



INTRODUCTION TO THE CONSTITUTION

WHAT IS THE CONSTITUTION?

- The vast majority of contemporary constitutions describe the basic principles of the state, the structures and processes of government and the fundamental rights of citizens in a higher law that cannot be unilaterally changed by an ordinary legislative act. This higher law is usually referred to as a constitution.
- In simpler terms, Constitution is the law of the Land. It is the Grundnorm (basic norm). All other laws have to conform to the principles and rights established by the Constitution.

ADOPTION AND ENFORCEMENT OF THE CONSTITUTION

- The Constitution was adopted on the 26th of November, 1949. It took the Constituent Assembly 2 years 11 months and 17 days to draft the same.
- The Constitution was brought into force on 26th of January, 1950.

ARTICLE 13

- This article protects the individual's fundamental rights by rendering any law null and void if it intervenes with the liberty or is inconsistent in any way with the fundamental right of the person.
- This article also paves the way for Judicial Review.

FUNDAMENTAL RIGHTS

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

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.

2. Right to Freedom (Articles 19 – 22)

Right to Freedom entails the following rights.

- 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

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.

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.

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.

DIRECTIVE PRINCIPLES OF STATE POLICY

Articles 36-51 under Part-IV of Indian Constitution deal with Directive Principles of State Policy (DPSP). DPSPs are the non-justiciable part of the Constitution which suggests that a person cannot enforce them in the Court.

These contain important principles like the one in Article 39A which provides for free legal aid to the poor and weaker sections of the society and ensures justice for all and those such as Article 50 which states the separation of power between the Executive and Judiciary.

FUNDAMENTAL DUTIES

Fundamental Duties are stated under Article 51A. There are 11 of them.

1. Abide by the Indian Constitution and respect its ideals and institutions, the National Flag and the National Anthem
2. Cherish and follow the noble ideals that inspired the national struggle for freedom
3. Uphold and protect the sovereignty, unity and integrity of India
4. Defend the country and render national service when called upon to do so
5. Promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities and to renounce practices derogatory to the dignity of women

FUNDAMENTAL DUTIES

6. Value and preserve the rich heritage of the country's composite culture
7. Protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures
8. Develop scientific temper, humanism and the spirit of inquiry and reform
9. Safeguard public property and to abjure violence
10. Strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement
11. Provide opportunities for education to his child or ward between the age of six and fourteen years.

LANDMARK DECISIONS

- ▣ *Puttuswamy v. Union of India* - On 24 August 2017, the Supreme Court of India in this historic judgement declared the right to privacy as a fundamental right protected under the Indian Constitution. In declaring that this right stems from the fundamental right to life and liberty (Article 21), the Court's decision has far-reaching consequences.

LANDMARK DECISION

- ▣ *People's Union for Civil Liberties v. Union of India & Others* – popularly known as the "right to food" case. The PUCL argued that article 21 – "right to life" of the Indian constitution when read together with articles 39(a) and 47, makes the right to food a derived fundamental right which is enforceable by virtue of the constitutional remedy provided under article 32 of the constitution. The PUCL argued that excess food stocks with the Food Corporation of India should be fed to hungry citizens. This included providing mid day meals in primary schools. The scheme came into force with the supreme court order dated 28 November 2001, which requires all government and government-assisted primary schools to provide cooked midday meals.

LANDMARK DECISIONS

- **Navtej Singh Johar v. UOI** – In this landmark judgment, the court partially struck down Section 377 of Indian Penal Code which by decriminalising same-sex relations between consenting adults. The Court has upheld provisions in Section 377 that criminalise non-consensual acts or sexual acts performed on animals. The court cited violations of Right to equality under Article 14 and 15, Violations of Right to Life and Dignity under Article 21 and Violations of freedom of Speech and Expression under Article 19.

LANDMARK DECISIONS

- National Legal Services Authority (NALSA) v. UOI - This was a landmark decision where the apex court legally recognised “third gender”/transgender persons for the first time and discussed “gender identity” at length. The Court recognised that third gender persons were entitled to fundamental rights under the Constitution and under International law. Further, it directed state governments to develop mechanisms to realise the rights of “third gender”/transgender persons.

JUDICIAL ACTIVISM

- A judiciary is an independent body that is even handed, unbiased, and unprejudiced. It functions within the framework of the constitution, defined under the concept of the separation of powers. It interprets the constitution which is supreme and at times needed, supports the rule of law and the standards laid down in the constitution. The Supreme Court of India is considered the Guardian of the Constitution and protects the fundamental and constitutional rights of the people.

Judicial Activism means the rulings of the court based on political and personal rational and prudence of the Judges presiding over the issue. It is a legal term referring to court rulings based, in part or in full, on the political or personal factors of the Judge, rather than current or existing legislation. According to Black's Law Dictionary judicial activism is a philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions.

WRITS

- A **Writ** means an order i.e. anything that is issued under an authority is known as a Writ. The Constitution of India empowers the Supreme Court and the High Courts to issue Writs for the enforcement of the fundamental rights conferred by the Part-III of the Indian Constitution under Article 32 and Article 226 respectively.
- It must be noted that the Supreme Court can issue writs for violations of Fundamental Rights while the High Courts can do so for the violations of constitutional rights as well.
- The Writs are Habeas Corpus, Mandamus, Certiorari, Prohibition and Quo Warranto.

Quick Revision

- Which Article of the constitution provides for free legal aid to everyone so as to ensure justice for all?
- Citing the Violations of which of the Fundamental Rights, the court decriminalised Section 377 IPC in the Landmark Judgement of Navtej Singh Johar v. UOI?

Quick Revision

- The fundamental Duties under the Constitution are stated in which article of the Constitution?
- Which article states that Laws which are inconsistent with the Fundamental Rights are void ?
- Which Articles of the constitution contain the Fundamental Rights in them?