



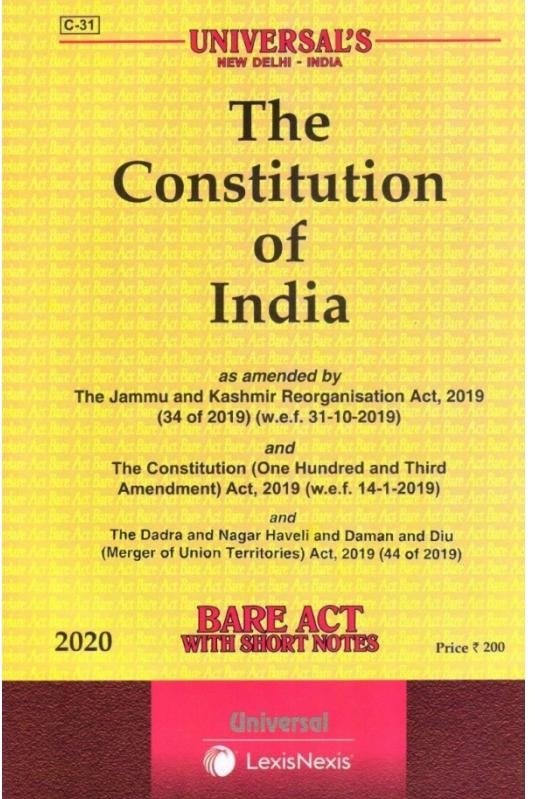
# **CONSTITUTIONAL LAW, CYBER LAW, IP LAW AND PROFESSIONAL ETHICS**

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**Unit-1: Introduction to Constitution of India.**

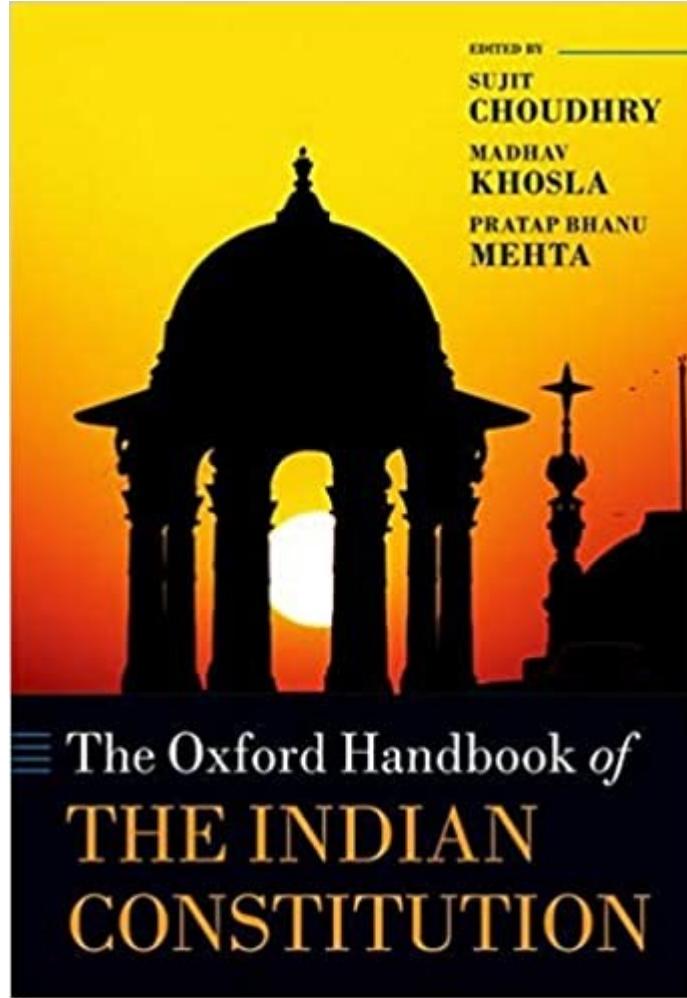
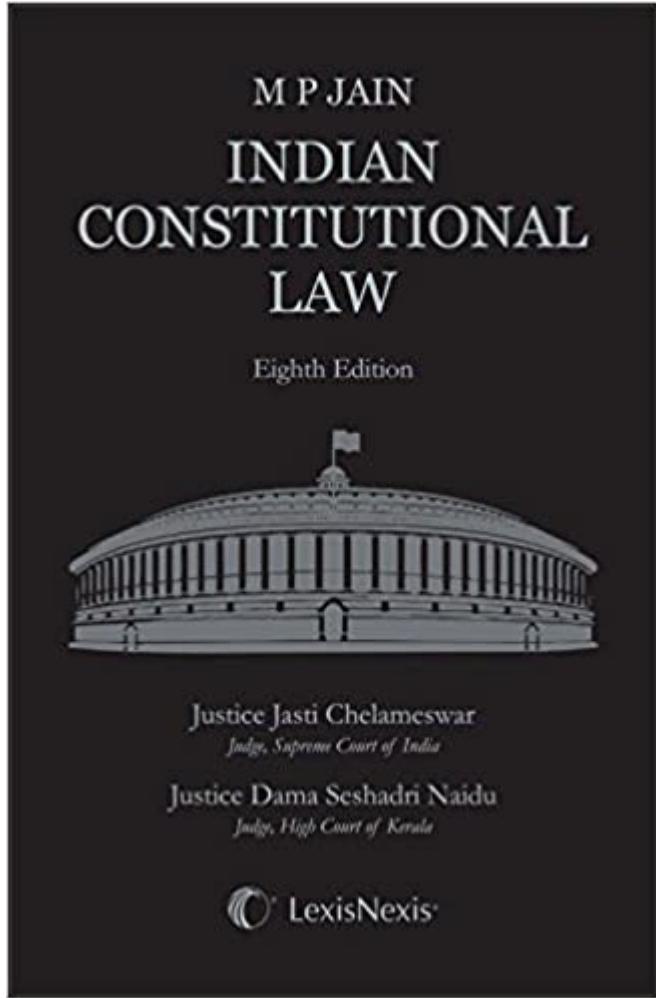
# CONSTITUTIONAL LAW-I: UL19BL204/UL19BA204

## Requisite Reference Material



# CONSTITUTIONAL LAW-I: UL19BL204/UL19BA204

## Reference Books



## Introduction

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- What is law?
  - Kinds?
  - What is state?
  - What do you mean by Constitution?
  - Is constitution law?
- 
- Shape aspirations of the country
  - State's fundamental political views
  - Social values of the state

## Introduction

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- Constitutional Law is a public law
- It is the source of power and exercise of power in itself.
- All laws in a country's legal regime is structured within the limits of the Constitutional law of the country

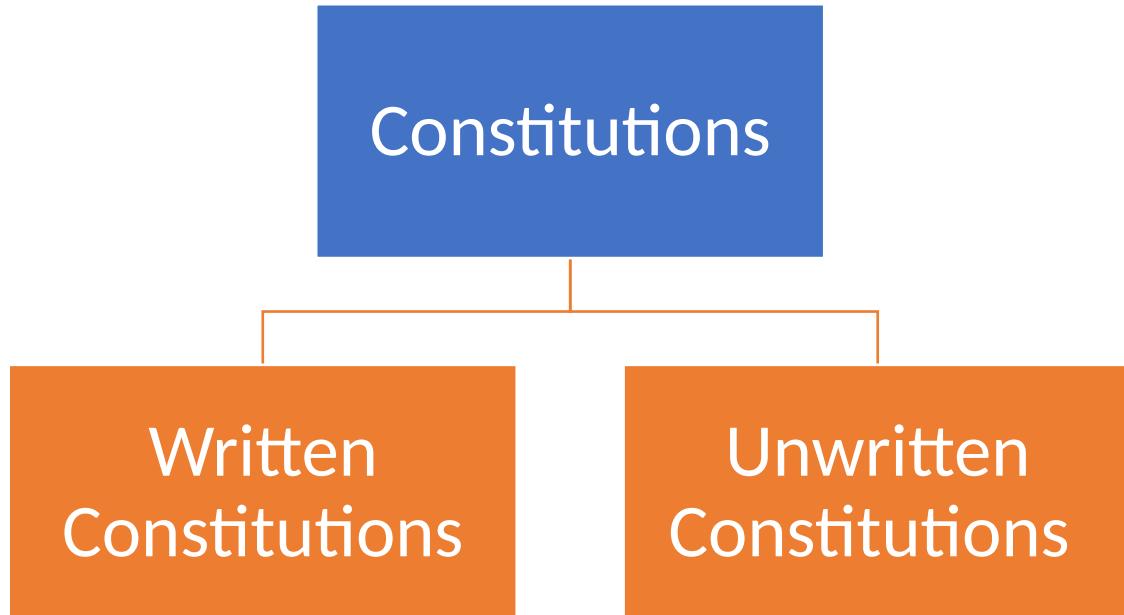
- Constitution is **legal document(s)** which has its roots **based on the socio-political history** of a nation which also **impacts the future of the nation** as well.

## Introduction

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- Kinds of constitution
- Written and unwritten
- Unitary and federal

## Constitution: Kinds of Constitutions



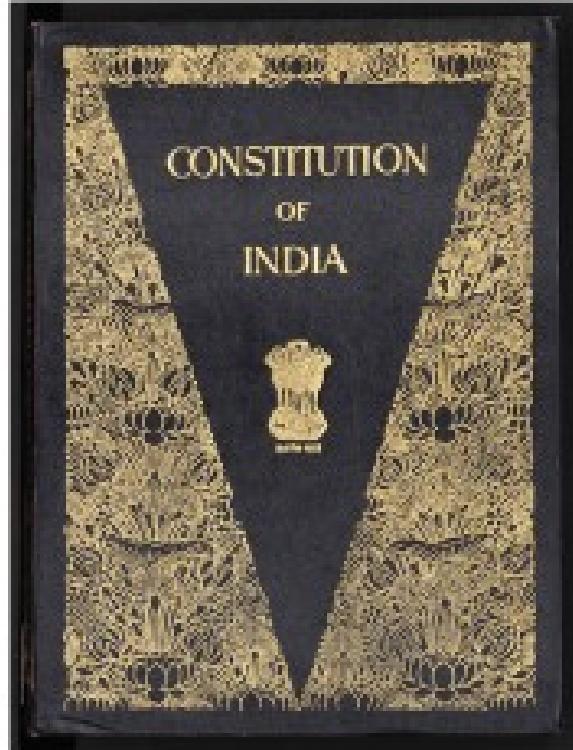
## Constitution: Written Constitution

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- **Written**
- Detailed provisions
- Formal source of power
  - Formal source of all constitutional powers in the country
  - Supreme or Fundamental law of the country
  - Government or organs of the state is creation of the Constitution.
- Special procedure for amendment
- Rigid

## **CONSTITUTIONAL LAW-I**

# Constitution



## Constitution: Unwritten Constitution

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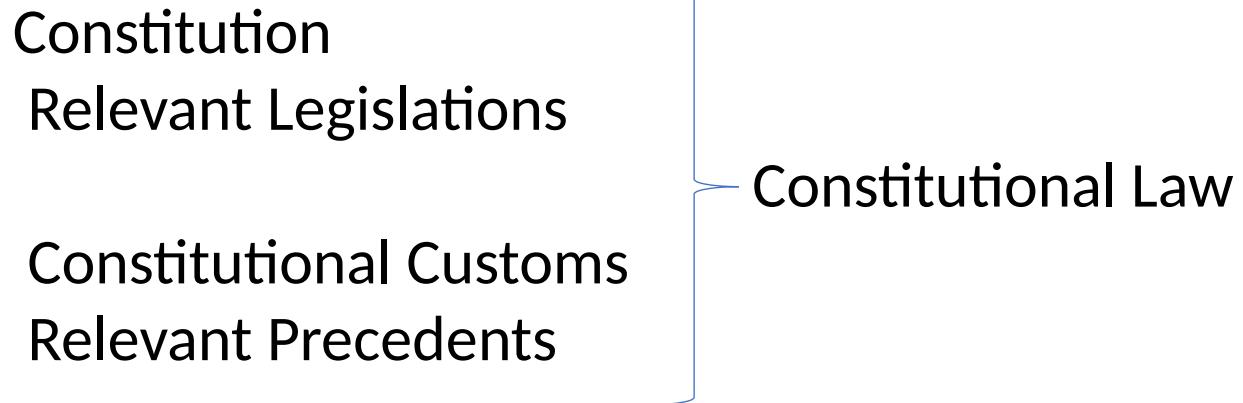
- Unwritten Constitution
  - Combination of regular legislations, conventions
  - The Parliament or Legislature is sovereign
  - United Kingdoms has unwritten constitution
    - Magna Carta, 1215; Provisions of Oxford, 1258; Petition of Right, 1628; Bill of Rights, 1689

### Distinction between Constitution, Constitutional Law

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- Terms Constitution and Constitutional Law used interchangeably
- For a student of law, clear distinction lies between them

- Terms Constitution and Constitutional Law used interchangeably
- For a student of law, clear distinction lies between them
- Constitutional law can be understood using the following formula.



## Constitutional Law: Relevant Laws

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- Relevant laws are those laws which are specifically mandated by the Constitution of India
  - Art 11
  - Article 17
  - Article 300

## Constitutional Law: Constitutional Customs

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- Constitutional Customs/ Conventions are non legal norms which are not enforceable as a matter of right
- Customs, conventions or usages being followed by various stakeholders of the Constitution
- Non-compliance would attract public outcry

- Examples
  - Appointment of Prime Minister Art. 75
  - Appointment of Chief Justice of India Art. 124
- Cases:
  - Judges Case I, II, III, IV
  - U.N.R Rao v. Indira Gandhi, AIR 1971 SC 1002

All the decisions of the Supreme Court of India and High Courts of various States which clarifies, restate or reiterate the constitutional position of law

## Constitutionalism

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- An old concept but gained international traction in the last three to four decades
- Constitutionalism is the idea that **government can and should be legally limited in its powers**, and that its authority or **legitimacy depends on its observing these limitations.**
  - Concept of Rule of Law, Social Contract theory by John Locke etc

## Constitutionalism

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- Constitutionalism are those concepts and doctrines which puts a limitations on the government to promote governance
- **Constitutionalism are those limitations which limit the government and maximizes governance**
- **Example**
  - Written Constitution , Independent Judiciary, Judicial Review, Rule of Law, Separation of Power

- A country can have a constitution but may be void of constitutionalism
- A country may have no constitution but may have constitutionalism

- |                                             |                                      |
|---------------------------------------------|--------------------------------------|
| 1. Written Constitution                     | 9. Judiciary                         |
| 2. Supremacy of Constitution                | 10. Federalism                       |
| 3. Rigid Constitutional Amendment Procedure | 11. Parliamentary Form of Government |
| 4. Rule of Law                              | 12. Universal Adult Suffrage         |
| 5. Separation of Power                      |                                      |
| 6. Fundamental Rights                       |                                      |

- Constitution of India
  - came into force on 26<sup>th</sup> January 1950
  - Adopted on 26<sup>th</sup> November 1949
- Legal history of Constitution of India
  - Traced back to
    - Government of India Act 1919
    - Government of India Act 1935

### Historical Perspective of Constitution of India

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- EIC (East India Company)
- 1st war of Indian Independence- 1857
- Direct Rule of British Crown- 1858
- Indian Councils Act 1861
  - Indians were not a part of councils
- INC- 1885
- Indian Councils Act 1892
  - Some provision to include Indians but not in Executive council
- Minto- Morley Reforms- 1909
- Increase representation in legislature- non elected members were more
- No representation in executive council

- Act of 1909
- No solution to the representation
- Ist world war
- Gandhi back to India
- Trade union movement
- Montague- Chelmsford- Report-
- Govt of India Act 1919

- Government of India Act, 1919
  - Passed as a token of gratitude to India's role in WW-I
  - Increase native participation in the Government
  - Creation of Diarchy( Chelmsford-Montagu Reform)
  - Creation of bicameral legislature in Federal Level
  - Separate Communal Electorate
  - High Commissioner in London to represent India in UK
  - To be reviewed after 10 years
  - Jalianwala Bagh
  - Bhagat singh
  - Poorna swaraj
    - Simon Commission 1930

- Government of India Act, 1935
  - Review of Gol Act 1919
  - Abolition of the diarchy
  - Establishment of Federation of India( didn't materialize)
  - Creation of an almost independent Parliamentary form of Government at Provinces.
  - Federal Govt.
    - Executive
    - Legislature
    - judiciary
  - II world war
  - INC did not participate in the election.
  - Muslim league- Lahore resolution

- Cabinet Mission or Cripps Mission
  - Set up Constituent Assembly

- An idea for a Constituent Assembly was proposed in 1934 by M. N. Roy
- August Offer and Cabinet Mission
  - 1946: Election to Constituent Assembly
  - 389 seats in total
    - 292 provinces
    - 93 Princely States
    - 4 from Chief Commissioner Provinces
  - United India

- Two Nation Theory
- Indian Independence Act
  - 18<sup>th</sup> July 1947
- Constituent Assembly redrawn
  - 299 Delegates in Total
- 114 days spread over 2 Years, 11 Months, 18 Days

- 9 December 1946: CA met for the first time
- 13 December 1946: Objective Resolution
- 22 July 1947: National flag adopted
- 29 August 1947: Drafting Committee appointed
  - Dr. B. R. Ambedkar as the Chairman
  - 6 members of committee
  - K.M. Munshi
  - Muhammed Saadulah
  - Alladi Krishnaswamy Iyer
  - Gopala Swami Ayyangar
  - N. Madhava Rao
  - T. T. Krishnamachari

- Drafting Committee – Bhimrao Ambedkar
- Union Power Committee – Jawaharlal Nehru
- Union Constitution Committee – Jawaharlal Nehru
- Provincial Constitution Committee – Vallabhbhai Patel
- Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas – Vallabhbhai Patel
  - 1. Fundamental Rights Sub-Committee – J.B Kripalani
  - 2. Minorities Sub-Committee – Harendra Coomar Mugharjee

# CONSTITUTIONAL LAW-I

## Committees

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4. North-East Frontier Tribal Areas and Assam Excluded & Partially Excluded Areas Sub-Committee - Gopinath Bordoloi
5. Excluded and Partially Excluded Areas (Apart from those in Assam) Sub-Committee - AV Thakker

- Rules of Procedure Committee – Rajendra Prasad
- States Committee (Committee for negotiating with states) – Jawaharlal Nehru
- Steering Committee – Rajendra Prasad
- Adhoc Committee on the National Flag- Rajendra Prasad
- Committee for the function of the Constitution Assembly – G V Mavlankar
- House Committee – G Pattabhi Sitaramayya
- Language Committee – Moturi Satyanarayana
- Order of Business Committee – K Munshi

1. Written Constitution
2. Supremacy of Constitution
3. Rigid Constitutional Amendment Procedure
4. Rule of Law
5. Separation of Power
6. Parliamentary Form of Government
7. Single Citizenship
8. Single Judiciary
9. Secularism
10. Federalism
11. Universal Adult Suffrage
12. Fundamental Rights
13. Directive Principles of State Policy
14. Fundamental Duties
15. Preamble

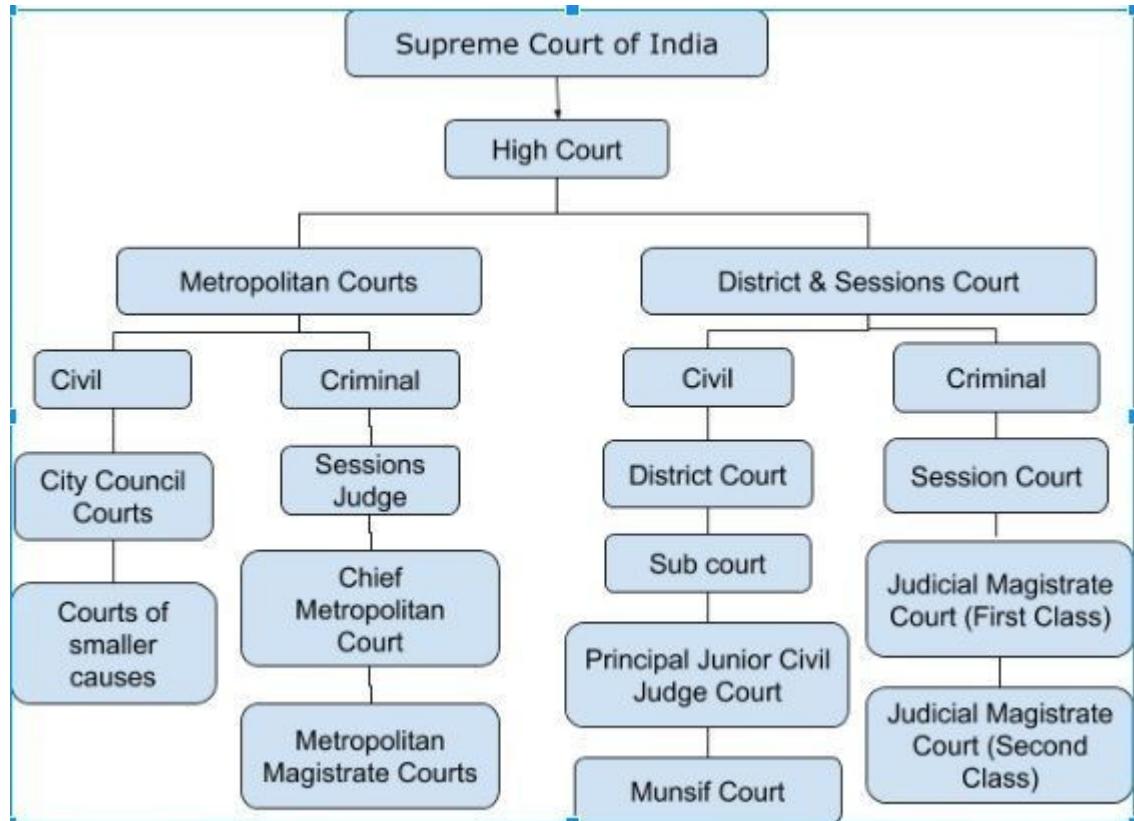
- 471 Articles, 25 parts and 12 Schedules (Original 395 and 8 Schedules)
- Longest Constitution in the world
- US Constitution
  - Originally 7 Articles
  - Added 27 articles through amendments
- Why written constitution is a salient feature ?
  - Written constitution: clear and unambiguous

- Why such detailed Constitution ?
  - Division of power between Center and State
  - Responsibility of various organs of the state
  - Relationship between Citizens and State
  - Enforcement of Rights and Duties
  - Details regarding official language, citizenship and civil servants etc.

- Constitution of India provides framework in which authorities function
- Unlike unwritten constitution, written constitution will be the primary source of power
- UK : Supremacy of Parliament
- India: Supremacy of Constitution
  - Limits of the powers, privileges etc. is given in clear cut terms in the Constitution of India

- Constitution of India
- Single Citizenship and Single Constitution
- One of criticism against federal nature of the Constitution

- Constitution of India
  - Three Tier Unified Judiciary



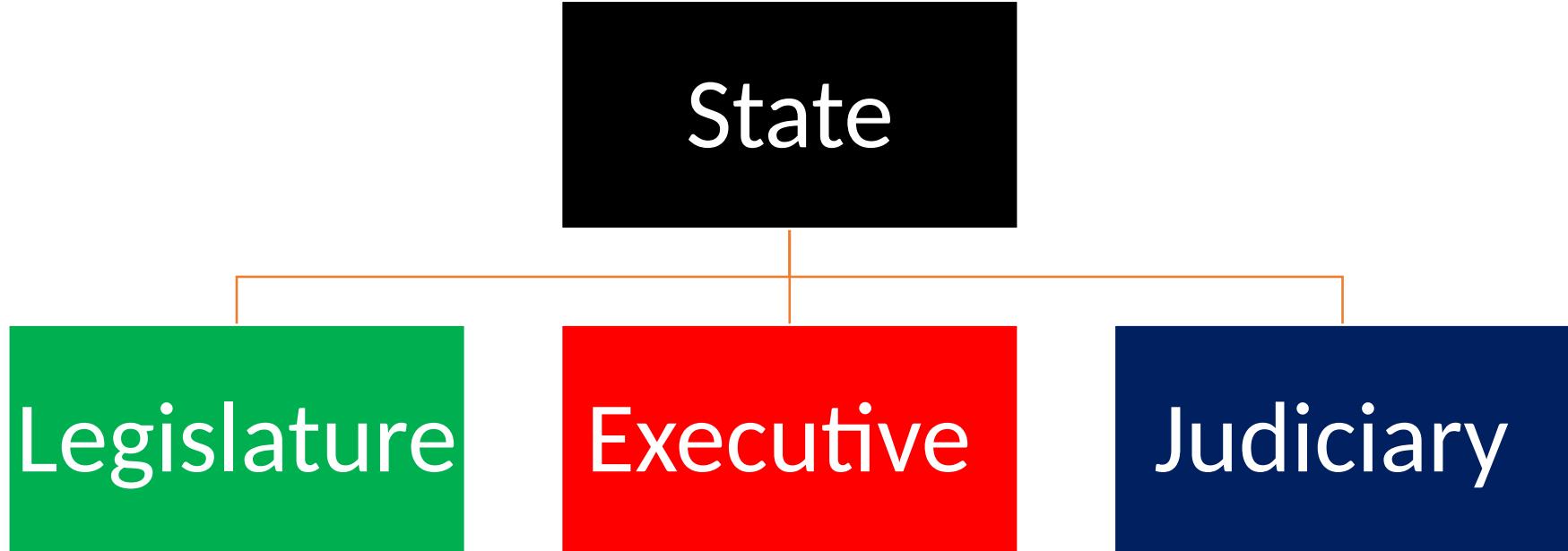
### Rigid Constitutional Amendment

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- Having a consistent and stable constitution ensures a stable legal system
- Rigid yet flexible amending process is required in ensuring constitutionalism
- Though Constitution of India have been amended 105 times in the last 70 years, the procedure of amendment is difficult

- Article 368
  - Majority
  - Special Majority
  - Special majority and ratification of  $\frac{1}{2}$  of state legislatures.

- Separation of Power
  - Three Tenants
    - The same person should not form part of more than one of the three organs
    - One organ should not interfere with the other organ
    - One organ should not exercise the functions assigned to any other organs



## Separation of Power

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- Strict separation- US
  - Looser separation- UK
  - India- unique model
  - Division of powers
  - No strict separation of powers
- 
- **Legislature**- law making
  - Judicial functions of legislature
    - Impeachment
    - Contempt of legislature
    - Nullify the impact of judicial decision

- Executive functions of the legislature
  - Parliament's power of creation of SC and HC
  - Decide the jurisdiction
  - Decide the powers of the SC and HC
- Executive- law enforcing
- Legislative functions
  - Delegated legislation- Rule making
  - Ordinance
  - Emergency
- Judicial function
  - Pardoning power Art 72

- **Judiciary**- dispute resolving in the law making and enforcement
- Legislative functions
  - Rule making- appointment of staff Art. 145
  - Judicial review
  - Art 142- Law until the suitable legislation is made
- Executive function
  - Judicial review- of executive action

- 3 Components
  - Absence of arbitrary power
  - Equality before law
  - Independence of legal spirit protected by Court
- Propounded while comparing French Legal system and English Legal system

- Rule of Law and Constitution of India
  - Judicial Review (Art. 13, 32 and 226)
  - Independence of Judiciary (Article 50)
  - Equality and Freedom (Art. 14 - 22)
  - Preamble
  - Democratic Government

- Federalism:
  - Mode of political organization that unites separate states or other polities within an overarching political system in a way that allows each to maintain its own integrity

- Features of Federal Constitution
  - Written Constitution
  - Supremacy of Constitution
  - Division of Power
  - Rigidity of Constitution
  - Independent Judiciary
- Does India have a federal constitution?

- **Features of Indian Federalism**
  1. Art.1 Union of states
  2. Single citizenship
  3. Single constituent authority
  4. Long concurrent list
  5. Power of parliament to make laws on state list
  6. emergency

Unique

### Problems of US Federalism

1. Economic disparities between states
2. Disparities between states in school funding
3. Health care access
4. Conflicting judicial decision
5. Rights and responsibilities

- SR Bommai v. Union of India (1994) 3 SCC 1
  - Federalism was held to be basic feature/basic structure of Constitution of India

- **Parliamentary form**
- President- Nominal Head of State-
- Real executive- Cabinet with Prime Minister
- Tenure at the Will of Legislature
- Collective Responsibility
- **Presidential form**
- Chief executive- real head
- Irremovable by the legislature
- Legislature cannot dictate the president
- Cabinet is appointed from the people

- Benefits of presidential form
- Stable
- Able ministers
- President need not be part of party politics
- Parliamentary form may lead to authoritarianism.
- Benefits of parliamentary form
- Responsible
- Pm may be sacked by the parliament at any time

- Why Parliamentary and not Presidential ?
  - Familiar
  - Harmony between Legislature and Executive
  - Responsibility
    - Assessment
      - Daily
      - Periodic

- What is Secularism?
  - Western Approach: separate religion and state
  - Interpretation by Indian sources: equal respect for all religion
  - Not anti-religion/ indifferent to religion
- 42<sup>nd</sup> Constitutional Amendment

- But principle of secularism embodied in the Constitution
  - Art. 25 to 28
  - Art. 15(1), 15(2)
  - Art. 16(2)
  - Art. 29(2)
  - Art. 325
- SR Bommai v. Union of India (1994) 3 SCC 1
  - Secularism was held to be basic feature/basic structure of Constitution of India

- Right to free and fair election
- Art. 326
  - Age 21
  - Age 18 after 61<sup>st</sup> Constitutional Amendment, 1988

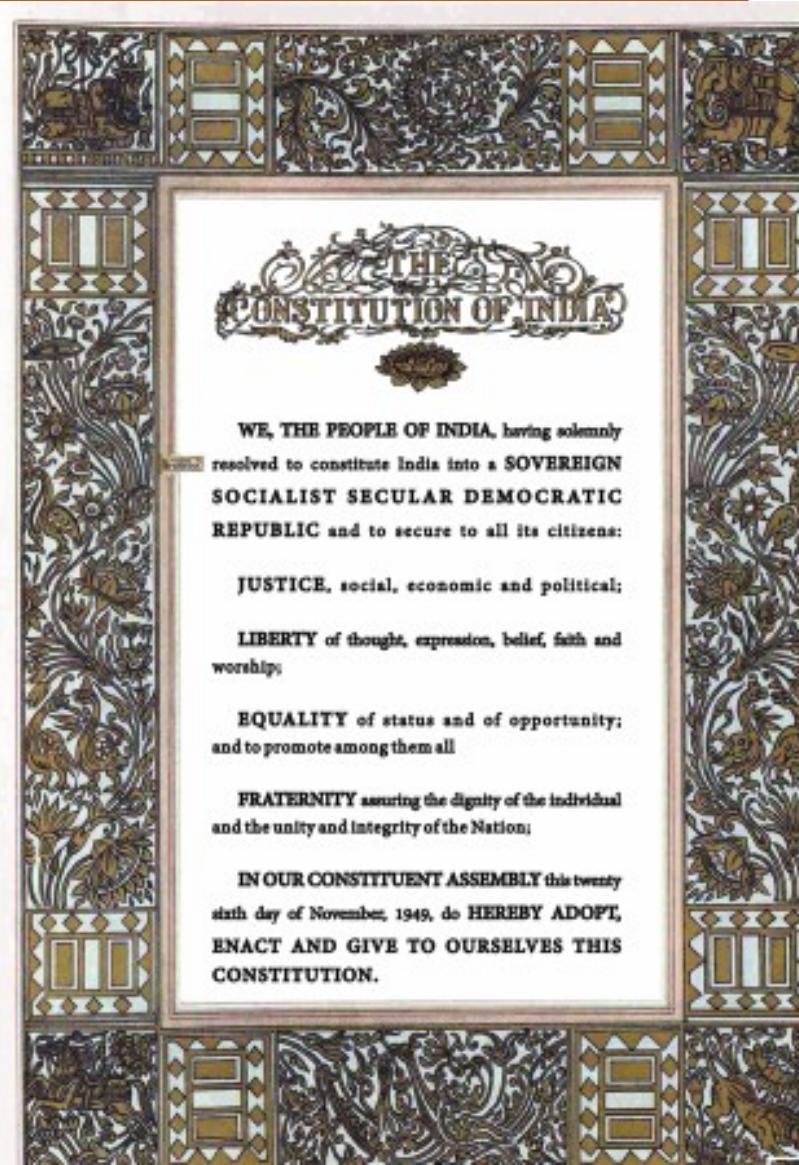
# CONSTITUTIONAL LAW-I

## Fundamental Rights, Directive Principles of State Policy & Fundamental Duties

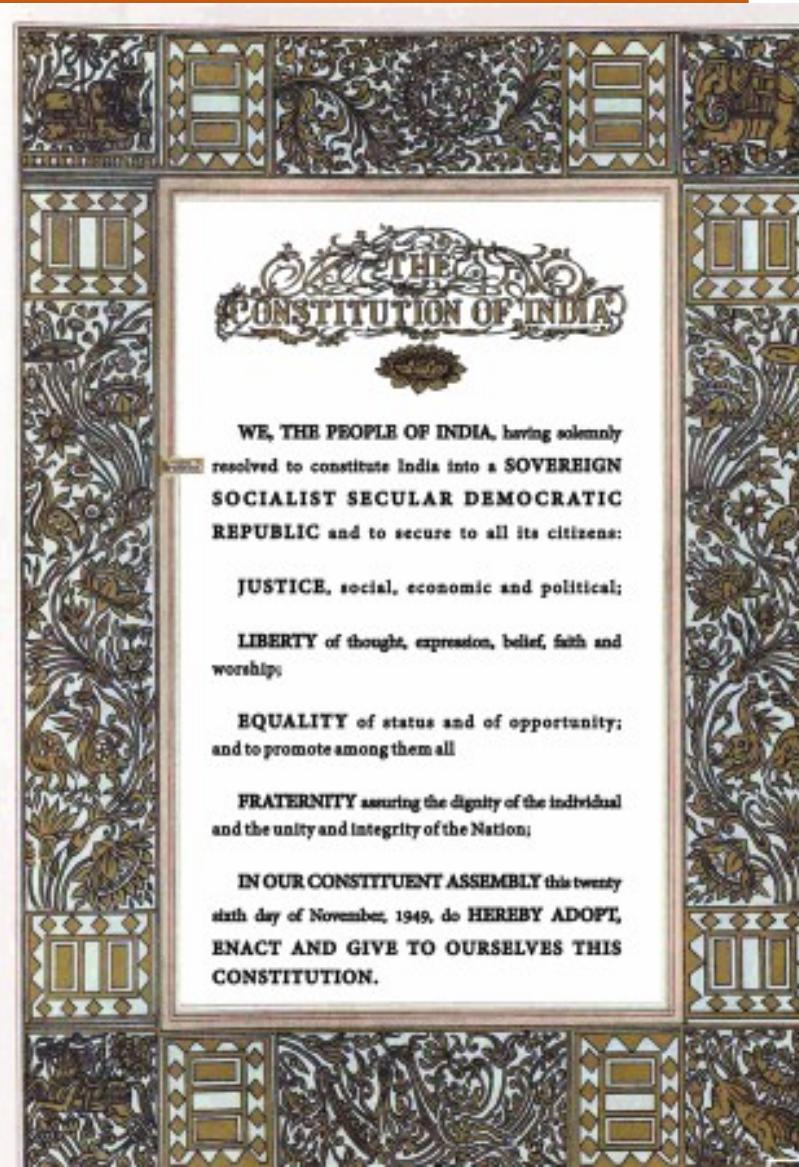
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- Fundamental Rights: Part III
  - Art. 12 to 35
  - Bill of Rights of USA Model
- Directive Principles of State Policy: Part IV
  - Non-enforceable guiding principles for the Government
  - Irish Constitution
- Fundamental Duties: Part IV-A
  - 42<sup>nd</sup> Constitutional Amendment
  - Result of Swaran Singh Committee Report
  - Japanese Constitution

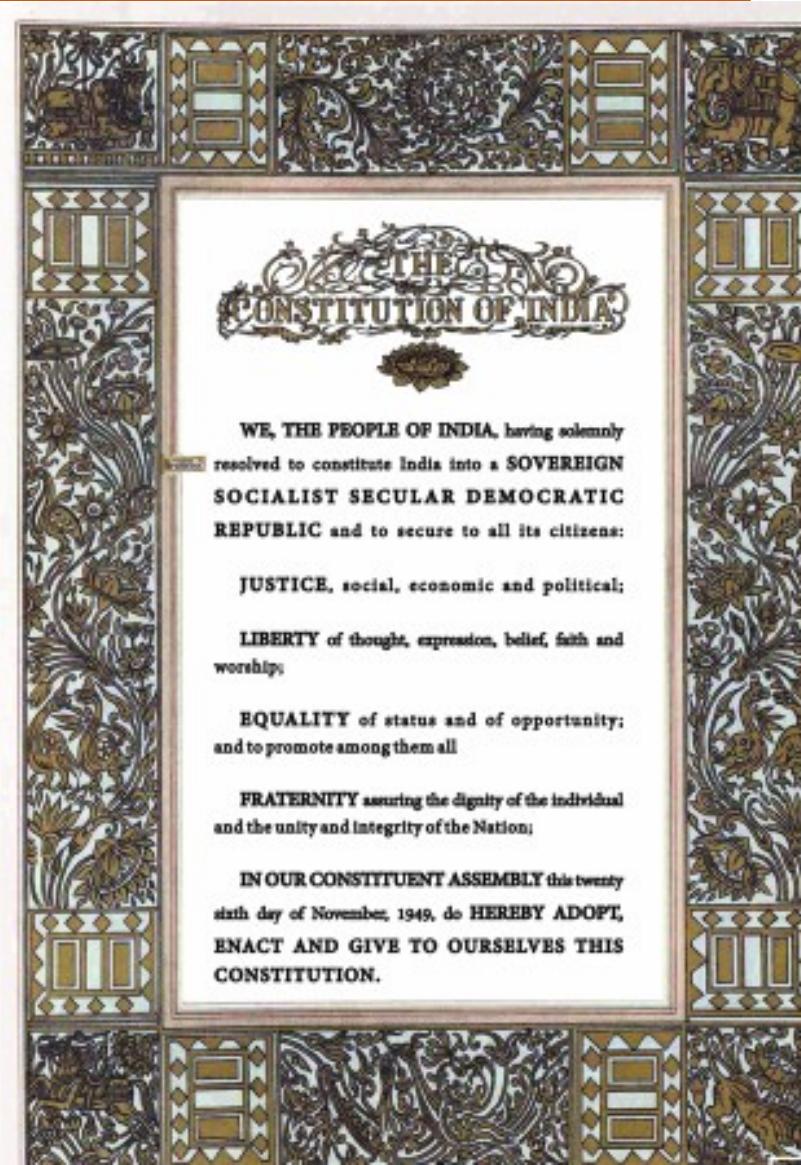
- Modified version of the Objective Resolution
  - 13<sup>TH</sup> December 1946
  - All objectives for CA



- Purpose of Preamble
  - Who made the Constitution?
  - What is its source ?
  - Ultimate Sanction
  - Nature of Polity
  - Goals & Objectives
- Three Parts of the Preamble



- Union of the trinity
  - Liberty, Equality and Fraternity
- Preamble has no power
  - Guiding Principles only
- Whether Preamble part of Constitution or not?
  - In Re Beruberi AIR 1960 SC845
  - Kesavanada Bharati Case



- Constitution of India refers to two kinds of entities in Part III
  - Persons: Art. 14
  - Citizens :Art. 19

- Citizenship governed by
  - Part II of the Constitution (Art. 5 to 11)
  - Citizenship Act, 1955 (Act No. 57 of 1955)

- Part II of the Constitution
  - Article 5: Citizenship at the commencement of the Constitution
  - Article 6: Rights of citizenship of certain persons who have migrated to India from Pakistan
  - Article 7: Rights of citizenship of certain migrants to Pakistan.
  - Article 8: Rights of citizenship of certain persons of Indian origin residing outside India.
  - Article 9: Persons voluntarily acquiring citizenship of a foreign State not to be citizens.
  - Article 10: Continuance of the rights of citizenship.
  - Article 11: Parliament to regulate the right of citizenship by law.

- Art.5
- At the commencement of this Constitution, every person who has his **domicile** in the territory of India **and** —
  - (a) who was born in the territory of India; **or**
  - (b) either of whose parents was born in the territory of India;  
**or**
  - (c) who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement,  
shall be a citizen of India.

- **Domicile**- residence+ Intention to permanently stay
  - 1. **By origin**- acquiring by birth- fathers domicile at the time of birth of the child.
    - Posthumous child-
    - English law.
    - Indian Law
  - 2. **By choice**

- Article 6: Rights of citizenship of certain persons who have migrated to India from Pakistan
- Notwithstanding anything in article 5, a person who has migrated to the territory of India from the territory now included in Pakistan shall be deemed to be a citizen of India at the commencement of this Constitution if —
  - (a) he or either of his parents or any of his grandparents was born in India as defined in the Government of India Act, 1935 (as originally enacted); and
  - (b) (i) in the case where such person has so migrated before the nineteenth day of July, 1948, he has been ordinarily resident in the territory of India since the date of his

- (ii) in the case where such person has so migrated on or after the nineteenth day of July, 1948, he has been registered as a citizen of India by an officer appointed in that behalf by the Government of the Dominion of India on an application made by him therefor to such officer before the commencement of this Constitution in the form and manner prescribed by that Government:
- Provided that no person shall be so registered unless he has been resident in the territory of India for at least six months immediately preceding the date of his application.

- Article 7: Rights of citizenship of certain migrants to Pakistan.
- Notwithstanding anything in Articles 5 and 6, a person who has after the first day of March, 1947 , migrated from the territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India
- Provided that nothing in this article shall apply to a person who, after having so migrated to the territory now included in Pakistan, has returned to the territory of India under a permit for resettlement or permanent return issued by or under the authority of any law and every such person shall for the purposes of clause (b) of Article 6 be deemed to have migrated to the territory of India after the nineteenth day of July, 1948

- Art 8-Notwithstanding anything in Article 5, any person who or either of whose parents or any of whose grand parents was born in India as defined in the Government of India Act, 1935 (as originally enacted), and who is ordinarily residing in any country outside India as so defined shall be deemed to be a citizen of India if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country where he is for the time being residing on an application made by him therefor to such diplomatic or consular representative, whether before or after the commencement of this Constitution, in the form and manner prescribed by the Government of the Dominion of India or the Government of India

- Art 9- Person voluntarily acquiring citizenship of a foreign State not to be citizens- No person shall be a citizen of India by virtue of Article 5, or be deemed to be a citizen of India by virtue of Article 6 or Article 8, if he has voluntarily acquired the citizenship of any foreign State.

- Art.10- Continuance of the rights of citizenship- Every person who is or is deemed to be a citizen of India under any of the foregoing provisions of this Part shall, **subject** to the provisions of any law that may be made by Parliament, continue to be such citizen

- Art-11- Parliament to regulate the right of citizenship by law- Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.
- Citizenship Act 1950
- Citizenship Amendment Act 2003
- Citizenship Amendment Act 2005.
- Overseas Citizenship
- Citizenship Amendment Act 2019.

- Citizenship Amendment Act 2019.
- By Birth
- Descent
- Registration
- Naturalization
- Incorporation of some territory

### Article 12: Definition

In this part, unless the context otherwise requires, the State includes 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.

### Article 12: Definition

1. In this part,
2. unless the context otherwise requires,
3. the State includes-
  - a. the Government and Parliament of India and
  - b. the Government and the Legislature of each of the States and
  - c. all local or **other authorities** within the territory of India or under the control of the Government of India.

2. Not necessary that the statutory authority should be engaged in performing governmental or sovereign functions.
  - State can engage in trade. Art 298, 46

### 3. Power to give directions- disobedience-punishment

- An other authority is a public administrative agency, or a Corporation having quasi-governmental powers and is authorized to administer a revenue producing public enterprise.
- Justice Shah had a separate concurring opinion-
  - According to him - Other authorities are those authorities that are invested with power by law with the ability to exercise sovereign powers.