

## **What is Polity:**

A particular form or system of government, under which we study about following things-

- 1- How Government is being formed
- 2- Rights available to citizens
- 3- Duties of citizens
- 4- Guidelines for the Government (DPSPs)
- 5- Judicial system
- 6- Procedure to make changes in the constitution
- 7- Centre-State Relations
- 8- Inter-State Relations etc.

## **What is Constitution:**

It's a law of the land and all the above mentioned things are found under it, so in order to study polity we need to refer to the constitution.

-To understand the constitution, Firstly we will refer to its background like...

1- How it came into picture first/How we felt the need for the constitution?

Ans- Because Britishers were not involving us in the lawmaking process and they were making laws for us, which were not favourable to us and they were exploitative in nature.

Example - **Regulating Act of 1773** (First direct interference made by the British government in the affairs of India)

**-Pitt's India Act of 1784** (Dual control of British Possessions in India by British government and the Company)

**-Charter Act of 1833 & 1853** etc.

So because of these reasons we started demanding for representation of Indians in the law making process , which we got through subsequent Indian Council Acts 1861,1892 etc. but this also didn't serve the purpose so we started demanding for our own constitution in the following manner..

In **1934** M.N. Roy put forward the idea of Constituent Assembly

In **1935** , INC officially demanded a Constituent Assembly

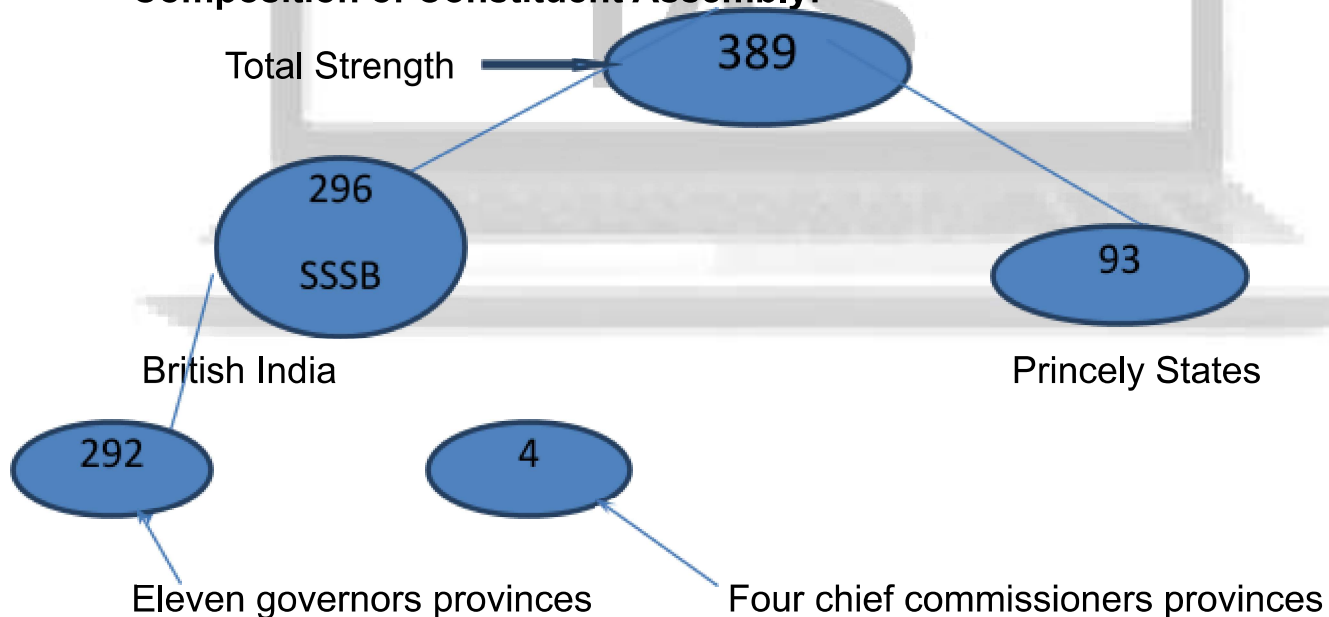
In **1938**, JL Nehru declared, Constitution of free India should be framed by Indians, without outside interference.

In **1940**, British Govt. accepted the Demand in August Offer.

In **1942**, Cripps Mission, came with a draft proposal for CA but rejected by Muslim League (The Muslim League was against the creation of a single union).

In **1946**, Cabinet Mission, came and provided for scheme of CA and as per this scheme CA was constituted.

### Composition of Constituent Assembly:



Each province and Princely state were to be allotted seats in proportion to their respective population. Just like presently various states have different no. Assembly and Lok Sabha seats.

It was 1 seat  For every million population

Seats allocated to three communities-Muslim, Sikhs and general in proportion to their population.

Only Muslim candidate can be elected.

The representatives of each community were to be elected by members of that community in the provincial legislative assembly (they were directly elected and anyone can vote in the election) and voting by method of Proportional Representation by means of single transferable vote. For elections of MPs and MLAs we have a first-past-the-post (FPTP) system.

The representatives of princely states were to be nominated by the heads of the princely states.

So, we can say CA was **partly elected** and partly **nominated body**.

### **Proportional Representation by means of single transferable vote:**

The eligible voters are given the usual ballot papers with the names of all the candidates. Here they don't cast one vote of their choice, but give preferences to the candidates by writing numbers against their names. Some systems follow quota (min no. of votes required to win) and some do not.

Steps of STV:

- 1- First preference votes will be counted and the last one will be eliminated.
  - 2- Same process will be continuing till the time one candidate will not be achieving the quota.
- Representatives of Princely states were to be nominated by the head of the Princely states.

- CA was partly elected and partly nominated body and represented all sections such as Hindu, Muslim, Sikhs, Parsis, Anglo-Indians, Indian Christians, SCs, STs including women of all these sections.
- It included all important personalities but not Gandhi and Jinnah.
- JL Nehru moved the historic 'Objective Resolution' in the Assembly. It laid down the fundamentals and philosophy of the constitutional structure. Its modified version forms the 'Preamble' of the present constitution.

By Independence Act of 1947-

- CA was made a fully sovereign body to make any Constitution, it pleased.

Two separate functions were assigned to the CA-

- Making constitution for free India
- Enacting ordinary laws for the country

Apart from all these functions the CA appointed a number of committees to deal with different tasks of the constitution making like –Union Powers committee, Drafting committee etc.

- Final draft of constitution was introduced by BR Ambedkar, after 3 readings it was adopted on nov 26, 1949.
- Jan 26 was chosen as the date of commencement of the constitution as it was on this day in 1930 when Purna Swaraj was celebrated (Lahore Session).

### **Criticism:**

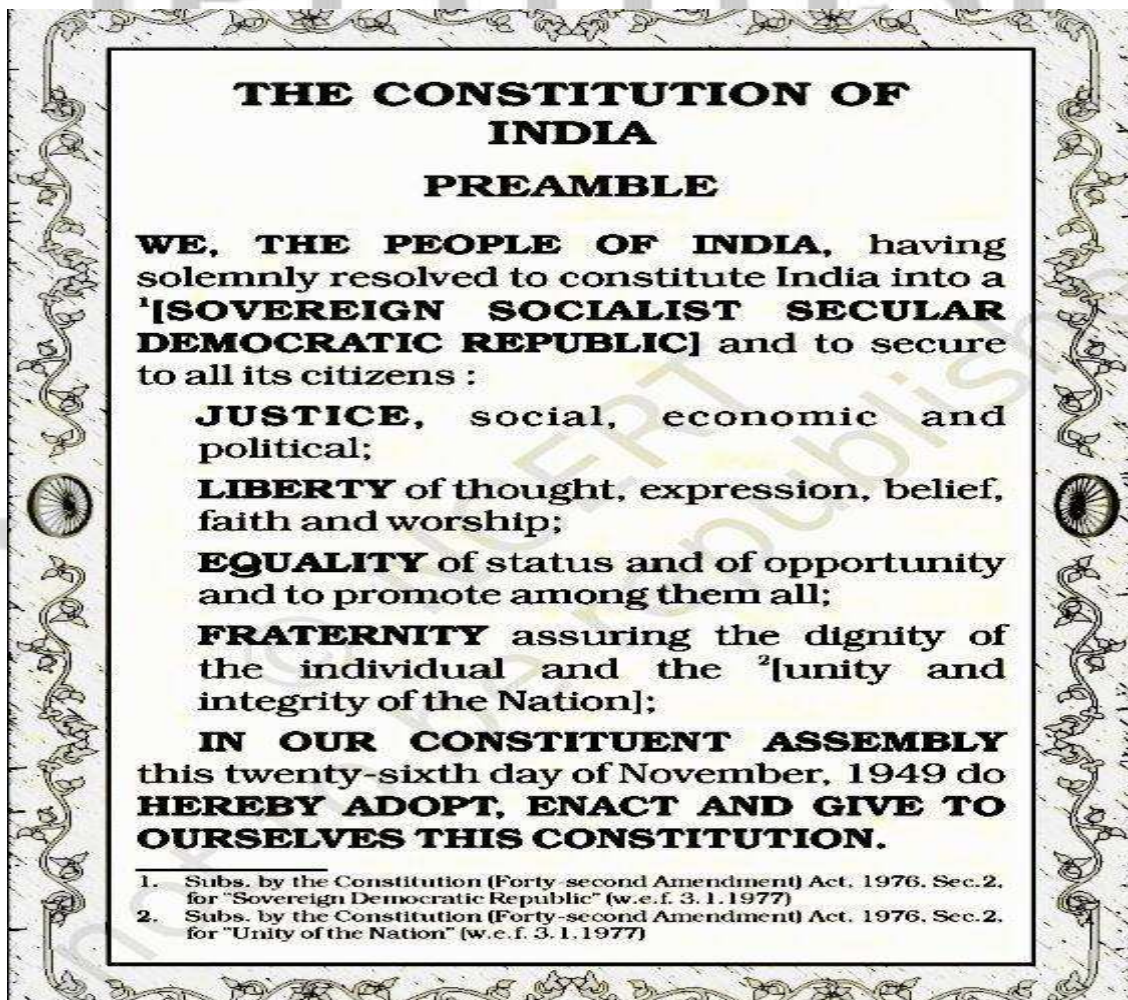
- Not a representative body- its members were not directly elected
- Not a sovereign body- As it was created by the proposals of the British govt.
- Time consuming- constituted in November 1946 and constitution was adopted on 26<sup>th</sup> nov 1949.
- Dominated by congress

- Lawyer politician domination
- Dominated by Hindus

## PREAMBLE OF THE CONSTITUTION:

### What is a Preamble?

- A preamble is an introductory statement in a document that explains the document's **philosophy and objectives**.
- In a Constitution, it presents the **intention of its framers**, the **history behind its creation**, and the **core values and principles of the nation**.



## Key words in the Preamble

- **We, the people of India:** It indicates the **ultimate sovereignty of the people of India**. Sovereignty means the independent authority of the State, not being subject to the control of any other State or external power.
- **Sovereign:** The term means that India has its own independent authority and it is not a dominion of any other external power. In the country, the legislature has the power to make laws which are subject to certain limitations.
- **Socialist:** The term means the **achievement of socialist ends through democratic** means. It holds faith in a mixed economy where both private and public sectors co-exist side by side.
  - It was added in the Preamble by 42<sup>nd</sup> Amendment, 1976.
- **Secular:** The term means that all the religions in India get equal respect, protection and support from the state.
  - It was incorporated in the Preamble by 42<sup>nd</sup> Constitutional Amendment, 1976.
- **Democratic:** The term implies that the Constitution of India has an established form of Constitution which gets its authority from the will of the people expressed in an election.
- **Republic:** The term indicates that the head of the state is elected by the people. In India, the President of India is the elected head of the state.

## **Objectives of Preamble:**

- **Justice:** It is necessary to maintain order in society that is promised through various provisions of **Fundamental Rights** and **Directive Principles of State Policy** provided by the Constitution of India. It comprises three elements, which is **social**,

## **economic, and political.**

- **Social Justice** – Social justice means that the Constitution wants to create a society without discrimination on any grounds like caste, creed, gender, religion, etc.
  - **Economic Justice** – Economic Justice means no discrimination can be caused by people on the basis of their wealth, income, and economic status. Every person must be paid equally for an equal position and all people must get opportunities to earn for their living.
  - **Political Justice** – Political Justice means all the people have an equal, free and fair right without any discrimination to participate in political opportunities.
  - **Equality:** The term 'Equality' means no section of society has any special privileges and all the people have given equal opportunities for everything without any discriminations. Everyone is equal before the law.
  - **Liberty:** The term 'Liberty' means freedom for the people to choose their way of life, have political views and behavior in society. Liberty does not mean freedom to do anything, a person can do anything but in the limit set by the law.
  - **Fraternity:** The term 'Fraternity' means a feeling of brotherhood and an emotional attachment with the country and all the people. Fraternity helps to promote dignity and unity in the nation.
- **Importance of Objectives:** It provides a way of life. It includes **fraternity, liberty, and equality** as the notion of a happy life and which can not be taken from each other.

## **Status of Preamble**

- The preamble being part of the Constitution is discussed several times in the Supreme Court. It can be understood by reading the following two cases.

- **Berubari Case:** It was used as a reference under **Article 143(1)** of the Constitution which was on the implementation of the Indo-Pakistan Agreement related to the Berubari Union and in exchanging the enclaves which were decided for consideration by the bench consisting of eight judges.
- Through the **Berubari case**, the Court stated that 'Preamble is the key to open the mind of the makers' but it can not be considered as part of the Constitution. Therefore it is not enforceable in a court of law.
- **Kesavananda Bharati Case:** In this **case**, for the first time, a bench of 13 judges was assembled to hear a writ petition. The Court held that:
  - The **Preamble of the Constitution** will now be considered **as part of the Constitution**.
  - The Preamble is not the supreme power or source of any restriction or prohibition but it plays an important role in the interpretation of statutes and provisions of the Constitution.
  - So, it can be concluded that preamble is part of the introductory part of the Constitution.
- In the 1995 case of **Union Government Vs LIC of India** also, the Supreme Court has once again held that Preamble is the integral part of the Constitution but is not directly enforceable in a court of justice in India.

#### Amendment of the Preamble

- **42<sup>nd</sup> Amendment Act, 1976:** After the judgment of the Kesavanand Bharati case, it was accepted that the preamble is part of the Constitution.
  - As a part of the Constitution, preamble can be amended under **Article 368** of the Constitution, but the **basic structure** of the preamble can not be amended.



- Because the structure of the Constitution is based on the basic elements of the Preamble. As of now, the preamble is only amended once through the **42<sup>nd</sup> Amendment Act, 1976**.
- The term 'Socialist', 'Secular', and 'Integrity' were added to the preamble through 42<sup>nd</sup> Amendment Act, 1976.

