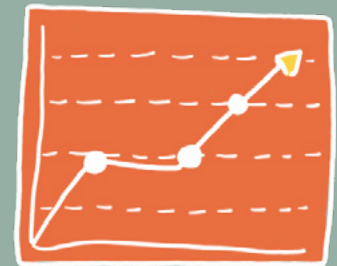
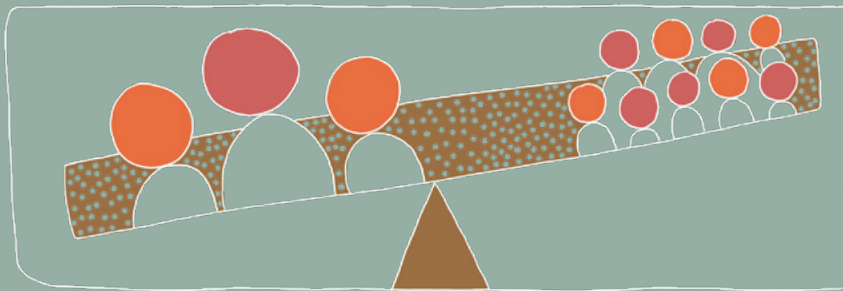




Law



and



Everyday

HONESTLY



Life



Chapter 2: The Constitution and You

By Sumedha Ray Sarkar





Introduction

Look at any newspaper- any day, any month, any year. Circle news of people protesting for their rights - be that on issues of farming, cinema, protection for sportspersons, increased prices, cancellation of licenses, school uniforms, or discussions on reservations. Circle also, reports on any action by the government - state or national elections, a criminal trial, a decision by any court or investigative agency, building of roads or bridges, changing political parties, police raids, introduction of any new development scheme. Finally circle any story on the history of India - resurrection of monuments, changing of road names, contents of history textbooks, commemoration of past leaders and luminaries, and celebration of festivals.

Every piece of news that you have read, and any question that may have arisen in your mind, all relates to one document - the Constitution of India, 1950.

India's Constitution or for that matter, any constitution, is the document which governs all action in a country. It has three primary functions:

- ✿ It recognises rights that belong to us, and lays down rules for the government to respect and protect them;
- ✿ it sets up Legislature, Executive and the Judiciary, the relationship between them and their duties;
- ✿ and finally, it pays homage to the cultural, social, and political history of this country.

What is a Constitution?

A Constitution is a **basic charter of governance**. What does this mean? When people decide to coexist, rules of how they will live together are required. This in turn means that there will be someone to enforce those rules and make sure they are followed.

Additionally, it is also necessary that those in charge, cannot break the rules themselves. This is where a Constitution comes in. A constitution sets out **all the rules** for a society, and a country to function in harmony - these are the rules, both the people and their "rulers" have to follow. In other words, it is the **highest law of the land**.

Now, a Constitution can seem like a high and mighty document, which we rarely see, or even hear about. It can also seem like it has nothing to do with us - after all, it was written 75 years ago by a small group of people. But imagine the following three scenarios -



Suppose you have a government job which you hold based on your performance. One fine day, you are removed from that job - but no one has told you why. Do you have a right to know why you've been removed?



Suppose you are in school writing an exam. Your "friend" throws a chit towards you which you have no interest in seeing. The teacher, however, notices the chit near your feet, thinks that you are cheating and cancels your exam without listening to you. Is what happened fair?



Suppose you go to a peaceful protest against a new law. Shortly after, the police comes and lathi charges the crowd, and disperses it in the interest of security. Were the police justified in their action?

You will notice that quite naturally, your answers may be as such:

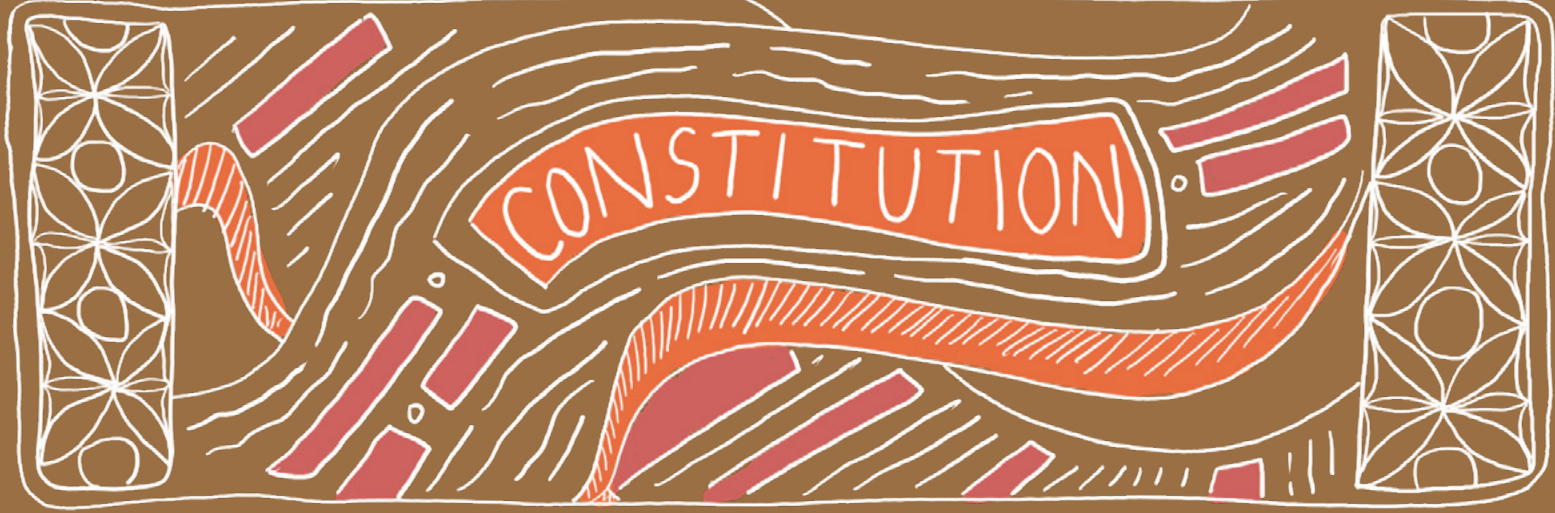
- ✿ Yes, I need to know if I've done something wrong. If I haven't, I shouldn't have to lose my source of income.
- ✿ No, it's not fair. The teacher should have heard me and let me tell her I wasn't cheating.
- ✿ No, the police were not justified. The people should have a right to protest against what they perceive to be an injustice, and the police cannot act violently towards them.

Each of your answers actually relates back to a provision or an **"article"** in the Constitution of India.

The first and second answers are based in Article 14, which is the Right to Equality, and Article 21, which is the Right to Life.

The third answer relates to Article 19(1)(a), which is the Freedom of Speech and Expression.

What this goes to show is that the Constitution is very close to us all and our everyday life.



General Structure of the Constitution of India

The Constitution of India has 25 Parts, 448 Articles and 12 schedules, making it the longest constitution in the world.

It is intimidating for anyone to study the longest constitution in the world, so where does one start? Start like any other book - from the index. Take your time to skim through the index - depending on your interests, certain parts will stand out to you.

Preamble

The Preamble to the Constitution can be thought of as a 'vision statement', 'blueprint', or a 'mood board'. It identifies the essential values the Constitution will ultimately embrace in its specific provisions. For India, the Preamble began as the Objectives Resolution in 1946 which was introduced by Pandit Nehru.



Read just the Preamble – can any of us take any exception to any of the words used in it? Can you build a case to change any of them today? Do you think any of the terms no longer apply? What would you add if you could?



Fun fact, while going through the index, you'll see that the last article is Article 395, not 448. Can you guess why? The answer is in the index itself.



Think about this additional fact - In 1978, the Preamble was amended to include the words "socialist" and "secular".

Constituent Assembly Debates

Imagine that you are going to make some rules for your class along with your class monitor. These are rules that will impact you for the entire academic year – rules about deadlines, penalties for late assignments, number of days you can be absent etc. Now there are 100 people in your class. Your monitor drafts some rules and puts them up for vote. Your class votes and all three rules are approved as follows:

Rule	For	Against
In a classroom discussion, every student can speak no more than two times.	90	10
The name of your classroom is Wonderland.	70	30
There is no official language of the classroom. Students can converse with each other in any language they are comfortable in.	55	45

Now answer the following question:

Which of these rules are likely to last the longest through the academic year, and which rule do you think, though passed, is likely to change?

A similar rule-making exercise was carried out by the Constituent Assembly of India which was tasked with drafting the Constitution of India. The Constituent Assembly Debates began on 9th December 1946, and went on to 24th January 1950. For over three years, the writers of the Constitution discussed, debated, wrote and rewrote multiple drafts of each article of the Constitution, striving to come to an agreement to the greatest possible extent before the text of a particular provision was cemented.

Consensus building was a very important part of the process of drafting the Constitution. The framers were careful to not come to simple majority decisions. There is a good reason for this.



Read the Constituent Assembly Debates on either Language or Article 1 of the Constitution. What do you think about the conversation and the process of discussing a draft of an article? What does it teach you, if anything, about political dialogue and decision-making?

Basic Concepts and Key to the Constitution of India

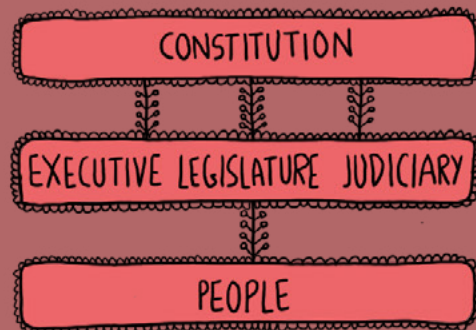
Understanding the Constitution of India essentially comes down to two concepts. These principles are not unique to India, but are instead features of nearly every modern constitution. These are:

- ✿ Constitutionalism
- ✿ Separation of Powers
 - ☞ Horizontal
 - ☞ Vertical (Federalism)

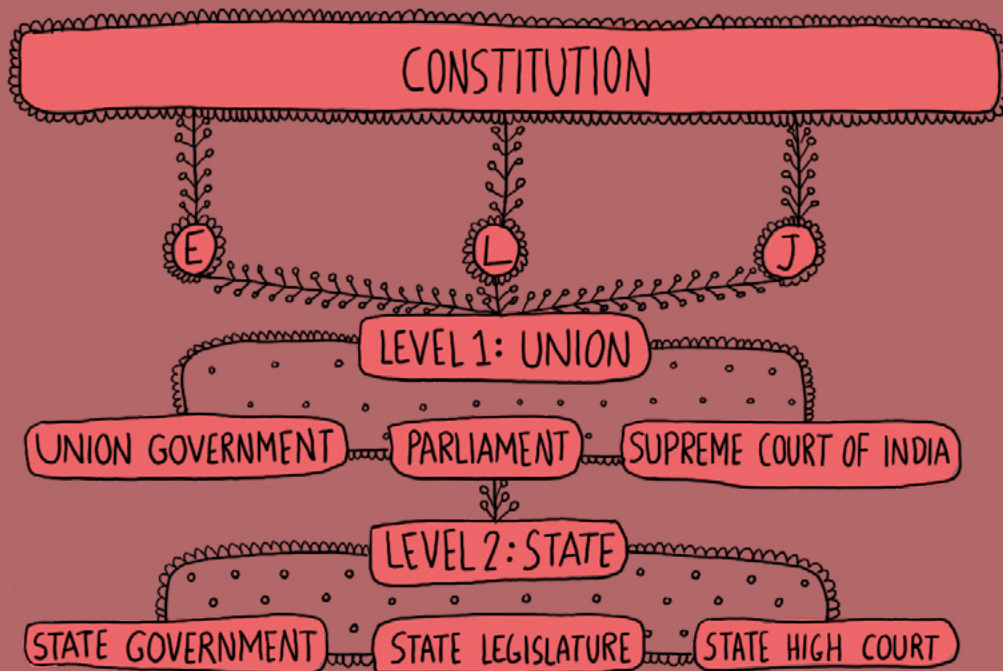
In the simplest of terms, **constitutionalism is the idea of keeping limits on power.** This requirement is based on the fact that **no power can be unlimited.** If power is unlimited that limits the freedom of the people who are under that power. When a basic document of governance, i.e., a constitution, has limits on the powers it confers on people, then that constitution is said to have constitutionalism.

Separation of Powers is a way of limiting power. Governance is a complex activity with multiple aspects. These include the identification of social issues, how one is to deal with these issues, and then finally the resolution of any dispute that arises. If all of these functions, and corresponding powers are given to one person, then (a) the power is unlimited and (b) it's impossible for one person to effectively discharge all of these functions.

Therefore, most constitutions including India's, create three institutions - the executive (creates policies), the legislature (creates law) and the judiciary (resolves disputes). By doing so, the powers of governance are distributed amongst three branches of the state. This distribution therefore avoids concentration of power. Separation of powers in the Indian context also includes a concept called checks and balances which means that while no branch can take on the functions of another branch (Judiciary cannot legislate or the Parliament cannot adjudicate disputes as a general rule) each branch can and should keep the other in check.



Federalism is another way of distributing power. In countries such as India, which are socio-politically and economically diverse, the concentration of power in only one layer of government is not advisable. **Hence, powers are distributed at two levels between the state and union government.** Therefore, we have the Union Government which has a Parliament, an Executive, and a Supreme Court of India, and we have state governments such as those of Maharashtra, Kerala, Uttar Pradesh, West Bengal, each of which has a State Legislature, a State Government, and a High Court. This way, people from different parts of the country, are represented not only at the State level, but also at the Union level.



How is this reflected in the Constitution of India?

Laws are required to be made on many different subjects. However, according to Article 246 these subjects are divided between the Parliament and the State Legislatures. If you read this provision, it will take you to the Seventh Schedule, which is home to three 'lists.' List I is the Union List – look at the subjects – all these are under the Parliament. List II is the State List – all these are under the State Legislature'. And finally, List III – which is shared by the Parliament and the States.

Fundamental Rights

Now that we have understood the broad structure of the Constitution and the principles that govern it, let's move to the most important and complex section of the Constitution - Part III.



Consider taking these steps:

Identify how many articles are there in Part III. You can go to the Index or flip through the Articles till you reach Part IV.
(Articles 12-35)

Read the "headings" of all the articles in this Part. Think of these as the 'topics' of each provision. In legal parlance, the heading is called the 'marginal note.'

First Reading: Read the text of each article, but stop at Article 32. Don't worry about the long sentences and the otherwise complicated language. Just try to understand the gist of what each article is on.

Second Reading: Read the text of each article again, very slowly this time, and mark out any words that feel unfamiliar and/or important.

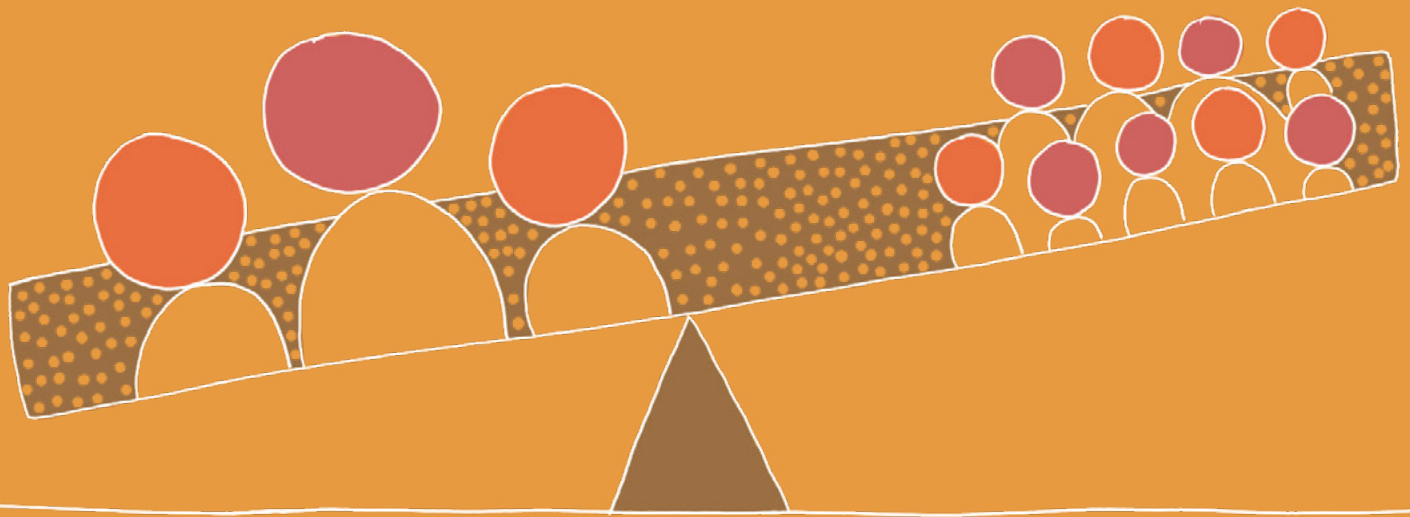


Now answer these questions:

Do you feel that the rights are to be read separately, or are they interconnected in any way?

Is there any pattern to how the rights have been written or framed?

Think about yourself. Which right(s) do you feel is the most meaningful to you? Now think about your neighbors. How likely is it that they will answer in the exact same way as you did above? What would happen if your most valued right clashed against their most valued right?



The Equality Code - Articles 14-18

In this section, we delve into the Equality Code in the Constitution.

Let's begin with a simple question – what does the word equal mean to you? When we say two things are equal, we mean that they are the same in some respect. In mathematics, this is very simple – $2 = 2$. However, when it comes to recognising and treating two people as equals, mathematical precision is impossible – and neither is it desirable.

Let's begin with the fundamental idea that all people are essentially born equal. However, this fundamental premise is disturbed greatly by the realities of lived experiences. In reality, the caste, class, sex, religion amongst many other things, that one is born into, are determinants of **where** one stands in society, **who** are treated as equals and **what** one's rights are. So how does the Constitution deal with this?

Article 14 states:

Equality before Law – The State shall not deny to any person equality before law or the equal protection of the laws within the territory of India.

Equality before law means that every person operates under the law's regime and that there are no exceptions to this. This is a fairly straightforward principle. However, the second point – equal protection of the laws, is a bit more complicated.

Let's start easy. Think about this situation:

“classes” as school years – 1st, 2nd, 3rd, 4th. Would you give a 4th standard math problem to a 1st standard student?

This is essentially called the **doctrine of classification**. This means that equality is not a fixed concept where all persons or things are treated the same irrespective of their circumstances and means. For example, if I earn 1000 Rupees and you earn 1,00,000 Rupees, would it be fair for the government to tax us both 30% of our incomes?

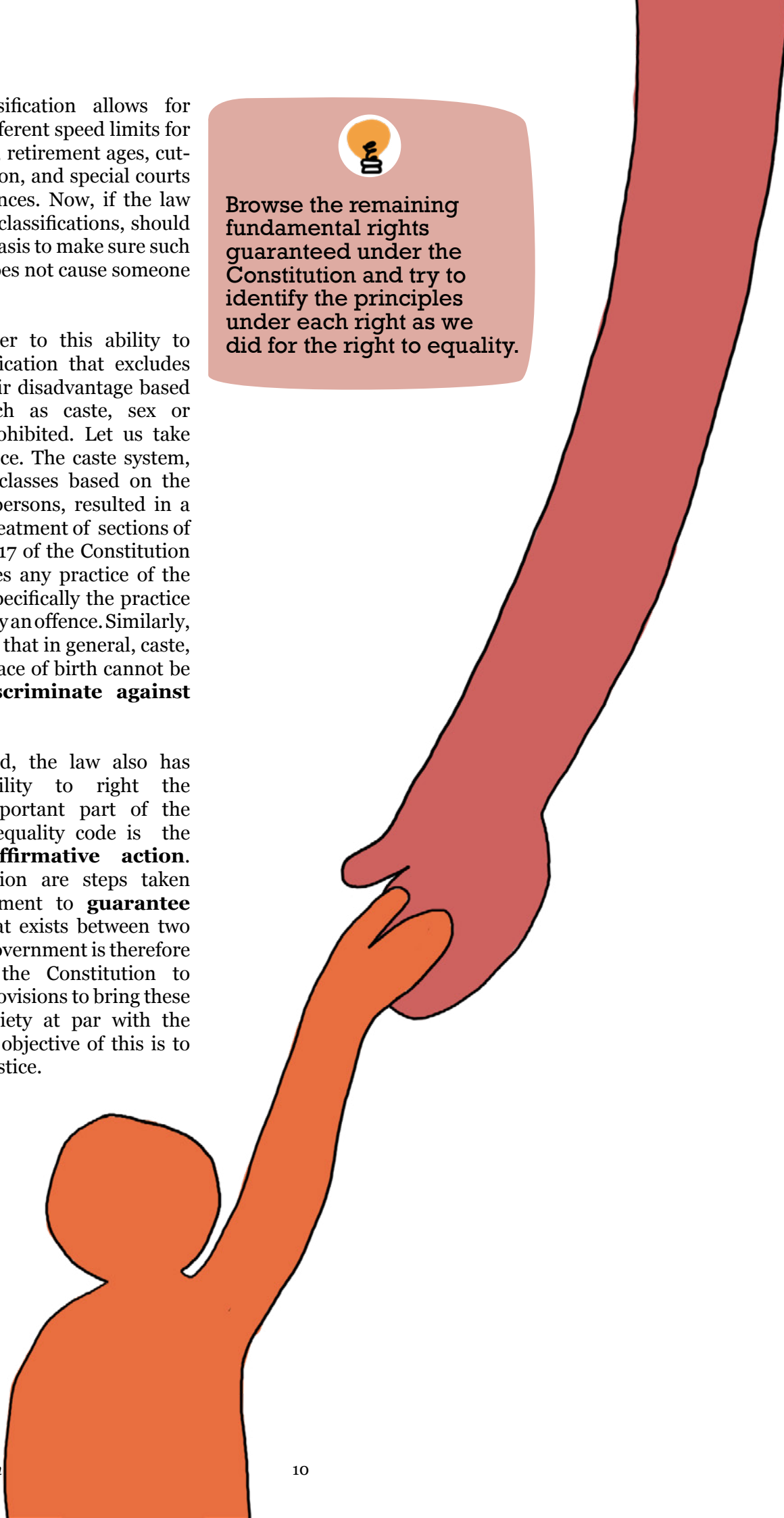
Similarly, classification allows for laws such as different speed limits for trucks and cars, retirement ages, cut-offs for admission, and special courts for special offences. Now, if the law can make such classifications, should there be some basis to make sure such classification does not cause someone disadvantage?

There is a rider to this ability to classify. Classification that excludes a person to their disadvantage based on factors such as caste, sex or religion are prohibited. Let us take caste for instance. The caste system, which created classes based on the occupation of persons, resulted in a hugely unfair treatment of sections of society. Article 17 of the Constitution therefore, makes any practice of the caste system, specifically the practice of untouchability an offence. Similarly, Article 15 states that in general, caste, sex, religion, place of birth cannot be reasons to **discriminate against anyone**.

That being said, the law also has the responsibility to right the wrong. An important part of the Constitution's equality code is the concept of **affirmative action**. Affirmative action are steps taken by the government to **guarantee** the equality that exists between two persons,. The government is therefore permitted by the Constitution to make special provisions to bring these sections of society at par with the privileged. The objective of this is to ensure social justice.



Browse the remaining fundamental rights guaranteed under the Constitution and try to identify the principles under each right as we did for the right to equality.



Thumb Rules and Thought Exercises

In the preceding sections, you have thought about what a constitution means for a country, what it does and the principles governing its most important section on Fundamental Rights. As you explore the Constitution, keep in mind the following thumb rules and then think about the thought exercises that follow -

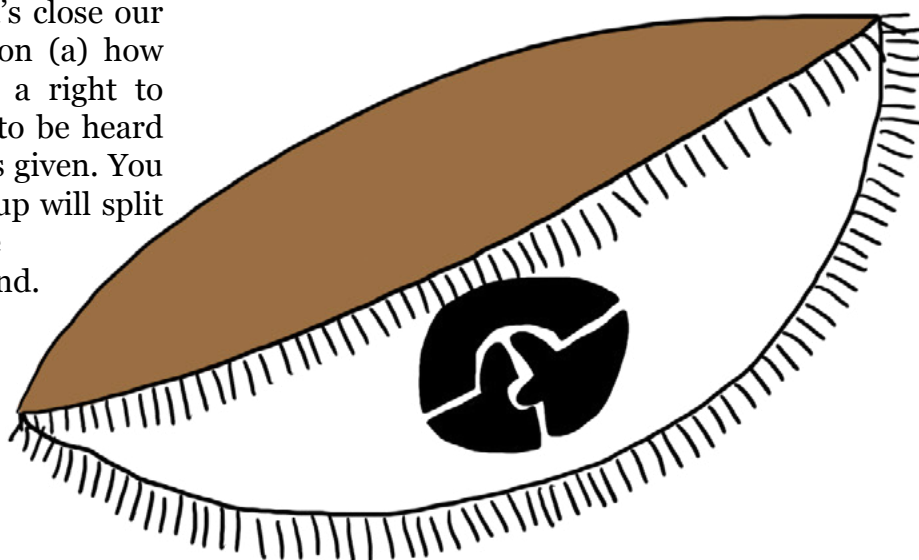
🌀 Reading and understanding Fundamental rights under the Indian Constitution is understanding that law-making is a question of balancing between competing interests of the individual, the society and the state. These do not always align, and for times that there is a conflict, go back to the vision board - the Preamble - to understand where 🌀 started.

What is just, fair and reasonable is often open for debate, however, luckily for us, there is a concept called **Natural Justice**. Natural Justice is a set of self-evident truths on how people facing any penal action that results in the loss of life or liberty, want to be treated. To explain the concept of a self-evident truth let's close our eyes and take a poll on (a) how many people support a right to die and (b), the right to be heard before a punishment is given. You will find that your group will split in the first case, and be unanimous in the second.

We leave you with these questions to discuss:

- 🌀 Is the Constitution static? Should it be so? Or should it evolve with time?
- 🌀 Is it more than just the words you read?
- 🌀 How does one decide what these words mean?
- 🌀 Who gets to decide?

As you explore the chapters ahead you will see the Constitution in action - in Courts, with law enforcement and with lawmakers. Keep coming back to this chapter to check if the principles we talk about here find a place in the other chapters.



Chapter Glossary

Articles of the Constitution:

They are numbered sections that outline various aspects of the government, fundamental rights, and citizens' duties.

Schedules of the Constitution:

These are attachments to the Constitution containing details about various administrative and legislative matters.

Socialist:

A principle that the government should work to reduce economic inequality and ensure the well-being of all citizens.

Secular:

Another fundamental principle of the Constitution that states that India doesn't have an official state religion and promotes religious freedom and tolerance.

Fundamental Rights:

A set of basic rights and freedoms that are protected and guaranteed to every citizen such as the right to equality, freedom of speech, and right to life.

Executive:

The branch of government responsible for enforcing laws and running the country. It includes the President, the Prime Minister, and the Council of Ministers.

Legislature:

The body responsible for making and passing laws. In India, it comprises the two houses of Parliament - the Lok Sabha and the Rajya Sabha, and state legislatures.

Judiciary:

The branch responsible for interpreting and upholding the law. In India, the judiciary includes the Supreme Court, High Courts, and all other courts.

Other Chapters in the book

Chapter 1: Our Spaces, My Rights

Chapter 2: The Constitution and You

Chapter 3: Court of Law - Enforcing your Rights

Chapter 4: The long arm of the law - Police powers and law enforcement

Chapter 5: Electing and working with your representatives - Becoming an engaged citizen

[Access these and the full book here.](#)

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