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ABOUT US

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Constitutional Law In India

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Table of Contents

1. INTRODUCTION	
2. STATEMENT OF PROBLEM.....	
3. OBJECTIVES	
4. LITERATURE REVIEW	
4.1 Need for Constitutional Laws	
4.2 Purpose of the constitution.....	
4.3 Types of Constitution.....	
4.4 Key Points on Indian Constitution.....	
4.5 Forms of Constitution	
4.6 Constitutionalism	
4.7 Magna Carta.....	
5. SALIENT FEATURES OF INDIAN CONSTITUTION	
5.1 Modern Constitution	
5.2 Written Constitution.....	
5.3 Preamble.....	
5.4 Socialist State.....	

5.5 Welfare State.....

5.6 Secular State.....

5.7 Minorities

5.8 Fundamental Rights

5.9 Elections.....

5.10 Judiciary

5.11 Federal Constitution.....

5.12 Rule of Law.....

6. RESEARCH QUESTIONS.....

7. RESEARCH METHODOLOGY

8. SOURCES OF DATA.....

9. CHARTS

10. RESEARCH SURVEY REPORT.....

11. CASE STUDY: LANDMARK CONSTITUTIONAL CASES.....

11.1 Golaknath v. State Of Punjab (1967 AIR 1643, 1967 SCR (2) 762)

11.2 Kesavananda Bharati v. State of Kerala (1973) 4 SCC 225; AIR 1973 SC 1461

11.3 The Berubari Union, (AIR 1960 SC 845).....

12. UK CONSTITUTION

13. US CONSTITUTION.....

14. CONCLUSION

15. LIMITATIONS

16. BIBILOGRAPHY

CERTIFICATE OF ORIGINALITY

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INTRODUCTION

Constitutional Law refers to those Laws which regulates the relationship between various branches or organs of the government. These are the fundamental principles according to which a state is governed and it determines the functions and powers of the State

The Constitution of India has upheld the values of unity in diversity, sustaining diversified democracy rooted in Constitutional culture, Constitutional morality and Constitutional politics embedded in equality.

It has been defined by two famous Legal Scholars as:

- Salmond: Constitutional Laws as the name implies, is a body of those Legal rules which determine the Constitution of the State.
- Dicey: Constitutional Law includes all rules which directly or indirectly affects the distribution or exercise of sovereign power in the state.

We want to study it as:

- 1) A source of Law
- 2) The way it is applied by Courts
- 3) Legal rules & Conventions

The Constitution of India is a living organism and dynamic. It is not static law because static law is like a deadwood that makes the system rigid and inflexible. It is receptum of living thought without losing its original color, content and basic sacrosanct character. In order to save Constitution of India from being defaced and defiled, we need a set of honest men who control it and operated it having the interest of the country before them.

STATEMENT OF PROBLEM

Constitutional Law as a topic of study is very general and as vast as the sea. We want to specifically focus on the fundamental principles of the Indian Constitution and a comparative study with the British Constitution and the US. We want to understand why Constitution is a Living document and how does state derives its power from it. There is a wide ignorance among people about the Constitutional Provisions, we will try to answer this problem by a survey and raising awareness among people.

OBJECTIVES

- To give an introductory idea about Constitutional Laws in India
- Be fully equipped and gain knowledge about with this branch of Law
- To Critically analyse the background behind the Birth of our Constitution
- To study the scope of Constitutional law in India
- To deeply study the constitutional laws in India tracing from Government of India, 1935 to the provisions of the present Constitution
- To study the Limitations of this branch of Law in India
- To raise awareness among people about their rights and the statutes and provisions of the Constitution

LITERATURE REVIEW

- 1) Indian Constitutional Law, M.P. Jain (6 th Edition), Lexis Nexis
- 2) Introduction to the Constitution of India, Durga Das Basu (23 rd Edition), Lexis Nexis
- 3) Outlines of Indian Legal and Constitutional History, M.P. Singh (8 th Edition), Lexis Nexis
- 4) Constitution Law of India, H.M. Seervai (4 th Edition), Law & Justice Publishing Co.
- 5) Legal Method, Reasoning and Research methodology (2014) ,Professor Dr. K.L. Bhatia & Dr. S.C. Srivastava, Regal Publications.

1.1 Need for Constitutional Laws:

It becomes necessary for the state to establish certain organs or agents which acts on its behalf and through which state can function and operate. Thus, certain fundamental organs are necessary. This creates need for constitutional law.

The state can't govern itself on ad hoc basis or without a basic set of rules and principles.

1.2 Purpose of the constitution

The purpose of the constitution is to have a framework of government which is likely to endure through vicissitudes of the nation. It is a predictable body of rules and norms from which government can draw its powers and functions. It lays down certain goals and aspirations which country wishes to achieve in future. For instance, the directive principles of state policy in the Indian Constitution lays down the aspirations which our founding fathers of the constitution dreamt of or wanted to achieve.

1.3 Types of Constitution

Federal:

Federalism is a form of government in which two levels of authority share control over the same region. Larger territorial areas are typically governed more broadly by an overall national government, while smaller subdivisions, states, and Local concerns are governed by cities. The federal government as well as the smaller Political subdivisions both have some autonomy and the authority to enact laws from one another.

Unitary:

In a unitary constitution, the provinces are subservient to the central government, but in a federal constitution, the federal and state governments have different levels of authority. A unitary state is a sovereign state where all powers are vested in the central government, which is governed as a single body. Administrative divisions may be established (or eliminated) by the central authority (sub-national units). These organisations only use the authority that the federal government has granted them.

1.4 Key Points on Indian Constitution

- India is a Union of States, usually referred to as Bharat. It has a parliamentary form of government and is a Sovereign Socialist Secular Democratic Republic. The Indian Constitution, which was approved by the Constituent Assembly on November 26, 1949, and took effect on January 26, 1950, governs the Republic.
- The Constitution establishes a parliamentary form of government with some unitary characteristics and a federal framework. The President is the official head of the Union's Executive under the Constitution. According to Article 79 of the Indian Constitution, the President and the two Houses known as the Rajya Sabha and the House of the People make up the Council of the Parliament of the Union (Lok Sabha).
- A union of states, India is often referred to as Bharat. It is a Sovereign Socialist Secular Democratic Republic that is governed by a parliamentary form of government. The Indian Constitution, which was ratified on 26 November 1949 and took effect on 26 January 1950, is the legal framework within which the Republic of India is governed.

- According to the Constitution, a parliamentary form of government with some unitary characteristics and a federal organisational structure is permitted. The President is the President of the Union as defined by the Constitution. The President and two Houses—the Council of States (Rajya Sabha) and the House of the People—make up the Council of the Parliament of the Union, according to Article 79 of the Indian Constitution (Lok Sabha).

1.5 Forms of Constitution

- **Written Constitution:**

It refers to a constitution that is codified and in a structured manner. It is a sacred legal document. Most of the times it is rigid in nature. Here, constitution is supreme authority and fundamental law of the land. Judiciary has a lot of powers and independence. The constitution of United States of America is oldest written constitution in the world in 1787.

- **Unwritten Constitution:**

It is a constitution that is uncodified in nature and not in a structured form. It is there in form of statutes, treaties and convention. Here, Parliament enjoys more power and supremacy. It is mostly flexible or changed easily. Judiciary has less powers. The oldest form of unwritten constitution in the world is the Magna Carta in 1215. It eventually evolved into the unwritten constitution of the United Kingdom.

1.6 Constitutionalism

Constitutionalism is the doctrine or belief that a country's legal system or constitution determines the power of its government. Although limited government is commonly associated with constitutionalism, that association is merely one meaning of the term and is in no way the most prevalent one historically. Constitutionalism more broadly refers to efforts to stop arbitrary governance. Therefore, a constitutional government is one which is democratic government. The principles of Constitutionalism include clear Separation of Powers, Accountable Government, So

1.7 Magna Carta

The Magna Carta is the oldest & the first form of legal document or constitution in the world. Also, known as The great English charter. It was charter of civil liberties granted by King John in 1215. It stated that No free man may be taken, locked up, stripped of his property, made illegal, banished, or subjected to any other form of ruin unless it results from a legal decision made by his peers in accordance with the law of the state. No one will be sold to, and no one will have their

rights or justice delayed or denied to. It said sovereign power is subject to rule of law and put the principle in writing that the king and government are not above law. It had provisions of clauses of providing free church, reforming law & justice and controlling behaviour of royal officials.

SALIENT FEATURES OF INDIAN CONSTITUTION

1.8 Modern Constitution

- Indian Constitution is a very interesting and unique document. It was drafted in the mid 20th century. It took cognizance from various constitutional processes.
- The Originality of the Indian Constitution, it had impact of several constitutions but it still has a distinct identity and not mere a carbon copy.
- Our constitution adopted various principles from different constitutions around the world but it was adjusted to the needs of Indian Society. It is continuously evolving to meet the requirements of the modern era such as Data Privacy and protection laws.

1.9 Written Constitution

- The Indian Constitution is one of the lengthiest constitution in the world. It has 395 Articles, 12 Schedules and 22 Parts.
- It is one of the longest organic laws. The judiciary is independent and a clear separation of powers is there in the Indian Constitution.
- It provides scope for development and growth of conventions. It is also evolving continuously and is relatively flexible in nature. The constitution is supreme and fundamental law of the land.

1.10 Preamble

- Our Constitution's spirit is the Preamble, which acts as the backbone of our constitution. It helps to unlock legislative intent behind drafting of the laws. It clarifies the source of Law and acts as the ultimate sanction.
- It lays down the aims and objectives that the legislative body or the constituent assembly wanted to achieve. It portrays most of our intended laws were socio-economic in nature.
- It also gives a concrete shape to the aspirations of the people. It defines India to be a sovereign, secular, socialist, democratic republic. It promotes Justice-social, economic, political; Equality-

status and opportunity and Freedom of thought, belief, expression, worship.

- Originally it was not a part of the constitution but it was corrected by the landmark Kesavananda Bharati case by which now preamble does forms a integral part of the constitution.
- The Objectives resolution passed by Jawaharlal Nehru in the constituent assembly gave birth to the preamble and acted as some of the guiding principles that helped our visionary leaders in drafting of the constitution.

1.11 Socialist State

- The word socialist was added to the preamble of the constitution by the 42nd amendment in 1976.
- It portrays India's commitment to the idea of socialism i.e. protection of the poor and weaker sections of the society and equitable distribution of resources.
- Most of our leaders or constitution makers wanted India to have a pro-socialist approach. India gave subsidies and had tariffs till Liberalisation in 1991.
- The Supreme Court defines Socialism as establishment of an Egalitarian social order through rule of law is basic structure of the Constitution.

1.12 Welfare State

- It refers to a state which renders social welfare to people and promotes their general welfare.
- It has been reflected in the Directive Principles of State Policy. It provides a modern outlook for well-being of overall society as a function of the state.
- Goal of economic democracy along with political democracy for the poor developing countries such as India.

1.13 Secular State

- This was added to the Constitution by the 42nd amendment in 1976 and was made explicit to the constitution.
- There is no official religion in India and no religion is promoted by the state. The right to freedom of worship & religion.
- State doesn't favour or identifies with any particular religion. Multifarious religious groups exist in the country.

- Supreme Court declares secularism as a basic feature of the constitution. It is a part of fundamental law.

1.14 Minorities

- It is a liberal scheme of safeguard to minorities, backward classes, scheduled caste and scheduled tribes in the Indian constitution. It gives a scheme of reservations for protection of minorities.
- Reservations have been implemented to ensure equity and safeguard the interests of the minorities and backward classes. It promotes equal chance of choice and opportunities.
- Constitution also sets up an effective machinery to oversee these safeguards are effectuated or implemented properly across the country.

1.15 Fundamental Rights

- The fundamental rights are conceived in liberal spirit which seeks a reasonable balance between individual freedom and social control.
- It promotes the rule of law and acts as an edifice of the constitution culture, constitution values, constitution morality and constitution politics.
- There are six fundamental rights: right to Equal Opportunity (Article 14-18) the freedom to (Article 19-22) firmly opposed to exploitation (Article 23-24) Right to Religious Freedom (Article 25-28).
- There is effective machinery of constitutional remedies if any of these fundamental rights are been curtailed or violated by the state in Article 32 & 226 of the constitution.

1.16 Elections

- The constitution has adopted universal adult franchise of framework of election in India. i.e. anybody above 18 years can participate in elections of the country.
- Right to Vote is a fundamental right in India. In order to conduct free and fair elections the Election Commission has been set up.
- The Election commission is an autonomous body. It is free and independent in nature. It is also impartial.

1.17 Judiciary

- A dignified and crucial position has been given to the judiciary in the constitution. India has a unified system of courts and federal in nature.
- The apex court in the country is the Supreme Court of India and there are high courts in the country.
- Indian judiciary has three features- active judiciary, judicial creativity of highest order and safeguard judicial interdependence. Judicial review is a basic feature of the constitution.

1.18 Federal Constitution

- India has a federal constitution. It has dual polity but single citizenship unlike the US where both national & state citizenship is there. It has been inspired by contemporary federations.
- Union in place of federations as governance was selected by the drafting committee. There is a good deal of centralisation, single imperium & the country is one integral whole. Cooperative federalism can be seen between the centre and the state.
- The constitution is single frame that is equally applicable to the state as well as the centre. A strong union government has been promoted and inter-governmental cooperation between the state and the central government.
- A strong union government has been promoted and inter-governmental cooperation between the state and the central government. Federalism is declared as basic structure of the constitution.

1.19 Rule of Law

It constitutes Dicey's three pillars of concept of rule of law:

1. Supremacy of Law
2. Equality before Law
3. Predominance of Legal spirit

RESEARCH QUESTIONS

- 1) What is a statute?
- 2) What is the scope of Constitutional Laws in India?
- 3) What gives birth to a Constitution?
- 4) What is the need for a Constitution?
- 5) What are the limits to the powers of the Government?
- 6) What is the Fundamental Law of the Land?
- 7) How can we say that the Indian Constitution is a Modern Constitution?

RESEARCH METHODOLOGY

Survey on Legal awareness among people across various age groups and occupations mainly fellow Students, Professionals, House wives, Unskilled workers about the Constitutional Provisions and their Rights & Duties as implied by the Constitution of India.

NATURE

Both Primary & Secondary data has been relied upon to conduct this research work

SOURCES OF DATA

- a) Primary Data: Surveys, Questionnaire
- b) Secondary Data: Books, Articles and Newspaper review, Government Reports and Websites

SAMPLING METHOD

Snowball method has been used and the sample size of 35 people has been reached out to collect information and successfully conduct the survey.

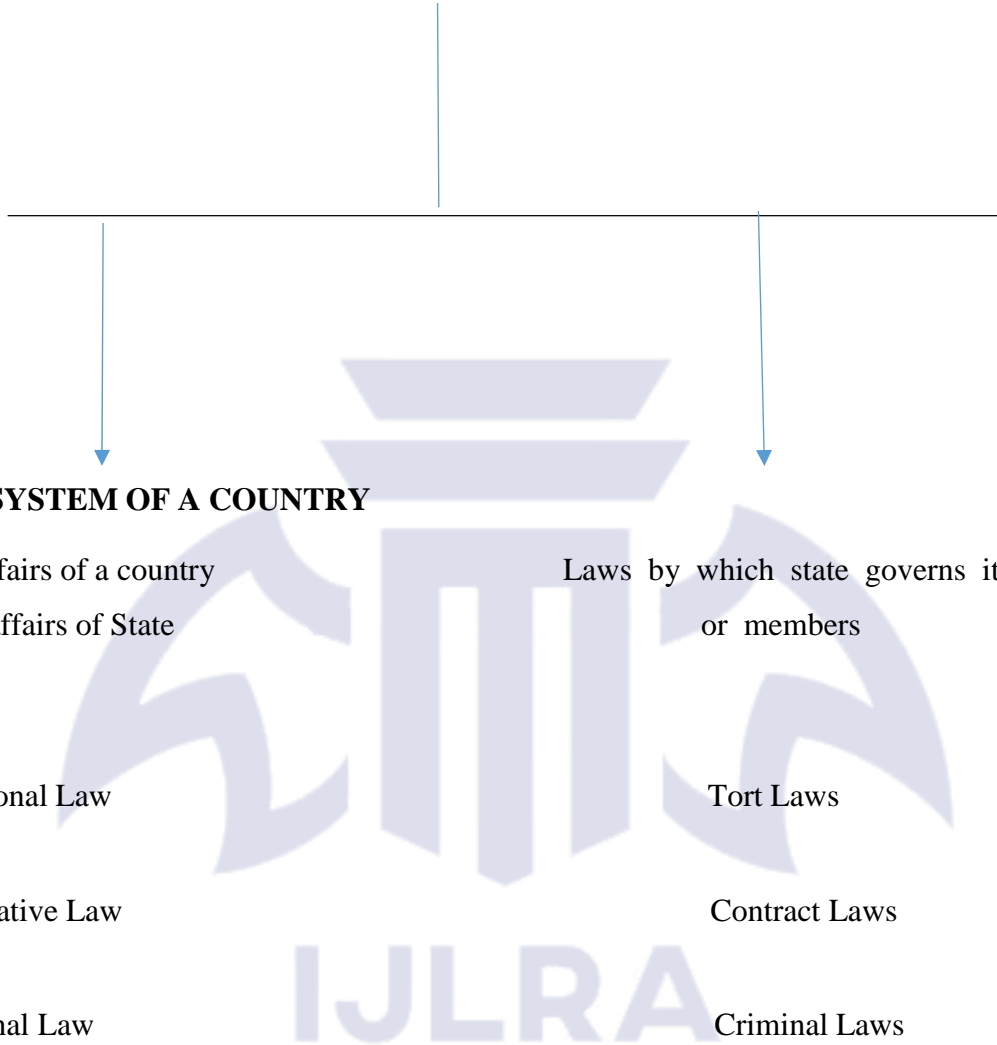
ADMINISTRATION

The Survey in Google Forms has been administered through E-mail

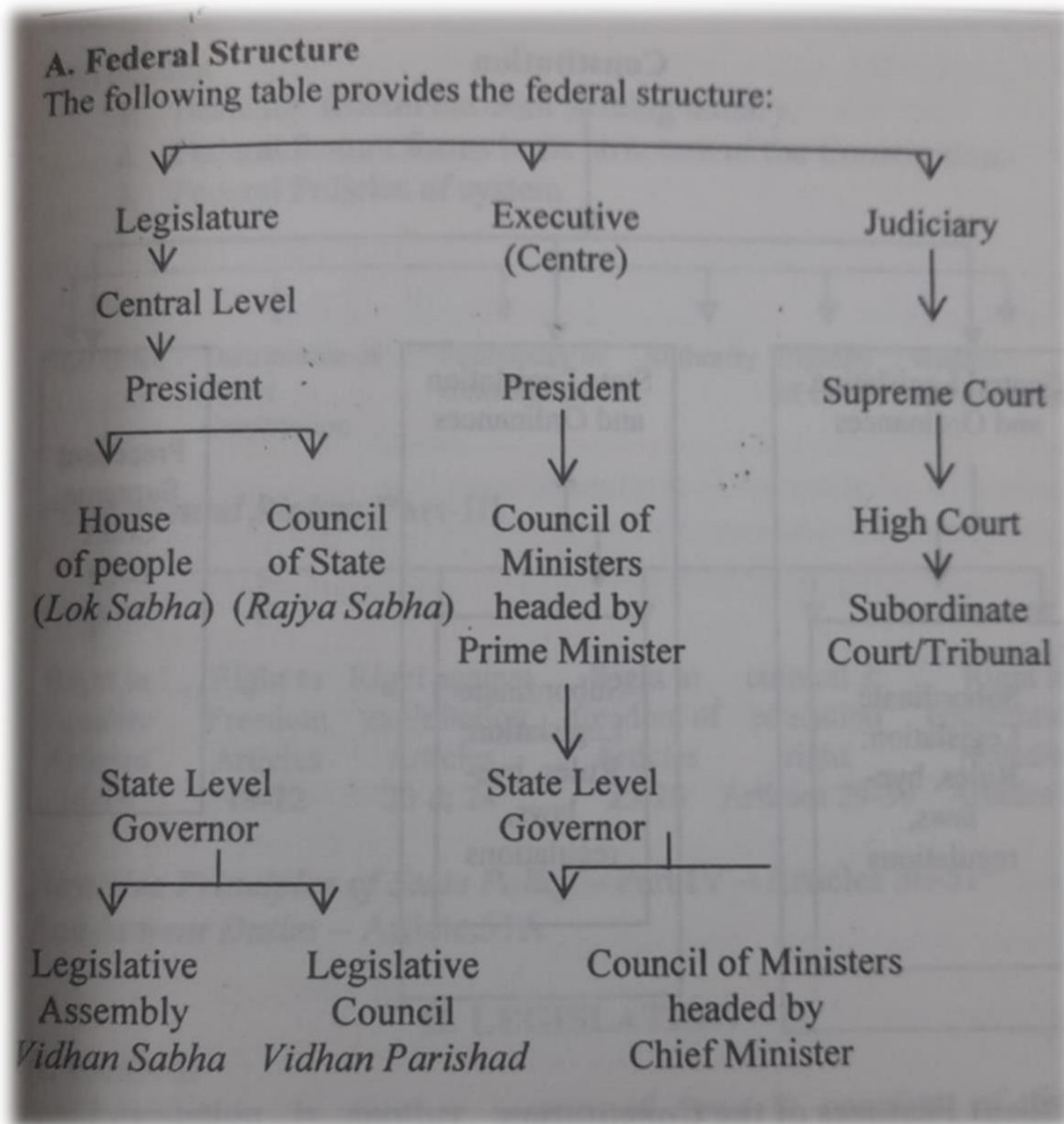
STATISTICAL METHODS

Data collected & responses from survey has been studied portrayed through Pie Chart.

CHARTS



Flow chart on Federal structure

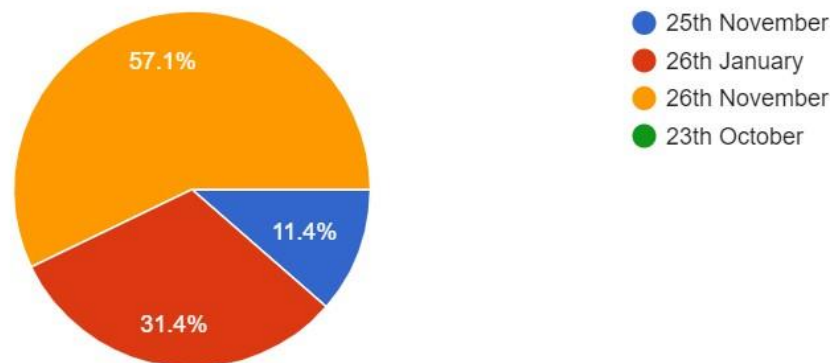


RESEARCH SURVEY REPORT

Questionnaire: Constitutional Law in India

When is the Constitution Day celebrated in India?

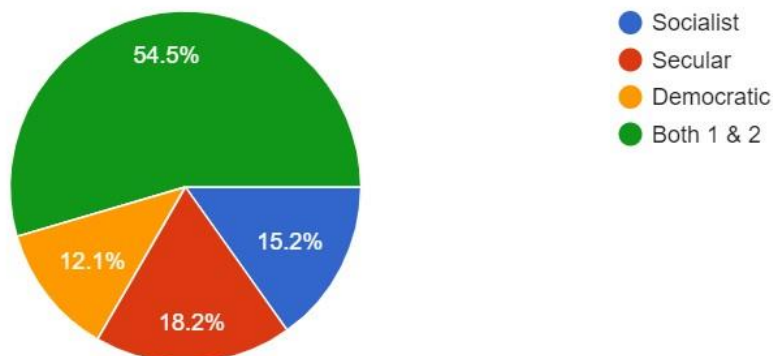
35 responses



57.1% of the respondents have correctly identified the actual date

Which word was included in the Indian Constitution by the 42nd amendment?

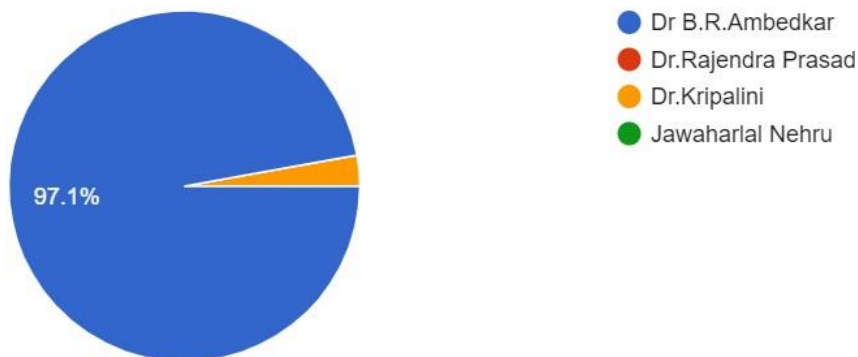
33 responses



54.5% have correctly chosen identified the right option

Who is the Father of Indian Constitution?

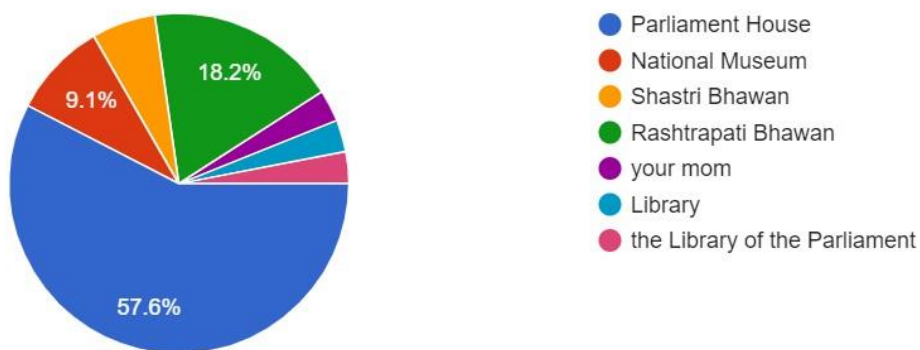
35 responses



97.1% have basic knowledge about who is the father of our constitution

Where is the original 1950 Indian Constitution preserved in India?

33 responses

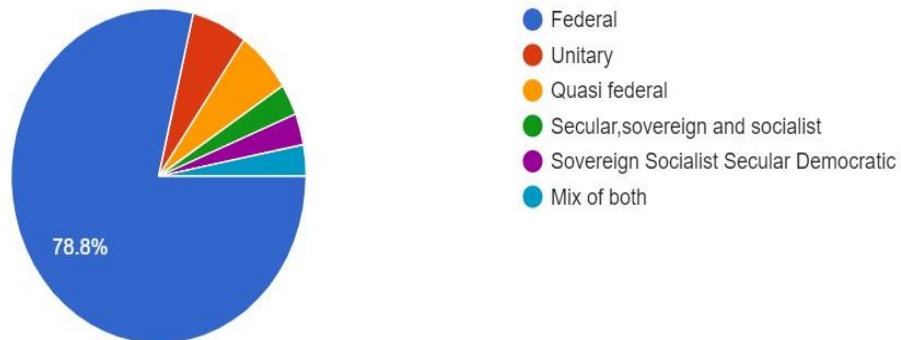


There are varying responses on this question but 57.6% people rightly identified the correct option

Which type of constitution is the Indian Constitution?



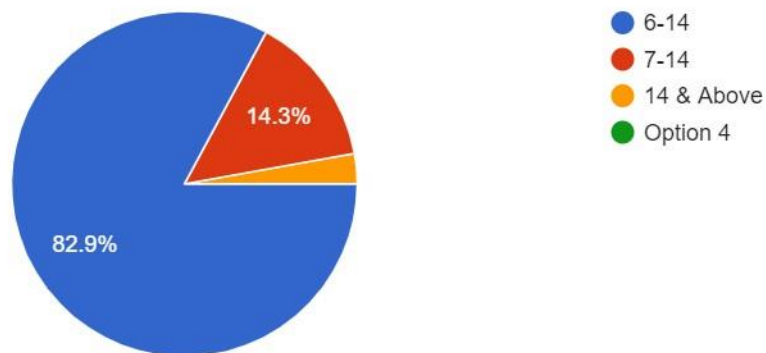
33 responses



There are varying responses on this question but 78.8% people have knowledge about the nature of our constitution

Which of the following age groups has the Right to education?

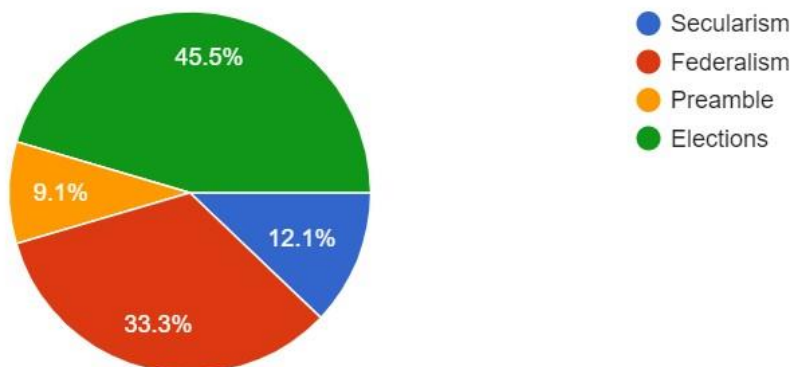
35 responses



82.9% people know about the features of Right to education

Which of the following is not a basic feature of the Indian Constitution?

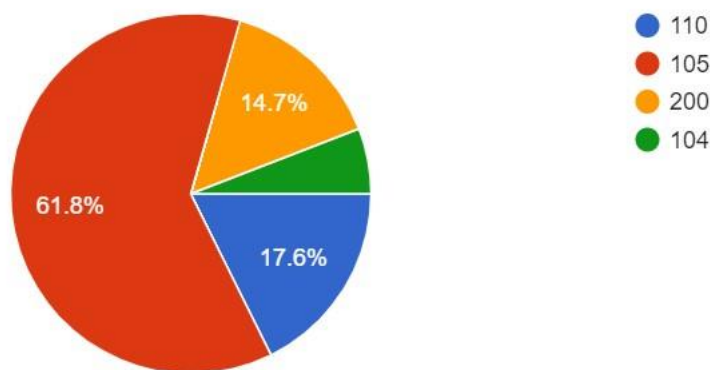
33 responses



Only 45.5 % have been able to identify the correct answer

How many amendments have been there to the Indian Constitution so far?

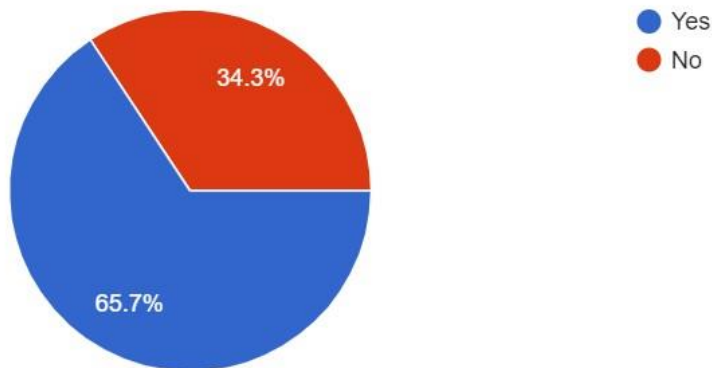
34 responses



61.8% people have idea about what amendments are about and how many have been there so far in India

Does Indian Constitution includes the principle of Seperation of Power?

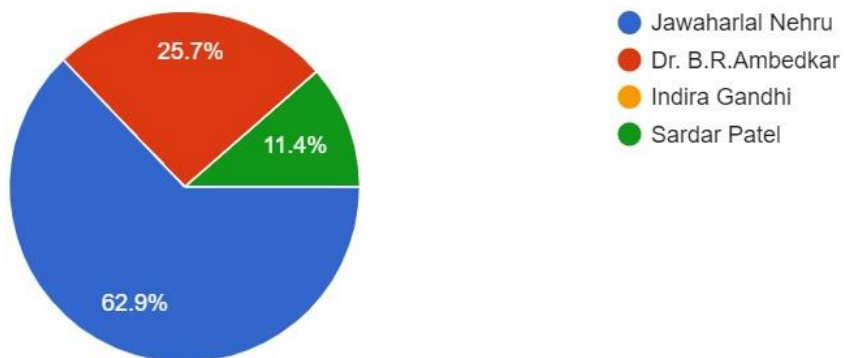
35 responses



65.7% have correctly answered

Who presented the Objectives Resolution in the Constituent Assembly?

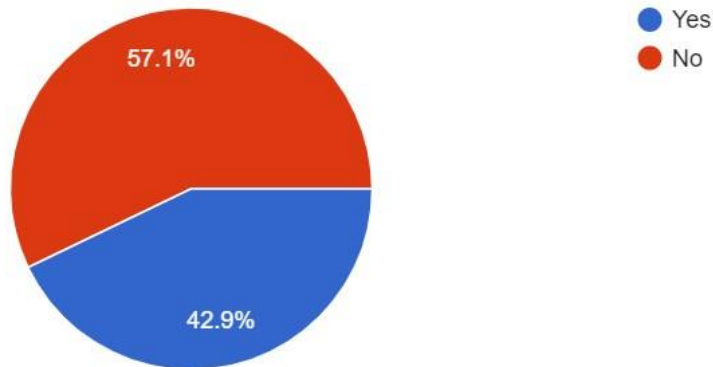
35 responses



62.9% have correctly identified the person behind the objectives resolution

Are the Directive Principles of State Policy legally enforceable in India?

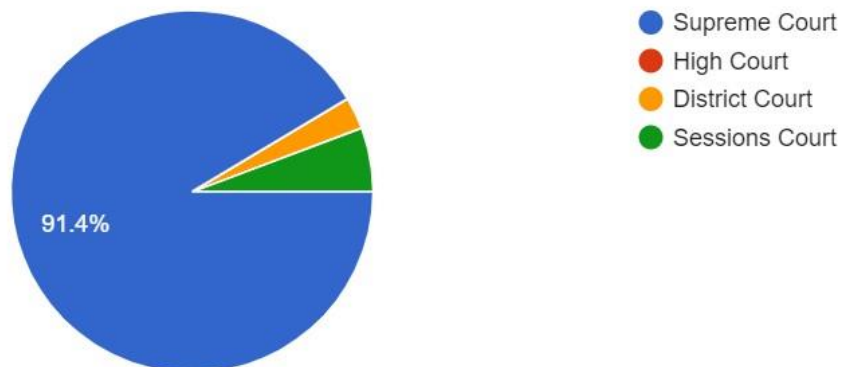
35 responses



57.1% have idea about the Directive principles

Which is the apex court in India?

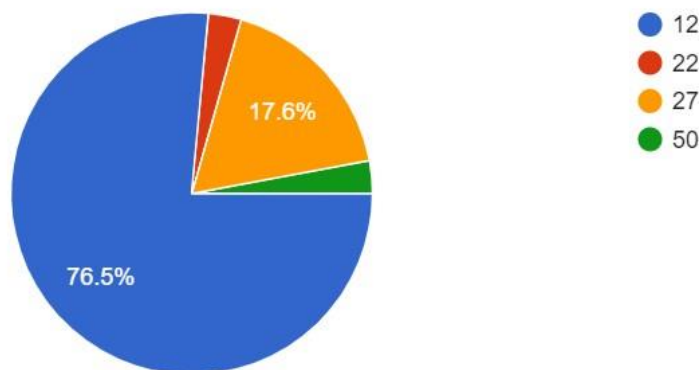
35 responses



91.4% have knowledge about the apex and the highest court in our country

How many schedules are there in the Indian Constitution?

34 responses



76.5% know about number schedules in our constitution

CASE STUDY: LANDMARK CONSTITUTIONAL CASES

1.20 Golaknath v. State Of Punjab (1967 AIR 1643, 1967 SCR (2) 762)

In 1967, the Supreme Court ruled in the Golaknath case that Parliament could not restrict any of the Fundamental Rights guaranteed by the Constitution.

Two brothers named Henry and William Golaknath owned around "500 acres of farmland" in Jalandhar, Punjab. The Golaknath brothers were informed that they could only own 30 acres of property under the recently passed Punjab security and land tenure legislation, and that some of the remaining land would be distributed to tenants and acquired by the government as excess.

The Golaknath family opposes the actions of the local government, and in 1965, the case reached the Supreme Court. The supreme court had the largest bench in history at the time of this case. The petitioners won the verdict by a 6:5 margin, indicating a majority vote in their favor. The majority of those who supported this choice believed that the government should be denied any rights or authority that would make it possible for them to change the Constitution.

The majority of those who spoke agreed that the Constitution's fundamental rights are a very important and vital component. Without them, the Constitution would be like a "body without a soul." It is believed that a person's individuality can only grow with the protection of their fundamental rights. These are the rights that give a man the freedom to choose how he wants to live his life.

The fundamental rights that we are guaranteed by our constitution include the rights of minorities and other groups that are disadvantaged. The Constitution of India states that Parliament and state legislatures have the authority to make laws in their respective areas. However, this authority is not absolute in nature. The judiciary is in charge of upholding the Constitution and determining whether all laws comply with the Constitution.

The majority's decision to protect Indian democracy from the oppressive actions of the parliament was commendable. With this decision, the parliament's dictatorship came to an end. The majority of the court was concerned that the decision might weaken the constitution. This ruling stopped the legislature from violating citizens' fundamental rights by limiting the legislature's authority. Preserving fundamental human rights that no government can take away was the primary focus of the trial. The Golaknath case upheld the "rule of law" by demonstrating that parliamentarians are too subject to the law.

1.21 Kesavananda Bharati v. State of Kerala (1973) 4 SCC 225; AIR 1973 SC 1461

Kesavananda Bharati was leader of a religious cult in Kerala. Some lands were purchased in the sect's name. According to the Kerala Land Reforms Act of 1963, which was later revised by the Kerala Land Reforms (Amendment) Act of 1969, the state government was required to acquire some of these lands in order to fulfil its socio-economic duties. In order to enforce his rights under Articles 25 (the right to practise and propagate religion), 26 (the right to manage religious affairs), 14 (the right to equality), 19(1)(f) (the freedom to acquire property), and 31, the petitioner filed a petition with the Apex Court under Rule 32 on March 21st, 1970. (Compulsory Acquisition of Property). While the Court was considering the petition, the Kerala State Government passed the Kerala Land Reforms (Amendment) Act, 1971. The Golaknath ruling established the parliament in order to clarify their stance that they are not

bound to adequately compensate the landowners amended Article 31(2) in case there property is acquired by the state. The word “amount” was placed instead of compensation in the provision.

The petitioner in the precedent-setting case, among other things, argued that the Parliament's ability to modify the Constitution is constrained and limited. Justice Mudholkar's Basic Structure theory, which was advanced in *Sajjan Singh*, served as the foundation for this argument of restricted competence with the Parliament. The respondent, or the State, argued the same points it has been making since *Shankari Prasad*, namely that parliament has unrestricted, total power to modify the Constitution. This state argument was founded on the fundamental tenet of the Indian legal system, the supremacy of parliament. The state also argued that it is very important that there be no conflict between the two countries in order to fulfil its socio-economic commitments provided to the citizens by the union in the Preamble.

By a vote of 7:6, the court ruled that Parliament may change any and all provisions of the constitution, provided that the change does not alter the constitution's fundamental principles. The court's deduction for the answer was the DOCTRINE OF BASIC STRUCTURE. According to this idea, Parliament may update the Constitution as a whole, but only under the condition that they do not alter any of the elements that make up the Constitution since doing so would render it meaningless.

The *Kesavananda Bharati Case* exhibits exceptionally high levels of judicial ingenuity. The majority bench's determination to defend the Constitution's core principles was founded on reasonable and defensible logic. Consequently, this admirable decision had restored the public's trust in the judiciary.

1.22 **The Berubari Union, (AIR 1960 SC 845)**

The states of Punjab and Bengal were to be divided in the *Re Berubari Case*. For the purpose of dividing up the state of Bihar, Sir Cyril Redcliffe was appointed chairman of a commission. The Redcliffe line is the name given to a boundary that was established between India and Pakistan.

Following this, there were disagreements between India and Pakistan regarding the precise location of the division. The district of Jalpaiguri was divided between India and Pakistan by

Sir Radcliffe, who gave India some thanas and Pakistan the rest. He missed one than during the procedure, namely; Union Berubari No. 12, and on August 12th, 1947, India received it. Pakistan was free to claim the territory as its own due to the commission's omission and inaccurate depiction on the map. In 1952, the Pakistani government challenged the Berubari Union for the first time.

The regions under the Berubari association stayed under the domain of India till such time was a piece of West Bengal. In 1958, an agreement was reached to settle the dispute, with India receiving half of the Berubari Union and India keeping the other half.

In addition, the court ruled that, despite the fact that the preamble serves as a key to the minds of the constitution's authors and explicitly refers to India's sovereignty, it cannot prevent legislation from carrying out its duties or be used to decide ambiguous provisions. It does not come from any of the various powers that the Constitution gives the parliament; These powers include those that are explicitly granted in the Constitution's body and those that may be implied from those granted; The prohibitions and limitations are just as valid as the powers.

UK CONSTITUTION

The constitution of the UK is not "written" or "codified." It is true that the majority of nations have a document with unique legal standing that embodies some of their fundamental principles. Courts often uphold this wording, and only a particularly difficult process may modify it. However, there isn't a single such constitutional text in the UK. It does, however, have a constitution. The constitution of the UK is divided up into many parts. It could be more difficult to recognize and comprehend due to its dispersion. It can be found in a number of places, such as certain specific Acts of Parliament, specific understandings of how the system should function (known as constitutional conventions), and numerous court judgments that affect how the system works.

In the UK, the legal system is referred to as "common law," which means that judges proclaim that the law is drawn from custom and precedent. Although it is the job of the courts to interpret the laws, not to create them, in actuality judges can create the law by defining what it is. Thus, they have created key elements of the UK constitution, such as individual rights and the notion that public bodies are bound by restrictions and do not have unlimited power. The constitution under the UK system, as we have seen, is dispersed

throughout a variety of papers and sources, which can make it particularly challenging to understand. Due to this, the analyses of specialists trying to understand the system might become very significant and powerful.

US CONSTITUTION

The United States of America Constitution is a key piece of Western literature and the cornerstone of the country's federal form of government. The Constitution describes the main governing bodies, their spheres of authority, and fundamental rights of people. It is the oldest written national constitution still in operation. Problems with the Articles of Confederation, which gave the majority of authority to a Congress of the Confederation and formed a "solid league of friendship" between the States, led to the necessity for the Constitution. The central authority regulated weights and measures, declared war, conducted diplomacy, and was the last judge of interstate conflicts, therefore this power was incredibly constrained. Importantly, it was wholly reliant on the States for funding because it was unable to raise any on its own

Invitations to a conference in Philadelphia to debate reforming the Articles were extended to the State legislatures in 1787 as part of an effort to amend them. Delegates from 12 of the 13 States (Rhode Island did not send any representatives) met in Philadelphia in May of that year to start the process of restructuring government. The participants to the Constitutional Convention immediately got to work creating a new United States Constitution. The Constitution's creators placed a high priority on protecting people's freedoms and restricting the scope of the federal authority. The stated guarantees of individual liberty, the theory of the separation of powers between the legislative, executive, and judicial branches, and the checks and balances between each branch were all intended to.

CONCLUSION

We have conducted a thorough study on various aspects of Constitutional Law in India based on the doctrinal and empirical research. This research is on basis of both primary data i.e. Survey through Questionnaire on constitutional awareness in India among various sections of India and secondary data (case studies, articles and statutes). It can be concluded that at last after considering the landmark constitutional cases that upheld the spirit of our constitution it has been reflected in our Survey Report that there is quite ignorance about the

constitutional laws and provisions. This research therefore wanted to point out flaws and bring awareness among people and informing them about the spirit of our constitution. We hope that this Research project would successfully serve the intended purpose. It is very much important to raise awareness and knowledge among people about our constitution. The Government is too trying to work towards this goal by simplifying and making laws easily accessible and understood by the common people. The laws and judgements are being translated into vernacular languages scheduled in our constitution. The Ministry of Law & Justice and Legislative department has now recently translated the Indian Constitution into the 21 regional languages (Assamese, Bengali, Bodo, Dogri, Gujarati, Kannada, Kashmiri, Konkani, Maithili, Malayalam, Manipuri, Marathi, Nepali, Odia, Punjabi, Sanskrit, Santhal, Sindhi, Tamil, Telugu, Urdu). We are working towards this goal when India is celebrating the diamond jubilee of its independence.

LIMITATIONS

The foremost limitation is the lack of knowledge among common masses or citizens about statutes and Legal Principles. It is also important to check the validity of sources of data relied upon to complete this research. More concerning is the wrong interpretation of Laws. I have deeply scrutinized all the data before incorporating it in my final research work & tried my best to overcome this limitations and make the project report highly reliable.

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