the rights of individuals he lays down two fundamental propositions. In the first place, he describes these rights as "the absolute rights of individuals", and proceeds to add: "He also describes this as natural liberty of mankind which "consists properly in a power of acting as one thinks fit, without any restraint or control, unless by the law of nature; being a right inherent in us by birth, and the gifts of God to man at his creation, when he endowed him with the faculty of free-will." His second proposition is that the principal aim of society is to protect individuals in the enjoyment of these absolute rights, which could not be preserved in peace without the mutual assistance and intercourse which results from the institutions of friendly and social communities. He, therefore, concludes that "the first and primary end of human laws is to maintain and regulate these absolute rights of individuals." He also points out that when man enters society, he gives up a part of his natural liberty in consideration of securing the advantages which society confers upon him, and undertakes to conform to those laws which the community thinks it proper to establish. Finally, he asserts that civil liberty "is no other than natural liberty so far restrained by
human laws, and no further, as is necessary and expedient for the
general advantage of the public”.

The theory of natural rights was universally accepted in the
American Colonies. For instance, Article 1 of the Virginia Bill of
Rights expressly declared that all men are by nature equally free
and independent, and have certain inherent rights, of which, when
they enter into a state of society, they cannot, by any compact,
deprive or divest their posterity. Similarly, the Declaration of
Independence of 1776 stated that “all men are by nature equally
free and independent, and have certain inherent rights, of which,
when they enter into a state of society, they cannot, by any
compact, deprive or divest their posterity. Similarly, the
Declaration of independence of 1776 stated that “all men are
created equal; that they are endowed by their Creator with certain
inalienable rights; that among these are life, liberty and the pursuit
of happiness. That, to secure these rights, governments are
instituted among men, deriving their just powers from the consent
of the governed.” The theory was also accepted by American
courts as a result of the powerful influence which Blackstone’s
Commentaries had on judges and jurists in the United States.
Thus, it was authoritatively laid down that "the rights of the individual are not derived from governmental agencies, either municipal, State or Federal, or even from the Constitution. They exist inherently in man by endowment of the Creator, and are merely reaffirmed in the Constitution, and restricted only to the extent that they have been voluntarily surrendered by the citizenship to the agencies, either municipal, State or Federal, or even from the Constitution. They exist inherent in man by endowment of the Creator, and are merely reaffirmed in the Constitution and restricted only to the extent that they have been voluntarily surrendered by the citizenship to the agencies of government." 14 It has, therefore, been stated that constitutions are not the source of the personal rights of the individual. The theory of American government is that the people, in full possession of inherent and inalienable rights, have formed the government in order to protect those rights, and have incorporated them into the organic law as a shield against unwarrantable interference by any department of government.

14 Dallis v. Mitchell, 245 S.W. 944
A modified version of the theory of natural rights is to be found in some of the decisions of the American courts. These judgments do not regard fundamental rights as rights existing in a state of nature. They take the view that fundamental rights are such rights as are essential to the individual in a free society. For instance, in *Micky v. Kansas*, 43 F. Supp. 739, it was laid down that “civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses.”

Similarly, in *Wolf v. Colorado*, (1949) 338 U.S. 25, Frankfurter, J., dealing with the right to security of one’s privacy against arbitrary intrusion, observed that the right was basic to a free society and was implicit in the concept of ordered liberty. Equally emphatic is the observation of Warren, C.J. in *Sweezy v. New Hampshire*, (1957) 354 U.S. 234, that the political freedom of the individual is a fundamental principle of a democratic society. “Our form of government is built on the premise that every citizen shall have the right to engage in political expression and association.” In other words, the modern view of fundamental rights is that they are

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15 Micky v. Kansas, 43 F. Supp. 739
rights which are essential to an individual in a free government. Fundamental rights have, therefore, been defined as “the summary of rights and liberties of the people, or of the principles of constitutional law deemed essential or fundamental.” These views do not, however, define all the essential elements of a fundamental right, although they emphasize one of its distinctive characteristics.

The protagonists of this theory contend that all powers of sovereignty vest in the state, but under certain circumstances the State may in its discretion grant certain rights to its citizens, and these rights constitute their fundamental rights.

These theorists contend that there exist only the sovereign, independent and omnipotent rights of the State. The so-called autonomous and original rights of the individual have no existence at all. On the other hand, the State limits the sphere of its own sovereign right taking into consideration the circumstances of the time and the aspirations of the subjects. As a result of this act of self-limitation, the individual is granted a sphere of liberty within which he can act for himself so long as he does not transgress the limits.
It is true that in every State there exists an antithesis between the authority which commands and the subjects who obey. The concept of liberty arises from this opposition in so far as it tends to restrict the sphere of activities of the State in favour of its Citizens. Santi Romano founds his theory of fundamental rights on the *factum* of this contradiction. He points out that there are two distinct spheres of action in which the intervention of the State is excluded. The first he describes as the sphere of *de facto* liberty, i.e. where the interests of the State are not involved and, therefore, the matters pertaining to it fall outside the legitimate activities of the State. The second is the sphere of legal liberty in which the State is directly interested but is excluded from it by virtue of positive rules of law. The fundamental rights of individuals relate to this sphere. They are negative in character since they impose an obligation on the State not to interfere except when permitted by law; they are, therefore, manifestations of *jus excludendi auctoritatem*. These rights of the individual must be distinguished from other rights which are of a positive character.

In the first place, it is obvious that fundamental rights, as the term itself indicates, are of the same nature as ordinary legal rights. The
generally accepted definition of legal rights is that they are titles or claims to power or authority which are recognised by law and are legally enforceable. Therefore, the generic description of rights is "legally enforceable claims". Fundamental rights being legal rights fall within the category of such claims. Fundamental rights being legal rights fall within the category of such claims; but in actual practice this is not always true, for there are exceptions to this general principle. For instance, the French Declaration of 1789 did not provide any machinery for enforcing the rights enumerated in it. As we have already pointed out, this is also the opposition under the Soviet Constitution. These must, however, be treated as an exception, and it may generally be asserted that all fundamental rights are and should be legally enforceable.

Here, however, ends the similarity between fundamental rights and other legal rights. Most legal rights deal with the relations between individuals and, therefore, fall within the domain of private law. On the other hand, fundamental rights, strictly so called, relate exclusively to the sphere of juridical relations between the State and its organs, on the one hand, and individuals, on the other. They are, therefore, exclusively rights of public law.
It has also been pointed out that fundamental rights can only be invaded or infringed by the State and not by private individuals. Thus, in the Butchers Union etc. Co. v. Crescent city etc. co. 28 L. ed. 585, Bradley, J. observed as follows: These rights (Fundamental Rights) are different from concrete rights which a man may have to a specific chattel or to a piece of land or to the performance by another of a particular contract, or to damages for a particular wrong, all of which may be invaded by individuals, they are the capacity, power or privilege of having and enjoying those concrete rights and of maintaining them in the courts, which capacity, power or privilege can only be invaded by the State.\footnote{Butchers Union etc. Co. v. Crescent city etc. co. 28 L. ed. 585, Bradley, J}

These primordial and fundamental rights are the privileges and immunities of the citizens. It follows, therefore, that fundamental rights, strictly so called, are rights which are enforceable only against the State. A constitution may, of course, include in its Bill of Rights such rights as are also enforceable against individuals, as, for instance, under Clause (2) of Article 15 of the Indian Constitution. These rights do not, however, partake of the nature of fundamental rights merely by virtue of their inclusion in the declaration. Therefore, the right conferred by Article 15(2) cannot,
strictly speaking, be regarded as a fundamental right in so far as claims against individuals are concerned, although for the purposes of enforcing the right it may be construed as a fundamental right.

A fundamental right is a legally enforceable right governing the relations between the State and the individual, and that such a right is both negative and positive in character. This statement does not, however, exhaust the essential elements of a fundamental right. A fundamental right, as the term itself denotes, must be fundamental. The question, therefore, arises what is the precise significance of the word “fundamental”? According to the Shorter Oxford Dictionary, the word “fundamental” means a “leading or primary principle, rule, law or article, which serves as the groundwork of a system”. The same significance is to be found in the German word Grundrechte which is a synonym for fundamental rights. From this it may be concluded that fundamental rights are those rights of liberty and property which are essential to the development of man as an individual. A fundamental right does not, therefore, merely mean a right of liberty permissible under the law; it must necessarily mean a right of liberty which enables an individual to develop his faculties in his own interest and in the interests of the
community as a whole. This aspect of fundamental rights was clearly emphasized by Bradley, J. in the Butchers Union case, 28 L. ed. 585. Dealing with the right to follow any of the common occupations of life, the learned Judge observed that it "is an inalienable right; it was formulated as such under the phrase 'pursuit of happiness' in the Declaration of Independence which commenced with the fundamental proposition that 'all men are created equal; that they are endowed by their Creator with certain inalienable rights; that they are endowed by their Creator with certain inalienable right; that among these are life, liberty and the pursuit of happiness. The right is a large ingredient in the civil liberty of the citizen. But this interpretation does not go far enough. It is also logically unsound to assume that these rights were granted to man by his Creator – an assumption which has often been adopted by American courts. It is equally incorrect to assume that these rights are essential to man living in a tribal society. Moreover, it is obvious that such rights can only exist in a free and democratic society which by its very definition implies the optimum development of the individual. As Washington, J. pointed out in Corfield v. Coryell, 4 Wash. C.C. 371, we feel no hesitation in confining these expressions to those privileges and
immunities which are, in their nature, fundamental; which belong, of right, to the citizens of all free governments; and which have, at all times, been enjoyed by the citizens of the several states which compose this Union, from the time of their becoming free, independent and sovereign.\textsuperscript{19} 

It has been stated that the rights of the individual are not derived from governmental agencies, either municipal, State or Federal, or even from the Constitution. They exist inherently in man, by the endowment of the Creator, and are merely reaffirmed in the Constitution, and restricted only to the extent that they have been voluntarily surrendered by the citizenship to the agencies of government.\textsuperscript{20}

According to these jurists, the second point of difference is that whereas fundamental rights are inherent and inalienable, other legally enforceable rights owe their origin to statutes.

\textsuperscript{19} Washington, J. Corfield v. Coryell, 4 Wash. C.C. 371
\textsuperscript{20} City of Dallas v. Mitchell, 245 S.W. 944
It is evident that a fundamental right has four distinctive and different elements. In the first place, all fundamental rights are legally enforceable claims to power or authority, as is the case with ordinary legal rights. Secondly, unlike other legal rights, a fundamental right exclusively relates to the juridical nexus between the State and the individual. Thirdly, a fundamental right is not merely of the nature of *jus excludendi auctoritatem*, but has a positive aspect as well. Fourthly, a fundamental right implies a definite sphere of liberty of action and the extent of this sphere depends on the necessity of the development of the human person in a free and democratic society.

It is obvious that fundamental rights can neither be absolute nor unrestricted. We have already seen that the earliest declarations of rights trace their origin to the political philosophy associated with the names of Locke and Wolff which laid down that the fundamental rights of the individual are absolute and unlimited. We have also seen that this view is not in accord with historical facts or the positive rules of constitutional law. For instance, the French Declaration of 1789 spoke of the natural and imprescriptible rights of man and citizen but at that same time
recognised that the exercise of these rights must be subject to limitations which ensure the exercise of the same rights by others and that such limitations must be prescribed by law. The French Constitution of 1791 went a step further and stated that limitations on fundamental rights may be imposed not only to safeguard the similar rights of others but also to maintain public peace and security.

Three different systems have been adopted in regard to the sphere of fundamental rights. Under the first system, fundamental rights are set out in absolute and unqualified terms. The argument is that any qualification of a fundamental right may in certain cases amount to its total negation. A typical instance is furnished by the First Amendment to the Constitution of the United States which, inter alia, prescribes that Congress shall not make any law abridging the freedom of speech and the liberty of the press. This specification of the right is in wide and general terms and does not purport to impose any limitations whatsoever. It was, therefore, argued by Jefferson that the Amendment confers an absolute right. This interpretation has, however, been totally rejected by the Supreme Court. For instance, in Robertson v. Baldwin, (1897) 165
U.S. 275, Brown, J. thus stated the position: "The law is perfectly well settled that the first ten Amendments to the Constitution known as the Bill of Rights, were not intended to lay down any novel principles of government, but simply to embody certain guarantees and immunities which we had inherited from our English ancestors, and which had, from time immemorial, been subject to certain well-recognised exceptions, arising from the necessities of the case. In incorporating these principles into the fundamental law, there was no intention of disregarding the exceptions, which continued to be recognised as if they had been formally expressed. In other words, the view was that although the fundamental rights were stated in absolute and unqualified terms, they were subject to the limitations laid down by the principles of the common law as adopted in the United States. The Supreme Court has, however, considerably advanced from his position and not confined itself to the restrictions sanctioned by the common law. It now considers it to be its function to define the precise scope of each fundamental right in order to secure a just and stable equilibrium between the interests of the individual and those of the community. For instance, it has been expressly laid down by the

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21 Robertson v. Baldwin, (1897) 165 U.S. 275, Brown, J.
court that the duty of the courts is to determine which of these two conflicting interests demands the greater protection under the particular circumstances presented. This view has considerably enlarged the scope of the discretion of the Court.

The second system has been described by Italian judges and jurists as *riserva di legge*. Under this system, the Bill of Rights does not lay down any specific limitations, but leaves it to the legislature to decide the character and extent of the restrictions which should be imposed. This was the formula which was adopted in the French Declaration of 1789 in respect of some of the fundamental rights and has since been embodied in many of the existing constitutions. For instance, Article 14 of the Argentine Constitution declares that all inhabitants of the Republic enjoy the right specified therein in accordance with such laws as regulate their exercise. Similarly, the Constitution of Brazil guarantees freedom of speech but also lays down that every person shall be responsible for the abuses he may commit in the cases and in the manner that law may determine. The same formula has been adopted in the Constitution of the West German Republic in respect of certain fundamental rights. Thus, for instance, under Article 2(2) the right to life and to
inviolability of person may be encroached upon in accordance with a law. Similarly, freedom of speech may be limited by the provisions of general laws. Another striking instance is furnished by Article 43 of the Irish Constitution. As pointed out by O’Byrne, J., in Buckley v. Attorney General, (1950) I.R.67, the Article acknowledges that the right to private ownership or the general right to transfer, bequeath and inherit property. But the Article further authorizes the legislature of the State to delimit the exercise of these rights with a view to reconciling their exercise with the exigencies of the common good.

It has been argued that the Article is a classical example of giving a right with one hand and taking it back with the other.

Under the Constitution of the West German Republic, a fundamental right may be limited by or under a law but it is also expressly laid down that in no case such a law can infringe the essential content of a fundamental right may be limited by or under a law, but it is also expressly laid down that in no case such a law can infringe the essential content of a fundamental right.

Similarly, as we have already seen, under the Constitution of Argentina the exercise of fundamental rights may be regulated by law. There is however, an express provisions in Article 28 that the principles, guarantees and rights recognized by the Constitution cannot be altered by laws which regulate their exercise. It has, therefore, been held by the Supreme Court of Argentina that the legislature is not permitted to act capriciously so as to destroy the right which it is required to protect and sustain\(^{23}\). (Fallos, 117, p. 432). Under the Italian Constitution, some of the fundamental rights are also expressly subject to the power of the legislature. For instance, Article 13 authorises the legislature to impose restrictions on the right to personal liberty. The same view has been taken by the Italian Constitutional Court in interpreting such express limitations. A typical instance is furnished by the decision of the court in Lucarelli v President of the council of Ministers\(^{24}\), (1961) Giur. Cost., p. 525. Two questions were raised in the case\(^{25}\). The first was whether the legislature had the authority to delegate to an administrative body its constitutional power to impose limitations on a fundamental right. The decision of the

23 Fallos, 117, p. 432.
24 Lucarelli v President of the council of Ministers, (1961) Giur. Cost., p. 525
court on this issue was that were the Constitution has expressly reserved the power of the legislature adopting such formula as on the basis of law or other of a similar significance the court has persistently held that ordinary law may confer power on an administrative organ to issue regulations provided the law itself indicates the necessary criteria and delimits the discretionary authority of the organ. The second question was whether the regulation contravened a constitutional provision. The opinion of the court was that such regulations could not violate a fundamental rights as laid down in the Constitution.

It is, therefore, clear that the generally accepted view is that even where the Constitution expressly grants power to the legislature to impose restrictions on a fundamental right, such restrictions cannot abrogate the right or alter its essential character.

The basic problem which confronts all constitution-makers in this matter is that they have to seek and establish a stable equilibrium between the rights of the individual and the interests of the community.
The Indian Constitution, therefore, prescribes specific and express limitations on each fundamental right, thus giving no opportunity to the legislature or the judiciary to invade the right within its prescribed sphere. The position was thus stated by the Supreme Court in Gopalan v. State of Madras (1950) S.C.R.88: There cannot be any such thing as absolute or uncontrolled liberty wholly freed from restraint for they would lead to anarchy and disorder. The possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed to the governing authority of the country to be essential to the safety, health, peace, general order and morals of the community....What the Constitution, therefore, attempts to do in declaring the right of the people is to strike a balance between individual liberty and social control – Article 19 of the Constitution gives a list of individual liberty and prescribes in the various clauses the restraints that may be placed upon them by law so that they may not conflict with public welfare or general morality. The same method of balancing the two conflicting interests has been adopted in the Italian Constitution in regard to some of the fundamental rights.  

It is obvious that this system provides a more adequate and effective protection against encroachment on individual rights by the State or its organs, while at the same time it establishes harmony and equilibrium between these rights and the power of the State.

The modern concept of Fundamental Rights is traced back to the *Magna Carta*, although they are ensured years ago and even earlier the *mosaic code* has given certain liberties though not in a compact form. The idea of corporation of bill of rights, which was concerned by the founding fathers of the Constitution of the U.S. in the 19th centuries that almost all the written constitutions promulgated since the 19th century, except the Government of Indian Acts, invariably adopted the declaration of Fundamental rights.

The Fundamental rights have been deemed as permanent sacrosanct rights receded by the people inalienable and inviolable transcendental on the ground that they are rooted in the doctrine of natural law and that they have been given a place of permanence by the constitution within its scheme.
If one compares the universal Declaration of Human rights 1948 with Parts III and IV of the constitution of India, one finds remarkable similarity in the two. It is significant that the committee on Fundamental rights in India was deliberating when the third committee of the United Nations was deliberating on the Universal declaration of Human rights. Both are manifestoes of man’s inviolable and fundamental freedoms.

Fundamental Rights recognise the importance of the individual in the affairs of the state and seek to assure to every citizen full freedom to enjoy life, liberty and happiness as he like. The development of a citizens’ personality, the pursuit of his profession or vocation and the manner in which he seek to enjoy the pleasure and comforts of life are basically his individual concern and the state can interfere with this basic right only on considerations of public justice for such interruption.

The rights described as Fundamental Rights are a necessary consequence of the declaration in the preamble that the people of India have solemnly resolved to constitute India into a sovereign democratic republic and to secure to all its citizens justice, social,
economic and practical, liberty of thought, expression, belief, faith worship, equality of status and opportunity.

According to Mr. J. Hidayatullah, the emphasis to the Fundamental Rights by having a prefatory declaration in the preamble, then specifying them and lastly by making them enforceable through correction, is to create a transcendental place for them. They are the basic rights and irreducible minimum, which the people of India have secured for them.