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OGN

The touchstone of constitutionalism is the concept of limited Govt. Under a higher law — David Fellman
 either by written or unwritten

- Constitutionalism — Specific limitations
 - by written or unwritten Constitutional Convention
 - Political - limited on general governmental powers
 - Philosophy - Govt. practices follow
 - Cont + take decisions out of its jurisdiction
 - 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 ^{partly} opposite of Arbitrary Power
- Separation of powers, judicial review & accountable govt- are concepts that evolved over time to reflect concept of constitutionalism

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Political Constitutionalism

Legal Constitutionalism

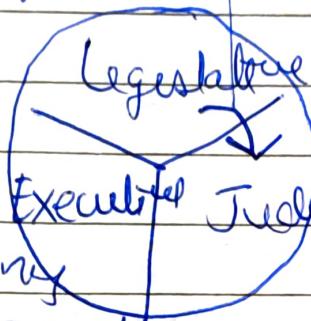
From mixed govt to
representative democracy

count
votes

Form Separation
of powers to

↓
3 types of polity

degeneracy — tyranny
aristocracy — oligarchy
democracy — anarchy



Montesquieu

John Wilson to ensure
moderation & proportion
by combining various
types

Aristotle's Politics - Polis

17th centth Century brought
main changes to the
doctrine →

Separation of power

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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
 Legislative 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 — ^{Govt. of nation}
 People exercise right → to decide
 how & by whom they should be governed.
 First & fundamental application of sovereignty
 1 give themselves Constitution
 ground rules → certain powers are transferred to different agents of state
4. Federal Polity — distributes powers
 b/w organs of state at Union / Central
 at State level
 provinces / local

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- Foundational law which embodies the fundamentals of polity & after 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 ethics / faith aspiration of people

Intral Document No

Written Text.

Meaning & Content

Living Organism - functions
Institutes

Growing evolves

Planner in which, & People by whom
it is operated

effects it acquire - how

Interpreted in courts

Practices that grow evolved
in Actual process of its work

② Constitution & Constitutionalism
Democratic Country

Date: 1/120.

Monarchy

Totalitarian, Dictatorship

① Supreme Law of Land

Law

1491-22 भारतीय संविधान

→ अधिकारी

- 1 राजनीतिक
- लोकशास्त्र

Constitution is
NOT there &
even if it is
there, there is

NO RESPECT

- It is source of all power
of govt.

- It guarantees individual
& collective rights & freedom

- It sets rules that citizens & govt
abide by

Right to Freedom,
Right to Freedom of Religion,
Cultural & Education
Right

Freedom of Speech
& Express

Right to Property

Freedom of Mvt

Right to Constitutional
Remedies

Freedom of occupation
Trade
Business etc

Right to Equality

Right against exploitation

It is means to achieve goal
Constitutional

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

Non Constitutional
System in which govt
uses power without
respecting citizen
rights
No way to limit power

Ideology

govt does not abuse its power

- It preserves basic freedom of individuals
& maintains their dignity & personal

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

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Sources of Indian Constitution

448 Articles in total

395 is last article how?

Present Structure of Indian Constitution

26 Nov 1949 When our Constitution was drafted & ready

ARTICLES

395

PARTS

22

SCHEDULES

8

448

25

12

+ 103 Amendments
done till now

To maintain the original number of the Articles present in our Constitution whatever New laws are introduced they are introduced in Alphabetic 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
specifically

Article 12 { 13, 14, 15, ... }
↓
Article 35 { 24, 22, ...
 30, 31, ... }
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 & U.T.

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 Amendment 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 Sections of General Category will be given 10% reservations

4. FEDERAL SCHEME

5. OFFICE OF GOVERNOR - ARTICLE 153

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Provision for trial in inserted in form of Clause
15(6) & 16(6)

Now lets go back to 1946-47

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

countries

We relied on 11 sources to make our constitution

Imp. features

from each source

1. GOVT OF INDIA ACT 1935

Constitution of Independent India

enforced on 26 Jan 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 352-353

2. PUBLIC SERVICE COMMISSION — PART XIV ARTICLES 315-321

3. JUDICIARY — PART V CHAPTER IV ARTICLE 147

Supreme Court, High Court, Subordinate Courts
State Federal Scheme of Govt, Office of Governor

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2

UNITED STATES OF AMERICA

1. Fundamental Rights - ARTICLE (12-35)

(In Govt of India Act 1935 there was no provision of Fundamental Rights)
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 124(4)

Removal procedure of 2 impartial posy

5. PREAMBLE OF OUR CONSTITUTION

6. INDEPENDENCE OF JUDICIARY

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(3)

BRITISH CONSTITUTION

Very old & basic.
Writs Constitutional Remedy

1 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 or
CONSTITUTION IS Supreme

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(4)

PRISHI CONSTITUTION

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

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

- 2) Method of Election of President -
ARTICLE 53

- 3) MEMBERS NOMINATION TO RAYYA
SABHA
BY PRESIDENT

PART V ARTICLE 80

(5)

GERMANY

WEIMAR CONSTITUTION

- 1) Suspension of Fundamental Rights
during Emergency - ARTICLE 358 [B]

(6)

SOUTH AFRICA

1. Amendment of Constitution - PART XX
ARTICLE 38

2. Election of Members of Rayya Sabha

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(7) SOVIET UNION (USSR)

- f. Fundamental Duties — PART IV A

duties of citizens

to increase their patriotism

towards their country

ARTICLE 51A

- g. Ideals of Justice (Social, Economic, Political) Expressed in Preamble

federal structure

(Central - State Powers)

(8) Canada

- 1. Federalism with strong Central Govt.

- 2. Advisory Jurisdiction of Supreme Court

Article 143

- 3. Centre approves Governor of State

ARTICLE 155, 157

- 4. RESIDUAL POWERS VEST WITH THE CENTRE

ARTICLE 248 OF CONSTITUTION &
ENTRY 97

whatever matters are not given to
Central State Government, to
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

Equality, Liberty, Fraternity & Republic

PRINCIPLES

(11)

JAPAN

Procedure Establish By Law
Article 21

1. Equality
2. Freedom
3. Protection
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5. Cultural & Educational Rights
Fundamental Rights 6. Right to Constitutional Remedies

Part II

(6) Fu Article 14-35

1. Law removes Doubt and gives 6 Freedoms by which we SAV MRP clearly in Equality

Right

- 14. Equality before Law
- 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

SAV MRP etc.

Right to Freedom

- 19. Protection of certain Rights regarding freedom of speech and expression:
 - a) to freedom of speech & expression
 - b) to assemble peacefully & without arms
 - c) to form associations or Unions or cooperative
 - d) to move freely throughout territory of India
 - e) to reside/ settle in any part of India
 - f) to practice any profession/ occupation

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

ARTICLES

- 21 A Right to Education ~~Def~~ &
22. Protection against ~~defects~~ in some cases

Right against Exploitation.

23. Prohibition of traffic in human beings & forced labour

24. Prohibition of employment of children in factories

14

15

16

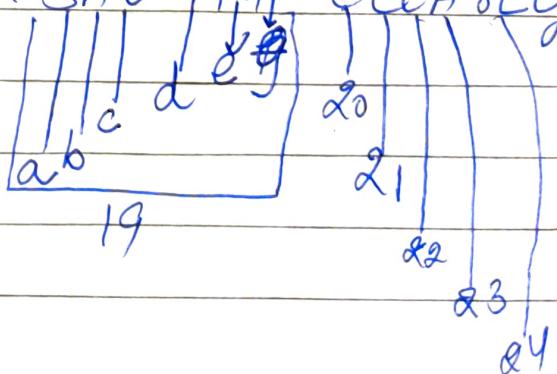
17

18

19

LAW

Removes Doubt & gives 6 freedoms by which we saw MRP clearly



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Q. CON MAN evades TAX ATTENDANCE
and hampers Indian CULTURE & EDUCATION

- Right to Freedom of Religion
25. Freedom of conscience, free profession, practice & propagation of religion
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 instruction or religious worship in certain educational institutions

Cultural & Educational Right

- Protection of interests of Minorities culture
- Right of minorities to establish & administer educational institutions

Problems

Sol'n

~~classfellow~~

3. Supreme Court will catch RAM Lal

Right to Constitutional Remedies

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

32A. Omelio.

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

34. Restrictions 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.