

INDIAN CIVIL RIGHTS ACT

What is the Indian Civil Rights Act?

The Indian Civil Rights Act of 1968 (ICRA) prohibits Indian tribal governments from enacting or enforcing laws that violate certain individual rights. It is similar to the Bill of Rights in the United States Constitution, which guarantees personal freedoms against actions of the federal government, and the Fourteenth Amendment to the Constitution, which extends those protections to actions of state governments. Since these Constitutional limitations do not apply to tribal governments, Congress adopted the ICRA to ensure that tribal governments respect basic rights of Indians and non-Indians.

What individual rights are protected by the Indian Civil Rights Act?

No Indian tribe in exercising powers of self government may enact or enforce any law which denies anyone the right to:

- free exercise of religion and freedom of speech;
- freedom from unreasonable search and seizures;
- freedom from prosecution more than once for the same offense;
- not testify against oneself in a criminal case;
- not have private property taken for public use without just compensation;
- a speedy and public trial, to be informed of the charges, to confront witnesses, to subpoena witnesses and, at one's own expense, to be assisted by a lawyer in all criminal cases;
- freedom from excessive bail, excessive fines, cruel and unusual punishment and, for conviction of any one offense, freedom from punishment greater than imprisonment for one year and a fine of \$5,000 or both;
- equal protection of the laws and freedom from deprivation of liberty or property without due process of law;
- freedom from any bill of attainder or ex post facto law; and
- the right, if accused of an offense punishable by imprisonment, to a trial by jury of no less than six persons.

How does the Indian Civil Rights Act differ from the Constitution's Bill Of Rights?

The ICRA guarantee of free exercise of religion does not prohibit a tribe from establishing a religion. This is in recognition of the fact that to many tribes religion is inseparable from

government and other areas of life. Although the ICRA guarantees a criminal defendant the right to have a lawyer at his or her own expense, there is no requirement that a tribe provide a lawyer for a defendant who cannot afford to hire a lawyer. The ICRA does not require a tribe to provide the right to jury trial in civil cases.

What relief is available to an individual who believes his or her civil rights have been violated by a tribal government?

A person alleging a violation of the ICRA by a tribal government may pursue any avenue of appeal available through tribal government. If sued in tribal court, the tribal government may raise a defense of sovereign immunity, a legal doctrine which prevents a government from being sued without its consent. It may be possible to avoid this defense by naming as defendants in the lawsuit the tribal official who allegedly violated the ICRA. The tribal court may order injunctive relief to stop the officials from repeating or continuing the unlawful conduct. However, money damages cannot be recovered from the tribe unless it has consented to being sued. The ICRA provides only one federal court remedy for its violation: a person may seek a “writ of habeas corpus” to test the legality of his or her detention when the person is being held in jail or otherwise detained by an order of an Indian tribe. A person must first exhaust all remedies available through the tribal court, including tribal court appeals, unless the effort would be futile or irreparable injury would result from the delay.

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