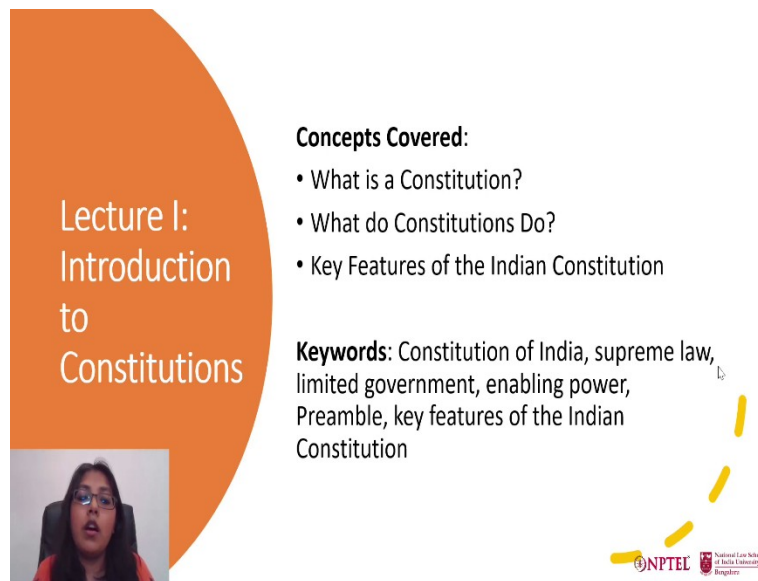


Constitutional Studies
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Lecture 01

Week I: Introduction to Constitutional Law

Hello. And welcome to your course on Constitutional Law. This is week 1. And we will be focusing this week on introducing you to 2 key concepts and key issues in the study of Constitutional Law.

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**Lecture I:
Introduction
to
Constitutions**

Concepts Covered:

- What is a Constitution?
- What do Constitutions Do?
- Key Features of the Indian Constitution

Keywords: Constitution of India, supreme law, limited government, enabling power, Preamble, key features of the Indian Constitution

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The concepts that we will look at are, what is a Constitution? What is it that constitutions do? And what are the key features of the Indian Constitution? Now, we all are familiar with the Constitution itself. We have some passing familiarity, either from our civics courses in school, or if we have had any exposure to political science or other social sciences, we have some familiarity with the Constitution.

But sometimes it is very easy to forget the extent to which the Constitution regulates our daily lives. If you were to pick up a newspaper on any given day, the front page is plastered with issues that either relate to or are directly governed by the Constitution. Take for example, the issues that are making the headlines today.

One issue on the front pages of every newspaper today is about the Delhi Riots case, and how certain academics and political activists have been implicated in that case. Or another issue that has the media in a frenzy is the Sushant Singh Rajput death and the investigation surrounding it, where Rhea Chakraborty and others have been arrested and other investigations are ongoing.

Now, both these cases deal with Criminal Law and all of criminal law is governed by the Constitution, because criminal law seeks to regulate our liberties. What we can do? What we cannot do? What is allowed? What is prohibited? How can the State enforce that prohibition? When can the State deprive us of our liberty in the enforcement of these prohibitions? These are key concerns of the Constitution and all of criminal law and criminal process is therefore governed by principles of the Constitution. Or take, for example, if you are talking about the Delhi riots, the Delhi riots were in the background of the anti-CAA protests.

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And we saw late last year and earlier this year - that the protests against the Citizenship Amendment Act were in the name of the Constitution - the idea that the CAA was violating the Constitution. Both in terms of its text and the core principles of the Constitution, and that it was, a denial and a betrayal of what the Constitution stands for. And so that is something that the Constitution does. The Constitution provides a site for protesting against the Government of the day, whatever Government it is.

We have seen protests against previous Governments. We have seen protests against the actions of this Government. But when we protest against the actions of the State, we often protest in the name of the Constitution, because the Constitution governs every action of the State. The Constitution is the supreme law of the polity, and every action that the State takes and every law that the State passes, has to comply with the Constitution. If it does not, then it is invalid. So, when we want to protest against the actions of the State, or against a particular law, we often do so in the name of the Constitution. This right to protest, this right to voice our opinion against the actions of the State is also protected by the Constitution.

So, the Constitution guarantees us liberty of thought, expression, belief, faith and worship, the right to free speech and expression and the right to assemble peaceably. And these are ways in which we organize ourselves when we want to protest against the State. So, then what is it that the Constitution is doing?

The Constitution is the supreme law of the land, and every other action, every other State action, every other law has to be in compliance with the Constitution. And very importantly, the Constitution, places a limit on what the State can do. That is why we invoke the Constitution, when we want to protest against the actions of the State. We say that the State cannot do something because the Constitution prohibits the State from doing it.

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Let us take another example. There has been a lot of debate recently about the upcoming Parliamentary Session. One level of debate is about whether Parliament should be convening at all, given the current pandemic. And of course, there are other debates about the cancellation of the Question Hour and the cancellation of Zero Hour.

The Constitution has something to say on when parliamentary sessions have to be held. In Article 85, The Constitution says, the President shall from time to time summon each house of Parliament to meet at such time and such place as he thinks fit, but 6 months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.

So, you cannot have more than 6 months between 2 sessions of Parliament, i.e. between the ending of the prior session of Parliament and the start of the next session of Parliament. There

are no exceptions to this. That means, that regardless of what the Government of the day wants, the regardless of the wishes of the President or any other official, Parliament has to meet, Parliament has to convene within 6 months. And that gets over in the coming week. That is why Parliament will convene in this time. And this is the nature of Constitution.

This tells us something about what Constitutions do. Constitutions place limits on what the State can or cannot do. When the Constitution says, you have to do something, the State has to do it. When the Constitution says, you cannot do something, the State cannot do it. So, the Constitution is supreme law of the land. All other laws have to be in compliance with the Constitution, all other State actions have to be in compliance with the Constitution, and the Constitution places limits on what the State can or cannot do, those limits have to be complied with.

How do we enforce those limits? The Constitution also creates institutions and structures to distribute power of the State and to provide checks and balances. So, for example, the Constitution creates the Architecture of State, where there is an Executive, there is a Legislature and there's the Judiciary.

The actions of the of the Executive are checked and balanced by the Legislature and the Judiciary. The actions of Parliament are checked by the Judiciary. So, there is a system of checks and balances, a system of distribution and separation of powers and of checks and balances, and this is again something that the Constitution does. It organizes, it creates the institutions of the State and it distributes powers within the State.

Keep these concepts in mind. The idea that the Constitution is supreme law of the land, and the idea that the Constitution places limits on what the State can or cannot do. These are themes that will come up repeatedly in the course of this week, as well as our future lectures.

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Now, let me take you briefly through the thinking process behind the framing of India's Constitution. I am sure we all know that the Constitution came into force on the 26th of January 1950, it is the day that we celebrate as Republic Day for that reason. The framing of the Constitution actually predates independence.

The Constituent Assembly started the task of framing India's Constitution in 1946. And in 1947, when India gained independence, the Constituent Assembly took over as the provisional Parliament as well. So, the Constituent Assembly started functioning both as the Constituent Assembly, as well as the provisional Parliament.

It took nearly 3 years, a little bit shy of 3 years to frame the Constitution. And this 3-year period was marked by intense public deliberation, both within the Constituent Assembly and outside, on what the nature of this document should be like, this charter for the future governance of the country, what should it be like, what should it contain, what should it not contain.

This is an incredibly rich source of modern and political philosophical deliberation about the nature of nature of the Indian experiment. And if you are interested on anything touching upon the Constitution, do look up as your first point of entry, do look up the Constituent Assembly debates on that particular issue, to see what was the thinking behind the design of the Constitution in the way it was designed.

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So, what was the key idea and understanding behind this Constitution? That is contained actually in the very first words of the Constitution, the Preamble of the Constitution. The Preamble itself draws from one of the first things that the Constituent Assembly got down to doing, which was to draw up the Objectives Resolution for the Constituent Assembly. The Objectives Resolution defined the aims behind the framing of the Constitution and provided a blueprint for the design of this Constitution.

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Objectives Resolution

- "(1) This Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and to draw up for her future governance a Constitution;*
- (2) WHEREIN the territories that now comprise British India, the territories that now form the Indian States, and such other parts of India as are outside British India and the States as well as such other territories as are willing to be constituted into the Independent Sovereign India, shall be a Union of them all; and*
- (3) WHEREIN the said territories, whether with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter according to the Law of the Constitution, shall possess and retain the status of autonomous Units, together with residuary powers, and exercise all powers and functions of government and administration, save and except such powers and functions as are vested in or assigned to the Union, or as are inherent or implied in the Union or resulting therefrom; and*
- (4) WHEREIN all power and authority of the Sovereign Independent India, its constituent parts and organs of government, are derived from the people; and*
- (5) WHEREIN shall be guaranteed and secured to all the people of India justice, social, economic and political; equality of status, of opportunity, and before the law; freedom of thought, expression, belief, faith worship, vocation, association and action, subject to law and public morality; and*
- (6) WHEREIN adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes; and*
- (7) WHEREBY shall be maintained the integrity of the territory of the Republic and its sovereign rights on land, sea, and air according to Justice and the law of civilised nations, and*
- (8) this ancient land attains its rightful and honoured place in the world and make its full and willing contribution to the promotion of world peace and the welfare of mankind."*

So, the Objectives Resolution set 8 points in the Objectives Resolution. I am just going to briefly highlight a few. The Objectives Resolution proclaimed India as an Independent Sovereign Republic, the objective of the Constituent Assembly was to draw up for future

governance – a Constitution. This is very important. Proclaiming India as a Sovereign Republic was important to break the tie from the colonial past. The Constituent Assembly drew its powers from a Sovereign Republic as opposed to – from the British Parliament. This was an act of breakage from the colonial past. And to buttress that, the Objectives Resolution said that all power and authority of Sovereign Independent India, its constituent parts and organs of government are derived from the people.

What does that mean? Derived from the people means that all power in the Indian polity resides in the people, it does not reside in a monarch, so India is not a monarchy, it does not reside in a group of people, India is not an oligarchy, it is derived from the people, India is being constituted into a democracy. And wherein shall be guaranteed and secured to all people of India, justice - social, economic and political; equality of status of opportunity and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality.

These are the guarantees that structure how the Constitution has been framed. And when adequate safeguards are provided for minorities, backwards and tribal areas, and depressed and other Backward Classes. These are some of the key ideas animating the design of the Indian Constitution. This is the framework; this is the skeletal structure and the Constituent Assembly spent 3 years filling in that skeletal structure and putting flesh on these bones.

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The Objectives Resolution then goes on to shape the Preamble of the Indian Constitution, which says, We The People Of India, i.e. we the people of India who are giving ourselves this

Constitution. So, we are the repository of the sovereign power of the State, all power in the Indian Constitution is derived from the people, it does not derive from the British Parliament, it does not derive from the Constituent Assembly, it does not derive from God, it does not derive from any other source, it is derived from the people of India.

We The People Of India, having solemnly resolved to constitute India into a Sovereign Democratic Republic and to secure to all its citizens: Justice - social, economic and political; Liberty of thought, expression, belief, faith and worship, equality of status and of opportunity; and to promote amongst them all Fraternity, assuring the dignity of the individual and the unity of the nation; In Our Constituent Assembly this 26th day of November, 1949, do Hereby Adopt, Enact And Give To Ourselves This Constitution. So, we, the people of India are giving to ourselves, this Constitution.

Now, if you are familiar with the text of the Constitution, you might notice that there are some key words that are missing in this particular framing of the Preamble. So, the current Preamble reads: “We the People of India, having solemnly resolved to constitute India into a Sovereign Socialist Secular Democratic Republic.” The words “socialist” and “secular” were added by the 42nd amendment in 1976.

Now, these were amendments made during the emergency. And there has been some recent controversy on whether the fact that the original Constitution did not contain the word secular, means that the Indian Constitution is not secular. In fact, there was discussion on this in the Constituent Assembly. It was very much the opposite. There was some discussion on including the word secular in the Preamble.

And the reason why that was rejected was because the Constitution was so self-evidently secular, that there was no need to put the word in, right at the beginning. The other phrase that is missing from here again, is a later addition, is “fraternity assuring the dignity of the individual. And the unity and integrity of the nation” is something that comes in later.

Now liberty, equality, fraternity, of course, derive their inspiration from the French Revolution, the 3 core ideas of liberalism that comes from the French Revolution. But the framers of the Constitution added as the first ideal of this Constitution - justice, social, economic and political. And why is that?

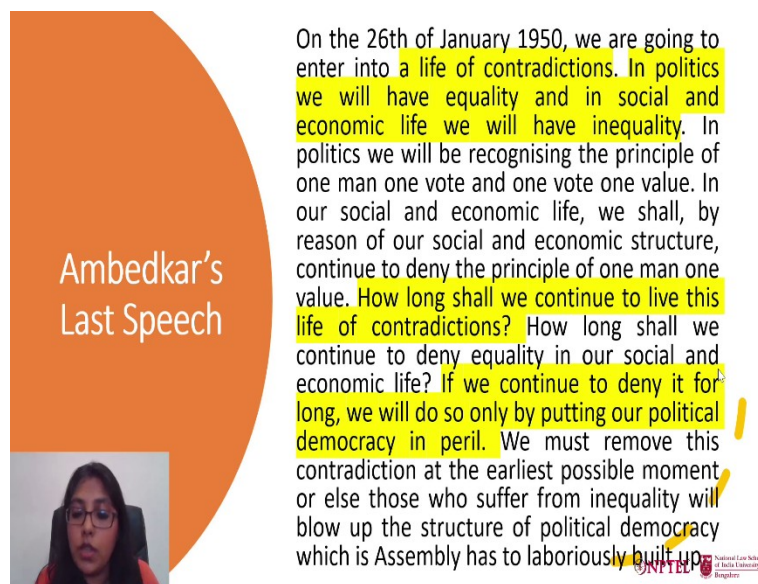
If you remember from your history, lessons, the freedom struggle was not only aimed at ending British rule. It was not just an anti-colonial struggle. It was also a struggle for social

justice. It was a struggle to remove social inequities and inequalities in Indian society. And the Constitution framers thought that the Indian Constitution should speak to and should address social injustice, questions of social justice and social injustice in Indian society as well. And that is very-very interesting because this is not something that Constitutions till that time were supposed to be doing.

Constitutions were supposed to create the charter for the State and to create the framework for organizing the State, not a framework for organizing society, or not a framework, not providing a vision for what society should look like or for transforming society. The Indian Constitution made a break in that sense from the Constitutions that had gone before, in saying that this Constitution should speak not only to the organization of state, but also to the, to have a vision for the organization of society and the organization of the economy, in order to provide for social, economic and political justice.

And this aspect of the Indian Constitution, then comes to shape Constitutions that come subsequently in other parts of the world. For example, the South African Constitution was heavily inspired by this ideal of the Indian Constitution of having a vision for social transformation embedded in the Constitution. In many constitutions in what is considered to be the global south or the third world, that have come subsequent to the Indian Constitution have borrowed this aspect of Social Transformative Constitution from the Indian Constitution. So, justice, social, economic and political was very-very key in the design of the Indian Constitution.

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Ambedkar's Last Speech

On the 26th of January 1950, we are going to enter into a life of contradictions. In politics we will have equality and in social and economic life we will have inequality. In politics we will be recognising the principle of one man one vote and one vote one value. In our social and economic life, we shall, by reason of our social and economic structure, continue to deny the principle of one man one value. How long shall we continue to live this life of contradictions? How long shall we continue to deny equality in our social and economic life? If we continue to deny it for long, we will do so only by putting our political democracy in peril. We must remove this contradiction at the earliest possible moment or else those who suffer from inequality will blow up the structure of political democracy which is Assembly has to laboriously built up.

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In fact, Doctor Ambedkar, when he stood up to present the final Constitution to the Constituent Assembly, he was of course the chairperson of the drafting committee. And in that capacity, he rose to introduce the final Constitution and for its adoption in the Constituent Assembly.

And he makes this speech of giving an overview to the Constitution and talking about his own impressions of the Constitution and his worries about the future and his hopes and aspirations for the future Indian State. And he says that on the 26th of January 1950, we are going to enter into a life of contradictions. In politics, we will have equality and in social and economic life, we will have inequality. So, in politics, we have recognized that one person holds one vote and one vote holds one value.

We are all equal before the law. We are all equal in terms of the political value that we have. All offices are open to us, all offices of State are open to us. And all of us count as one and no one less than one. But by reason of our economic and social structure, which is based on inequality, social inequality, and economic inequality, we shall continue to deny the principle of – one man one value. How long shall we live with this life of contradictions? He asks.

How long shall we continue to deny equality in our social and economic life? Because if we continue to deny it for long, we will do so only by putting a political democracy in bedroom. So therefore, you cannot have us this system of contradictions, where in theory, in a formal theoretical sense, you recognize the value of equality of all human beings, but in reality on the ground, in your social structure, in your economic structure, there is no equality.

If you continue with a life of inequality, this life of contradictions, those who suffer from inequality will blow up the structure of liberal democracy on which the constant assembly had built up. And so, he therefore says that, this Constitution speaks to not only political inequality, but also social and economic inequality. And therefore, the Constitution is designed not only to address the political aspects of the Indian State, but also those social and economic life under the new Constitution. And that is why justice in all these spheres - social, political and economic are our key design principles for the Indian Constitution.

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- Citizenship
- Fundamental Rights
 - Right to Equality
 - Fundamental Freedoms
 - Right to Freedom
 - Right Against Exploitation
 - Religious Freedom
 - Cultural and Educational Rights
 - Right to Constitutional Remedies
- Directive Principles of State Policy
- Fundamental Duties

So, then what the Constituent Assembly goes on to do is, it gives us the longest Constitution in the world, by far the longest Constitution in the world. And the reason for the length of that Constitution was that there was so much disagreement, one of the reasons was there was so much disagreement on so many issues that the framers felt that they should address and go into minutiae of various issues that many other constitutions do not place on in the Constitution. They place. they regulate those aspects through statutory law. Now, what is the consequence of placing it in the Constitution?

Placing it in the Constitution means that no other law can contradict, those aspects of those laws. So, they one design choice that was made by frames of the Constitution was to have a very expansive Constitution, where many matters that other countries and other Constitutions have relegated to Parliament to decide were actually put into the Constitution itself.

So, with that, the Indian Constitution regulates a whole range of issues that go on to govern us in our daily lives. So, it regulates citizenship, it guarantees us fundamental rights, those

include the right to equality, to fundamental freedoms, to including the right to life, to right to personal liberty, guarantees in the criminal justice process, our freedom of speech, expression, association, assembly, freedom of trade and occupation, so on and so forth.

The right against exploitation, the rights of religious freedom, certain cultural and educational rights and the right to constitutional remedies. It guarantees as an aspect of our fundamental rights, the right directly to move the Supreme Court for enforcement of our fundamental rights. Then it has a chapter on the Directive Principles of State Policy.

The Directive Principles of State Policy are guidance that the Constituent Assembly has given to the future State and says that these are principles that you should be bound by in governing the future country, of governing the future polity, these are the principles that should guide you in your economic policy, in your social policy, in your political policy.

So, for example, the idea that you should prevent inequalities and the concentration of wealth in the hands of a few. You should ensure that there are just in fair working conditions for all workers and that there is a fair living wage. Then some that you might know, that are more controversial is that the Constituent Assembly directed the State to have a Uniform Civil Code; to make provisions for prohibition on cow slaughter. So, these are directions that have been provided by the Constituent Assembly to the future State.

And with the admonition that, that the State is bound by these principles, but these principles are not judicially enforceable. So, one cannot go to the courts and say that the actions of the State are in contradiction to the `Directive Principles of State Policy. But these principles are nonetheless binding upon the State. It's just that they cannot be enforced before the judiciary.

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- Architecture of the State: Separation of Powers
 - The Executive
 - The Legislature
 - The Judiciary
 - Fourth Branch Institutions (Election Commission, CAG, etc)
- Architecture of State: Federalism
 - Asymmetric
 - Division of Powers
 - 73rd and 74th Amendments and Local Self Governance
 - Special Provisions

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The Constitution, through subsequent amendments also provides for fundamental duties. It creates the of provides the architecture of the State. So, we have already discussed this, it separates powers between the Executive, the Legislature and the Judiciary, creates certain Fourth Branch Institutions, accountability institutions that provide another measure of accountability and checks and balances upon the actions of other branches. So, the Election Commission, the CAG are examples of Fourth Branch Accountability Institutions. It distributes powers between the Centre and the States.

It is a particular feature of the Indian Constitution that this distribution of powers is asymmetric, the Centre has more powers than the State. Through the 73rd and 74th Amendments, the Constitution now also has distribution of federal powers to local Self-Government Institutions, to Panchayats and Municipalities.

The Constitution also provides for special provisions for certain States, certain districts, certain areas, tribal areas, autonomous areas, certain states. Article 374 was an example of special provisions for Jammu and Kashmir. But there are many-many other states, the North-Eastern states being example and many-many other states that are governed by special provisions. Article 371A to B C D E, there are multiple provisions that govern, the that provide special provisions for different States in the country.

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Key Features of the Indian Constitution (contd...)

- Architecture of the State: Administration
- Trade and Commerce
- Elections
- Protections for Certain Classes
- Language
- Emergency
- Amendment to the Constitution

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It also in terms of the architecture of the State, creates the administrative, the structure of the Administrative State, and the Regulatory State provides for the services, the bureaucracy and the principles that would apply to the bureaucracy, creates tribunals for resolution of some types of disputes, provides for the freedom of trade and commerce, provides for elections, how elections are to be conducted, qualifications and disqualifications of members, provides protections for certain classes, particularly scheduled caste, scheduled tribes, creates commissions in the National Commission for Scheduled Castes, for Scheduled Tribes.

Backward Classes commissions to protect the interests of groups that have been historically marginalized, provides for the languages of the of the union and the States, has certain emergency provisions and of course, those are the provisions using which the Emergency of 1975 was imposed. And then it provides for its own amendment, how can the Constitution be amended. And this is something, this is an issue that we will take up in greater detail in subsequent lectures.

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So, let me conclude the session by asking you a question. What then is the Constitution? If I were to ask you, what is the Constitution? Can you identify what the Constitution is? What, where would you look? I have taken you through broadly the table of contents of the text of the Constitution.

That is only one part of the Constitution. The text, the document that the Constituent Assembly prepared is one part of what comprises the Constitution. On top of that, are judicial decisions that have interpreted the Constitution, there are a set of what are called Constitutional Conventions.

These are practices that have, due to repeated observance, have gained the sanctity of law. So, let me give you one example. If there is a hung Parliament and no one party has majority, who should the President call to upon to form the Government? There is nothing in the Constitution, no specific express provision in the Constitution, which guides the President on what to do or what not to do in this situation.

So, there are conventions that have developed around this, conventions are, that it is either the single largest party or the single largest coalition, depending on various permutations and combinations. So, these constitutional conventions because of them being followed for many-many years, with the belief that, those who are following this these principles are also bound by them, gain the status of Constitutional conventions.

And there is an expectation that they will be followed, courts use these principles to decide whether there was a violation of the Constitution or not. So, there is a written part of the Constitution, there are these unwritten parts of the Constitution, and then there is the judicial decisions that again add another layer of flesh, probably a layer of fat on top of the flesh, that is the constitutional text. So, that is what the Constitution is. We will stop the lecture here, and take up the issues of what it is that Constitutions do and how we should think about the Constitution in the next lecture.