

Unit 3: Constitution of India Chapter

The Preamble of Indian Constitution

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;

Fundamental duties

Fundamental duties basically imply the moral obligations of all citizens of a country and today, there are 11 fundamental duties in India, which are written in Part IV-A of the Constitution, to promote patriotism and strengthen the unity of India.

Originally, the fundamental duties of India were not a part of the Indian Constitution, in fact, they were added by the 42nd and 86th Constitutional Amendment Acts. The list of fundamental rights and duties and the Directive Principles of State Policy are sections of the Indian Constitution that elaborate on the essential obligations of the states to its citizens, along with the duties and rights that they hold as Indian citizens.

Just like all citizens have equal rights, they also have an equal fundamental duty to uphold other rights (mentioned under **Article 21**) and also make sure that they **do not violate these rights**. A person cannot expect to enjoy all the privileges and freedom under the law without performing their corresponding fundamental duties.

However, by the 86th Amendment in 2002, the original 10 duties were then increased to 11, under Article 51A, Part IV-A of the Constitution of India.

The 10 fundamental duties are as follows:

1. *To oblige with the Indian Constitution and respect the National Anthem and Flag*
2. *To cherish and follow the noble ideas that inspired the national struggle for freedom*
3. *To protect the integrity, sovereignty, and unity of India*
4. *To defend the country and perform national services if and when the country requires*
5. *To promote the spirit of harmony and brotherhood amongst all the people of India and renounce any practices that are derogatory to women*
6. *To cherish and preserve the rich national heritage of our composite culture*
7. *To protect and improve the natural environment including lakes, wildlife, rivers, forests, etc.*

8. *To develop scientific temper, humanism, and spirit of inquiry*
9. *To safeguard all public property*
10. *To strive towards excellence in all genres of individual and collective activities*

The 11th fundamental duty which was added to this list is:

11. *To provide opportunities for education to children between 6-14 years of age, and duty as parents to ensure that such opportunities are being awarded to their child.*

What is the difference between Fundamental Rights and Fundamental Duties?

Fundamental Rights and Fundamental Duties are inter-related and one can't exist without the other.

“Fundamental rights can be defined as privileges granted to each individual of the country to enjoy and the Fundamental Duties are the moral responsibilities which one needs to carry out in order to respect the rights of another individual and perform social obligations,”

Fundamental Rights	Fundamental Duties
Fundamental Rights are the freedoms guaranteed by the constitution which can't be taken away from a citizen.	Fundamental Duties are the legal responsibilities bestowed upon the citizens to perform.
Fundamental Rights are considered to be the normative rules of liberty and freedom for every citizen in order to achieve a harmonious and a free lifestyle	Fundamental Duties are the moral responsibilities of all the citizens that need to be performed by them in order to achieve prosperity and uphold the unity of the nation.
Fundamental Rights are universally available to all citizens regardless of their race, caste, religion, sex or place of birth and are justiciable in nature, i.e. they can be taken to the court of law.	Fundamental Duties are non-justiciable and hence can't be taken to the court of law.

The Relationship between the Fundamental Rights, Directive Principles and Fundamental Duties

The Indian Constitution provides different sections of Fundamental Rights, Fundamental Duties and Directive Principles of the State Policy to regulate the conduct of citizens among each other, and the state's conduct with the citizens. These different segments of the Indian Constitution provide a rule book of rights, duties, and guidelines for citizens' behaviour and conduct along with the parameters with which the government has to keep itself fully aligned while making laws.

The **Fundamental Rights** are defined as the basic human rights of all citizens. **Part III** of the Indian Constitution contains all the fundamental rights applicable to all the individuals irrespective of race, religion, caste, creed or gender or place of birth. All these rights are enforceable by the courts, subject to specific restrictions. The basic idea behind formulating these Fundamental Rights is to protect the liberty of citizens and to maintain the social democracy of the country based on the factors of equality in society.

Fundamental Rights are Right to Equality, Right to Freedom, Right against Exploitation, Right to Freedom of Religion, Cultural and Educational Rights, Right to Constitutional Remedies and Right to Privacy.

Right to Equality

The Right to Equality is one of the chief guarantees of the Constitution. It is embodied in Articles 14–18, which collectively encompass the general principles of equality before law and non-discrimination and there is no any other power given to any cast wise e.g., son of king didn't become who is qualify the quality of king is become a king and Articles 17–18 which collectively encompass further the philosophy of social equality. Article 14 guarantees equality before law as well as equal protection of the law to all persons within the territory of India. This includes the equal subjection of all persons to the authority of law, as well as equal treatment of persons in similar circumstances. The latter permits the State to classify persons for legitimate purposes, provided there is a reasonable basis for the same, meaning that the classification is required to be non-arbitrary, based on a method of intelligible differentiation among those sought to be classified, as well as have a rational relation to the object sought to be achieved by the classification.

Article 15 prohibits discrimination on the grounds only of religion, race, caste, sex, place of birth, or any of them. This right can be enforced against the State as well as private individuals, with regard to free access to places of public entertainment or places of public resort maintained partly or wholly out of State funds. However, the State is not precluded from making special provisions for women and children or any socially and educationally backward classes of citizens, including the Scheduled Castes and Scheduled Tribes. This exception has been provided since the classes of people mentioned therein are considered deprived and in need of special protection.

Article 16 guarantees equality of opportunity in matters of public employment and prevents the State from discriminating against anyone in matters of employment on the grounds only of religion, race, caste, sex, descent, place of birth, place of residence or any of them. It creates exceptions for the implementation of measures of affirmative action for the benefit of any backward class of citizens in order to ensure adequate representation in public service, as well as reservation of an office of any religious institution for a person professing that particular religion.

The practice of un-touchability has been declared an offence punishable by law under Article 17, and the Protection of Civil Rights Act, 1955 has been enacted by the Parliament to further this objective.

Article 18 prohibits the State from conferring any titles other than military or academic distinctions, and the citizens of India cannot accept titles from a foreign state. Thus, Indian aristocratic titles and title of nobility conferred by the British have been abolished. However, awards such as the *Bharat Ratna* have been held to be valid by the Supreme Court on the ground that they are merely decorations and cannot be used by the recipient as a title.

Right to Freedom

The Right to Freedom is covered in Articles 19 to article 22, with the view of guaranteeing individual rights that were considered vital by the framers of the Constitution, and these Articles also include certain restrictions that may be imposed by the State on individual liberty under specified conditions.

Article 19 guarantees **six freedoms** in the nature of civil rights, which are available only to citizens of India. *These include the freedom of speech and expression, freedom of assembly without arms, freedom of association, freedom of movement throughout the territory of our country, freedom to reside and settle in any part of the country of India and the freedom to practice any profession.* All these freedoms are subject to reasonable restrictions that may be imposed on them by the State, listed under Article 19 itself. The grounds for imposing these restrictions vary according to the freedom sought to be restricted and include national security, public order, decency and morality, contempt of court, incitement to offences a defamation. The State is also empowered, in the interests of the general public to nationalize any trade, industry or service to the exclusion of the citizens. Article 22 provides specific rights to arrested and detained persons, in particular the rights to be informed of the grounds of arrest, consult a lawyer of one's own choice, be produced before a magistrate within 24 hours of the arrest, Article 22 provides that when a person is detained under any law of preventive detention, the State can detain such person without trial for only three months, and any detention for a longer period must be authorised by an Advisory Board. The person being detained also has the right to be informed about the grounds of detention, and be permitted to make a representation against it, at the earliest opportunity

Right against Exploitation

Child labour and Beggar is prohibited under the Right against Exploitation.

The Right against Exploitation, contained in Articles 23–24, lays down certain provisions to prevent exploitation of the weaker sections of the society by individuals or the State. Article 23 prohibits human trafficking, making it an offence punishable by law, and also prohibits forced labour or any act of compelling a person to work without wages where he was legally entitled not to work or to receive remuneration for it. However, it permits the State to impose compulsory service for public purposes, including conscription and community service. The Bonded Labour System (Abolition) Act, 1976, has been enacted by Parliament to give effect to this Article. Article 24 prohibits the employment of children below the age of 14 years in factories, mines and other hazardous jobs. Parliament has enacted the Child Labour (Prohibition and Regulation) Act, 1986, providing regulations for the abolition of, and penalties for employing, child labour, as well as provisions for rehabilitation of former child labourers.

Right to Freedom of Religion

The Right to Freedom of Religion, covered in Articles 25–28, provides religious freedom to all citizens and ensures a secular state in India. According to the Constitution, there is no official State religion, and the State is required to treat all religions impartially and neutrally.

- i. Article 25 guarantees all persons the freedom of conscience and the right to preach, practice and propagate any religion of their choice. This right is, however, subject to public order, morality and health, and the power of the State to take measures for social welfare and reform. The right to propagate, however, does not include the right to convert another individual, since it would amount to an infringement of the other's right to freedom of conscience.
- ii. Article 26 guarantees all religious denominations and sects, subject to public order, morality and health, to manage their own affairs in matters of religion, set up institutions of their own for charitable or religious purposes, and own, acquire and manage a property in accordance with law. These provisions do not derogate from the State's power to acquire property belonging to a religious denomination. The State is also empowered to regulate any economic, political or other secular activity associated with religious practice.
- iii. Article 27 guarantees that no person can be compelled to pay taxes for the promotion of any particular religion or religious institution.
- iv. Article 28 prohibits religious instruction in a wholly State-funded educational institution, and educational institutions receiving aid from the State cannot compel any of their members to receive religious instruction or attend religious worship without their (or their guardian's) consent.

Right to Education and Culture

The Cultural and Educational rights, given in Articles 29 and 30, are measures to protect the rights of cultural, linguistic and religious minorities, by enabling them to conserve their heritage and protecting them against discrimination.

- i. Article 29 grants any section of citizens having a distinct language, script culture of its own, the right to conserve and develop the same, and thus safeguards the rights of minorities by preventing the State from imposing any external culture on them. It also prohibits discrimination against any citizen for admission into any educational institutions maintained or aided by the State, on the grounds only of religion, race, caste, language or any of them. However, this is subject to reservation of a reasonable number of seats by the State for socially and educationally backward classes, as well as reservation of up to, 50 percent of seats in any educational institution run by a minority community for citizens belonging to that community.
- ii. Article 30 confers upon all religious and linguistic minorities the right to set up and administer educational institutions of their choice in order to preserve and develop their own culture, and prohibits the State, while granting aid, from discriminating against any institution on the basis of the fact that it is administered by a religious or cultural minority. The term "minority", while not defined in the Constitution, has been interpreted by the Supreme Court to mean any community which numerically forms less than 50% of the population of the state in which it seeks to avail the right under Article 30. In order to claim the right, it is essential that the educational institution must

have been established as well as administered by a religious or linguistic minority. Further, the right under Article 30 can be availed of even if the educational institution established does not confine itself to the teaching of the religion or language of the minority concerned, or a majority of students in that institution do not belong to such minority. This right is subject to the power of the State to impose reasonable regulations regarding educational standards, conditions of service of employees, fee structure, and the utilisation of any aid granted by it.

Right to Constitutional Remedies

The Right to Constitutional Remedies empowers citizens to approach the Supreme Court of India to seek enforcement, or protection against infringement, of their Fundamental Rights.

- Article 32 provides a guaranteed remedy, in the form of a fundamental right itself, for enforcement of all the other fundamental rights, and the supreme court is designated as the protector of these rights by the constitution. The supreme court has been empowered to issue writs, namely *habeas corpus*, *mandamus*, *prohibition*, *certiorari* and *quo warranto*, for the enforcement of the fundamental rights, while the high courts have been empowered under article 226 – which is not a fundamental right in itself – to issue these prerogative writs even in cases not involving the violation of fundamental rights. the supreme court has the jurisdiction to enforce the fundamental rights even against private bodies, and in case of any violation, award compensation as well to the affected individual. Exercise of jurisdiction by the supreme court can also be *suo motu* or on the basis of a public interest litigation. This right cannot be suspended, except under the provisions of article 359 when a state of emergency is declared.

Right to privacy

Right to privacy is the latest right of our country being recently approved by the supreme court of India. According to this right we are liable to keep our material private and without our permission no one can interfere in our private matter.it applies to all our private material also.

Please Note- Right to Property was removed from the Indian Constitution in 1978. Now it is not counted as a Fundamental Right.

Powers of President of India

The President of India is the Head of State of India, and the Commander-in-chief of the Indian Armed Forces. He is a titular head with certain powers. With the Presidential elections fast approaching, here is a recap of the role of the President of India.

Powers

The President of India, the First Citizen of India, has the following powers:

Executive Powers

As per Article 53 of the Constitution of India, the President has the following executive powers:

- 1- A right to be informed of all of the nation's affairs.
- 2- Powers to appoint and remove high Constitutional authorities, including the prime minister and the council of ministers.
- 3- Appointments of the judges of the Supreme Court and the High Courts, the state governors, the attorney general, the comptroller and auditor general (CAG), and the chief commissioner and members of the election commission are made in his name.

Legislative Powers

1. The President is always the first to address the Parliament during the budget session.
2. In case of a deadlock in legislation process between the two houses of Parliament, the President summons a joint session to break the impasse.
3. Presidential sanction is mandatory for a legislation such as creating a new state, or changes in the boundary of existing states, or a change in the name of a state.
4. Legislation dealing with fundamental rights under the Constitution require the President's consent.
5. Money bills introduced in the Lok Sabha require the President's consent.
6. All bills passed by Parliament need the President's consent before becoming law.
7. The President is responsible for promulgating ordinances or emergent legislation during Parliament's recess.
8. He nominates the members to both the Houses.

Military Powers

As the Supreme Commander of the Indian Armed Forces the President plays the following role:

- 1- All officers' appointments are made by him or her, including that of the chiefs.
- 2- The country declares war in the name of the President.
- 3- The country also concludes peace in the name of the President's

Diplomatic roles

The President of India plays a vital role in maintaining diplomatic and cordial relationships with other countries across the globe.

- 1- The country's ambassadors and high commissioners are his representatives in foreign land.
- 2- He also receives the credentials of diplomatic representatives of foreign countries.
- 3- The President also negotiates treaties and agreements with other nations prior to ratification by Parliament.

Judicial powers

The President has the privilege of judicial powers.

- 1- He rectifies judicial errors
- 2- Has the power to grant pardons and reprieves from punishment.

3- The President can also seek the opinion of the supreme court on legal and Constitutional matters and on matters of national and people's interest.

Financial Roles

- 1-** The Contingency Fund of India is at the disposal of the President of India.
- 2-** He causes the presentation of audit reports before Parliament.
- 3-** He also receives the report of the finance commission and acts on its recommendations.

Emergency Powers

The Constitution of India envisages three kinds of emergency powers on the President.

- 1-** During any national emergency which puts the country's security at peril, either from external aggression or armed rebellion within, the President has the power to declare a state of emergency. The President's Rule is then established in the state. However, such emergency has to be recommended by the Prime Minister and the cabinet.
- 2-** The President can declare a State emergency based on political emergency due to Constitutional or law and order breakdown. The Governor's Rule is then established in the state.
- 3-** The President has the power to intervene when the financial stability of the country or any state is seriously affected. The President has the power to direct a state government to observe prudence in public expenditure.

Qualifications required to become an MLA

To become a Member of a State Legislative Assembly (MLA), a person must be a citizen of India, not less than 25 years of age, should be mentally sound, should not be bankrupt, and must be enrolled on the voters' list of the state for which he or she is contesting an election. He or she may not be a Member of Parliament. He or she should also state an affidavit that there are no criminal procedures against him or her.

Disqualifications

A person is disqualified from being chosen as and for being a member of the Legislative Assembly of a State:

- 1.** If he holds an office of profit under the Government of India or the Government of any State other than an office declared by the State Legislature by law not to disqualify its holder;

2. If he is of unsound mind as declared by competent Court,

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3. If he is an un-discharged insolvent;
4. If he is not a citizen of India or has voluntarily acquired the citizenship of a foreign state or is under any acknowledgement of allegiance or adherence to a foreign state;
5. If he is so disqualified by or under any law of Parliament.

Functions of election commission of India.

Functions and Powers

Key functions of the Election Commission of India are as under:

1. The Election Commission of India is considered the guardian of free and reasonable elections.
2. It **issues the Model Code of Conduct in every election** for political parties and candidates so that the decorum of democracy is maintained.
3. It **regulates political parties and registers them for being eligible to contest elections.**
4. It publishes the allowed limits of campaign expenditure per candidate to all the political parties, and also monitors the same.
5. The **political parties must submit their annual reports to the ECI** for getting tax benefit on contributions.
6. It guarantees that all the political parties regularly submit their audited financial reports.

Other powers handled by the Election Commission of India are as follows:

1. The Commission **can repress the results of opinion polls** if it deems such an action fit for the cause of democracy.
2. The Commission **can recommend for disqualification of members after the elections** if it thinks they have violated certain guidelines.
3. In case, a candidate is found guilty of dishonest practices during the elections, the Supreme Court and High Courts consult the Commission.
4. The Commission **can postpone candidates who fail to submit their election expense accounts timely.**

The main duties of the Election Commission are:

1. To supervise, direct, control and conduct all elections to Parliament and State Legislatures as also to the office of the President and Vice- President of India.
2. To set down general rules for election.
3. To determine constituencies and to prepare electoral rolls.
4. To give credit to political parties.
5. To allot election symbols to different political parties and individual contestants.
6. To appoint tribunals for the decision of doubts and disputes arising out of or in connection with election to parliament and State Legislatures.

State Legislature: Organisation, Powers and Limitations on the Powers of State Legislature!

State Legislature:

The Constitution of India provides for a legislature in each State and entrusts it with the responsibility to make laws for the state. However, the composition of a state Legislature can be different in different states. It can be either bicameral or unicameral. Presently, only six states (Andhra Pradesh, Bihar, J&K, Karnataka Maharashtra and UP) have bi-cameral legislatures. Twenty-two States and Two Union Territories (Delhi and Puducherry) have unicameral Legislatures.

In case of a bicameral state legislature, the upper house is known as State Legislative Council (Vidhan Parishad) and the lower house as the State Legislative Assembly (Vidhan Sabha). Where there is only one House of the State Legislature, it is known as the State Legislative Assembly. Orissa has a unicameral legislature with Orissa Legislative Assembly as its all-powerful house.

(I) Method of Abolition or Creation of a State Legislative Council:

The power to establish or abolish the Legislative Council in a state belongs to the Union Parliament. It can do it by enacting a law. The Parliament, however, acts when the Legislative Assembly of the concerned state passes a desired resolution by a majority of its total membership and by a majority of not less than two-thirds of the members of the State Legislative Assembly present and voting.

Organisation of a State Legislature:

(A) Composition of the State Legislative Assembly (Vidhan Sabha):

The State Legislative Assembly, popularly known as Vidhan Sabha, is the lower, directly elected, popular and powerful house of the state legislature. Its membership is in proportion to the population of the state and hence it differs from state to state. The members are directly elected by the people of the state through a secret ballot, simple majority vote victory and single member territorial constituency system. Orissa Legislative Assembly has 147 members.

A citizen of India, who is not less than 25 years of age and who fulfils every other qualification as laid down by a law can become its member by winning an election from any constituency in the state. However, no person can simultaneously be a member of two Houses of the Parliament or of any other State Legislature.

The normal term of Legislative is 5 years. However, it can be dissolved by the Governor at any time. It can be suspended or dissolved when an emergency under Art. 356 is proclaimed in the state. In May 2009, in the Orissa Legislative Assembly elections the BJD won 103 seats while the Congress got 26, the BJP 6 and independents and other 12 seats.

(B) Composition of State Legislative Council:

At present only 6 States — Andhra Pradesh, UP, Maharashtra, Karnataka, J&K and Bihar— have Legislative Councils. The popular name of the State Legislative Council is Vidhan Parishad. The total membership of a Legislative council cannot be normally less than 40 and more than 1/3rd of the total membership of the State Legislative Assembly.

Andhra Pradesh Vidhan Parishad has 90 members UP Vidhan Parishad 100, Maharashtra Vidhan Parishad 78, J&K Vidhan Parishad 36, Bihar Vidhan Parishad 75 and Karnataka Vidhan Parishad 75 members. The membership of Vidhan Parishad includes elected as well as nominated representatives from several types of constituencies.

The following formula is used:

- a. 1/3rd members are elected by the members of State Legislative Assembly.
- b. 1/3rd members are elected by local bodies of the state.
- c. 1/12th members are elected by teachers of at least three years standing, serving educational institutions of the state.
- d. 1/12 members are elected by state university graduates of not less than three years-standing.
- e. 1/6th members are nominated by the Governor of the state.

Any citizen of India who is not less than 30 years of age, who possesses all the qualifications as laid down by the Parliament, who is not a member of any other legislature or Union Parliament can become a member of the State Legislative Council either by winning an election or by securing Governor's nomination. Legislative council is a semi-permanent House. It is never dissolved as a whole. 1/3rd of its members retire after every 2 years. Each member has a term of 6 years.