

# **CONSTITUTION OF INDIA<sup>1</sup>**

## **General information on the constitution**

Constitution is a supreme legal document of a country. It is under this fundamental law that all laws are made and executed, all governmental authorities act and the validity of their functioning adjudged. No legislature can make a law, and no governmental agency can act, contrary to this document. No act, executive, legislative, judicial or quasi-judicial, of any administrative agency can stand if contrary to the constitution.

## **Making of the Constitution**

The constitution went through a draft that was prepared by Sir B.N. Rau. A seven member committee then examined the draft and then Dr. B.R. Ambedkar piloted the draft constitution in the Assembly.

## **Main Features**

Constitution of India provides for :

- i. Judicial review of all actions of the state
- ii. Fundamental rights for its people
- iii. Federal structure to the government
- iv. Directive principles of state policy and fundamental duties
- v. Provisions for functions of Union executive
- vi. Provisions for functions of Union Legislature
- vii. Provisions for functions of Supreme Court
- viii. Provisions for functions of State Executive
- ix. Provisions for functions of State Legislature
- x. Provisions for functions of High Courts
- xi. Provisions for functions of Union Territories
- xii. Finance, contracts, Property and suits of the government
- xiii. Emergency Provisions
- xiv. Amendment of the constitution

Our constitution has the distinction of being the most detailed and elaborate constitution in the world with 395 articles, twelve schedules and appendixes. I endeavour to give the basics of the constitution without getting into the legal jargons. We shall examine each of the above mentioned features in brief.

## **JUDICIAL REVIEW:**

Unlike, United Kingdom of England, India has adopted the feature of 'judicial review'. This doctrine means that all legislations / rules/ actions taken by the government are subject to review by judiciary on the touchstone of the constitution of India. Thus, if any legislation passed by the government is doubted to be against the constitution, the same can be challenged in a court of law. The High Court can be approached under Art. 226 of the constitution and the Supreme Court can be approached under Article 32 or Article 136 of the Constitution of India.).

## **FUNDAMENTAL RIGHTS**

The grounds for challenging the constitutionality are violations of the fundamental rights of the citizens (part III of the constitution - [http://lawmin.nic.in/legislative/Art1-242%20\(1-88\).doc](http://lawmin.nic.in/legislative/Art1-242%20(1-88).doc)).

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<sup>1</sup> The Article denotes the position as on 14<sup>th</sup> June 2007.

Fundamental rights have been granted to the citizens by virtue of part III of the constitution and include:

- ◆ Right to equality: The entire issue of reservation revolves around this right.
- ◆ Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth
- ◆ Abolition of untouchability
- ◆ Abolition of titles
- ◆ Right to freedom of speech and expression : The recent controversy over the paintings of the Gujarat student would fall under this category.
- ◆ Freedom of peaceful assembly
- ◆ Freedom to form associations and unions
- ◆ Freedom of trade and profession
- ◆ Freedom to travel and residence
- ◆ Right to life and personal liberty
- ◆ Freedom in respect of conviction for offenders
- ◆ Protection against arrest and detention in certain cases
- ◆ Right against exploitation
- ◆ Freedom of religion
- ◆ Freedom of minorities
- ◆ Right to constitutional remedies (writ remedy)

These are the statutory rights. Beyond these, the Courts have interpreted a plethora of other rights to be included in the fundamental rights like:

- ◆ Right to clean environment
- ◆ Right to privacy
- ◆ Freedom of press

However, it should be noted that all these rights are always subject to reasonable restrictions that may be applied by the state. For instance, just because there exists a freedom of speech and expression, people cannot say what they want. They may be barred from expressing communally sensitive speeches etc. What is reasonable is the key question to be debated in the courts.

## **FEDERAL STRUCTURE**

India is a federal country with a strong unitary base. Federalism simply means that there are two tiers of government, the state government and the central government. The division of powers between the state and the central government is given in Article 245, Schedule VII in the form of three lists i.e.:

Union List- subjects on which the central government can pass enactments

State List- subjects on which the state government can pass enactments

Concurrent List- subjects on which both the governments can pass enactments.

For instance subjects like land, law and public order are under the state purview whereas defense, communications are in the central purview.

Division of powers is also discussed in article 245-254 wherein some of the important provisions are:

- ◆ A comprehensive distribution of subjects in the three lists as illustrated above
- ◆ Certain cases the centre can enact laws over the state on the state subjects after the states give a consent to do the same
- ◆ In case of conflict between a state and a central law on a subject, supremacy of the laws passed by the centre
- ◆ Residuary power of legislation lies with the central government

This system is followed for the legislative and the executive wing of the government. However, the courts in India follow a unitary system i.e. all High Courts are below the Supreme Court of India unlike the United States court judiciary which is a dual judiciary.

## **DIRECTIVE PRINCIPLES AND FUNDAMENTAL DUTIES**

The directive principles of state policy give in certain directions to states which are not mandatory but directory in nature. These include:

- ◆ Enactment of Uniform Civil Code for India;
- ◆ Providing fair employment opportunities to all;
- ◆ Equal justice and free legal aid
- ◆ Organization of village panchayats
- ◆ Provision of free and compulsory education to children;
- ◆ Upliftment of scheduled castes/tribes and weaker sections of society;

The fundamental duties of a citizen are also listed and it should be noted that the same are not mandatory but are the basic duties, which every citizen must follow, for every action does not have to have legal consequences to ensure that it is done.

It shall be the duty of every citizen of India—

- ◆ To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
- ◆ To cherish and follow the noble ideals which inspired our national struggle for freedom;
- ◆ To uphold and protect the sovereignty, unity and integrity of India;
- ◆ To defend the country and render national service when called upon to do so;
- ◆ To promote harmony and the 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;
- ◆ To value and preserve the rich heritage of our composite culture;
- ◆ To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
- ◆ To develop the scientific temper, humanism and the spirit of inquiry and reform;
- ◆ To safeguard public property and to abjure violence;
- ◆ To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.

## **UNION EXECUTIVE**

The President is the head of the union executive and the mode of his election/impeachment are listen in this part. Further his powers/duties which include the financial powers and legislative powers are also discussed here. The president is indirectly elected unlike the prime minister. He is the titular head of the executive and must act according to the advice of the Cabinet. The Cabinet is the core of the ministers and is headed by the Prime Minister. So, the Union executive is actually controlled by the Prime Minister again.

## **UNION LEGISLATURE – PARLIAMENT**

The union legislature consists of two houses namely the Lok Sabha and the Rajya Sabha. The powers/duties/rights and obligations of the members are given in this chapter. The former is an elected body and the exact mode of election is stated here. The Prime Minister is the head of Lok Sabha. More information can be obtained at [http://www.prsindia.org/know\\_parliament.htm](http://www.prsindia.org/know_parliament.htm)

## **SUPREME COURT**

The Supreme Court is the highest judicial authority in India and sits in Delhi. The judiciary is entrusted with the responsibility of adjudicating on various disputes between citizens and also between citizens and government. The Supreme Court is a court of record i.e. all the lower courts are bound by the decisions of the Supreme Court. It also possesses advisory jurisdiction powers wherein the president can refer any matter to the Supreme Court and obtain its opinion.

## **STATE EXECUTIVE**

The governor is the head of the state executive. The provisions of the state executive are more or less similar to the union executive wherein the governor has to act according to the advice of the state cabinet which is headed by the Chief Minister by virtue of Article 166.

## **STATE LEGISLATURE**

The state legislature is headed by the Chief Minister and has similar provisions like that of Union Legislature. The duration of the legislature/ the mode of passing of the laws/ the privileges of the members and the provisions for disqualification are listed hereunder.

## **HIGH COURTS**

Each state has its own high court which is the highest court of jurisdiction in that state. The High Courts enjoy original jurisdiction as well as appellate jurisdiction i.e. by virtue of art. 226 High Courts have the power to issue writs for any purpose. Thus a writ petition can be directly filed in the High Court.

Ordinarily, the lowest courts should be approached instead of approaching the higher courts.

## **EMERGENCY PROCEDURES**

These provisions are the most controversial provisions of the constitution. The dark years of emergency are embedded in the memory of every Indian. The chaos created by the government at that time can be traced to the emergency provisions in the constitution. These provisions are included as a safeguard in constitution that are to be used extremely sparingly. The idea of the provision is that when the nation faces a crisis like:

- ◆ that of external aggression,
- ◆ failure of constitutional machinery in a state
- ◆ financial emergency,

the citizens must sacrifice some of their rights for the greater good and during such a time, the country functions as a unitary state rather than as the federal country. The proclamation of emergency is done by the President. The government must exercise its discretion when exercising such a power.

## **AMENDMENT OF THE CONSTITUTION**

Amendment of the constitution is a unique feature wherein the power is given to only the union legislature to amend the constitution. By virtue of a simple majority, lot of provisions of the constitution can be amended and this has resulted in more than hundred amendments to the

constitution already. However, the landmark case of *Keshavananda Bharti v/s State of Kerala*<sup>2</sup> evolved the doctrine of 'Basic Structure' of the Constitution. Thirteen judges delivered different judgements but the majority of seven judges agreed that although the Parliament had the power to amend the constitution, they had no power to alter the basic structure of the constitution. Exactly what features are configured under the 'Basic Structure' was left open by the judges. However, generally, fundamental rights, judicial independence, separation of powers and supremacy of the constitution form a part of the basic structure.

### **WHAT IS OUR ROLE AS CITIZENS?**

The preamble reads that we, as the citizens have given this constitution to ourselves. Our first and foremost duty is to understand the sanctity of the document and then act according to the noble principles laid down hereunder. There must always be a genuine endeavor to:

- ◆ Understand the constitution in its correct spirit by imbibing the deep democratic spirit within it which carries a huge element of responsibility along with our liberties;
- ◆ Follow the constitution in its spirit and word especially the fundamental duties;
- ◆ To note that, while on one hand, the constitution does not provide for any qualifications for our representatives besides age qualification and that of being the citizen of India it provides for adult franchise on the other hand. The intent of the constitution makers is cogent that the entire responsibility of electing the representatives should be that on the citizens;
- ◆ To note that, the constitution provides for judicial review of every action of the government be it an administrative action or a legislative action. It is for the citizens to approach the courts for redress;

To conclude, a democracy can be a success only when it is participative. People of the country must have a deep conviction of having their own government. As Janagraha points out the relation between people and the elected representative should not be E-F i.e. elect and forget but it should be E-E i.e. elect and engage.

We must in all circumstances strive to achieve our ideals i.e. justice, equality liberty and fraternity. The constitution is not a political document meant for politicians or lawyers. It is a living spirit of every person who claims to be an Indian. It is well stated:

*“There must be a capacity and a passion for the enjoyment of liberty- there must be a sense of personality in each, and of respect of personality in all, generally spread through the whole community-before the democratic State can be truly achieved .. Perhaps it can be fairly demanded only in a community which has achieved a sufficient standard of material existence, and a sufficient degree of national homogeneity to devote itself to an ideal of liberty which has to be worked and in each by the common effort of all<sup>3</sup>.”*

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<sup>2</sup> AIR 1973 SC 1461

<sup>3</sup> Prof. Earnest Barker in *Barker , Reflections on Governemnt* (Paperback pp. 192-93. )

## More Information

- ◆ Actual text of the constitution- <http://indiacode.nic.in/coiweb/welcome.html>
- ◆ General features of the constitution can be viewed at : [http://en.wikipedia.org/wiki/Constitution\\_of\\_India](http://en.wikipedia.org/wiki/Constitution_of_India)
- ◆ More on parliament-[http://www.prsindia.org/know\\_parliament.htm](http://www.prsindia.org/know_parliament.htm)

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