

## RIGHTS

### MEANING AND DEFINITION OF RIGHTS:

Rights are those conditions recognized by state or society that are very essential for the development of man. The aim of society is to make the best man, so these favorable conditions (rights) should be provided to man without conflict. Thus, right denotes a power or a capacity recognized by society.

### DEFINITION:-

According to Laski, "Rights in fact, are those conditions of social life without which no man can seek, in general, to be himself at his best."

According to Austin, "Rights mean one man's capacity of exacting from another or other acts or for bearance."

According to Mac Cun, "Rights are certain advantageous conditions of social life being indispensable to the true development of citizen."

### HOW IS RIGHT DIFFERENT FROM CLAIM:

Rights existed in every age in one form or the other and changed with change in society. The importance of rights increased, when state granted recognition to rights. Right we know are the essential conditions for proper development of an individual, while as an essential demand through which a man wants to gain livelihood is called as claim. But every demand cannot be a claim, because demand can be legal or illegal. The claim approved by a society cannot become a right unless it is recognized by state. The difference between rights and claims can be explained as:

- a. Man in order to fulfill his needs, develop his personality is in need of opportunities. So, man's right to develop his personality depends upon the demand of opportunity.
- b. Secondly, these demands can become rights only when their achievement is necessary for good life. The demands which are harmful cannot be changed into rights, but demands which are reasonable and create conditions of development, can be accepted as rights.
- c. Thirdly, if society is not ready to accept any right, than that right can not exist as human is known in society and not in isolation. The society accepts only that demand of the individual which is in interest of all.
- d. Fourthly, in addition to the acceptance given by society, state approval is also necessary, because it is state which is required to quantify that claim and implement it.

### ESSENTIAL ELEMENTS OF RIGHTS:

The essential elements of rights are:

**a. Rights are demands made by an individual or group of individuals:-**

Right are based on demands that come from individuals in order to fulfill their needs. An individual demands for opportunity to meet his needs.

**b. Demands are essential for development of his self:**

Demands become rights when they are regarded as essential for living a good life. If a person demands something that is harmful, then that demand cannot become a right. Only those demands that help the creation of an atmosphere favorable for the growth of man can be accepted as right.

**c. Society regards demands as just & accept them as rights:**

Society regards that demand as just, that is in interest of all. Society does not merely recognize the demands, but also take care to meet these demands. Once demand is recognized by state as right, society also accepts it.

**d. Rights imply duties as rights can never be enjoyed without duties:**

Every right impels some kind of duty as rights are relative and subject to public good and safety of state. So for enjoying rights, to perform duty is must.

**MAJOR KINDS OF RIGHTS:**

In democratic countries rights are given to people under heading of legal rights. These legal rights include:

- a. Social and economic rights
- b. Political and civil rights
- c. Fundamental rights

**a. Legal Rights:-** are those rights which are recognized and protected by the state. If any individual violates any of these rights, then he is punished by state. The three categories of legal rights are:

**i. Social and Economic Rights:**

Social and economic rights are those rights that pave way for the development of individual, and, society and government both recognize these rights as well as protect them. Social rights can be divided into six categories:

1. **Personal Rights:-** Personal Rights include, right to self-protection, right to get justice, right to freedom of movement, freedom of speech, right to protect honour, to form organizations, to hold meetings and freedom of press.
2. **Family Rights:-** Family is an important association in society and makes important contribution in the progress of man's life. Family rights in right to marry and right to family life.
3. **Religious Rights:-** Religion is personal affair of an individual and should be given full freedom to develop in this respect, so that along with physical, spiritual development also takes place. Religious rights includes right to religious faith, right to worship, right to preach religion.
4. **Cultural Rights:-** Cultural rights include right to get education, to attain knowledge, so that mind will develop, which well translate man into a human being. It is education which is key to the success of a democratic government. Cultural rights also include right to establish cultural association and to spread culture is recognized.
5. **Recreational Rights:** State should provide the scope so that citizens can establish recreational centres of libraries, dance, music and other art centres. Recreational rights are necessary to remove the fatigue of mind and it inspires for next day's work.
6. **Economic Rights:-** Economic rights are necessary for every individual to meet their needs. Economic rights include right of livelihood, right to choose vocation, right to acquire property and right of minimum economic standard.

**b. Political & Civil Rights:-**

The rights that help citizens in taking part in administration are known as political rights, and the rights that make an individual free from interference of state in private lines are called as civil rights.

- i. **Political Rights:-** political rights are as essential as other rights for an individual. These rights can be enjoyed only in a democratic government. Political rights include right to vote, to get elected, to be appointed in public services, right to petition, right to criticize the government.
  - ii. **Civil Rights:-** are those rights which are helpful to the citizens in making them to live a respectful and good life civil rights include personal liberty, freedom to assembly and speech, right to religious faith, right to equality before law and right to settle permanently .
- c. Fundamental Rights:-** are those rights which are framed not by legislature, but are mentioned in constitution. These rights are given in the constitution because without these rights the complete

development of man is not possible. If government takes away these rights, then citizens have the right to approach the court and safeguard these rights. Indian constitution grants six fundamental rights to its citizens. These are:

- i. Right to equality
- ii. Right to freedom
- iii. Right to religious freedom
- iv. Cultural and educational right
- v. Right against exploitation
- vi. Right to constitutional remedies

#### **DUTIES:**

Rights are possible only in the world of duties. Rights are essential conditions for development of an individual, but these rights will not take shape of rights until the citizens do not make a firm determination to perform their duties. Therefore, duty can be defined as "work done in the interest of others". Thus, duty is an obligation on us which creates rights of others.

Indian culture gives stress on performance of duty and without any expecting any result. Also, if everyone performs his or her duty eagerly, then they can have their rights as well.

#### **CLASSIFICATION OF DUTIES:-**

Duties are classified as under:-

- a. **Moral Duty:-** Moral duty is based on the morality of man. Moral duty is not from state, but is enforced by man's conscience. Moral duties include serving the poor, speaking the truth, living a perfect life, obeying the parents and elders etc.
- b. **Legal Duty:-** These are the duties which come in area of law. It is our duty not to rob, injure or insult others, for which we can be punished. Legal duty includes paying tax, obeying the order of government etc under threat of punishment.

#### **HOW DOES STATE ENABLE AND PROTECT RIGHT?**

The state on one hand enables rights for its citizens and on the other hand it obstructs them for misusing these rights. As rights are essential for complete development of an individual, therefore, in modern democracies, fundamental rights are provided to individuals without any discrimination. State gives due respect to these rights and judiciary protects them. Parliament has monopoly to amend the fundamental rights, except right to life, liberty, equality etc. But constitution provides safeguard to all fundamental rights through constitutional remedies, to Supreme Court under article 32(2) and high courts under article 226. The writs and orders through which courts protect the fundamental rights are:

- a. **Writ of habeas corpus:-** It is derived from Latin and means "Let us have the body". This empowers the court to issue orders for the production of detenu before him who is detained. If the person thus detained feels that his detention is unlawful, then he or any of his representatives can move the court against the detention. If court finds merit in application, it may issue the writ to the detainer and ask the detenu to be presented before him, and if the court feels that the detention has no merit, then it can order the release of the person so detained. This writ, in fact, prevents the executive from becoming absolute.
- b. **Writ of mandamus:-** It is a Latin word meaning there by "we command", if an individual or institution fails in performing its duty, then the court orders to perform the duty by issue of the writ of Mandamus. If a lawful degree is denied to a student by the university, then on the former's approach, the court may issue this writ to the university in order to issue the degree.

- c. **Writ of prohibition:-** When a lower court functions without jurisdiction or functions against procedure of law, then the High Court or the supreme court can prohibit the lower court from doing so. Such a kind of prohibition order issued by a higher court to lower court is writ of prohibition.
- d. **Writ of Quo warranto:-** It means 'By what authority'. If a person has occupied an office without authority and on application by contestant to the office, the court may issue this writ against that person who is unlawfully occupying the office.
- e. **Writ of certiorari:-** It means "Be more fully informed". If a person feels that justice is not possible in a court due to lack of its proper composition or that justice has not been done unto him, he may move the superior court. Finding merit in the application, the High court may issue this writ and order the lower court for the transfer of the entire record or decision itself so that justice

G.V.E!