**FUNDAMENTAL RIGHTS**

Fundamental rights has often been referred to as the ‘conscience’ of the Indian constitution. Fundamental rights protect citizens against the state’s arbitrary and absolute exercise of power. The constitution, thus, guarantees the rights of individuals against the State and other individuals. The constitution also guarantees the rights of minorities against the majority.

**OBJECTIVES OF FUNDAMENTAL RIGHTS**

1. The first objective is that every citizen must be able to claim those rights.
2. Secondly, these rights must be binding upon every authority that has the power to make laws.

In addition to Fundamental rights, the constitution has a section called Directive Principles of State Policy. This section was designed by the members of the constituent assembly to ensure greater social and economic reforms and to serve as a guide to the independent Indian State, to institute laws and policies that help reduce the poverty of the masses.

The fundamental rights in the Indian Constitution include:

1. **Right to equality**: all persons are equal before the law. This means that the laws of the country shall equally protect all persons. It also states that no citizen can be discriminated against based on religion, caste or sex. Every person has access to all public places, including playgrounds, hotels, shops etc. the State cannot discriminate against anyone in matters of employment.
2. **Right to Freedom**: this include the right to freedom of speech and expression, the right to form associations, the right to move freely are reside in any part of the country, and the right to practice any profession, occupation or business.
3. **Right against exploitation**: the constitution prohibits human trafficking, forced labor, and employment of children under 14 years of age.
4. **Right to freedom of religion:** religious freedom is provided to all citizens. Every person has the right to practice, profess and propagate the religion of their choice.
5. **Cultural and educational rights**: the constitution states that all minorities, religious or linguistic, can set up their own educational institutions in order to preserve and develop their own culture.
6. **Right to constitutional remedies:** this allows citizens to move to the court, if they believe that the state has violated any of their fundamental rights.

**RIGHTS OF VICTIM**

A victim is a person who has been harmed physically and mentally. As per section 2(a) of the Code of Criminal procedures 1973, a victim is a person who has suffered any loss or injury caused because of the act or omission for which the accused person has been charged.

Hence, one can say a victim is a person who has suffered harm, physical or mental injury, emotional suffering, economic loss or violation of their fundamental rights through acts or omissions violative of Indian Criminal laws.

The United Nations Declaration of Basic Principles of Justice for victims of Crime and Abuse have defined a victim as,” person who. Individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within the member states, including those laws proscribing criminal abuse of power”. This has made it possible to include not just the primary victim who has suffered the trauma of the crime first- hand but also people who has suffered vicariously through the primary victim in the definition of a crime victim.

The UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power has acknowledged the rights of victims (1985). These rights are recognized in India also. These are as follows:

1. **Right to attend proceedings**: the victims and their families are entitled to attend the proceedings during criminal proceedings. The right to attend proceedings includes the right to witness the offender’s trial, sentence, parole hearing etc. A crime is more confident and in a better state of mind to exercise his right to attend the proceeding with the support and presence of a trusted advocate or family member.
2. **Right to compensation:** the majority of compensation schemes are available to those who were directly harmed by crime or to their surviving relatives. However, in some instances, victims are ineligible to claim compensation, if their misconduct contributed to their injuries.
3. **Right to be heard**: generally, according to the law, the victim’s comments might be given verbally or in writing. However, these declarations may be provided electronically via audio or video cassette in many states or other electronics means. These statements provided by the victims describe the impact of offence on them, including financial, physical, psychological or emotional impact.
4. **Right to information:** the criminal justice system should provide general information of interest to victims. It includes information on the right to attend a proceeding, submit a victim impact statements, sue the offender for money damages in the civil justice system, file for a protection order, and collect witness fees for their testimony. The victim should be informed of various proceedings in the criminal justice process, such as the arrest of the accused, bail release and related proceedings, dismissal of charges, negotiated pleas, sentencing hearings, parole release and related proceedings etc.
5. **Right to restitution:** restitution refers to the restoration of the harm caused by the defendant. Courts can impose restitution as a part of a sentence on convicted offenders. A court considers the victim’s losses for calculation of the restitution owed. The court may also consider the defedant’s financial resourcse while setting the total amount of restitution.
6. **Right to expeditious return of personal property**: sometimes, a victim of a crime may suffer the loss of property. This loss can be due to theft or the seizure of property by the police. Generally, the property seized is returned to its rightful owner when it is no longer required as evidence in criminal prosecution. Certain jurisdictions have tried to enforce particular time limitations for the restitution of property to ensure that the victim is not deprived of his property for a long period.
7. **Right to a speedy trial**: this right is provided to crime victims by many jurisdictions. Moreover, some specific cases are given priority as compared to others by several jurisdictions due to their facts and circumstances. Such priority cases involving children or vulnerable elderly victims.
8. **Right to privacy**: furthermore, many victims back down from seeking justice because of the fear of harassment or retaliation from their known ones and offenders. Victims have the right to protect their privacy, such as name, address, phone number, etc. in addition, particular communications, such as conversations between husband- wife, doctor- patient, attorney- client, etc. are safeguarded from judicial disclosure.

**RIGHTS OF AN ACCUSED**

The constitution and the law of India provide numerous rights to the citizens of India, even when they are arrested for criminal or any other case. The supreme court of India has provided its citizens with several laws for safeguarding the arrest of an accused.

The mode of the arrest ( section 46 of CrPC)

1. To make an arrest, the officer is bound to confine the body of the person to be arrested until and unless there is submission to custody by actions or words.
2. The officer can only use force, if the person to be arrested shows some resistance or tries to escape. Only a female constable can make the arrest, if the arrest is of a women.
3. The arrest should be either before sunset or after sunrise.

However, the code does not give the right to cause death of a person who is not accused of any offence, which is punishable with death or imprisonment of life.

**Rights of an accused include the following:**

1. **Rights to be informed:**
2. No person shall be detained without being informed of the grounds of such arrest or shall be denied legal aid ( article 22 of the Indian Constitution)
3. An accused being arrested without a warrant has the right to know the particulars of the offence, which the police officers cannot deny (section 50(1) or CrPC)
4. An accused being arrested has the right to ask for a written warrant that mentions the cause of his arrest; otherwise, it would be considered an illegal arrest ( section 55 of CrCP)
5. Any officer executing the arrest must notify the cause and content of such arrest to the person being arrested, if required ( section 75 of CrcP)
6. **Right to remain silent:**
7. No person who has been arrested shall be compelled to act as a witness against himself. No one can extract any kind of statement forcibly from the convict no matter what, the accused has the right to remain silent in the due course of investigation and interrogation ( article 20(3) of the Indian constitution).
8. Narco- analysis, brain mapping, and lie detector tests violate article 20(3) of the constitution, and forcible intrusion into a person’s mind nullifies the validity and legitimacy of this right. (article 20(3) of the constitution).
9. **Right to be released on bail:**
10. An accused has the right to apply bail for bailable offences and also even for non- bailable offences. The court grants bail after considering the density of the offences and the evidence presented ( article 21 of the constitution)
11. When an officer arrests a person accused of other than non- bailable offences without a warrant, he has to inform the person arrested he is entitled to release on bail and may arrange for sureties on his behalf. (section 50(2) of CrCP)
12. **Right to be taken before magistrate without delay:** The officer making an arrest must present the person arrested before a judicial officer within 24 hours without any delay, no matter how the arrest is made, with or without a warrant.
13. The accused is to be presented before the magistrate or officer in charge, where the arrest is made without warrant, the person shall be taken to the magistrate with competent jurisdiction without delay (section 56 of CrCP)
14. Delay shall not be more than 24 hours, and the journey time shall be excluded ( section 76 of CrCP)

Such a rule has been made to eliminate the possibility of the police officers compelling the person arrested to give information.

1. **Right at trials:**
2. For a trial to be fair, it must be an open court trial. It has been mandatory that an investigation must be conducted as fast as possible.
3. In cases where the maximum punishment is 2 years and once the accused is arrested, the investigation must be completed within 6 months.
4. **Right to consult a legal practitioner:**
5. Every person who is being accused has the right to consult any legal practitioner of their choice (article 22(1) of the Indian Constitution)
6. A person against whom proceeding have been initiated has the right to choose a legal practitioner of his interest as soon as the person is arrested (section 50(3) of CrCP)
7. **Right to free legal aid**: the state is under obligation to assign legal aid to the indigent accused person. The right starts as soon as the trial begins. This right cannot be denied, even, if the accused fails to apply for it (section 304 CrCP)
8. **Right to be examined by a medical practitioner:** the right of the accused to seek examination by the medical practitioner. When the person is detained or produced before the magistrate, the medical examination of his body will afford evidence that will lead to disapproving the commission of an offence by him. This may also lead to evidence which proves that the offence may be committed by someone else (section 54 of CrCP). This also works asa a check to ensure that the accused has undergone any harassment or torture by the police officers.

**There are a few extra rights provided to women accused. They are as follows:**

1. No women can be arrested before sunrise or after sunset.
2. Whenever it is necessary to cause a female to be searched, the search must be made by another female with regard to decency.
3. Whenever a female is to be examined, the examination shall only be conducted under the supervision of e registered female medical practitioner.
4. Female accused should be guarded by women constables and shall be questioned in the presence of women constables.
5. Female suspects must be kept in a separate locker room.
6. No women under 15 years of age shall be required to attend anywhere other than where she resides.
7. Women have the right to file a zero FIR ( an FIR that can be filed in any police station regardless of the place of incidence or jurisdiction).
8. Women have the right not to be handcuffed while arrested.