

Rights in the Indian Constitution

Rights :-

Rights are those conditions of social life without which no man can develop himself. Rights are those rights which a common man needs to lead the life which he demands. The facilities provided by law protect the rights.

Declaration of Rights :-

In most democratic countries, the rights of citizens are listed in the constitution, such a list is called 'Declaration of Rights'. The demand for which was raised by Nehru in 1928.

Why do we need Fundamental Rights?

Fundamental rights are essential for the basic development, all-round development of the individual. They help in bringing equality, liberty, fraternity, economic and social development in the society.

What is the "BILL OF RIGHTS"?

A list of rights mentioned and protected by the constitution is called the bill of rights. Democracy must ensure that individuals have certain rights and that the government will always recognize these rights.

It Prohibits the government from thus acting against the rights of the individuals and ensures a remedy in case there is a violation of these rights.

The Fundamental Rights have been described in 'Articles 12- 35' also in 'Part-3' of the constitution. Part-3 of the constitution is rightly described as the Magna Carta of India

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National Human Rights Commission :-

National Human Rights was formed in 2000. It consists of members – one former Chief Justice of Supreme Court, one former Chief Justice of High Court and two members having knowledge or practical experience in relation to human rights. Functions - To hear complaints, investigate and provide relief to the victim.

Ordinary Rights & Fundamental Rights

Ordinary legal rights are protected & enforced by ordinary law. It may be changed by the legislature by the ordinary process of lawmaking. Fundamental Rights are protected and guaranteed by the constitution of the country. These rights may only be changed by amending the Constitution itself. Judiciary has the powers and responsibility to protect the fundamental rights from violations by actions of the government, Executive, as well as legislative actions, can be declared illegal by the judiciary if these violate the fundamental rights or restrict them in an unreasonable manner.

Fundamental Rights in the Indian Constitution :-

During the freedom movement of India, the demand for civil rights was raised from time to time by the revolutionaries / freedom heroes. In 1928 also, the Motilal Nehru Committee raised the demand for a Declaration of Rights. Then after independence most of these rights were listed in the constitution.

General Rights :-

Those rights which are enforced with the help of ordinary laws and Parliament can change these rights by making laws.

Fundamental Rights :-

Those rights which are listed in the constitution and special provisions have been made to implement them. The constitution itself guarantees and protects them. The constitution has to be amended to change these rights. No part of the government can do any work against the fundamental rights.

Note:- India has taken the inspiration of Fundamental Rights from the Constitution of America.

Article 12 to 5 of Part-3 of the Constitution contains details/mention of Fundamental Rights.

Types of Fundamental Rights :-

Note: - There are 7 fundamental rights mentioned in the original constitution, but under the 44th Constitutional Amendment 1978, the fundamental right to property has been abolished and it has been established in Article 300(1) as the right of common law.

The six fundamental rights mentioned in part three of the Indian constitution are as follows:-

- 1) Right to Equality (Articles 14 – 18)
- 2) Right to Freedom (Articles 19 – 22)
- 3) Right against exploitation (Article 23 - 24)
- 4) Right to freedom of religion (Articles 25 - 28)
- 5) Culture and Education (Articles 29-30)
- 6) Right to constitutional remedies (Article 32)

1. Right to Equality :-

Article 14:- Guaranteed legal equality and equal legal protection without discrimination.

Article 15 :- Government – Establishment of a society free from discrimination on the basis of religion, caste, sex or place of birth.

Article 16:- Equality of opportunity in public appointments.

Article 17:- Abolition of untouchability from society.

Article 18:- Prohibition of titles other than military and educational titles.

2 . Right to Freedom :-

Article 19: - Freedom of speech and expression, to form associations, to hold meetings, to travel throughout India, to settle in any part of India and to do any business freely.

Article 20:- To provide protection to a person accused or punished in an offence.

Article 21:- No person can be deprived of the liberty to live except by process of law. Article 21 (a) - RTE, 2002, 86th Constitutional Amendment Education Fundamental Right, age 6 to 14, free and compulsory education.

Article 22: - To provide protection to any citizen from arrest and detention in special cases.

Note – The Right to Education was added to Article 21 (A) by the 93rd Amendment (2002).

3. Right against exploitation :-

Article 23: - Prohibition on human trade (smuggling) and forced labor, bonded labor by use of force - When India became independent, then slavery and forced labor was prevalent in many parts of India. The zamindars made the farmers work but did not pay wages, especially women were bought and sold like cattle.

Article 24 - Prohibition of children in mines, factories and hazardous work.

Article 24 :- According to this, children below the age of 14 years shall not be employed in any hazardous work, such as – in mines in factories etc.

4. Right to religious freedom :-

Article 25: - Right to profess, practice and propagate one's own religion.

Article 26:- Right to establish institutions doing religious and charitable work in the form of organized unit.

Article 27: - Propagation of religion and care of religious sect. will not be compelled to pay tax for

Article 28: - No religious education shall be given in any government educational institution.

5. Right to Culture and Education :-

Article 29 :- Gives right to the citizens of any state of India to maintain their own special language, script or culture.

Article 30 - Under this, the language and religious minorities are given the right to establish educational institutions and run their administration.

6. Right to constitutional remedies :-

Article 32 :- The father of the constitution, Dr. Ambedkar has termed this right as "the heart and soul of the Constitution". Under this, the courts issue many special orders, which are called writs.

Which are as follows :-

1. Habeas Corpus (Habis Corpus)
2. Parmadesh (Mandamas)
3. Prohibition
4. Inquiry of Rights (Quo Warranto)
5. Induction (sarshiyori)

1. Habeas Corpus (Habis Corpus) :-

Habeas corpus is called by the court to order an arrested person to appear before the court/judge.

2. Parmadesh (Mandamas) :-

Under this, if any public officer / Mandamas does not discharge his office, then the court can order him to perform duty.

3. Prohibition (Prohibition) :-

Under this, the Supreme Court or the High Court can be asked to adjourn the hearing in any matter of the lower or subordinate courts.

4. Inquiry of Rights (Quo Warranto) :-

Rights query means "What are your rights?" This writ is issued when a person acts in a public office without any authority, then the court obtains information about his right through this writ, if the court is not satisfied with the answer of that person, may stop working.

5. Induction (Sarshiyori) :-

Under this, a writ of commutation is issued by the Supreme Court or High Court to set aside an order issued by a subordinate court, tribunal or quasi-judicial authority.

Constitution of South Africa :-

The Constitution of South Africa came into force in December 1996, when the country was reeling from the threat of civil war after the apartheid government was removed, the Declaration of Rights is a cornerstone of democracy in South Africa.

Major rights listed in the Constitution of South Africa :-

Right to dignity.

Right to privacy.

Right to fair treatment related to labour.

Right to health, environment and environmental protection.

Right to proper housing.

Right to health facilities, food, water and social security.

Child Rights.

Right to basic and higher education.

Right to receive information.

Rights of cultural, religious and linguistic communities.

What are the Directive Principles of State Policy?

In independent India, in addition to fundamental rights, many rules were needed to bring equality to all citizens and welfare of all. Under the Directive Principles of State Policy, similar policy directions have been given to the governments, which cannot be challenged in court but the government can be urged to implement them. It is the responsibility of the government to enforce them to the extent it can.

There are three main things in the list of major policy directive principles -

1. The goals and objectives that we as a society should accept.
2. The rights that citizens should get in addition to the fundamental rights.
3. The policies that the government should accept.

Fundamental Duties of Citizens :-

In 1976, the list of fundamental duties of citizens (Article 51 (a)) has been included by the 42nd Constitutional Amendment.

Under this ten fundamental duties of citizens are as follows:-

To abide by the constitution, respect the national flag and the national anthem.

To cherish and follow the high ideals that inspired the national movement.

To protect the sovereignty, unity and integrity of India.

To be ready for the defense and service of the nation.

To build brotherhood among the citizens.

Understand the importance of the glorious tradition of our social culture and maintain it.

Preserve the natural environment.

Develop scientific outlook, humanism and the spirit of knowledge acquisition and improvement.

Protect public property, make Swachh Bharat Abhiyan a success and stay away from violence.

Try to move towards excellence in all spheres of individual and group activities.

Policy - Relationship between Directive Principles and Fundamental Rights :-

Both are complementary to each other. While the Fundamental Rights impose restrictions on certain actions of the government, the Directive Principles instruct them to perform certain functions.

Fundamental rights especially protect the rights of the individual, while the Directive Principles talk about the interest of the whole society.

Policy - Difference between Directive Principles and Fundamental Rights :-

Fundamental rights have legal support but Directive Principles do not get legal support. That is, you can go to court for violation of fundamental rights, but you cannot go to court for violation of Directive Principles.

Fundamental rights are related to individuals and Directive principles are related to society.

The Fundamental Rights have been achieved while the Directive Principles are yet to be implemented.

The objective of Fundamental Rights is to establish political democracy in the country, the objective of Directive Principles is to establish social and economic democracy.

Fundamental rights promote the welfare of the individual Directive principles promote the welfare of the community.

Bonded Labor :-

Generation after generation of wages from the poor by the landlords, moneylenders and other rich people. Now it has been declared a crime.

Overview of Rights

The Constitution clarifies that the government can implement special schemes and measures for improving the conditions of certain sections of society: children, women, and the socially and educationally backward classes. Article 16(4) of the constitution explicitly clarifies that a policy like reservation will not be seen as a violation of the right to equality. If you see the spirit of the Constitution, this is required for the fulfilment of the right to equality of opportunity. The right to freedom of speech and expression is subject to restrictions such as public order, peace and morality etc. Freedom to assemble too is to be exercised peacefully and without arms. The government may impose restrictions in certain areas declaring the assembly of five or more persons as unlawful.

What is Preventive Detention?

A person would be arrested on the apprehension that he or she is likely to engage in unlawful activity

Sometimes a person can be arrested simply out of an apprehension that he or she is likely to engage in an unlawful activity and imprisoned for some time.

This is known as preventive detention:

- A person can be arrested without a formal charge.
- Detention can be up to 'Three Months'.

It means that if the government feels that a person can be a threat to law and order or the peace and security of the nation, it can detain or arrest that person. The Jammu & Kashmir Public Safety Act, 1978 is a preventive detention law. A person is taken into custody to prevent him/her from acting in a manner that is a threat to the security of J&K.

What are the Rights of the Accused?

To ensure a fair trial in courts, the Constitution has provided three rights:

- No person would be punished for the same offence more than once.
- No law shall declare any action as illegal from a backdate, and
- No person shall be asked to give evidence against him or herself Freedom of faith and worship.