

# The Constitution of India and the Educational Provisions

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**Introduction:** 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

A constitution is a set of fundamental principles or established precedents according to which a state or other organization is governed. When these principles are written down into a single collection or set of legal documents, those documents may be said to comprise a written constitution.

A Constitution symbolizes independence of a country. Framework and structure for the governance of a free country are provided in the Constitution. The Constituent Assembly prepared the draft of the Constitution by keeping the 'Objectives Resolution' as the backdrop which reflected the aspirations of the people of India.

The Constitution of India has several distinctive features. It is the lengthiest Constitution in the world and it is a combination of rigidity and flexibility. The Constitution provides for a quasi-federal (It means a federal set up where despite having two clear sets of government – central and the states, more powers are given to the Central Government.) set up with a strong centre.

There is a clear division of powers between the Centre and the States. The Supreme Court of India, is the apex court of India which will resolve the disputes between the centre and state or between the states.

India has a parliamentary democracy. The Council of Ministers headed by the Prime Minister enjoys the real powers and is responsible to the Parliament. The Indian Constitution provides for Fundamental Rights which are justifiable. Ten Fundamental Duties have also been added to the Constitution. The Directive Principles of State Policy give a concrete shape to the welfare concept

The framing of the Constitution was completed on November 26, 1949 when the Constituent Assembly formally adopted the new Constitution. The Constitution came into force with effect from January 26, 1950.

The Constitution begins with a Preamble which declares India to be a 'Sovereign, Socialist, Secular, Democratic, Republic'. The Preamble also mentions the goals of securing justice, liberty and equality for all its citizens and promotion of national unity and integrity on the basis of fraternity among the people assuring dignity of the individual.

We need a constitution to govern a country properly. The constitution defines the nature of political system of a country. sometimes we feel strongly about an issue that might go against our larger interests and the constitution helps us guard against this.

All the 3 organs of government (executive, legislature and judiciary) functions within the constitution. All the 3 organs of government, including ordinary citizens, derive their power and authority (i.e. Fundamental Right) from the constitution. If they act against it, it is unconstitutional and unlawful.

So constitution is required to have authoritative allocation of power and function, and also to restrict them within its limit.

Functions of the Constitution: The first function of a constitution is to provide a set of basic rules that allow for minimal coordination amongst members of a society.

The second function of a constitution is to specify who has the power to make decisions in a society. It decides how the government will be constituted.

The third function of a constitution is to set some limits on what a government can impose on its citizens. These limits are fundamental in the sense that government may ever trespass them.

The fourth function of a constitution is to enable the government to fulfill the separations of a society and create conditions for a just society.

Provisions taken from different Countries:

1.From U.K. - Nominal Head – President, Cabinet System of Ministers, Post of PM, Parliamentary Type of Govt., Bicameral Parliament, Lower House more powerful, Council of Ministers responsible to Lower House, Provision of Speaker in Lok Sabha are adopted from the U.K..

2.From U.S.A- Written constitution, Appointment of Vice President, Fundamental Rights, Supreme court are the ideas taken from the U.S.A.

3.From Australia- The provisions of Concurrent List, Centre-State relationship, Language of the Preamble are taken from Australia.

4.From USSR- The Provisions of Fundamental Duties, Five year plan are taken from the USSR.

5.From Germany- The Provisions of Emergency provisions are taken from Germany.

6.From Japan- The Provisions of Law on which the Supreme Court functions are taken from Japan.

7.From Canada- The Provisions of Federal System and Residuary powers are taken from Canada.

8.From South Africa- The Provisions of Procedure of constitutional amendment are taken from South Africa.

9.From Ireland- The Provisions of Concept of Directive Principles of state policy are taken from Ireland.

### Some Important Educational Articles at a Glance:

#### **Article 28:**

According to our Constitution article 28 provides freedom as to attendance at religious instruction or religious worship in educational institutions.

#### **Article 29:**

This article provides equality of opportunity in educational institutions.

#### **Article 30:**

It accepts the right of the minorities to establish and administrate educational institutions.

#### **Article 45:**

According to this article "The state shall endeavour to provide within a period of ten years from the commencement of this Constitution for free and compulsory education for all children until they complete the age of 14 years."

We notice that the responsibility for universal elementary education lies with the Central Government, the State Governments, the Local Bodies and voluntary organisations.

#### **Article 46:**

It provides for special care to the promotion of education and economic interests of the scheduled caste, scheduled tribes and the weaker sections of society.

**Article 337:**

This provides for special provision with respect to educational grants for the benefit of Anglo-Indian community.

**Article 350A:**

This article relates to facilities for instruction in mother tongue at primary stage.

**Article 350B:**

It provides for a special offer for linguistic minorities.

**Article 351:**

This article relates to the development and promotion of the Hindi language.

The seventh schedule of the Indian Constitution contains legislative powers under three lists viz. The Union List, the State List and the Concurrent List

**The Union List:**

This list contains 97 subjects where the following entries are related to education:

**Entry 13:**

To provide Educational and Cultural relations with foreign countries.

**Entry 62:**

The institutions known at the commencement of the Constitution as National Library, The Indian Museum, the Imperial War Museum, the Victoria Memorial, and Indian War Memorial. Any other such institutions financed by the Government of India wholly or in part and declared by the Parliament by law to be an institution of national importance.

**Entry 63:**

Institutions of national importance. The institution known at the commencement of this Constitution as the BHU, AMU and Delhi University etc. declared by Parliament by law to be an institution of national importance.

**Entry 64:**

The institution of scientific and technical education financed by the Government of India wholly or in part and declared by law to be institutions of national importance like IITs and IIMs.

**Entry 65:**

**Union agencies and institutions for:**

- (i) Professional, vocational or technical training, including the training of police officers.
- (ii) The promotion of special studies or research.
- (iii) Scientific or technical assistance in the investigation of detection of crime.

**Entry 66:**

Coordination and determination of standards in the institution of higher education or research and scientific and technical institutions.

**State List:**

State list consists of 66 entries, out of which the following is the entry related to education:

**Entry 12:** According to this entry all libraries, museums and other similar institutions controlled or financed by the state, ancient and historical monuments and records other than those declared by or under law made by the Parliament to be of the national importance.

**Concurrent List:**

It comprises 47 entries, among them the following are related to education:

**Entry 20:**

Economic and social planning.

**Entry 25:**

Education, including technical education, medical education and universities subject to provision of entries 63,64,65,66 of list (Union List).

**Entry 34:**

Newspapers, books and printing presses.

**Reservation in Education and the Important Areas in Detail:**

## **1.(A) Education of minorities :**

Article 28 of the Constitution has made certain provisions for the education of the minorities including

(i) No religious instruction shall be provided in educational institutions wholly maintained out of state funds.

(ii) If any institution has been established under any endowment trust even if administered by state, can impart religious education.

(iii) None person attending an educational institution recognized by the state or receiving funds from state government shall be required to take part in any religious worship or instruction that may be conducted in such institutions or in any premises attached there to unless such person or if such person in a minor and his guardian has given his consent thereto.

## **(B) Cultural and Educational Rights:**

Under article 29 and 30 for the protection of educational interest of minorities viz.

### **(i) Article 29 (i):**

Any section of citizen residing in the territory of India on any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

### **(ii) Article 30 (i):**

All minorities whether based on religion or language shall have the right to establish and administer educational institutions of their choice.

### **(iii) Article 30 (ii):**

The state shall not in granting and to educational institution discriminate against any educational institution on the ground that it is under the management of a minority whether based on religion or language.

(iv) To make any law providing for the compulsory acquisition of any property of any educational institutions established and administered by minorities, the state shall ensure that the amount fixed by or determined under such law for acquisition of such property is such as would not restrict on abrogate the right guaranteed to them.

## **(C) Admissions:**

(i) Article 29 (II) states that no citizen of India can be denied admission into any educational institution, which is either maintained by the state or receiving aid out of state funds on grounds only of religion, race, caste, language or any of them.

(ii) Article 15 (III) states that to make special provisions for women. Hence, separate educational institutions for women can be established.

#### **(D) Mother Tongue:**

For promotion of teaching of mother tongue the Constitution of India has made some provisions for Hindi language.

#### **Article 350 (A):**

It shall be endeavour of every state and local authorities with the state to provide adequate facilities for instruction in the mother tongue at the primary stage of education to children belonging to linguistic minority groups : the President may issue directions to any state as he considers necessary for recurring the facilities.

#### **Article 351:**

It is to promote the development of Hindi language and states that it shall be the duty of the Central Government to promote the spread of Hindi language in the entire country.

#### **(E) Right to Education:**

Article 41 of the Constitution provides that "All the citizens have equal right to education ". It states. "The state shall, within the limits of its economic capacity and development, make effective provisions for the right to work, to education and to public assistance in cases of employment, old age, sickness and disablement".

**(F) Education for Weaker Section:** 2Our Constitution has made some special provisions for the weaker sections of our society viz.

#### **Article 45:**

The state shall endeavour to provide within a period of ten years from the commencement of the Constitution for the free and compulsory education for all children until they complete the age of 14 years.

#### **Article 46:**

The state shall promote with special care the educational and economic interests of weaker sections of the people and, in particular, of the scheduled caste and scheduled tribes, and shall protect them from social injustice and all forms of exploitations".

The Supreme Court of India has given the following guidelines to promote education of the people:

- (i) The state can make regulatory measures to promote efficiency of education.
- (ii) Educational institutions of minority groups cannot claim immunity from general laws such as contract law, labour law and industrial law etc.
- (iii) The state can take over the management of the institutions of minority groups in case of irregularity and inefficiency.
- (iv) Teachers have the right to approach to the Arbitration Tribunal in case of any injustice to them by the institution.

## 2. Free and Compulsory Education:

The Constitution makes the following provisions under Article 45 of the Directive Principles of State Policy that, "The state shall endeavour to provide within a period of ten years from the commencement of this Constitution, for free and compulsory Education for all children until they complete the age of fourteen years."

The expression 'State' which occurs in this Article is defined in Article 12 to include "The Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India." It is clearly directed in Article 45 of the Constitution that the provision of Universal, Free and Compulsory Education becomes the joint responsibility of the Centre and the States.

In the Constitution it was laid down that within 10 years, i.e., by 1960 universal compulsory education must be provided for all children up to the age of 14, But unfortunately, this directive could not be fulfilled. Vigorous efforts are needed to achieve the target of 100 percent primary education. The Central Government needs to make adequate financial provisions for the purpose. At the present rate of progress it may, however, be expected that this directive may be fulfilled by the end of this century.

Education of Minorities: Article 30 of the Indian Constitution relates to certain cultural and educational rights to establish and administer educational institutions.

### **It lays down:**

- (i) All minorities whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.



(ii) 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.

### 3. Language Safeguards:

Article 29(1) states “Any section of the citizen, residing in the territory of India or any part there of having a distinct language, script or culture of its own, shall have the right to conserve the same.” Article 350 B provides for the appointment of special officer for linguistic minorities to investigate into all matters relating to safeguards provided for linguistic minorities under the Constitution.

### 4. Education for Weaker Sections:

Article 15, 17, 46 safeguard the educational interests of the weaker sections of the Indian Community, that is, socially and educationally backward classes of citizens and scheduled castes and scheduled tribes. Article 15 states, “Nothing in this article or in clause (2) of Article 29 shall prevent the state from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes and the scheduled tribes.”

Under Article 46 of the Constitution, the federal government is responsible for the economic and educational development of the Scheduled Castes and Scheduled Tribes

It states. “The state shall promote with special care the educational and economic interests of the weaker sections of the people and in particular, of the Scheduled castes and Scheduled Tribes and shall protect them from social injustice and all forms of exploitation.” It is one of the Directive Principles of State Policy.

### 5. Secular Education:

India is a secular country. It is a nation where spirituality based on religion, had always been given a high esteem. Under the Constitution, minorities, whether based on religion or language, are given full rights to establish educational institutions of their choice. Referring to the constitutional provisions that religious instructions given in institutions under any endowment or Trust, should not be interfered with even if such institutions are helped the State.

Article 25 (1) of the Constitution guarantees all the citizens the right to have freedom of conscience and the right to profess, practice and propagate religion.

Article 28 (1) states, “No religious instruction shall be provided in any educational institution if wholly maintained out of state fund.”

Article 28 (2) states, "Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or Trust which requires that religious instruction shall be imparted to such institution."

Article 28 (3) states, "No person attending any educational institution by the state or receiving aid out of state funds, shall be required to take part in any religious instruction that may be imported in such institutions or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person a minor, his guardian has given his consent thereto."

Article 30 states, "The state shall not, in granting aid to 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."

#### 6. Equality of Opportunity in Educational Institutions:

Article 29(1) states "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."

The Fundamental Rights of the Indian Constitution has also adopted the fourfold ideal of justice, Liberty, Equality and Fraternity. Our Constitution laid down that in the eyes of law, everyone should have an equal status, to no one the justice be denied, everyone should have liberty of thought, expression.

The fundamental right of equality clearly signifies that in the eyes of law no distinction can be made on the basis of any position, caste, class or creed. Side by side the right of equality of opportunities to all is also provided. The equality of opportunity is meaningless, unless there are equal opportunities for one's education.

The well-known Kothari Commission, 1964-66 recommended that Central Government should undertake the responsibility in education for the equalization of educational opportunities with special reference to the reduction of inter-state differences and the advancement of the weaker section of the community.

#### 7. Instruction in Mother -Tongue:

There is diversity of languages in our country. After the dawn of Independence, Mother-Tongues have received special emphasis as medium of instruction and subjects of study. In the Constitution of India, it has been laid down that the study of one's own language is a fundamental right of the citizens.

Article 26 (1) states, "Any section of the citizens, residing in the territory of India or any part there of, having a distinct language, script or culture of its own, shall have the right to converse the same."

Article 350 A directs, "It shall be the endeavour of every state and every local authority to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups."

Secondary Education Commission, 1952-53 recommended that the mother tongue or the regional language should generally be the medium of instruction throughout secondary school stage subject to the provision that for linguistic minorities, special facilities should be made available. Kothari Commission, 1964-66 has also said that at college and university stage, mother-tongue should be the medium. The medium of instruction at school level is already mother-tongue. This is not a new proposal.

#### 8. Promotion of Hindi:

The Indian Constitution makes provision for the development and promotion of Hindi as national language. Article 351 enjoins the Union, the duty to promote the spread of the Hindi language.

Hindi accepted as the Official Language of India as laid down by the Constitution in following words:

"It shall be the duty of the Union to promote the spread of the Hindi language, to develop it so that it may serve as a medium of expression of all the elements of the composite culture of India." In practice, Hindi is already largely in use as a link language for the country. The educational system should contribute to the acceleration of this process in order to facilitate the movement of student and teacher and to strengthen national Unity.

#### 9. Higher Education and Research:

Parliament has the exclusive rights to enact legislation in respect of institutions and Union Agencies mentioned in entries 63, 64, 65, and 66 of List. The entries which give authority to the Government of India in education are mentioned below:

##### Entry 63 of the Union List:

The institutions known at the commencement of this Constitution as the Banaras Hindu University, the Aligarh Muslim and the Delhi University, and any other institution declared by Parliament by law to be an Institution of National importance.

##### Entry 66 of the Union List:

Co-ordination and determination of standards in institution for higher education or research and scientific and technical institutions.

#### 10. Women's Education:

One of the unique features of Modern Indian Education is the tremendous advancement of Women's Education. Education of the girls is considered to be more important than that of the boys.

The Constitution makes the following provisions under different articles:

Article 15(1) provides that the State shall not discriminate any citizen on groups only of sex.

Article 15 (3) reads: "Nothing in this article shall prevent the State from making any special provision for women and children."

The well-known National Policy on Education was concerned about the status and education of women in the country. It envisages that education would be used as a strategy for achieving a basic change in the status of women. It opined that the national system of education must play a positive role in this direction.

The Policy states, "Education will be used as an agent of basic change in the status of women. In order to neutralize the accumulated distortions of the past, there will be a well conceived edge in favour of women."

#### 11. Education in the Union Territories:

Article 239 of the Constitution states, "Save as otherwise provided by Parliament by Law, every Union Territory shall be administered by the president acting to such extent as he thinks fit through an administrator to be appointed by him with such designation as he may specify."

#### 12. Educational and cultural relations with foreign countries:

Entry 13 of the Union List deals with the Participation in international conferences, associations and other bodies .

#### Conclusion:

All the provisions regarding education are enshrined in the Constitution of our country and the Constitution guarantees all the provisions. But only such provisions related to the fundamental rights are enforceable by the court of Law and the provisions based on the directive Principles of State Policy are not enforceable by the court. Hence the success of all

these provisions lies on the good will of the government. So article 21 which guarantees Free and compulsory education to the children of age group of 6 to 14 years being the fundamental Right is important as violation of which is punishable in the court of law. Article 51 clarifying the duties of the parents of the children of age group between 6 to 14 years to provide education being declared as the national duty is considered an important provision of the Constitution of India. What is more important is public consciousness to pursue all these provisions lawfully.

Reference:

[1] C.A.D. Vol. 9, page 177

[2] Sarkaria report

[3] Samsher Singh v. State of Punjab, AIR 1974 SC 2192 (paras 55,138)

[4] Durga Das Basu, Shorter Constitution of India, 14<sup>th</sup> edition, Vol. 2, 2009, Pg. 2166

[5] *ibid*

[6] AIR 1977 SC 1361 (paras 169, 188A, 201)

[7] H.M. Seervai, constitutional law of india, 4<sup>th</sup> edtn. Vol. 3, 2006 Pg. 3092

[8] AIR 1968 P&H 441 (paras 11,12)

[9] AIR 1974 Or. 52

[10] Sarkaria Commission Report, <http://interstatecouncil.nic.in/Sarkaria/CHAPTERVI.pdf>; visited on 02.01.2016s

[11] *ibid*

[12] Soli Sorabjee; Constitutional Morality Violated in Gujarat, Indian Express, Pune, India, Sept. 21, 1996