

OGN

The touchstone of constitutionalism is the concept of limited Govt. Under a higher law — David Feldman

either by written or

— Constitutionalism — Specific limitations

or by constitutional conventions

Political & limited on general governmental powers

Philosophy - Govt

Practical
Practical
follows

cont. take decisions out of themselves

Specific agencies make decisions

UK →

To prevent exercise of arbitrary power

North Korea

To preserve basic freedoms of individual

- Constitutionalism is far more important than having written constitution
- Mechanism for providing legitimacy to democratic govt.
- It is ^{often} opposite of Arbitrary Power
- Separation of powers, judicial oversight & accountable govt - are concepts that evolved over time to reflect concept of constitutionalism

Political
Constitutionalism

Legal
Constitutionalism

From mixed govt to
representative democracy

constitutional
cases

From Separation
of powers to
Judicial
Review

3 types of polity

degenerates

monarchy — tyranny
aristocracy — oligarchy
democracy — anarchy



Montesquieu

Coln was to ensure
moderation & propriety
by combining various
types

Aristotle's Politics - Polity

17th 18th Centuries brought
main changes to the
doctrine of
Separation of powers

What is Constitution

1. Lays down Basic Structure of Political System under which people are to be governed.
2. Establishes — Main organs of the state
 Legislature Executive Judiciary
 defines power
 democratic responsibilities.
 Regulates relationships with each other & with people.
3. In Democracy sovereignty vests in people
 i.e. People govern themselves
 administration complex — ^{grows} ~~State of nature~~
 People exercise right to decide
 how & by whom they should be governed.
 First & fundamental application of sovereignty
 → give themselves ^{Constitution}
 ground rules → certain powers are
 transferred to different agencies of state
4. Federal Polity — distributes powers
 between organs of state at Union / Central
 and States level
 provincial level

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- Foundational law which enforces
fundamentals of polity.
& after at which all other laws
executive acts of the state are
to be tested for their validity & legitimacy

Represents

- Vision & values of founding
fathers → based on
Social political economic
ethos / faith / aspirations of
people

Incl Document No

Written Text

Meaning & Content

✓ Living Organism - functions
institutions

grows evolves

✓ Manner in which & People by which
it is operated

✓ effects it acquires - how
interpreted in courts

✓ Practices that grow evolved
in Actual process of its work

②

Constitution & Constitutionalism

Date: / / 20.

Democratic Country

Monarchy
Totalitarian, Dictatorship

What is Cons.

① Supreme law of land
एक ही देश की

→ राजा-राज
→ राजनिक
→ शाही

- It is source of all power of govt.

- Constitution is NOT there, even if it is there, there is NO RESPECT

- It guarantees individual & collective rights & freedoms

- It sets rules that citizens & govt abide by should respect

Freedom of Speech & Express

Freedom of Movement

Freedom of occupation
Trade Business etc

Right to Freedom
Right to Freedom of Religion
Cultural & Educational R/M

Right to property

Right to constitution
Remedy

Right to Equality

Right against exploitation

It is means to achieve goal
Constitutional

Constitution

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Principles
that limit
the power
of govt in
order to
protect basic
rights &
freedom of
people

Non Constitutional
System in which govt
uses ^{power} arbitrary power
without respecting citizen
rights
↓
No way to limit power

Ideology

govt does not abuse its power

- It preserves basic freedom of individuals
& maintain their dignity & personality

Limitation of Power of Govt

A country may have Constitution
but not necessarily Constitutional

Adolf Hitler & Nazi Party
Controlled Country

- Power transferred to Dictatorship
should be controlled power

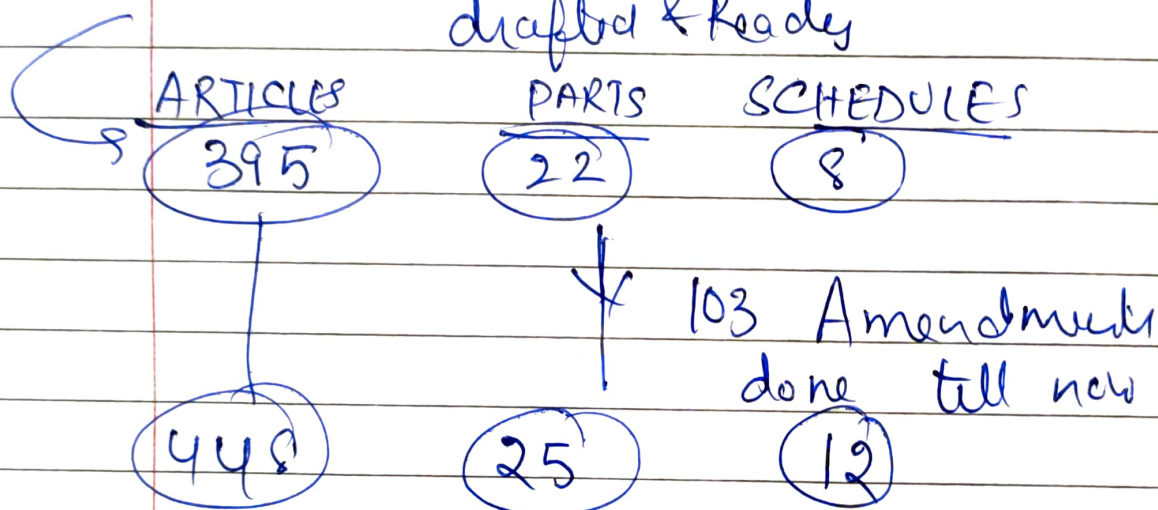
Sources of Indian Constitution

448 Articles in total

395 is last article now?

Present Structure of Indian Constitution

26 Nov 1949 When our Constitution was drafted & Ready



To maintain the original number of the Articles present in our Constitution whatever New Laws are introduced they are introduced in Alphabetical Order.

New ARTICLES are introduced Alphabetically
Eg. 86th Amendment, It has given us a new Fundamental Right, Right to Education. This Act was introduced in our Constitution as Article 21A. ∴ in after 100 amendments, last article is 395.

ARTICLES → TOPIC WISE

PARTS ? ← Topic wise

SCHEDULES

All articles present in our constitution are made up of topic wise specifics

Article 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 } Fundamental Rights

This specific topic wise arrangement is called PARTS

PARTS

PART III — Fundamental Rights
PART IV — Directive Principles of State
Each part talks about specific Policy Article.

SCHEDULES — All provisions which are given in constitution apart from the all Additional Details & Lists are introduced as Schedules.

Eg Schedule 1 & 4 — States & Union Territories

SCHEDULES — ADDITIONAL DETAILS & LISTS

Schedule 1 & 4 — STATES & UT Territories?
Schedule 2 — LIST OF SALARIES
Schedule 3 — Official Languages

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The way we have included Article in Constitution, Why we have not included Schedules in Constitution because it was already lengthy would be complicated.

INDIAN CONSTITUTION IS THE World's longest for a SOVEREIGN NATION. AT ITS ENACTMENT IT HAD ABOUT 145000 WORDS

In: our constitution, till now 124 Amendments PROPOSED of which 103 have been passed.

124 AMENDMENT PROPOSED
103 PASSED

Latest amendment act is 103rd Amendment Act which was passed In January 2019

LATEST
103rd Amendment → FWS

Economically Weaker Sects
of General Category will
be given 10% reservation

4. FEDERAL SCHEME

5. OFFICE OF GOVERNOR - ARTICLE 153

Provision for this is inserted in former Clauses
15(6) & 16(6)

Now let's go back to 1946-47

When Constituent Assembly of India
 began to make our constitution
 for first time

We relied on 11 sources to make
 our constitution. Country
imp. features
from each source

1. GOVT of INDIA ACT 1935

Constitution of Independent India
enforced on 26 Jun 1950

But before this in British India, The
law of the Land = Govt of India Act 1935
 so this was our Reference Point
3 important features

1. EMERGENCY PROVISIONS - PART XVIII ARTICLES
352-360

2. PUBLIC SERVICE COMMISSION - PART XIV ARTICLES
315-323

3. JUDICIARY - PART V CHAPTER IV ARTICLE
147-167
Supreme Court High Courts, Subordinate Courts
State Federal Scheme of Govt, Office of Governor

② UNITED STATES OF AMERICA

1. Fundamental Rights - ARTICLE (12-35)

(In Govt of India Act 1935 there was no provision of Fundamental Rights & Duties
So from 1950 India got their Fundamental Rights)

2. JUDICIAL REVIEW - ARTICLE (13)

There should be NO LAW which violates fundamental rights

3. IMPEACHMENT OF THE PRESIDENT - Article 61

4. REMOVAL OF SUPREME COURT & HIGH COURT JUDGE - ARTICLE (24/4)

Removal procedure of 2 impeached post

5. PREAMBLE OF OUR CONSTITUTION

6. INDEPENDENCE OF JUDICIARY

(3)

BRITISH CONSTITUTION

Very core & basic.

Writs Constitutional Remedy1 WRITS — RIGHT TO CONSTITUTIONAL
REMEDIES

[ARTICLE 32 & 226]

2- PARLIAMENTARY form of Govt.

IDEA of SINGLE Citizenship—

Part II ARTICLES 5-11

PARLIAMENTARY PRIVILEGES — ARTICLE 105

3. RULE OF LAW — In any country
Govt is NOT SUPREME, Law is
CONSTITUTION is Supreme

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(4)

INDIAN CONSTITUTION

1) Directive Principles of State Policy -
PART VI ARTICLE 36-51

how to govern states
which type of laws & policies
to be made

2) Method of Election of President -
ARTICLE 54

3) MEMBERS NOMINATION TO RAJYA
SABHA
BY PRESIDENT

PART V ARTICLE
80

(5)

GERMANY (WEIMAR CONSTITUTION)

1) Suspension of Fundamental Rights
during Emergency - ARTICLE 356

(6)

SOUTH AFRICA

1. Amendment of Constitution - PART XX
ARTICLE 38

2. Election of Members of Rajya Sabha

(7) SOVIET UNION (USSR)

- 1. Fundamental Duties — PART IVA

ARTICLE 51A

duties of citizens

↳ increase their
patriotism

to wards their country

- 2. Ideals of Justice (Social, Economic,
Political) Expressed in Preamble
Federal Structure
(Central - Unitary)
State

(8) Canada

- 1. Federalism with strong Central Govt.

- 2. Advisory Jurisdiction of Supreme Court
Article 143- 3. Centre appoints Governors of States
ARTICLE 155, 157- 4. RESIDUARY POWERS VEST WITH THE
CENTREARTICLE 248 OF CONSTITUTION &
ENTRY 97Whatever matters are not given to
Central State concerned list, i.e.
make laws on them lies with Centre

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9

Australia

- CONCURRENT LIST SEVENTH SCHEDULE
- FREEDOM OF TRADE & COMMERCE—
PART XIII, ARTICLE 301-307
- Joint Sitting of 2 Houses of Parliament ARTICLE 108

10

FRANCE

Ideals of Liberty Equality
Fraternity & Republic

PREAMBLE

11

JAPAN

Procedure Established By Law
— Article 21

1. Equality
2. Freedom
3. Exploitation
4. Freedom of Religion
5. Cultural & Educational Rights
6. Fundamental Rights

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no Constitutional Bench

Part III (6) fu Article 14-35

1. LAW removes DOUBT and
gives 6 Freedoms by which
we can see SAV MRP CLEARLY

Right to Equality

- Article 14-15 Equality before Law. D
- 15 Prohibition of discrimination on
ground of religion, race, caste, sex, place
of birth
- 16 Equality of opportunity in matters
of public employment
- 17 Abolition of Untouchability
- 18 Abolition of Titles

Right to Freedom

SAV MRP CLEARLY

19. Protection of certain Rights regarding freedom of speech
- All citizens shall have the right to
- to freedom of speech & expression
 - to assemble peacefully & without arms
 - to form associations or unions or co-operatives
 - to move freely throughout territory of India
 - to reside/settle in any part of India
 - to practice any profession/occupation/trade/business

19. Protection of certain rights regarding freedom of speech.
20. Protection in respect of conviction for offences C
21. Protection of life & personal liberty L

ARTICLES

- 21A Right to Education Art 21A
- 22 Protection against detention in some cases

Right against Exploitation

23. Prohibition of traffic in human beings & forced labour
24. Prohibition of employment of children in factories

LAW Removes DOUBT & gives 6 freedoms by which we can MRP CLEARLY

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graph TD
    14((14)) --> 15((15))
    14 --> 16((16))
    14 --> 17((17))
    14 --> 18((18))
    15 --- DOUBT[DOUBT]
    16 --- DOUBT
    17 --- DOUBT
    18 --- DOUBT
    DOUBT --> 19((19))
    19 --- CLEARLY[CLEARLY]
    20((20)) --- CLEARLY
    21((21)) --- CLEARLY
    22((22)) --- CLEARLY
    23((23)) --- CLEARLY
    24((24)) --- CLEARLY
  
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2. CON MAN evades TAX ATTENDANCE
and hampers Indian
CULTURE & EDUCATION

Right to Freedom of Religion

25. Freedom of conscience free profession, practice & propagation of

26. Freedom to manage religious affairs

27. Freedom as to payment of taxes for promotion of particular religion

28. Freedom as to attendance at religious institutions or religious worship in certain educational institutions

Cultural & Educational Right

29. Protection of interests of Minorities culture

30. Right of minorities to establish & administer educational institutions

Problem

Soln

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30. Supreme Court will catch RAN Lal
Right to Constitutional Remedies

32. Remedies for enforcement of rights
conferred by this Part.

32A Omitts.

33. Power of Parliament to modify rights
conferred by this Part in their
applicability to Forces etc.

34. Restriction on rights conferred by
this part while Martial Law
is in force in any area.

35. Legislation to give effect to the
provision of this Part.