

Indian Constitution

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Introduction

The knowledge of the Constitution of India is important as it lays the foundation for citizenship training. The learner is exposed to the various features of our Constitution such as the principles of socialism, secularism, fundamental rights, fundamental duties and the working of the *Executive, Legislature and the Judiciary*. The study of the Constitution aims at preparing citizens with greater consciousness on Rights and Duties and citizens who believe in making India a vibrant democracy.

Basic Features of the Indian Constitution

The basic features of the Constitution unfold before the learners the essential features inherent in the Constitution.

Longest Constitution in the World

Indian Constitution, adopted by the Constituent Assembly on November 2, 1949 is the *longest Constitution* originally containing 395 Articles, divided into 22 parts and 9 schedules. We have incorporated 93 Amendments to the constitution as on January 2003. It has been a model for many developing countries.

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Ideals

The ideals of socialism, secularism and democracy are enshrined and elaborated by the enacting provisions.

Socialist and Secular

The Preamble of the Constitution has incorporated the term '*Socialist and Secular*' through the 42nd amendment of the Constitution in 1976. *Socialist* means the nationalisation of the means of production and equal distribution of wealth whereas *Secular* aims at the separation of religion from the State.

Sovereignty Resides in the People

The introduction to the Constitution declares that the constitution of India was adopted and enacted by the people of India and they are the custodians of the republic.

Parliamentary Form of Government

The Constitution of India establishes a parliamentary form of government both at the Centre and the States. In a Parliamentary form of government, the Prime Minister and Council of Ministers are responsible for all their actions to the government, particularly to the Lower House, *Lok Sabha*. When they lose their confidence with the people they should resign. When they refuse to resign the opposition parties will move a no-confidence motion and remove the government from power.

Unique Blend of Rigidity and Flexibility

Though India has a written constitution, the Indian constitution is not as rigid as the American constitution. It has incorporated the flexible nature in the procedures for amendments. There are three methods by which

the constitution is amended. In other words, the procedure for amendment is simple, clear and well articulated and not cumbersome.

Fundamental Rights

The Fundamental Rights are guaranteed by the constitution to all its citizens through Part III of the constitution. The Fundamental Right deals with political and civil rights. It guarantees Rights to Equality, Right to Freedom, Freedom of Religion, Right against Exploitation, Educational and Cultural rights and Rights to Constitutional Remedies. One can approach the Supreme Court directly in case of violation of Fundamental Rights.

Directive Principles of the State Policy

Part IV of the constitution deals with *Social, Economic and cultural Rights*. However, they are not justifiable in the court of law. The idea of a 'Welfare State' envisaged in our Constitution can only be achieved if the States endeavor to implement them with a high sense of moral duty.

Quasi-federal in Nature

The nature of the State is federal, in the sense that the powers are distributed between the Union and the State. But in times of emergency arising out external danger the Union Government assumes a unitary character and the union is empowered to legislate for all the States.

Adult Suffrage

All adult citizens above 18 are given the right to vote.

Independence of Judiciary

The Indian judiciary is independent as per the norms of separation of powers. The features that goes with the independence of Judiciary are direct appointment by the President, given decent salaries and perks on one hand, whereas judges cannot be removed, simply by executive.

Judicial Review

India borrowed this feature aspect from US. The judiciary can declare a law passed by the Union or State government as unconstitutional or null and void when it violates the rights guaranteed under the Fundamental rights to the people of India.

Fundamental Duties

The Fundamental Duties are incorporated to the constitution through the 42nd amendment. A set of ten duties are incorporated under the Fundamental Duties under Article 51 A.

The Preamble

The Preamble is an introduction to the constitution. It sets out the goals, the values and the ideals for which our country stands. The objectives specified in the Preamble contains the basic structure of our constitution, which can not be amended in exercise of the power under article 368 of the constitution. (*Refer Keshwanand Bharati Vs State of Kerala, AIR 1973 SC 1461 and Indira Gandhi Vs Raj Narain, AIR 1975 SC 2299*).

The preamble is a part of the constitution which reads as:

“WE THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN, SOCIALIST,

SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity; and to promote among them all;

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;

In our constituent assembly this twenty-sixth day of November 1949, do hereby adopt, enact and give to our selves this constitution”.

The Forty-second amendment to the Constitution in 1976 incorporated terms such as ‘*Socialist and Secular*’ and ‘*Unity and Integrity*’ of the nation in the preamble. Pluralism is the keystone of Indian Culture whereas religious tolerance is the bedrock of Indian secularism.

The Preamble may be involved to determine the ambit of (a) Fundamental rights and (b) Directive Principles of State Policy. From the preamble it is clear that India has emerged as a Sovereign, Socialistic, Secular, Democratic, Republic ensuring to its citizens *Justice, Liberty, Equality, and Fraternity*.

We the People

The power to govern is drawn from the people of India therefore, sovereignty, resides with the people of India.

Sovereign

This means that India is no more under the domination of any foreign country and any external force can not

influence its decisions. It is a free and independent country. It can acquire foreign territory and if necessary, cede a part of the territory in favour of a foreign state.

Socialist

There are many definitions for socialism but one well accepted explanation is the nationalization of the means of production and equal distribution of wealth. In other words absence of private property.

Secular

This means a State taking a neutral position on religion. It is separation of State and religion. There is no official religion in India. Secularism pervades its provisions which give full opportunity to all persons to profess, practise and propagate religion of their choice. All religions will receive equal treatment. It is neither a theocratic nor an atheistic state.

Democratic

The *Democratic* has been introduced with a view to realize the political, economic and social democracy. Political democracy means one vote for one person and rotation of government. Social democracy means absence of discrimination on the basis of caste, religion, race, gender etc. Economic democracy means to bridge the gap between rich and poor in terms of income and distribution of wealth.

Republic

Since the constitution has been given by the people to themselves, thereby affirming the republican character of the polity and sovereignty of the people.

In the independent India the Head of the Republic, President is elected which means, we have put an end

to the hereditary rule. (Under the British, regime we were under the Monarchy or Crown).

Justice

The term justice being used in its widest possible sense which is made clear by the addition of the objectives 'social, economic and political' to justice. It intends not only creating an environment in which social, economic and political justice is assured but also work positively against any form of discrimination existing in the society on the basis of caste, community race, religion or otherwise.

Liberty

It is the basic freedom set forth by the French Revolution. Our Constitution believes in freedom of different nature—social, civil and political as articulated through the fundamental rights in the Constitution under Part III.

Equality

'Equality before law' and 'equal protection of laws' are guaranteed under the Fundamental Rights, enshrined in the constitution.

Fraternity

Fraternity, according to Dr. Ambedkar, is "a sense of common brotherhood and sisterhood of all Indians". Without fraternity he was clear in his mind that "equality and liberty will be no deeper than coats of paint". Liberty, equality and fraternity forming a union of trinity in the sense that if we divorce one from the other, it defeats the very purpose of democracy.

The structural part of the constitution is, to a large extent, derived from the Government of India Act, 1935

whereas its philosophical part has many other sources. In our constitution, Fundamental rights partly derives its inspiration from the Bill of Rights, enshrined in the American constitution; Directive Principles of State Policy from the Irish Constitution. We had added the principle of cabinet government and executive-legislature relationship from the British experience. The Canadian Constitution partly proved source for Union-State relations whereas Australian constitution provided us concurrent list, privileges of the members of parliament and matter related to trade and commerce. Besides these, we have also many indigenous and innovative ideas like Panchayats, international peace and security.

Constitution is a living and organic thing. It is not to be construed as a mere law, but as the machinery through which laws are made.

Fundamental Rights

Fundamental rights are the political and civil rights meant for all the citizens. Kept in Part III of the constitution, Fundamental Rights are borrowed mainly from the UDHR (Universal Declaration of Human Rights, 1948) and Bill of Rights enshrined in the American constitution. Fundamental rights have paramount importance in the constitution as it declares that all laws inconsistent with or in derogation of the fundamental rights shall be *void*. Further, State shall not make any law which takes away or abridge the rights conferred in Part III of the constitution. The fundamental rights are provided to protect the dignity of the individual and to create conditions in which every human being can develop his or her personality to the fullest extent possible. The constitutional remedies make the fundamental rights active, alive and functional.

Classification of Fundamental Rights: Broadly fundamental rights can be classified, based on nature, in six groups.

- a) Right to Equality (Arts. 14-18)
- b) Right to Freedom (Arts. 19-22)
- c) Right against Exploitations (Arts. 23-24)
- d) Right to Freedom of Religion (Arts. 25-28)
- e) Cultural and Educational Rights (Arts. 29-30)
- f) Right to Constitutional Remedies (Arts. 32-35)

Right to Equality (Arts 14-18)

Article 14 – The State shall not deny any person ‘equality before law’ and ‘equal protection of laws’ within the territory of India. The source of article 14 lies in American and British constitutions. ‘Equality before law’ is borrowed from the British Constitution and negative in connotation implying the absence of any special privilege in favour of the individual whereas ‘Equal protection of laws’ is borrowed from US, but positive in connotation. It means that all people have to get equal treatment in similar circumstances. The element of *reasonableness* is an important consequence to apply this right. It is also available even to foreigners and aliens alike.

To spell out, the *principle of equality* in greater detail, Article 15 directs that the State shall not discriminate against a citizen on grounds of religion, race, caste, sex or place of birth or any of them. It prohibits discrimination but permits state to make special provisions.

Article 15-clause (1) -- the State is prohibited to discriminate between citizens on grounds only of religion, race, caste, place of birth or any of them. However, Art 15-Clause (2): prohibits discrimination by the State and the citizens with regard to access to shops, public restaurants, hotels and places of public entertainment or the use of wells, tanks bathing ghats, roads and places of public resorts maintained wholly or partly out of State funds or dedicated to the use of general public. Recognising need of special protection, it offers special protection for women and children [Art 15 (3)] and provides reservation for socially and educationally Backward Classes of the citizens or for the Scheduled Castes and Scheduled Tribes. [Art 15(4)]

Article 16 creates the right to equality of opportunity in public employment which explains that no citizen shall be discriminated against or be ineligible for any employment or office under the State on grounds only of religion, race, caste, sex, place of birth, descent or residence. Two additional grounds 'descent and residence' which was not included in Art. 15 have been added in Art.16.

The Art.16-(4) provides reservation for appointments or post in favour of any Backward Classes of citizens who, in the opinion of the State, are not adequately represented in the service under the State.

Article 17 *Abolition of Untouchability* : Our Constitution abolishes untouchability and forbids its practice in any form. In pursuance of this article the Parliament enacted Untouchability Offences Act in 1955. It has been renamed as Protection of Civil Rights Act, 1995 Further to strengthen the legislation the government enacted Scheduled Castes and Scheduled Tribes Prevention of Atrocities Act in 1989 and Scheduled Castes and Scheduled Tribes 'Prevention of Atrocities rules' in 1995.

Similarly, state has abolished all the titles to create equality among citizens in the free and independent India. Military and Academic distinction are however exempted from the provision for they are an incentive to further efforts for the perfection of the military power of the State.

Rights to Freedom (Arts. 19-23)

Freedom as fundamental rights has been explained under Arts. 19-23. All citizens shall have the right to freedom of speech and expression, peaceful assembly without arms, unionization or forming association, free movement and freedom to settle anywhere within country.

Citizens have been granted freedom to express one's conviction and opinions freely by word of mouth, writing, printing, pictures or any other mode. It includes the freedom of press. Therefore, pre-censorship of newspapers and magazines are invalid. The above rights have some reasonable restrictions. The grounds of restrictions for freedom of speech and expression are:

- i) security of the State
- ii) friendly relation with foreign States,
- iii) public order,
- iv) decency and morality,
- iv) contempt of Court,
- v) defamation,
- vi) incitement of an offence, and

vii) sovereignty and integrity of India.

The right of assembly includes the right to hold meeting and to take out processions. This right is subject to the restriction of being peaceful and without arms. Citizens have right to form, to join an association or trade union. Every citizen of India has also the right to reside and settle in any part of India but the grounds of restriction include the interest of general public as well as State [Art. 19 (1)(d)].

Right to Property is not a fundamental right but it is a legal right. Under article 19(1) (f), Citizens have rights to acquire, hold and dispose of property. This is dropped through the 44th amendment to the Constitution in 1978. Further, all citizens shall have the right to practice any profession or to carry out any occupation or trade or business with reasonable restrictions, in the interest of general public and in prescribing professional or technical qualification necessary for practicing any profession or carrying out any occupation, trade or business.

The Indian Constitution observes that 'no person shall be convicted of any offence except for violation of law in force at the time of the commission of the act charged as an offence nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of commission of the offence'. (This is known as ex-post facto law). It also guarantees a person against a double jeopardy i.e. a person should not be punished twice for the same offence. While constitution prohibits 'self incrimination' which means no person accused of any offence shall be compelled to be a witness against himself.

Protection of life and personal liberties means that 'No person shall be deprived of his or her life or personal

liberty except according to procedure established by law'. Thus, assures personal liberty of citizens against the arbitrary action on the part of the law enforcing authorities. We have been provides safeguards against arbitrary arrest and detention. Accordingly, Article 22 guarantees four rights to the person who is arrested under an ordinary law.

- i) The right to be informed as soon as, may be the ground of arrest.
- ii) The right to consult and to be represented by a lawyer of one's own choice.
- iii) The right to be produced before a magistrate within 24 hours.
- iv) The freedom from detention beyond the set period except by the order of the magistrate.

Further sub - clauses (5 -7) of Art. 22 deals with the preventive detention. Preventive detention is opposite to punitive detention. While the purpose of punitive detention is to punish a person for what he has already done, the objective of preventive detention is not to punish a person for having done something but to intercept before one does it and to prevent him/her from doing it. The period of detention has been decreased from 3 months to 2 months and also the composition of review/advisory board has been changed after the 44th amendment to the constitution, 1978. The following are some of the preventive detention laws in operation. Human Rights activists also call them as 'black laws' such as (i) MISA (Maintenance of Internal Security Act, 1971), (ii) COFEPOSA (Conservation of Foreign Exchange and Prevention of Smuggling Activities Act 1974, (iii) TADA (Terrorist and Disruptive Activities (Prevention, Act 1985) and (iv) POTA (Prevention of Terrorist Activities Act 2002).

Rights against Exploitation Arts 23-24

Article 23 prohibits trafficking in human beings, beggar, slavery, and other similar forms of forced labour. Art.23- Clause (2) permits the State to impose compulsory services for public purposes. Trafficking in human being means selling and buying men, women and children like marketable commodities. The traffic in human beings include slavery, immoral traffic in women and children for immoral purposes like sex work and other forms of forced labour.

The Constitution clearly prohibits employment of Children below 14 years of age in factories and hazardous employment (Art. 24). The government has enacted several laws to prohibit children from working. Some of the legislations are Employment of Children Act, 1938, Children (pledging of labour) Act, 1933, the Mines Act, 1952 and Child Worker Regulation Act, 1986.

Rights to Freedom of Religion

The term 'religion' is not defined in the Constitution whereas it also guarantees secularism as one of the ideals of the Constitution. It guarantees a) freedom of conscience, b) freedom to profess, practice and propagate any religion. Reasonable restrictions to this freedom are religious liberties subject to public order, morality and health (Art. 25). Further subject to public order, morality and health every religious denomination or any section should have the following rights to establish and maintain institutions for religious and charitable purposes:

- a) to manage its own affairs in the matters of religion.
- b) to own and acquire movable and immovable properties.

- c) to administer such properties in accordance with law.

In order to ensure the secular character, Art. 27 provides 'no one shall be compelled to pay any tax for the promotion or maintenance of any particular religion or religious denomination'. This is to ensure the secular character of the State. Consequently, there is prohibition of religious instruction in State aided institutions.

Cultural and Educational Rights

State has been entrusted responsibility of protection of interests of minorities (Art. 29). It also confers minorities right to establish and administer educational institutions and provides following four distinctive rights :

- a) Right of any section of citizens to conserve its own language, script or culture [Art. 29 (1)].
- b) Right of all religion and linguistic minorities to establish and administer educational institutions of their choice [Art. 30(1)].
- c) Right of an education institution not to be discriminated in matters of State aid on grounds that it is managed by a religious or linguistic minority [Art. 30 (2)].
- d) Right of the citizen not to be denied admission in to any State maintained or State aided institutions on grounds of religion, caste, race or language [Art. 29 (2)].

The word 'minority' has not been defined in the constitution but it has intent to use term in wide sense i.e. section of citizens. Minorities shall be protected in

respect of their language, script and culture. The state shall not make any law that operate oppressively or prejudicially.

Right to Constitutional Remedies

Realizing the futility of granting rights without an effective machinery for their enforcement, the Constitution makers included in chapter III itself the rights to Constitutional Remedies. Article 32 guarantees to a person the right to move the Supreme Court directly for the enforcement of their fundamental rights. The Supreme Court can issue various kinds of writs for the enforcement of these rights. The right to Constitutional remedies shall not be suspended except as otherwise provided in the constitution that is during emergency under Article 352. Article 32 has been called the cornerstone of the entire edifice set up by the constitution. Dr. Ambedkar called it “the very heart and soul of the Constitution”. One can seek redressal through following petitions.

The Writ of Habeas Corpus: It means “To have a body”. It is a powerful safeguard against arbitrary acts not only on private individuals but also of the executive. This writ can be filed by any one including the arrested person, his relatives, friends etc. This petition will force the arresting authorities to produce the person bodily in the court.

The Writ of Mandamus: Literally means ‘we command’ This writ commands the person to whom it is addressed to perform public or quasi public legal duty which he has refused to perform and the performance of which cannot be enforced by any other legal remedy.

The Writ of Prohibition: It simply means to forbid or to stop. The Supreme Court or High Court issues directions

to an inferior court or institution of governance, forbidding the latter to continue proceeding in a case in excess of its jurisdiction or to encroach on jurisdiction with which it is not legally vested.

The Writ of Certiorari: It means 'to be more fully informed of'. It is issued to a lower court after a case has been decided by it denouncing or abolishing that order. The objective is to secure that order. Jurisdiction of an inferior court does not encroach the jurisdiction which it does not possess.

The Writ of Quo warranto : The writ of Quo warranto means 'by what warrant or by what order'. It is a proceeding by which the court inquires into the legality of the claim, which a party asserts to a public office and to remove from his or her employment if the claim is not found.

Fundamental Duties

The fundamental duties are incorporated by the 42nd Amendment to the Constitution in 1976 as Article 51-A in Part IV-A. India is the only country having in the Constitution rights and duties side by side. Rights and duties are correlated. The following ten are the charter of duties for the citizens of India:

- a) to abide by the Constitution and respect its ideals and institutions, the National flag and the National Anthem;
- b) to cherish and follow the noble ideals which inspired our national struggle for freedom.
- c) to uphold and protect the sovereignty, unity and integrity of India;
- d) to defend the country and render national service when called upon to do so;

- e) to promote harmony and spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
- f) to value and preserve the rich heritage of our composite culture;
- g) to protect and improve the natural environment including forest, lakes, rivers and wild life, and to have compassion for living creatures;
- h) to develop the scientific temper, humanism and the spirit of inquiry and reform;
- i) to safeguard public property and to abjure violence;
- j) to strive towards excellence in all spheres of individual and collective activity so that nation constantly rises to higher levels of endeavour and achievement.

There is no provision in the Constitution for direct enforcement of these duties. These can not be enforced by writs, but can be promoted only by constitutional methods. Their inclusion has been justified on the basis that they would help to strengthen our democracy. These duties are obligatory on citizens. It is only through education and enlightened public opinion that a feeling of pride and responsibility towards these constitutional duties to the nation can be inculcated in the citizens.

Directive Principles of State Policy

In Part IV of the constitution, Directive Principles of the State policy are explained from Art. 36 to Art. 51. It is borrowed from the Irish Constitution. The objective

of Directive Principles is to embody the concept of 'welfare state'. Thus *Directives* have been held to supplement fundamental rights to achieve the ideals of welfare state. The *Directive Principles of State policy*, deals with the social, economic and cultural rights. Unfortunately they are not justifiable in the court of law when it is violated. However, *Directive principles* are fundamental in the governance of the country. These are the directions to the State and law making bodies to keep in mind while framing policies and laws. The *Directive Principles* have not been properly classified in the Constitution. Yet they can be conveniently divided into the following categories.

Socialist Principles

- i) Equal distribution of wealth and material resources among all classes of people so as to prevent its concentration in a few hands. (Art. 38 and 39)
- ii) Provision of adequate means of livelihood to all the citizens. (Art. 43)
- iii) Equal pay for equal similar work for both men and women. (Art. 39)
- iv) Right to work, education and public assistance (Art. 41)
- v) To ensure just and humane conditions of work, a decent standard of living, full enjoyment of leisure and social and cultural opportunities. (Art. 42)
- vi) Maintenance and protection of health and strength of all citizens.
- vii) To make provision for public assistance in case of unemployment, old age, sickness, disability and other cases of undeserved want.

- viii) To raise the level of nutrition and standard of living and to improve public health (Art. 47)

Gandhian Principles

- i) Prohibition of intoxicating drinks and drugs. (Art. 47)
- ii) To organise village Panchayats. (Art. 40)
- iii) To provide free and compulsory education for children up to the age of fourteen. (Art. 45)
- iv) To promote with special care the educational and economic interests of the weaker sections of the people and particularly scheduled castes and scheduled tribes and protect them from social injustice and all forms of exploitation. (Art. 46)
- v) Prohibit the slaughter of cows and calves and other milch and draught cattle and to promote animal husbandry for improving their breed. (Art. 48)
- vi) To organise agriculture and animal husbandry on modern and scientific lines (Art. 48)

Liberal Principles

- i) To promote international peace and security (Art. 51)
- ii) To maintain just and honourable relations between nations.
- iii) To foster respect for international law and treaty obligations in the dealings of organised people with one another.
- iv) To encourage settlement of international disputes by arbitration.

Miscellaneous

- i) To separate Judiciary from the Executive (Art. 50).
- ii) To protect monuments, historical buildings and places and objects of national importance. (Art. 49)
- iii) To secure for the citizens Uniform Civil Code through out the territory of India. (Art. 44)

Directive Principles of State Policy are significant to realize ideals of welfare state and to achieve social justice.

Conclusion

The Basic Features of the Constitution

Our Constitution has certain basic features. These are :

- 1) Longest Constitution in the World, 2) Socialist and Secular, 3) Sovereignty resides in the People, 4) Parliamentary form of Government, 5) Unique blend of rigidity and flexibility, 6) Fundamental Rights, 7) Directive Principles of State Policy, 8) Quasi-federal nature, 9) Adult suffrage, 10) Independent judiciary, 11) Judicial review, 12) Fundamental duties

The Preamble

The Preamble is part of the Constitution and has its own importance. Any controversy about any provision of the Constitution can be explained with the help of the preamble. The preamble embodies the spirit of the Constitution and the ideal of the Indian people to promote national unity and common welfare.

Fundamental Rights

Part III of the Constitution gives a list of Fundamental Rights. These are classified as follows:

- a) Right to equality (Arts. 14-18)
- b) Right to freedom (Arts. 19-22)
- c) Right against exploitations (Arts. 23-24)
- d) Right to freedom of religion (Arts. 25-28)
- e) Cultural and educational rights (Arts. 29-30)
- f) Right to constitutional remedies (Arts. 32-35)

Fundamental Duties

Fundamental duties, are given in Part IVA of the constitution and is incorporated by the 42nd Amendment to the Constitution in 1976. India is the only country having in the constitution rights and duties side by side. *Rights* and *Duties* are correlative.

Directive Principles

Directive Principles of State Policy are discussed in Part IV of the Constitution. These principles are not justifiable, but these are fundamental in the governance of the country. These are in the form of advice to governments, which cannot ignore these for fear of losing popular support. These principles can be broadly classified as follows :

- a) Socialist Principles
- b) Gandhian Principles
- c) Liberal Principles
- d) Miscellaneous

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