

Course 1.1.2. Contemporary India and Education (First Half)

Unit 1. Educational Provisions in the Constitution of India

Fundamental Rights and Fundamental Duties

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The Constitution of India was framed by the Constituent Assembly. The Assembly was constituted in 1946. The President of the Assembly was Dr. Rajendra Prasad.

The most important committee was the Drafting Committee. Dr. B.R. Ambedkar was the Chairman of the Drafting Committee. The task of the Committee was to prepare the draft of the Constitution. The constitution was adopted on 26 November, 1949 and was enforced with effect from January 26, 1950.

The document containing laws and rules which determine and describe the form of the government, the relationship between the citizens and the government, is called a constitution.

As such a constitution is concerned with **two** main aspects

1. the relation between the different levels of government and
2. between the government and the citizens.

Preamble of Indian Constitution

The Preamble is like an introduction or preface of a book. It is the window to what is there inside the constitution. It is mentioned in the beginning of the Constitution, before the main part, i.e., the part I. As an introduction, it explains the **philosophy, purposes and objectives** with which the document has been written. So is the case with the 'Preamble' to the Indian Constitution. As such the 'Preamble' provides **the guidelines of the Constitution**. It is a resolution which people of India have passed themselves for their overall development. It is not given to them by any other source than the people themselves. It was written on behalf of the people of India by the members of the Constituent Assembly.

The Objectives Resolution, drafted by Jawaharlal Nehru and seconded by Purushottam Das Tandon, outlined the aims and principles guiding the Constituent Assembly in framing the Indian Constitution. Initially presented at the beginning of the Assembly debates, most of its

provisions were later adopted as the Preamble towards the end. It served as a pledge and provided direction about what the Assembly sought to achieve. The Resolution laid down the fundamental principles for the future Constitution, the most important being the establishment of a "Sovereign Indian Republic." Although representatives of princely states and the Muslim League were absent, Nehru asserted that the republic would include all of India.

The Objectives Resolution, introduced by Jawaharlal Nehru on 13 December 1946, outlined the guiding "Fundamentals" for framing the Indian Constitution. It was meant to express the goals and direction of the Constituent Assembly, which later drafted the Constitution that came into force on January 26, 1950. The Resolution emphasized India becoming an Independent Sovereign Republic, unity of territories, division of powers between the Union and states, authority derived from the people, social, economic and political justice, equality, freedom, and safeguards for minorities and backward groups. It also aimed to preserve territorial integrity and promote world peace. Although the term "democratic" was absent, Nehru stated that "republic" implied both political and economic democracy. The Resolution was not binding but provided foundational principles for constitution-making.

The text of the Preamble to Indian Constitution is given below.

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 26th day of November ,1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.**

The Parliament amended the Constitution (**42nd Constitutional Amendment, 1976**) and inserted "**Secular**", "**Socialist** ", and "**and Integrity**" in the Preamble of the Constitution.

The preamble is a part of the Indian Constitution. The Kesavananda Bharati case (1973) held that Preamble is part of the Constitution.

The Preamble explains the objectives of the Constitution in two ways:

- About the structure of the governance
- About the ideals to be achieved in independent India.

Sovereignty is one of the foremost elements of any independent State. It means absolute independence, i.e., a **government which is not controlled by any other power: internal or external**. A country cannot have its own constitution without being sovereign. India is a sovereign country. It is free from external control. It can frame its policies. India is free to formulate its own foreign policy.

The word '**Socialism**' had been used in the context of economic planning. It signifies major role in the economy. It also means commitment to attain ideals like removal of inequalities, provision of minimum basic necessities to all, equal pay for equal work.

Secularism implies that India is neither religious, nor irreligious nor anti-religious. It implies that in India there will be no 'State' religion – the 'State' will not support any particular religion out of public fund. This has two implications,

- every individual is free to believe in, and practice, any religion he/she belongs to, and,
- State will not discriminate against any individual or group on the basis of religion.

The Constitution belongs to the people of India. The last line of the Preamble says '.... Hereby Adopt, Enact and Give to Ourselves This Constitution'. In fact, the Democratic principles of the country flow from this memorable last line of the Preamble. **Democracy** is generally known as government of the people, by the people and for the people. Effectively this means that the Government is elected by the people, it is responsible and accountable to the people. The **democratic principles** are highlighted with the **provisions of universal adult franchise, elections, fundamental rights, and responsible government**. The Preamble also declares India as a **Republic**. It means that the head of the State is the President who is indirectly elected and he is not a hereditary ruler as in case of the British Monarch.

Justice comes from Latin Justitia that means righteousness or equity. The Preamble of the Indian Constitution includes Justice as a core objective of the nation. It promises to secure Justice—social, economic, and political— to all citizens. Justice promises to give people what they are entitled to in terms of basic rights to food, clothing, housing, participation in the decision-making and living with dignity as human beings. The granting of political justice is in the form of universal adult franchise or the representative form of democracy. Social justice ensures equality in society by removing discrimination based on caste, religion, gender, race, or place of birth, and by promoting a fair social order. Economic justice aims to reduce inequality of wealth, income, and opportunity so that resources are shared fairly and no one is exploited or deprived.

The Preamble of the Indian Constitution guarantees **Liberty** of thought, expression, belief, faith, and worship to all citizens. Liberty means the freedom of individuals to think, speak, and act without unreasonable restrictions, while respecting the rights of others and maintaining public

order. These freedoms have been guaranteed in the Constitution through the Fundamental Rights.

Equality is considered to be the essence of modern democratic ideology. All kinds of inequality based on the concept of rulers and the ruled or on the basis of caste and gender, were to be eliminated. All citizens of India should be treated equally and extended equal protection of law without any discrimination based on caste, creed, birth, religion, sex etc.

In the background of India's multi-lingual, multi-cultural and multi-religious society and keeping in view the partition of the country, the framers of the Constitution were very much concerned about the unity and integrity of our newly independent country. There was a need for harmonious co-existence among various religions, linguistic, cultural and economic groups. Inclusion of phrases like 'dignity of individuals', '**fraternity** among people' and 'unity and integrity of the nation' in the Preamble highlight such a need. Similarly, equality of opportunities implies that regardless of the socio-economic situations into which one is born, he/she will have the same chance as everybody else to develop his/her talents and choose means of livelihood.

Fundamental Rights and Duties in Indian Constitution

The concept of Fundamental Rights in India developed during the late nineteenth and early twentieth centuries as Indians demanded the same rights enjoyed by the British. Early efforts included the Constitution of India Bill, 1895, which sought free speech, fair imprisonment, and free education. Later documents such as the Commonwealth of India Bill (1925), the Nehru Report (1928), and the Karachi Resolution emphasized individual liberty, equality before law, minority protection, and economic rights. The Sapru Report (1945) distinguished between justiciable and non-justiciable rights and stressed minority safeguards. Finally, the Rights Sub-Committee of the Constituent Assembly, headed by J.B. Kripalani, recommended making Fundamental Rights justiciable, which were incorporated into **Part III** of the Constitution.

Rights are rules of interaction between people. They place constraints and obligations upon the action of the state and individuals or group. But the rights have real meaning only if individuals perform duties. A duty is something that someone is expected or required to do. Duties are obligations that accompany rights.

The rights, which are enshrined in the Constitution, are called 'Fundamental Rights'. **These rights ensure the fullest physical, mental and moral development of every citizen.** They include those basic freedoms and conditions which alone can make life worth living.

Fundamental Rights generate a feeling of security amongst the minorities in the country. They establish the framework of 'democratic legitimacy' for the rule of the majority. No democracy can function in the absence of basic rights such as freedom of speech and expression.

Fundamental Rights provide standards of conduct, citizenship, justice and fair play. They serve as a check on the government. Various social, religious, economic and political problems in our country make Fundamental Rights important. In our Constitution, Fundamental Rights are enumerated in **Part III from Article 14 to 32. These rights are justiciable** i.e. if these rights are violated by the government or anyone else, the individual has the right to approach the Supreme Court or High Courts for the protection of his/her Fundamental Rights.

The original Constitution (1950) had seven Fundamental Rights. But after the passage of the 44th Amendment in 1978, there are now six Fundamental Rights. This Amendment deleted the seventh fundamental right, viz., right to property (Art. 31) from the list of Fundamental Rights.

FUNDAMENTAL RIGHTS IN PART III OF INDIAN CONSTITUTION

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 Equality (Article 14-18)

Right to Equality means that all citizens enjoy equal privileges and opportunities. It protects the citizens against any discrimination by the State on the basis of religion, caste, race, sex, or place of birth. Right to Equality includes five types of equalities.

Equality before law (Article 14): “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”

It means that everyone will be equally protected by the laws of the country. No person is above law. It means that if two persons commit the same crime, both of them will get the same punishment without any discrimination.

No discrimination on the basis of religion, race, caste, sex or place of birth (Article-15): No citizen shall be denied access to shops, restaurants and places of public entertainment. Neither shall anyone be denied the use of wells, tanks, bathing ghats, roads etc. maintained wholly or partly out of State funds. However, this Article does not prevent the State from making any special provisions for women or children. Further, it also allows the State to extend special provisions for socially and economically backward classes for their advancement. It applies to the Scheduled Castes (SC) and Scheduled Tribes (ST) as well.

Equality of opportunity to all citizens in matter of public employment (Article-16): the state can't discriminate against anyone in the matter of public employment. Merit and qualification will only be the basis of employment. This Article also provides the autonomy to the State to grant special provisions for the backward classes, under-represented States, SC & ST for posts under the State.

Abolition of untouchability (Article-17): Practice of untouchability is an offense and anyone doing so is punishable by law. The following actions are considered offences committed on the grounds of untouchability- refusing admission to any person to the public institutions; preventing any person from worshipping in place of public worship; insulting a member of Scheduled Caste on the grounds of untouchability; preaching untouchability directly or indirectly.

Abolition of titles (Article-18): No title, not being a military or academic distinction, shall be conferred by the State. No citizen of India shall accept any title from any foreign State. Titles such as *Rai Bahadur, Sawai, Rai Sahab, Zamindar, taluqdare* etc were abolished by article 18 of the constitution. However, civil awards such as Bharat Ratna and Padma awards and military awards like Veer Chakra, Paramveer Chakra etc. are conferred.

Right to Freedom (Article 19-22)

Article 19 of the Constitution provides for the following **six freedoms**. However, the Constitution has authorized the State to impose certain reasonable restrictions on the abovementioned Rights.

1. Freedom of speech and expression. Its main concern is the interests of sovereignty and integrity of India, security of the state, friendly relations with foreign states, public order,

decency or morality or in the relation of contempt of court, defamation or incitement to an offence;

2. Freedom to assemble peacefully and without arms. It is qualified by the interests of security and integrity of India or public order;

3. Freedom to form associations and unions. It is qualified by the interests of sovereignty and integrity of India, or public or morality.

4. Freedom to move freely throughout the territory of India. General interests of the public or the protection of interests of the scheduled tribes;

5. Freedom to reside and settle in any part of India.

6. Freedom to practise any profession or to carry out any occupation, trade or business. It is qualified by professionals' qualification needed for practising them and the power of the state or a corporation owned or controlled by the state to the total or partial exclusion of citizen.

Protection in respect of conviction for offences (Article 20): of the Constitution provides for the protection in respect of conviction for offences. No one can be convicted for an act that was not an offence at the time of its commission, and no one can be given punishment greater than what was provided in the law prevalent at the time of its commission. Also, no one can be prosecuted and punished for the same offence more than once and can be forced to give witness against his or her own self. Article 20 ensures fairness in criminal justice, protects individual liberty, and prevents misuse of state power.

Protection of life and personal liberty: As provided in **Article 21**, no one can be deprived of his or her life or personal liberty except according to the procedure established by law. **The Right to Education** is added by introducing a new Article **21A** in the Chapter on Fundamental Rights in **2002** by the **86th Constitutional Amendment**. It was a long-standing demand so that all children in the age group of **6-14 years** (and their parents) can claim compulsory and free education as a Fundamental Right. But this was enforced in 2009 when the Parliament passed the Right to Education Act, 2009.

Protection against arrest and detention in certain cases: Our Constitution guarantees certain rights to the arrested person. It is provided in **Article 22** that whenever a person is arrested, he or she should be informed, as soon as it is possible, of the grounds for arrest and should be allowed to consult and to be defended by a legal practitioner of his or her choice. The accused

has to be produced before the nearest magistrate within a period of twenty-four hours of arrest.

These freedoms can be suspended during **the State of National Emergency**. As soon as the State of National Emergency is declared under Article 352, **the abovementioned freedoms except the right to life and liberty, automatically remain suspended** as long as the State of National Emergency continues. All these freedoms get restored as soon as the proclamation of National Emergency is lifted.

Right against Exploitation (Article 23-24)

Traditionally, the Indian society has been hierarchical that has encouraged exploitation in many forms. Which is why, the Constitution makes provisions against exploitation. The citizens have been guaranteed the right against exploitation through **Articles 23 and 24** of the Constitution. These two provisions are: **Prohibition of traffic in human beings and forced labour:** Traffic in human beings and begar and other similar forms of forced labour are prohibited and any breach of this provision shall be an offence punishable in accordance with law. **Prohibition of employment of children in factories, etc.:** As the Constitution provides, no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

Right to Freedom of Religion (Article 25-28)

Since India is a multi-religion country, the Constitution declared India a '**secular state**'. It means that **Indian state has no religion of its own**. But it allows full freedom to all the citizens to have faith in any religion and to worship, the way they like. But this should not interfere with the religious beliefs and ways of worship of other fellow beings. In respect of the Right to freedom the Constitution makes the following four provisions under **Articles 25-28**:

Freedom of conscience and free profession, practice and propagation of religion: (Article 25)

All persons are equally entitled to freedom of conscience and the right to profess, practice and propagate religion freely. However, it does not mean that one can force another person to convert his/her religion by force or allurement. Also, certain inhuman, illegal and superstitious practices have been banned.

Freedom to manage religious affairs: (Article 26) Subject to public order, morality and health, every religious group or any section thereof shall have the right (a) to establish and maintain institutions for religious and charitable purposes; (b) to manage its own affairs in matters of religion; (c) to own and acquire movable and immovable property; and (d) to administer such property in accordance with law.

Freedom as to the payment of taxes for promotion of any particular religion: (Article 27) No person shall be compelled to pay any tax, the proceeds of which are specifically used in payment of expenses the incurred on the promotion or maintenance of any particular religion or religious sect.

Freedom as to attendance at religious instruction or religious worship in certain educational institutions: (Article 28) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.

However, it will not apply to an educational institution which is administered by the State but has been established under any trust which requires that religious instruction shall be imparted in such an institution. But **no person** attending such an institution **shall be compelled to take part in any religious instruction** that may be imparted there or attend any religious worship that may be conducted there. In case of a minor, the consent of his/her guardian is essential for attending such activities.

Cultural and Educational Rights (Article 29-30)

Since people take pride in their own culture and language, a special right known as Cultural and Educational Right has been included in the Chapter on Fundamental Rights. In Articles 29-30 two major provisions have been made:

Protection of interests of minorities: (Article 29) Any minority group having a distinct language, script or culture of its own shall have the right to conserve the same. No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

Right of minorities to establish and administer educational institutions: (Article 30) All Minorities, whether based on religion or language, have the right to establish and administer educational institutions of their choice. The State shall not, **in granting aid** to educational

institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

These rights ensure that minorities will be given assistance by the state in the preservation of their language and culture. The Ideal before the state is to preserve and propagate the composite culture of the country.

Right to Constitutional Remedies (Article 32)

Our Constitution does not permit the legislature and the executive to curb these Fundamental rights. It provides legal remedies for the protection of our Fundamental Rights. This is called the Right to Constitutional Remedies stipulated in Article 32. When any of our rights are violated, we can seek justice through courts. We can directly approach the Supreme Court that can issue directions, orders or writs for the enforcement of Fundamental Rights.

Salient Features of Fundamental Rights

1. **Guaranteed by the Constitution**

Fundamental Rights are enshrined in Part III of the Indian Constitution.

2. **Justiciable Rights**

They are legally enforceable. Citizens can directly approach the Supreme Court or High Courts if their rights are violated.

3. **Restrict State Power**

They act as limitations on the authority of the government and protect individuals from arbitrary state action.

4. **Not Absolute**

Rights can be restricted through reasonable limitations to protect national security, public order, morality, and the rights of others.

5. **Available to Citizens and in Some Cases Foreigners**

Some rights are only for citizens such as equality of opportunity while others such as protection of life and liberty apply to all persons.

6. **Can Be Suspended**

During a National Emergency, most rights can be suspended except Articles 20 and 21.

7. **Dynamic and Evolving**

Through judicial interpretation, rights expand. Right to Privacy is declared a fundamental right in 2017 under Article 21.

8. Promote Individual Development and Democracy

They ensure dignity, freedom, equality, and a democratic way of life.

Fundamental Rights in the Indian Constitution are **not absolute**; they are subject to **reasonable restrictions**. The State can restrict the **Right to Freedom** to protect:

- **Sovereignty and security** of the nation
- **Public order** (for example, curfew)
- **Morality**
- **Friendly relations with foreign countries**

Reasonable restrictions on **Right to Equality** are allowed for **welfare measures** for:

- Women and children
- Socially and educationally backward classes
- Scheduled Castes (SCs) and Scheduled Tribes (STs)

Article 33 empowers Parliament to limit or cancel Fundamental Rights for **armed forces, paramilitary forces, and police** to maintain discipline.

Article 32 allows individuals to directly approach the **Supreme Court** for enforcement of Fundamental Rights.

High Courts may **decline petitions** for constitutional remedies in some cases.

Fundamental Rights in Part III of the Indian Constitution (Articles 14–32) protect the dignity and status of citizens and are enforceable by courts. There are six Fundamental Rights, including the recently added Right to Education. These rights are not absolute and may have reasonable restrictions for national security, public order, morality, and public welfare. Key rights include the Right to Equality, prohibiting discrimination and abolishing untouchability; the Right to Freedom, ensuring personal liberty and protection from exploitation; Freedom of Religion in a secular state; and Cultural and Educational Rights protecting minority culture and institutions. The Right to Constitutional Remedies allows citizens to approach courts to enforce rights, considered by Dr. B.R. Ambedkar as the “heart and soul” of the Constitution.

Fundamental Duties

For every right, the society expects the citizens to do certain things which are collectively known as duties. Some such important duties have been incorporated in the Indian Constitution also. The fundamental rights and the fundamental duties are inter-related. If someone performs his or her duties properly, it signifies that the basic rights of others are safeguarded and vice-versa. Indeed, no one can enjoy rights without performing his or her due duties. In other words, if a person fulfils his or her duties then he or she must be in a moral position to get his/her basic rights.

The original Constitution enforced on 26th January, 1950 did not mention anything about the duties of the citizen. It was expected that the citizens of free India would perform their duties willingly. But things did not go as expected. Therefore, ten Fundamental Duties were added in **Part-IV** of the Constitution under **Article 51-A** in the year 1976 through the 42nd Constitutional Amendment. However, whereas Fundamental Rights are justiciable, the **Fundamental Duties are non-justiciable**. It means that the violation of fundamental duties, i.e. the non-performance of these duties by citizens is not punishable.

After the passage of the 42nd and 86th Constitutional Amendments, there are 11 Fundamental Duties of the citizens of India. These are as follows:

1. to abide by the Constitution and respect its ideals and institutions, the National Flag, National Anthem;
2. to cherish and follow the noble ideals which inspired our national struggle for freedom;
3. to uphold and protect the sovereignty, unity and integrity of India;
4. to defend the country and render national service when called upon to do;
5. to promote harmony and the spirit of common brotherhood amongst all the people of India and to renounce practices derogatory to the dignity of women;
6. to value and preserve the rich heritage of our composite culture;
7. to protect and improve the natural environments including forests, lakes, rivers and wildlife;
8. to develop the scientific temper, humanism and the spirit of inquiry and reform;
9. to safeguard public property and not to use violence; and
10. to serve towards excellence in all spheres of individual and collective activity.
11. A parent or guardian has to provide opportunities for the education of his child/ward between the age of six and fourteen years.

Salient Features of the Fundamental Duties

1. Fundamental Duties are both civic and moral in nature.
2. It emphasized on the Indian way of life especially respecting and preserving Indian culture.
3. This provision is not applicable upon the foreigners, only citizens of India will obey these constitutional duties.
4. There are clear differences between Fundamental Rights and Fundamental Duties. Rights give freedom; duties demand responsibility. Rights protect individuals from the State; duties remind individuals to protect the State and society. Rights ensure individual growth; duties ensure national growth.
5. It is non-justiciable and non-enforceable.

These duties are in the nature of a code of conduct. Since they are unjusticiable, there is no legal sanction behind them. A few of these duties are vague. For example, a common citizen may not understand what is meant by 'composite culture', 'rich heritage' 'humanism', or 'excellence in all spheres of individual and collective activities'.

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