

CONSTITUTION OF INDIA

Meaning of constitution:

Constitutional law, **the body of rules, doctrines, and practices that govern the operation of political communities**. ... Modern constitutional law is the offspring of nationalism as well as of the idea that the state must protect certain fundamental rights of the individual.

Constitutionalism is a philosophy which is essential for a democratic setup. It ensures that the freedoms of the individual are given primacy and the State does not encroach upon the liberty of the citizen. It ensures that the government is limited and prevents it from turning the democratic setup into dictatorial and authoritative.

Constitutional law is a broader term as it comprises of the Constitution, statutory regulations, judicial decisions and conventions. It has been developed by interpretation of the Constitution through judicial review. It consists of legal norms and non-legal norms. Legal norms are those which can be enforced and applied by the Courts, whereas non-legal norms refer to conventions, usages, practices and customs.

Constitutionalism means that the government should be limited in its powers, and its authority depends upon its ability to observe those limitations. Constitutionalism recognizes the need for a government but insists upon constraints being placed on the powers of the government. It envisages checks and balances and puts the power of the legislature and executive under some restraints. It prevents them from being arbitrary. The powers of the government can be limited through procedural stability, division of powers, accountability, openness, and disclosure. The Constitution places restrictions on the powers of the government to preserve the fundamental freedom of the individuals.

PREAMBLE

According to the preamble, the constitution of India has been pursuance of the solemn resolution of the people of India to constitute India into a 'Sovereign Democratic Republic', and to secure well-defined objects set forth in the preamble. Sovereignty denotes supreme and ultimate power.

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 OURSELVES THIS CONSTITUTION.

Sovereign

sovereign means the independent authority of a State. It means, that it has the power to legislate on any subject; and that it is not subject to the control of any other State / external power.

Socialist

It means that (since wealth is generated socially) wealth should be shared equally by society through distributive justice, not concentrated in the hands of few, and that the government should regulate the ownership of land and industry to reduce socio-economic inequalities.

Secular

Secular means that the relationship between the government and religious groups are determined according to constitution and law. It separates the power of the state and religion. By the 42nd Amendment in 1976, the term "Secular" was also incorporated in the Preamble. "Secularism is a part of the basic structure of the Indian Constitution and it means equal freedom and respect for all religions."

Democratic

The people of India elect their governments by a system of universal adult franchise, popularly known as "one person one vote". This representative form of government is suitable for governing the country because of its huge and diverse population. Every citizen of India 18 years of age or older and not otherwise debarred by law is entitled to vote.

Republic

In a republican form of government, the head of state is elected and not a hereditary monarch. India has a president who is indirectly elected and has a fixed term of office. There's an absence of a privileged class and all public offices are open to every citizen without discrimination

Justice

Justice stands for rule of law, absence of arbitrariness and a system of equal rights, freedom and opportunities for all in a society.

- i) *Social Justice*
- ii) *Economic Justice*
- iii) *Political Justice*

Liberty

The idea of Liberty refers to the freedom on the activities of Indian nationals. This establishes that there are no unreasonable restrictions on Indian citizens in term of what they think their manner of expressions and the way they wish to follow up their thoughts in action. However, liberty does not mean freedom to do anything, and it must be exercised within the constitutional limits.

Equality

The term 'equality' means the absence of special privilege to any section of society, and the provision of adequate opportunity of all the individuals without any discrimination.

Fraternity

This refers to a feeling of brotherhood and sisterhood and a sense of belonging with the country among its people.

The Preamble declares that fraternity has to assure two things—the dignity of the individual and the unity and integrity of the nation. The word 'integrity' has been added to the Preamble by the 42nd Constitutional Amendment (1976)

FUNDAMENTAL RIGHTS

Fundamental rights are the basic human rights enshrined in the Constitution of India which are guaranteed to all citizens. They are applied without discrimination on the basis of race, religion, gender, etc. Significantly, **fundamental rights are enforceable by the courts**, subject to certain conditions.

These rights are called fundamental rights because of two reasons:

1. They are enshrined in the Constitution which guarantees them
2. They are justiciable (enforceable by courts). In case of a violation, a person can approach a court of law.

List of Fundamental Rights

There are six fundamental rights of Indian Constitution along with the constitutional articles related to them are mentioned below:

1. Right to Equality (Article 14-18)
2. Right to Freedom (Article 19-22)
3. Right against Exploitation (Article 23-24)
4. Right to Freedom of Religion (Article 25-28)
5. Cultural and Educational Rights (Article 29-30)
6. Right to Constitutional Remedies (Article 32)

Right to Property is not a Fundamental Right

There was one more fundamental right in the Constitution, i.e., the right to property.

However, this right was removed from the list of fundamental rights by the 44th Constitutional Amendment.

This was because this right proved to be a hindrance towards attaining the goal of socialism and redistributing wealth (property) equitably among the people.

Note: The right to property is now a legal right and not a fundamental right.

Introduction to Six Fundamental Rights (Articles 12 to 35)

Under this section, we list the fundamental rights in India and briefly describe each of them.

1. Right to Equality (Articles 14 – 18)

Right to equality guarantees equal rights for everyone, irrespective of religion, gender, caste, race or place of birth. It ensures equal employment opportunities in the government and insures against discrimination by the State in matters of employment on the basis of caste, religion, etc. This right also includes the abolition of titles as well as untouchability.

Aspirants can read more about Right to Equality in the linked article.

2. Right to Freedom (Articles 19 – 22)

Freedom is one of the most important ideals cherished by any democratic society. The Indian Constitution guarantees freedom to citizens. The freedom right includes many rights such as:

- Freedom of speech
- Freedom of expression
- Freedom of assembly without arms
- Freedom of association
- Freedom to practise any profession
- Freedom to reside in any part of the country

Read more on the Right to Freedom in the linked article.

Some of these rights are subject to certain conditions of state security, public morality and decency and friendly relations with foreign countries. This means that the State has the right to impose reasonable restrictions on them.

Aspirants can find the details on Right to Life (Article 21), in the linked article.

3. Right against Exploitation (Articles 23 – 24)

This right implies the prohibition of traffic in human beings, *begar*, and other forms of forced labour. It also implies the prohibition of children in factories, etc. The Constitution prohibits the employment of children under 14 years in hazardous conditions.

4. Right to Freedom of Religion (Articles 25 – 28)

This indicates the secular nature of Indian polity. There is equal respect given to all religions. There is freedom of conscience, profession, practice and propagation of religion. The State has no official religion. Every person has the right to freely practice his or her faith, establish and maintain religious and charitable institutions.

Read more on the Right to Freedom of Religion in the linked article.

5. Cultural and Educational Rights (Articles 29 – 30)

These rights protect the rights of religious, cultural and linguistic minorities, by facilitating them to preserve their heritage and culture. Educational rights are for ensuring education for everyone without any discrimination.

Read more on Cultural and Educational Rights in the linked article.

6. Right to Constitutional Remedies (32 – 35)

The Constitution guarantees remedies if citizens' fundamental rights are violated. The government cannot infringe upon or curb anyone's rights. When these rights are violated, the aggrieved party can approach the courts. Citizens can even go directly to the Supreme Court which can issue writs for enforcing fundamental rights.

Features of Fundamental Rights

- Fundamental rights are different from ordinary legal rights in the manner in which they are enforced. If a legal right is violated, the aggrieved person cannot directly approach the SC bypassing the lower courts. He or she should first approach the lower courts.
- Some of the fundamental rights are available to all citizens while the rest are for all persons (citizens and foreigners).
- Fundamental rights are not absolute rights. They have reasonable restrictions, which means they are subject to the conditions of state security, public morality and decency and friendly relations with foreign countries.
- They are justiciable, implying they are enforceable by courts. People can approach the SC directly in case of violation of fundamental rights.
- Fundamental rights can be amended by the Parliament by a constitutional amendment but only if the amendment does not alter the basic structure of the Constitution.

- Fundamental rights can be suspended during a national emergency. But, the rights guaranteed under Articles 20 and 21 cannot be suspended.
- The application of fundamental rights can be restricted in an area that has been placed under martial law or military rule.

Fundamental Rights Available Only to Citizens

The following is the list of fundamental rights that are available **only to citizens** (and not to foreigners):

1. Prohibition of discrimination on grounds of race, religion, caste, gender or place of birth (Article 15).
2. Equality of opportunity in matters of public employment (Article 16).
3. Protection of freedom of:(Article 19)
 - Speech and expression
 - Association
 - Assembly
 - Movement
 - Residence
 - Profession
4. Protection of the culture, language and script of minorities (Article 29).
5. Right of minorities to establish and administer educational institutions (Article 30).

Importance of Fundamental Rights

Fundamental rights are very important because they are like the backbone of the country. They are essential for safeguarding the people's interests.

According to Article 13, all laws that are violative of fundamental rights shall be void. Here, there is an express provision for judicial review. The SC and the High Courts can declare any law unconstitutional on the grounds that it is violative of the fundamental rights. Article 13 talks about not just laws, but also ordinances, orders, regulations, notifications, etc.

Amendability of Fundamental Rights

Any changes to the fundamental rights require a constitutional amendment that should be passed by both the Houses of Parliament. The amendment bill should be passed by a **special majority** of Parliament.

Salient features of Indian Constitution

Indian constitution, one of the utmost admired constitutions in the world was enacted after 'ransacking' all the known constitutions of the world at that time. This constitution that we have enacted has stood the test of times. Though provisions were borrowed from other constitutions, the constitution of India has several salient features that distinguish it from constitution of other countries.

Some of its salient features are discussed below

Longest written constitution

- Constitution can be classified into written constitution such as that of America or unwritten constitution such as that UK.
- The constitution of India is a written constitution which happens to be the longest written constitution in the world.
- It is comprehensive, elaborate and a detailed document
- The factors that have contributed to this phenomenon are: geographical factors (vastness of country and diversity), Historical factors (Influence of GoI, 1935), Single constitution for both centre and state and dominance of legal luminaries

Drawn from various sources

- It has borrowed most of its provisions from the constitution of various other countries as well as from the Government of India act, 1935. Ex: structural part from GoI, 1935, independence of judiciary from USA, Fundamental Rights from USA etc
- Though it is borrowed, the Indian constitution-makers made sure the borrowed features were made suitable to Indian conditions. **Ex:** Though we borrowed cabinet form of governance from UK, the cabinet is not all-supreme as in the case of UK

Preamble of the constitution

- The Preamble consists of the ideals, objectives and basic principles of the Constitution.
- The salient features of the Constitution have developed directly and indirectly from these objectives which flow from the Preamble
- It asserts India to be a Sovereign Socialist Secular Democratic Republic and a welfare state committed to secure justice, liberty and equality for the people and for promoting fraternity, dignity the individual, and unity and integrity of the nation.
- The Preamble is the nature of Indian state and the objectives it is committed to secure for the people.

Democratic system

- The authority of the government rests upon the sovereignty of the people. The people enjoy equal political rights.
- Free fair and regular elections are held for electing governments

India is a republic

- The Preamble declares India to be a Republic.
- India is not ruled by a monarch or a nominated head of state. India has an elected head of state (President of India) who wields power for a fixed term of 5 years.
- After every 5 years, the people of India indirectly elect their President.

Union of states

- Article I of the Constitution declares, that “India that is Bharat is a Union of States.”

Fundamental Rights and duties:

- The Constitution of India grants and guarantees Fundamental Rights to its citizens.
- The constitution of India confirms the basic principle that every individual is permitted to enjoy certain basic rights and part III of the Constitution deals with those rights which are known as fundamental right.
- The Six FR include- Right to Equality; Right to Freedom; Right Against Exploitation; Right to Freedom of Religion; Cultural and Educational Rights and Right to Constitutional Remedies (Art. 32).
- The fundamental rights are justiciable and are not absolute. Reasonable constraints can be imposed keeping in view the security-requirements of the state.
- A new part IV (A) after the Directive Principles of State Policy was combined in the constitution by the 42nd Amendment, 1976 for fundamental duties.

Directive Principles of State Policy:

- A unique aspect of the Constitution is that it comprises of a chapter in the Directive Principles of State Policy.
- These principles are in the nature of directives to the government to implement them to maintain social and economic democracy in the country.

Parliamentary System:

- The Constituent Assembly decided to espouse Parliamentary form of government both for the Centre and the states.
- In Indian parliamentary system, distinction is made between nominal and real executive head.
- The Council of Ministers is responsible before the Lok Sabha, The lower house of union parliament. There are close relations between executive and legislature.

Federal structure of government:

- A federal state is a state where a country is divided into smaller regions and the government is functioning at two levels
- The Indian Constitution has envisaged a federal structure for India considering the geographical vastness and the diversity of languages, region, religions, castes, etc.
- Written Constitution, supremacy of the Constitution, division of powers between Union and States, bicameral Legislature, independent Judiciary, etc. are the features of Indian federation.
- Scholars describe India as a 'Quasi-Federation' (K.C. Wheare) or as 'a federation with a unitary bias, or even as 'a Unitarian federation.'

Universal adult franchise

- All men and women enjoy an equal right to vote. Each adult man and woman above the age of 18 years has the right to vote.
- All registered voters get the opportunity to vote in elections.

Single integrated State with Single Citizenship:

- India is the single Independent and Sovereign integrated state.
- All citizens enjoy a common uniform citizenship.
- They are entitled to equal rights and freedoms, and equal protection of the state.

Integrated Judicial system

- The Constitution provides for a single integrated judicial system common for the Union and the states.
- The Supreme Court of India works at the apex level, High Courts at the state level and other courts work under the High Courts.

Independent Judiciary

- It is necessary to secure the philosophical foundations of the rule of law and democracy

- Firstly, the Constitution makers created a separate Judiciary independent of Legislature and Executive.
- Secondly, the Constitution has ensured complete independence of Judiciary in the matters of administration and finances.

Amending the Constitution of India:

- Amending the Constitution of India is the procedure of making modifications to the nation's fundamental law or supreme law.
- The procedure of amendment in the constitution is laid down in Part XX (Article 368) of the Constitution of India.
- This procedure guarantees the sanctity of the Constitution of India and keeps a check on uninformed power of the Parliament of India.

Judicial Review:

- The judiciary has significant position in Indian Constitution and it is also made independent of the legislature and the executive.
- The Supreme Court of India stands at the peak of single integrated judicial system
- It operates as defender of fundamental rights of Indian citizens and guardian of the Constitution.

Basic Structure doctrine:

- The basic structure doctrine is an Indian judicial norm that the Constitution of India has certain basic features that cannot be changed or destroyed through amendments by the parliament.
- The basic features of the Constitution have not been openly defined by the Judiciary.
- At least, 20 features have been described as “basic” or “essential” by the Courts in numerous cases, and have been incorporated in the basic structure.
- In Indira Gandhi v. Raj Narayan case and also in the Minerva Mills case, it was witnessed that the claim of any particular feature of the

Constitution to be a “basic” feature would be determined by the Court in each case that comes before it.

Secularism

- In no other country of the world so many religions co-exist as in India. In view of such diversity the Constitution guarantees complete freedom of religion to all.
- The citizens of our country are free to follow any religion and they enjoy equal rights without any distinction of caste, creed, religion or sex.
- The State does not discriminate against anyone on the ground of his religion, nor can the State compel anybody to pay taxes for the support of any particular religion.
- Everybody is equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.
- The Constitution regards religion as a private affair of individuals and prohibits the State from interfering with it. The Constitution also grants various cultural rights to minorities.

Independent bodies

- Constitution has setup various independent bodies and vested them with powers to ensure the constitutional provisions. Ex: Election Commission, CAG, Finance Commission
- These institutions have been provided with security of tenure, fixed service conditions etc to ensure that they are not susceptible to the whims of either the legislature or the executive.

Emergency provisions

- Indian constitution contains elaborate provisions to deal with those challenges that pose a threat to the country's security and unity (It will be discussed in detail in upcoming chapters)

Three-tier government

- Through 73rd and 74th amendment act, we have rural and urban local bodies as an additional constitutional tier of the government structure.
- This section fulfills the dream of Gandhi ji to see a self-functioning villages in India.

RIGHT TO LIFE AND PERSONAL LIBERTY UNDER INDIAN CONSTITUTION

Introduction

The right to live a free, full and dignified life is one of the most basic principles of human existence. Every person is entitled to live their life on their own terms, with no unfair interference from others. A successful democracy can only be one that guarantees its citizens the right to protect their own life and liberty.

In India, the Protection of Life and Personal Liberty is a Fundamental Right granted to citizens under Part III of the Constitution of India, 1950. These Fundamental Rights represent the foundational values cherished by the people and are granted against actions of the state, meaning that no act of any state authority can violate any such right of a citizen except according to the procedure established by law.

Article 21 of this part states that “No person shall be deprived of his life or personal liberty except according to the procedure established by law”, and this is known as the Right to Life and Personal Liberty.

Hence, this Article prohibits the encroachment upon a person’s right to life and personal liberty against the state. The state here refers to all entities having statutory authority, like the Government and Parliament at the Central and State level, local authorities, etc. Thus, violation of the right by private entities is not within its purview.

The terms 'life' and 'personal liberty' encompass a wide variety of rights of the people, which are a result of the evolution in the interpretation of Article 21 by the courts over the years. Here, we shall examine the various aspects of this Fundamental Right; but before that, let's have a look at the jurisprudential evolution of this concept and the significance of one of the most famous judgements related to it – *Maneka Gandhi v. Union of India* (1978)

Personal Liberty: Meaning and Scope

The meaning of Personal Liberty of a citizen in India has evolved and its scope has widened. Prior to the *Maneka Gandhi* case, it had a relatively narrower scope, comprising only some liberties of a person.

Personal Liberty was first interpreted in the case of *A.K. Gopalan v. State of Madras* in 1950, which is explained below.

A.K. Gopalan v. State of Madras (1950): Prevention Detention

Facts:

the Petitioner, a communist leader, was detained under the Preventive Detention Act, 1950. He claimed that such detention was illegal as it infringed upon his freedom of movement granted in [Article 19\(1\)\(d\)](#) of the Constitution of India and thus also violated his Personal Liberty as granted by Article 21 since freedom of movement should be considered a part of a person's personal liberty.

Judgement:

The court stated that personal liberty meant liberty of the physical body and thus did not include the rights given under [Article 19\(1\)](#). Hence, Personal liberty was considered to include some rights like the right to sleep and eat, etc. while the right to move freely was relatively minor and was not included in one's "personal" liberty.

Maneka Gandhi v. Union of India (1978): Right to Travel

Facts:

The petitioner, [in this case](#), was ordered by the Regional Passport Office, Delhi to surrender her newly-made passport within 7 days due to the Central Government's decision to impound it "in public interest", in accordance with the Passport Act of 1967. Upon requesting a statement of the reasons for such impounding, the Government replied that they could not furnish a copy of the same "in the interest of the general public." A writ petition was filed by the petitioner challenging the Government's decision of impounding and also of not providing the reasons, as well as not allowing the petitioner to defend herself.

Judgement:

The Honourable Supreme Court held that the right to travel and go outside the country must be included in the Right to Personal Liberty. It stated that "personal liberty" given in Article 21 had the widest amplitude and covered a variety of rights related to the personal liberty of a person. The scope of personal liberty was, hence, greatly increased and it was held to include all the rights granted under Article 21, as well as all other rights related to the personal liberty of a person. Such a right could only be restricted by a procedure established by law, which had to be "fair, just and reasonable, not fanciful, oppressive or arbitrary."

Hence, the Court adjudged in the case that:

1. The Government action was not justified as there was no pressing reason for the impounding of the petitioner's passport and it was a violation of her Fundamental Rights.
2. The principles of Natural Justice were violated as the petitioner was not given the opportunity to be heard.

Since this landmark case, the courts have sought to give a wider meaning to "personal liberty". The principles of natural justice have also been emphasized upon, as any procedure which restricts the liberty of a person must be fair, just and reasonable.

Scope of Right to Life and Personal Liberty

Right to live with human dignity

It is not enough to ensure that a person has a Right to Live. An essential element of life is one's dignity and respect; therefore, each person has been guaranteed the right to live with dignity – which means having access to the necessities of human life as well as having autonomy over one's personal decisions.

Right to livelihood

To survive, a person requires access to financial and material resources to fulfill his various needs. The law recognises that every person, whether man or woman, has an equal right to livelihood so that he or she may acquire the necessary resources like food, water, shelter, clothes and more. No person deserves to live in poverty and squalor because of being deprived of the chance to earn for himself.

Right to privacy

Right to Privacy sounds like a very basic and obvious right to possess, but for a long time, it was not recognised as a distinct right by the Government because of not being mentioned explicitly by the drafters in the Constitution of India. Over time, there has been a growing recognition of a person's autonomy over his or her personal body, mind and information which has been given due emphasis by the courts in various judgements.

Right to Health and Medical Assistance

The Right to Life, of course, cannot be upheld if every person is not given access to proper health and medical assistance. It is the most primary prerequisite to living a full life.

However, sometimes doctors and medical institutions hesitate to assist the ailing persons due to fear of long formalities and complications, especially in medico-legal cases. An example of such a situation is given below.

Right to sleep

All of us love sleeping, right? But many are not aware that the Right to Sleep is a distinct part of one's Fundamental Rights, which protects against any actions of the State leading to the unlawful deprivation of a person's sleep.

Right to a Healthy Environment

Nature has showered us with its gifts since the beginning of time, and these gifts and resources act as the backbone of human existence. A clean, healthy and harmonious environment is one of the necessities for the true enjoyment of life, and thus, it comes as no surprise that our right to live in a pollution-free environment is included in the expansive Right to Life.

Right to get pollution-free water and air

Without clean drinking water, we can't last half a week, and without air, we can't even last half an hour. It is very important to have access to pollution-free water and air for a sound mind and body.

Public hanging

Public hanging means the execution of a convict by hanging in a public space where the members of the general public are allowed to attend voluntarily. While today they are regarded with a general distaste, public executions used to be more

commonplace earlier as they acted as a strong deterrent for others, showing the power of the State to deal with unfavourable elements of society.

Conclusion

The Right to Life and Personal Liberty has a wide ambit which is only growing over time. There has been increasing awareness about the various aspects of a person's life which he or she is entitled to control and which would, thus, facilitate the enhancement in quality of his or her life. This Right has been described as the "heart and soul" of the Constitution of India by the Supreme Court and certainly proves to be so – representing the very basic necessities of human life.



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