

# Indian Polity

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### **Framing of the Constitution:**

- a) The Constitution of India was framed by a Constituent Assembly which was set up under the Cabinet mission plan (1946).
- b) The Constituent Assembly took almost 3 years (2 years, 11 months, and 18 days) to complete its historic task of drafting the Constitution for an Independent India.
- c) During this period it held 11 sessions covering a total of 165 days. Of these, 114 days were spent on the consideration of and discussion on the Draft Constitution.



4. The Framing of Constitution of India.

Dr. Sachchidananda Sinha was the first president (temporary) of the Constituent Assembly when it met on December 9, 1946. Later, Dr. Rajendra Prasad became the President of the Constituent Assembly and Dr. Bhimrao Ambedkar became the Chairman of its drafting committee on December 11, 1946.



First president (temporary) Dr. Sachchidananda Sinha (Left) on December 9, 1946. Dr. Rajendra Prasad (Middle) the President of the Constituent Assembly and Dr. Bhimrao Ambedkar (Right) the Chairman of its drafting committee as on December 11, 1946.

d) As for the composition of the Assembly, members were chosen by indirect election by the members of the Provincial Legislative Assemblies, following the scheme recommended by the Cabinet Mission. The arrangement was as follows:

- I. 292 members were elected through the Provincial Legislative Assemblies;
  - II. 93 members represented the Indian Princely States; and
  - III. 4 members represented the Chief Commissioners Provinces. The total membership of the assembly thus was to be 389.
- e) However, as a result of the partition under the Mountbatten Plan of 3 June 1947, a separate Constituent Assembly was set up for Pakistan and

representatives of some provinces ceased to be members of the Assembly. As a result, the membership of the Assembly was reduced to 299.

### **The Cabinet Mission**

World War II in Europe came to an end on May 9, 1945. The new British Govt. announced its Indian Policy and decided to convene a constitution drafting body. Three British cabinet ministers were sent to find a solution to the question of India's independence. This team of ministers (Lord Pethick Lawrence, Stafford Cripps, A V Alexander) was called the Cabinet Mission. The Mission was in India from March 1946 to May 1946. The Cabinet Mission discussed the framework of the constitution and laid down in some detail the procedure to be followed by the constitution drafting body. Elections for the 296 seats assigned to the British Indian provinces were completed by July-August 1946. The Assembly began work on 9 December 1946.

### **First Interim National Govt**



The formation of an interim national Govt. was announced on 24 August, 1946. The Govt. was constituted on 2 September, 1946. It was led by Pundit Nehru and it comprised 11 other members, including 3 Muslims. Muslim League initially didn't join the Govt. Technically, however, all the 12 members of the interim Govt. were members of Viceroy's Executive Council. The Viceroy continued to be the head of the Council. Pundit

Jawahar Lal Nehru was designated as the Vice-President of the Council. The Constituent Assembly

- a) The people of India elected members of the provincial assemblies, who in turn elected the constituent assembly.
- b) Rajendra Prasad, Sardar Patel, Maulana Abul Kalam Azad and Shyama Prasad Mukherjee were some important figures in the Assembly.
- c) Frank Anthony represented the Anglo-Indian community.
- d) The Parsis were represented by H.P. Modi.
- e) The Chairman of the Minorities Committee was Harendra Coomar Mookerjee, a distinguished Christian who represented all Christians other than Anglo-Indians.
- f) Dr. Sachidanand Sinha was the first president of the Constituent Assembly. Later, Dr. Rajendra Prasad was elected president of the Constituent Assembly while B.R. Ambedkar was appointed the Chairman of the Drafting Committee.

#### COMMITTEES

1. Committee on the Rules of Procedure	Rajendra Prasad
2. Steering Committee	
3. Finance and Staff Committee	
4. Ad hoc Committee	
5. States Committee . Union Powers Committee . Union Constitution Committee	Jawaharlal Nehru
6. Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas	Vallabhbhai Patel
7. Drafting Committee	B.R. Ambedkar
8. House Committee	B.Pattabhi Sitaramayya
9. Committee on the Functions of the Constituent Assembly	G.V. Mavalankar
10. Minorities Sub Committee	H.C. Mookherjee
11. Fundamental Rights Sub-Committee	J.B. Kripalani
12. North-East Frontier Tribal Areas and	Gopinath Bardoloi

#### Constitutional Reforms in British India

##### Regulating Act of 1773

- The first step taken by the British Parliament to control and regulate the affairs of the East India Company in India.
- It designated the **Governor** of Bengal (Fort William) as the **Governor-General (of Bengal)**.

- Warren Hastings became the first Governor-General of Bengal.
- Executive Council of the Governor-General was established (Four members). There was no separate legislative council.
- It subordinated the Governors of Bombay and Madras to the Governor-General of Bengal.
- The Supreme Court was established at Fort William (Calcutta) as the Apex Court in 1774.
- It prohibited servants of the company from engaging in any private trade or accepting bribes from the natives.
- Court of Directors (governing body of the company) should report its revenue.

##### Amending Act of 1781:

- Actions of public servants of the Company in their official capacity were exempted from the jurisdiction of Supreme Court.
- Jurisdiction of Supreme Court was defined. SC had to take into consideration and respect the religious and social customs and usages of the Indian while enforcing its decrees and processes.
- The rules and regulations made by GG-in-Council were not to be registered with SC

##### Pitt's India Act of 1784

- Distinguished between commercial and political functions of the company.
- Court of Directors for Commercial functions and Board of Control for political affairs.
- Reduced the strength of the Governor General's council to three members.
- Placed the Indian affairs under the direct control of the British Government.
- The companies territories in India were called "the British possession in India".
- Governor's councils were established in Madras and Bombay.

##### Act of 1786:

- Governor General given the power to over-ride the Council and was made the Commander-in-chief also to prevail upon Cornwallis to accept the GG-ship of India

##### Charter Act of 1793:

- Company given monopoly of trade for 20 more years.
- laid the foundation of govt. by written laws, interpreted by courts

##### Charter Act of 1813

- The Company's monopoly over Indian trade terminated; Trade with India open to all British subjects.

##### Charter Act of 1833

- **Governor-General (of Bengal)** became as the Governor-General of India.
- First Governor-General of India was Lord William Bentick.
- This was the final step towards centralization in the British India.
- Beginning of a Central legislature for India as the act also took away legislative powers of Bombay and Madras provinces.
- The Act ended the activities of the East India Company as a commercial body and it became a pure administrative body.

### **Charter Act of 1853**

- **The legislative and executive functions of the Governor-General's Council were separated.**
- 6 members in Central legislative council. Four out of six members were appointed by the provisional governments of Madras, Bombay, Bengal and Agra.
- It introduced a system of open competition as the basis for the recruitment of civil servants of the Company (Indian Civil Service opened for all).

### **Government of India Act of 1858**

- The rule of Company was replaced by the rule of the Crown in India.
- The powers of the British Crown were to be exercised by the Secretary of State for India
- He was assisted by the **Council of India**, having 15 members
- He was vested with complete authority and control over the Indian administration through the Vice roy as his agent
- The Governor-General was made the Viceroy of India.
- Lord Canning was the first Viceroy of India.
- Abolished Board of Control and Court of Directors.

### **Indian Councils Act of 1861**

- It introduced for the first time Indian representation in the institutions like Viceroy's executive+legislative council (non-official). **3 Indians entered Legislative council.**
- Legislative councils were established in Center and provinces.
- It provided that the Vice-roys Executive Council should have some Indians as the non-official members while transacting the legislative businesses.
- It accorded statutory recognition to the portfolio system.
- Initiated the process of decentralisation by restoring the legislative powers to the Bombay and the Madras Provinces.

### **India Council Act of 1892**

- Introduced indirect elections (nomination).
- Enlarged the size of the legislative councils.
- Enlarged the functions of the Legislative Councils and gave them the power of discussing the Budget and addressing questions to the Executive.

### **Indian Councils Act of 1909**

1. This Act is also known as the Morley-Minto Reforms.
2. Direct elections to legislative councils; first attempt at introducing a representative and popular element.
3. It changed the name of the Central Legislative Council to the Imperial Legislative Council.
4. The member of Central Legislative Council was increased to 60 from 16.
5. Introduced a system of communal representation for Muslims by accepting the concept of 'separate electorate'.
6. **Indians for the first time in Viceroy's executive council.** (Satyendra Prasad Sinha, as the law member)

### **Government of India Act of 1919**

- This Act is also known as the Montague-Chelmsford Reforms.
- The Central subjects were demarcated and separated from those of the Provincial subjects.
- The scheme of dual governance, 'Dyarchy', was introduced in the Provincial subjects.
- Under dyarchy system, the provincial subjects were divided into two parts – transferred and reserved. On reserved subjects Governor was not responsible to the Legislative council.
- The Act introduced, for the first time, **bicameralism at center.**
- **Legislative Assembly** with 140 members and **Legislative council** with 60 members.
- Direct elections.
- The Act also required that the three of the six members of the Viceroy's Executive Council (other than Commander-in-Chief) were to be Indians.
- Provided for the establishment of Public Service Commission.

### **Government of India Act of 1935**

- The Act provided for the establishment of an All-India Federation consisting of the Provinces and the Princely States as units, though the envisaged federation never came into being.

- Three Lists : The Act divided the powers between the Centre and the units in items of three lists, namely the Federal List, the Provincial List and the Concurrent List.
- The Federal List for the Centre consisted of 59 items, the Provincial List for the provinces consisted of 54 items and the Concurrent List for both consisted of 36 items
- The residuary powers were vested with the Governor-General.
- The Act abolished the Dyarchy in the Provinces and introduced 'Provincial Autonomy'.
- It provided for the adoption of Dyarchy at the Centre.
- Introduced bicameralism in 6 out of 11 Provinces.
- These six Provinces were Assam, Bengal, Bombay, Bihar, Madras and the United Province.
- Provided for the establishment of Federal Court.
- Abolished the Council of India.

- 6. Part VI Articles 152-237 Government at the State level
- 7. Part VII Article 238 Deals with states in Part B of the First Schedule. It was repealed by 7<sup>th</sup> Amendment in 1956
- 8. Part VIII Articles 239-241 Administration of Union Territories
- 9. Part IX Article 242-243 Territories in Part D of the First Schedule and other territories. It was repealed by 7<sup>th</sup> Amendment in 1956
- 10. Part X Articles 244-244 A Scheduled and tribal areas
- 11. Part XI Articles 245-263 Relations between the Union and States
- 12. Part XII Articles 264-300 Finance,, property,, contracts and suits
- 13. Part XIII Articles 301-307 Trade, commerce and travel within the territory of India
- 14. Part XIV Articles 308-323 Services under the Union and States
- Part XIV-A Articles 323A-323B Added by the 42<sup>nd</sup> Amendment in 1976 and deals with administrative tribunals to hear disputes and other complaints
- 15. Part XV Articles 324-329 Election and Election Commission
- 16. Part XVI Articles 330-342 Special provision to certain classes ST/SC and Anglo Indians
- 17. Part XVII Articles 343-351 Official languages
- 18. Part XVIII Articles 352-360 Emergency provisions
- 19. Part XIX Articles 361-367 Miscellaneous provision regarding exemption of the President and governors from criminal proceedings
- 20. Part XX Article 368 Amendment of Constitution
- 21. Part XXI Articles 369-392 Temporary,, transitional and special provisions
- 22. Part XXII Articles 393-395 Short title, commencement and repeal of the Constitution

## PARTS OF INDIAN CONSTITUTION



- 1. Part I Articles 1-4 Territory of India, admission,, establishment or formation of new states
- 2. Part II Articles 5-11 Citizenship
- 3. Part III Articles 12-35 Fundamental Rights
- 4. Part IV Articles 36-51 Directive Principles of State Policy Part IV A Article 51-A Duties of a citizen of India. It was added by the 42<sup>nd</sup> Amendment in 1976
- 5. Part V Articles 52-151 Government at the Union level

## SCHEDULES OF INDIAN CONSTITUTION

- 1. First Schedule - List of States & Union Territories
- 2. Second Schedule -Salary of President, Governors, Chief Judges, Judges of High Court and Supreme court, Comptroller and Auditor General
- 3. Third Schedule-Forms of Oaths and affirmations
- 4. Fourth Schedule-Allocate seats for each state of India in Rajya Sabha
- 5. Fifth Schedule-Administration and control of scheduled areas and tribes

6. Sixth Schedule-Provisions for administration of Tribal Area in Asom, Meghalaya, Tripura, Mizoram & Arunachal Pradesh
7. Seventh Schedule-Gives allocation of powers and functions between Union & States. It contains 3 lists-Union List (For central Govt) /States List (Powers of State Govt) /Concurrent List (Both Union & States).
8. Eighth Schedule-List of 22 languages of India recognized by Constitution
9. Ninth Schedule-Added by 1st amendment in 1951. Contains acts & orders related to land tenure, land tax, railways, industries.
10. Tenth Schedule-Added by 52nd amendment in 1985. Contains provisions of disqualification of grounds of defection
11. Eleventh Schedule-By 73rd amendment in 1992. Contains provisions of Panchayati Raj.
12. Twelfth Schedule-By 74th amendment in 1992. Contains provisions of Municipal Corporation.
8. French Constitution- Republic and ideals of liberty, equality and fraternity in the Preamble.
9. South African Constitution- Procedure for amendment of the constitution and election of members of Rajya Sabha.
10. Japanese Constitution- Procedure established by Law.
11. Constitution of former USSR: Procedure of five-year plan, fundamental duties, ideals of justice in Preamble.

### **PREAMBLE TO THE CONSTITUTION**

It is a preface or the introduction of the constitution. It is not an integral part of constitution. The interpretation of Constitution is based on the spirit of preamble. The Preamble of the Indian Constitution is based on the 'Objectives Resolution', drafted and moved by Pandit Nehru, are adopted by the Constituent Assembly. It has been amended by the 42nd Constitutional Amendment Act (1976), which added three new words-Socialist, Secular and Integrity

### **TEXT OF THE PREAMBLE**

'We, THE PEOPLE OF India, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR 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 among them all; **FRATERNITY** assuring the dignity of the individual and the unity and integrity of the Nation; IN OUR CONSTITUENT ASSEMBLY this twentymixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION'.

### **KEY WORDS IN THE PREAMBLE**

#### **1. Sovereign**

The word 'sovereign' implies that India is neither a dependency nor a dominion of any other nation, but an independent State. There is no authority above it, and it is free to conduct its own affairs (both internal and external). Being a Sovereign State, India can either acquire a foreign territory or cede a Part of its territory in favour of a foreign state.

### **Sources of our Constitution**

The Indian Constitution is borrowed from almost all the major countries of the world but has its own unique features too. Major sources are:

1. Government of India Act of 1935 – Federal Scheme, Office of Governor, Judiciary, Public Service Commission, Emergency provisions and administrative details.
2. British Constitution – Parliamentary System, Rule of law, Legislative Procedure, Single Citizenship, Cabinet System, Prerogative Writs, Parliamentary Privileges and Bicameralism.
3. US Constitution – Fundamental rights, independence of judiciary, judicial review, impeachment of president, removal of Supreme court and high court judges and post of vice president.
4. Irish Constitution- Directive Principles of State Policy, nomination of members of Rajya Sabha and method of election of president
5. Canadian Constitution- Federation with a strong centre, vesting of residuary power in the centre, appointment of state Governor by the centre and advisory jurisdiction of Supreme Court.
6. Australian Constitution- Concurrent list, joint sitting of two houses of Parliament.
7. Constitution of Germany- Suspension of fundamental rights during emergency.

## 2. Socialist

Even before the term was added by the 42nd Amendment in 1976, the Constitution had a socialist content in the form of certain Directive Principles of State Policy. In other words, what was hitherto implicit in the Constitution has now been made explicit. Moreover, the Congress party itself adopted a resolution to establish a 'socialistic pattern of society' in its Avadi session as early as in 1955 and took measures accordingly. Notably, the Indian brand of socialism is a 'democratic socialism' and not a 'communistic socialism' (also known as 'state socialism') which involves the nationalisation of all means of production and distribution and the abolition of private property. Democratic socialism, on the other hand, holds faith in a 'mixed economy' where both public and private sectors co-exist side by side<sup>6</sup>. As the Supreme Court says, 'Democratic socialism aims to end poverty, ignorance, disease and inequality of opportunity. Indian socialism is a blend of Marxism and Gandhism, leaning heavily towards Gandhian socialism's. The new economic policy (1991) of liberalisation, privatisation and globalisation has, however, diluted the socialist credentials of the Indian State.

## 3. Secular

The term 'secular' too was added by the 42nd Constitutional Amendment Act of 1976. However, as the Supreme Court said in 1974, although the words 'secular state'<sup>9</sup> were not expressly mentioned in the Constitution, there can be no doubt that Constitution-makers wanted to establish such a state and accordingly Articles 25 to 28 (guaranteeing the fundamental right to freedom of religion) have been included in the constitution. The Indian Constitution embodies the positive concept of secularism i.e., all religions in our country (irrespective of their strength) have the same status and support from the state<sup>10</sup>.

## 4. Democratic

A democratic polity, as stipulated in the Preamble, is based on the doctrine of popular sovereignty, that is, possession of supreme power by the people. Democracy is of two types direct and indirect. In direct democracy, the people exercise supreme power directly as is the case in Switzerland. There are four devices of direct democracy, namely, Referendum, Initiative, Recall and Plebiscite<sup>12</sup>. In indirect democracy, on the other hand, the representatives elected by the

people exercise the supreme power and thus carry on the government and make the laws. This type of democracy, also known as representative democracy, is of two kinds—parliamentary and presidential. The Indian Constitution provides for representative parliamentary democracy under which the executive is responsible to the legislature for all its policies and actions. Universal adult franchise, periodic elections, rule of law, independence of judiciary, and absence of discrimination on certain grounds are the manifestations of the democratic character of the Indian polity.

The term 'democratic' is used in the Preamble in the broader sense embracing not only political democracy but also social and economic democracy.

## 5. Republic

A democratic polity can be classified into two categories—monarchy and republic. In a monarchy, the head of the state (usually king or queen) enjoys a hereditary position, that is, he comes into office through succession, eg, Britain. In a republic, on the other hand, the head of the state is always elected directly or indirectly for a fixed period, eg, USA. Therefore, the term 'republic' in our Preamble indicates that India has an elected head called the president. He is elected indirectly for a fixed period of five years. A republic also means two more things: one, vesting of political sovereignty in the people and not in a single individual like a king; second, the absence of any privileged class and hence all public offices being opened to every citizen without any discrimination.

## 6. Justice

The term 'justice' in the Preamble embraces three distinct forms—social, economic and political, secured through various provisions of Fundamental Rights and Directive Principles. Social justice denotes the equal treatment of all citizens without any social distinction based on caste, colour, race, religion, sex and so on. It means absence of privileges being extended to any particular section of the society, and improvement in the conditions of backward classes (SCs, STs and OBCs) and women. Economic justice denotes the non-discrimination between people on the basis of economic factors. It involves the elimination of glaring inequalities in wealth, income and property.

A combination of social justice and economic justice denotes what is known as 'distributive justice'. Political justice implies that all citizens should have equal political rights, equal access to all political offices and equal voice in the

government. The ideal of justice—social, economic and political—has been taken from the Russian Revolution (1917).

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