



# Level Up

## **GS FOUNDATION BATCH FOR CSE 2024**

### **Polity**

### **Handout- 03 (Basics of Polity)**

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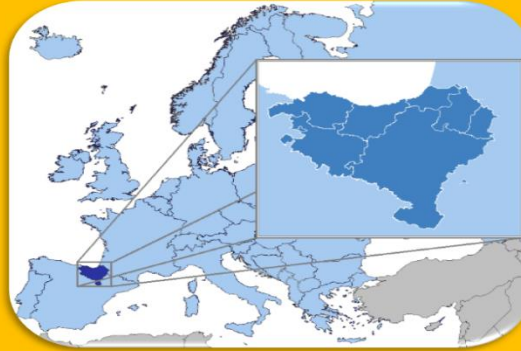
# STATE

A state is an independent political entity with clear geographic boundaries



# NATION

A nation is a large population that shares the same culture, language, traditions, history...



Elements of the State:

What is Constitution

## Organic Law of the Land

It sets out the fundamental principles by which the state is governed.

It describes the main institutions of the state, and defines the relationship between these institutions (for example, between the **executive, legislature and judiciary**).

It places limits on the exercise of power, and sets out the rights and duties of citizens

Why do we need the constitution? (Functions of the Constitution)

1. Constitution allows **coordination** and **assurance**.
2. Allocation of powers in the society, constitution of the government.
3. Limitation upon the powers of the government (ideals of **constitutionalism**):  
These limits are fundamental in the sense that government may never trespass them. The most common way of limiting the power of government is to specify certain fundamental rights that all of us possess as citizens and which no government can ever be allowed to **violate**. In practice, these rights can be limited

during times of **national emergency** and the constitution specifies the circumstances under which these **rights may be withdrawn**.

4. The fourth function of a constitution is to enable the government to **fulfil the aspirations of a society and create conditions for a just society**: For example, India aspires to be a society that is free of caste discrimination. **If this is our society's aspiration**, the government will have to be enabled or empowered to take all the necessary steps to achieve this goal. The Indian Constitution enables the government to take positive welfare measures some of which are legally **enforceable**.
5. **Sets fundamental Identity of the People**: This means the people as a collective entity come into being only through the basic constitution. By agreeing to certain basic norms and **principles**, one constitutes one's **basic** political identity. The constitution sets authoritative constraints upon what one may or may not do. It defines the fundamental values that we may not **trespass**. So the **constitution also gives one a moral identity**.

Although India's Constitution was formally created by a Constituent Assembly between December 1946 and November 1949, it drew upon a long history of the nationalist movement that had a remarkable ability to take along different sections of Indian society together. Some countries have subjected their constitution to a full-**fledged referendum**, where all the people vote on the **desirability** of a constitution. The Indian Constitution was never subject to such a **referendum**, but nevertheless carried enormous **public authority**. The Constitution drew enormous legitimacy from the fact that it was drawn up by people who enjoyed immense public **credibility**, who had the capacity to negotiate and command the respect of a wide cross-section of society, and who were able to convince the people.

### **How to ensure balanced institutional design in the constitution?**

Constitutions are often subverted, not by the people, but by small groups, who wish to enhance their **own power**. Hence, **it is important to secure such a better institutional design. One way of such intelligent designing of a constitution is to ensure that no single institution acquires monopoly of power**. The Indian Constitution, for example, horizontally fragments power across different institutions like the Legislature, Executive and the Judiciary and even independent bodies like the **Election Commission**. This ensures that even if one institution wants to subvert the Constitution, others can check its **transgressions**.

Another important aspect of intelligent institutional design is: that a constitution must **strike** the right balance between certain values, norms and **procedures** as authoritative, and at the same time allow enough **flexibility** in its operations to adapt to changing needs and circumstances. **Too rigid a constitution is likely to break under the weight of change**. The **Indian Constitution is described as 'a living' document**. By **striking** a balance between the possibility to change the provisions and the limits on such changes, the Constitution has ensured that it will survive as a document respected by people.

### **Parliamentary System in India**

- The Constitution of India provides for a parliamentary form of government, both at the **Centre** and in the **states**.

- Article 75 ensures collective responsibility of **union council of Ministers** towards **Lok Sabha** and Article 164 ensures **collective responsibility** of State Council of Minister towards legislative assembly **of the state**.
- The **parliamentary system of government is the one in which the executive is responsible to the legislature** for its policies and acts.

While in the presidential system, **executive** is **not responsible** to the legislature and they work in independent **spheres**.

Ivor Jennings called the parliamentary system as 'cabinet System' because the cabinet is the **nucleus of power in a parliamentary system**

**Find out: What are other kinds of responsibilities of executive towards legislature?**

#### Other **FEATURES OF PARLIAMENTARY GOVERNMENT**

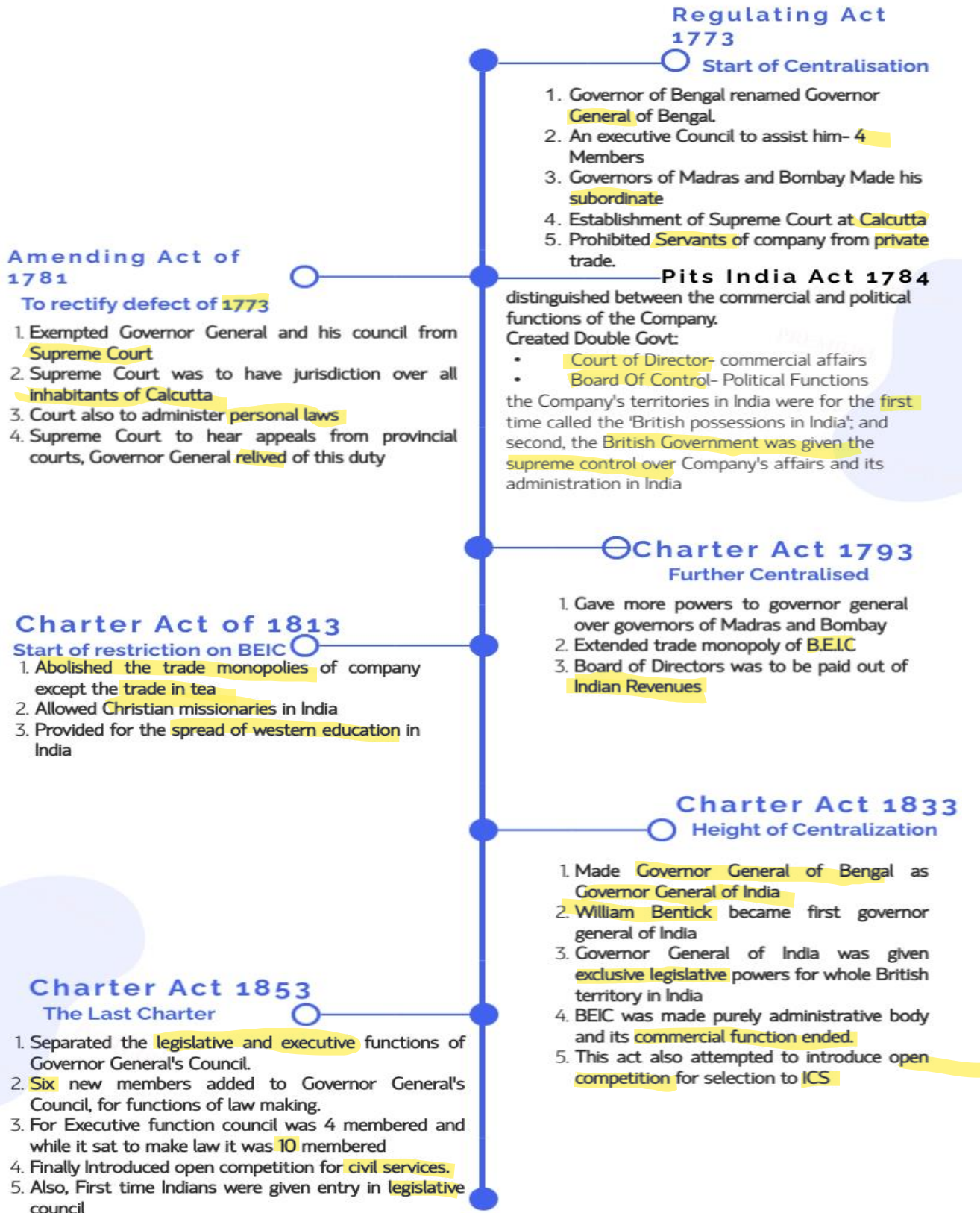
- Presence of **nominal** and **real** executives
- *Majority Party Rule*
- **Political Homogeneity** in Council of Ministers
- *Double membership- Same person acts as **executive** and also as a **legislator***
- Dissolution of the Lower House

### Historical Underpinnings

- The Regulating Acts to mainly govern the internal affairs of the company, rather to check corruptions in the company.
- The Charter Acts dealt with the Royal Charter for the EIC towards trade.
- The Council Acts dealt with the subject matter of the Council of the Viceroy.
- The Government of India Acts dealt with the constitution of the territory and its government.

# Evolution of Constitution

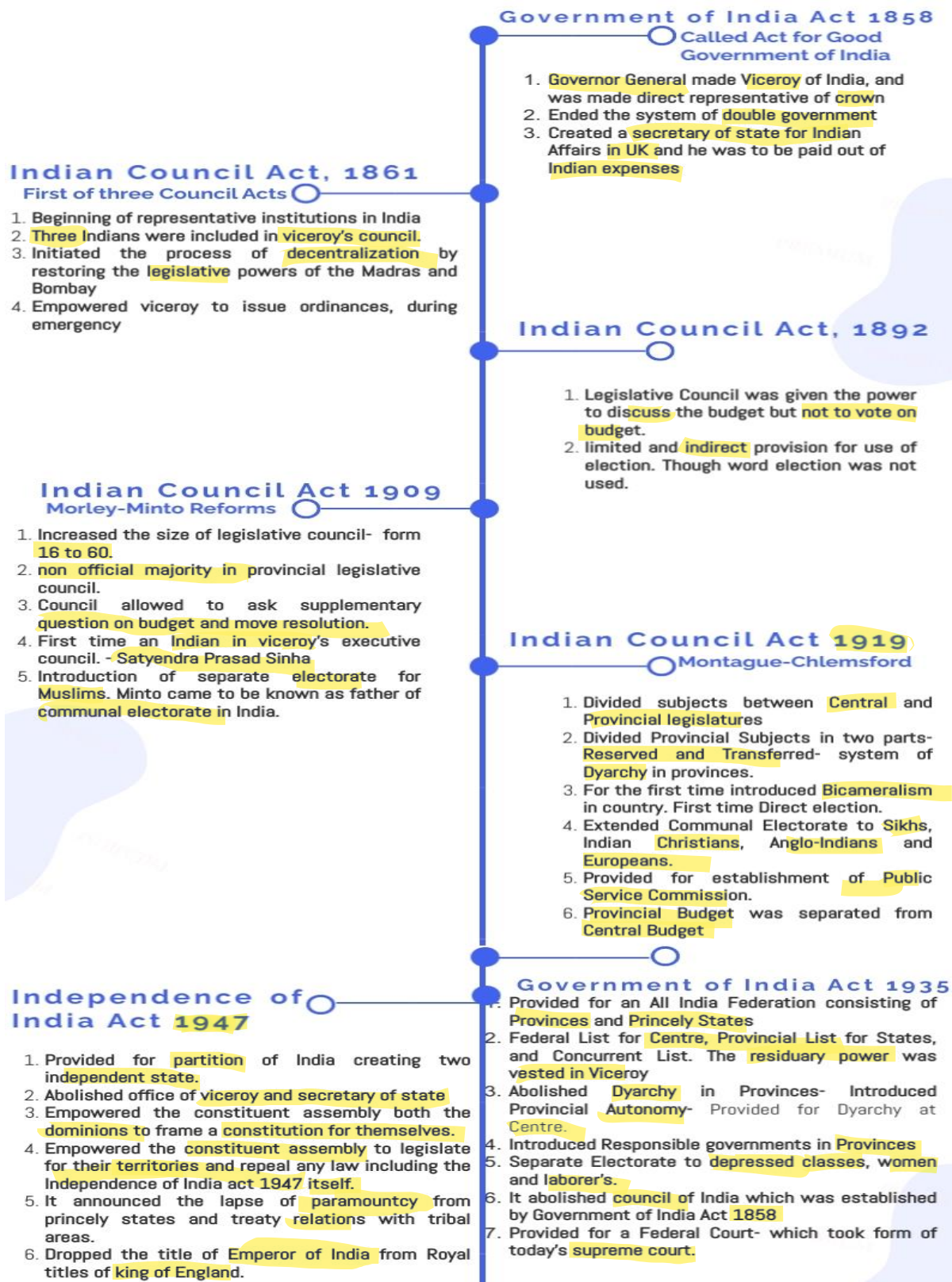
## Before 1857





# Evolution of Constitution

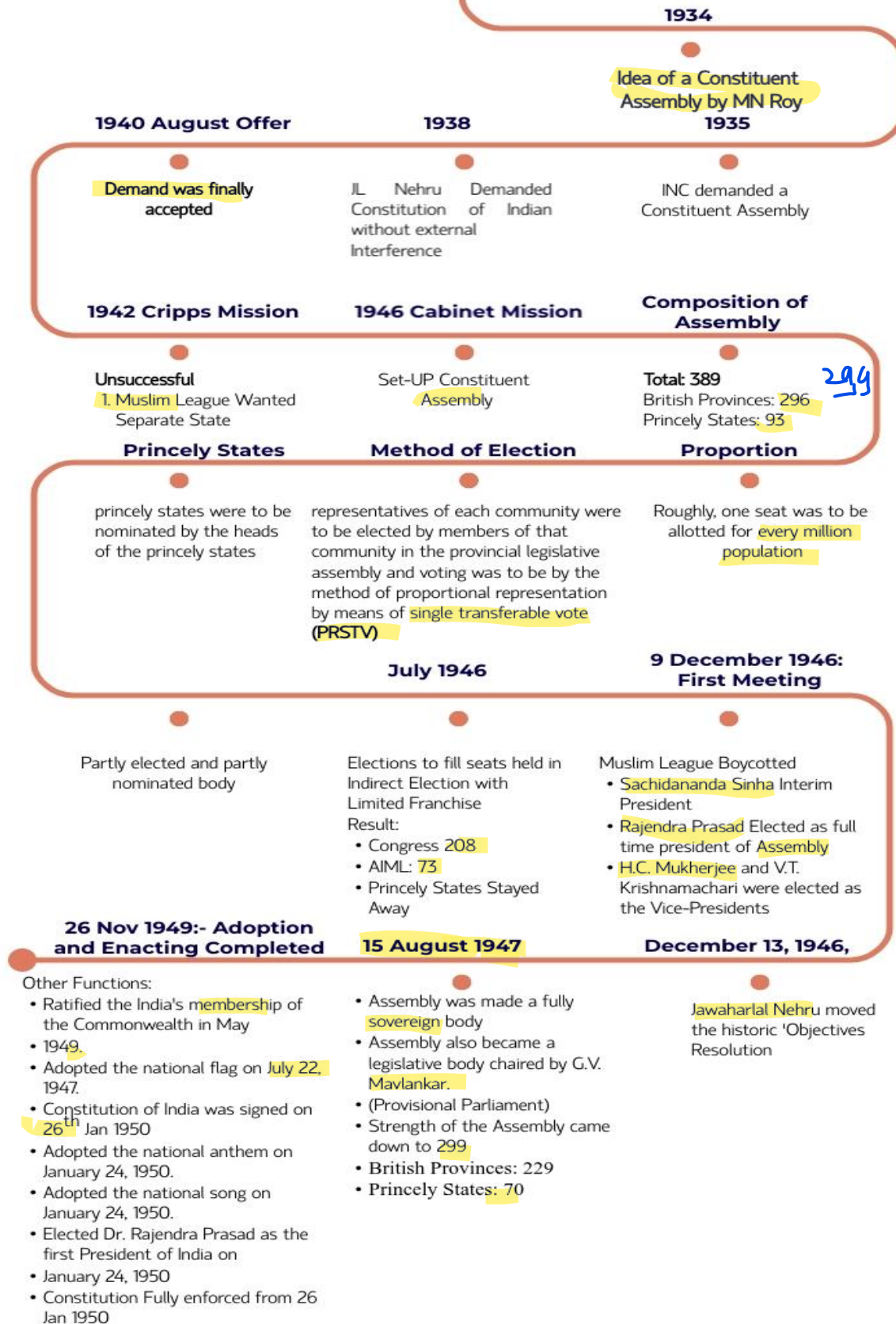
## Post 1857



biacamerlism  
in provinces  
not at center.

# Making of Constitution

How it All Went Down





# COMMITTEES OF CONSTITUENT ASSEMBLY

## Jawaharlal Nehru

1. Union Powers Committee
2. Union Constitution Committee
3. States Committee (Committee for Negotiating with States)
4. Special Committee to Examine the Draft Constitution

## Sardar Patel

1. Provincial Constitution Committee
2. Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas

## Dr. Rajendra Prasad

1. Steering Committee
2. Rules of Procedure Committee
3. Finance and Staff Committee
4. Ad-hoc Committee on the National Flag

## Others

1. Fundamental Rights Sub-Committee - J.B. Kripalani
2. Minorities Sub-Committee - H.C. Mukherjee
3. House Committee - B. Pattabhi Sitaramayya
4. Order of Business Committee - Dr. K.M. Munshi
5. Committee on the Functions of the Constituent Assembly -
6. G.V. Mavalankar
7. Linguistic Provinces Commission - S.K. Dar (Not an Assembly Member)

## Drafting Committee

1. Dr. B.R. Ambedkar (Chairman) ✶
  2. N. Gopalaswamy Ayyangar
  3. Alladi Krishnaswamy Ayyar
  4. Dr. K.M. Munshi
  5. Syed Mohammad Saadullah
  6. N. Madhava Rau (He replaced B.L. Mitter who resigned due to ill-health)
  7. T.T. Krishnamachari (He replaced D.P. Khaitan who died in 1948)
- Some provisions of the Constitution pertaining to citizenship, elections, provisional parliament, temporary and transitional provisions, and short title contained in Articles 5, 6, 7, 8, 9, 60, 324, 366, 367, 379, 380, 388, 391, 392 and 393 came into force on November 26, 1949, itself.
  - The remaining provisions (the major part) of the Constitution came into force on January 26, 1950

## Provisions adapted from the Constitutions of different countries

### 🇬🇧 British Constitution

- First Past the Post
- Parliamentary Form of Government
- The idea of the rule of law
- Institution of the Speaker and her/his role
- Law-making procedure

### 🇺🇸 United States Constitution

- Charter of Fundamental Rights
- Power of Judicial Review and independence of the judiciary

### 🇨🇦 Canadian Constitution

- A Quasi-Federal Form of Government (a federal system with a strong Central Government)
- The idea of Residual Powers

### 🇫🇷 French Constitution

- Principles of Liberty, Equality and Fraternity

### 🇮🇪 Irish Constitution

- Directive Principles of State Policy

Preamble to the Constitution: Embodies basic philosophy of the constitution.

### **Who Says What?**

Palkhiwala says “it is an identity card of the constitution”

K.M Munshi: - “horoscope of our sovereign democratic republic”

Earnest Barker: - “preamble as key-note”

J Hidayatullah: -” soul of our constitution, which lays down the pattern of our political society.”

What are the  
Contents

- Source of the authority
- Nature of Indian State
- Objectives to be achieved
- Date of adoption and enactment

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Free to decided **internal** as well as external affairs

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There is no **authority** above it

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Being a sovereign state, India can either acquire a foreign territory or cede a part of its territory in favour of a foreign state

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Is any alliance like BRICS or membership of commonwealth anti-sovereign?

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No- They are the outcome of freewill of Indian state and can be terminated by the freewill of the state whenever it may deem fit.

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### 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.

The term socialism was added in the Preamble by **42nd Amendment, 1976.**

- In 2008, the Supreme Court rejected a plea demanding the removal of 'socialist'.
- The apex court believed the term socialism shall not be interpreted in the narrower sense. It hasn't got any definite meaning. It gets different meanings in different times.
- In a broader sense, **it means welfare measures for the citizens. It is a facet of democracy**, said the Court.

### Secular

The term means that **all the religions in India get equal respect, protection and support from the state** based on the principle of percept of *Sarva Dharma Sama Bhava*.

- Articles 25 to 28 (guaranteeing the fundamental right to freedom of religion) have been included in the constitution
- ❑ Indian Constitution possesses positive concept of secularism.

- ❑ Positive secularism is where the state plays an **enabler role in the exercise of fundamental rights and the religious freedoms of all communities.**
- ❑ However, the negative secularism means- state completely forbids the public display of religious identity in public affairs. E.g., Turkey, where ban on Hijab was upheld by the courts.

SECULARISM	
<b>Secularism</b>  Secularism means separation of religion from political, economic, social and cultural aspects of life, religion being treated as a purely personal matter.	<b>Constitution and Secularism</b>  The term 'Secular' was added to the preamble by the <b>forty-second constitution Amendment Act of 1976</b> , (India is a sovereign, socialist, secular, democratic, republic).  In S. R. Bommai v. Union of India, AIR 1994 case: The 9 judge bench, in this case, ruled that <b>Secularism is the basic feature of the Constitution of India.</b>  <b>Freedom of Religion Article 25-Article 28</b> <b>Cultural and Educational Rights: Article 29-30</b>
<b>Western Secularism</b>  Mutual Exclusion of state and religious institutions.  Absence of state-led reforms in religion  State cannot aid any religious institution  Primacy to Individual liberty	<b>Indian Secularism</b>  Concept of 'Dharma nirapekshata' i.e. the indifference of state to religion. Indian philosophy of secularism is related to "Sarva Dharma Sambhava" which means equal respect to all religions.  State through its various organs can spread head the <b>religious reforms</b>  Special protection to minorities.  Philosophy of inter-religious equality
<b>Criticism of Secularism in India</b>  1. <b>Anti-religious</b> 2. <b>Copy of Western Thought</b> 3. <b>Promotes Minoritism</b> 4. <b>Intervenes in personal affairs</b> 5. <b>Vote Bank Politics</b>	<b>Threats to Secularism in India</b>  1. <b>Populist policy making</b> 2. <b>Casteism and Social Discriminations</b> 3. <b>Radical Politics</b> 4. <b>Growing Intolerance</b> 5. <b>Religious fundamentalism</b> 6. <b>Cross border radicalization of youth</b> 7. <b>Coercive Nationalism</b>

Dr Radhakrishnan in his book has written-

That **Indian state does not completely reject the importance of religions in Individual lives nor does secularism itself becomes any religion.** We hold that no religion shall be given preferential status.

### Democratic: Elected Government

Democracy is of two types—direct and indirect. In direct democracy, the people exercise their supreme power directly by taking key policy decisions.



1. **Referendum:** procedure whereby a proposed legislation is referred to the electorate for settlement by their direct votes.
2. **Initiative:** is a method by means of which the people can propose a bill to the legislature for enactment
3. **Recall:** method by means of which the voters can remove a representative or an officer before the expiry of his term, when he fails to discharge his duties properly.
4. **Plebiscite:** to obtain public opinion on important matters specially in case of territorial disputes

**Referendum:** votes are legally binding but plebiscite may not be, though it may be used to influence any law or policy.

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

Social Democracy: a way of life which recognizes liberty, equality, and Fraternity

- Liberty cannot be divorced from equality,
- equality cannot be divorced from liberty.
- Nor can liberty and equality be divorced from fraternity.
- Without equality, liberty would produce the supremacy of the few over the many.
- Equality without liberty, would kill individual initiative

### Republic:

India has an elected head called the president. There are two major connotations of republic:

1. Vesting of political sovereignty in the people and not in a single individual like a king.
2. All public offices being opened to every citizen without any discrimination.

## **Constitutional Status of the preamble: Whether it is a part of constitution or not?**

**In Berubari Union Case (1960):** a key to the minds of the makers of the Constitution as it reflects general objectives behind various provisions of the constitution.

**Keshavanada Bharti Case (1973):** the Supreme Court rejected the earlier opinion and held that Preamble is a part of the Constitution. It observed that the Preamble is of extreme importance and the Constitution should be read and interpreted in the light of the grand and noble vision expressed in the Preamble

**Observation of the apex court:** Though someone may argue that preamble was enacted at the last but reason behind so was to ensure the conformity of the preamble with other provisions of the constitution. It was also passed by adopting a motion similar to the manner in which all the other provisions of constitution was enacted. However, it should also be noted that:

1. The Preamble is neither a source of power to legislature nor a prohibition upon the powers of legislature.
2. It is non-justiciable, that is, its provisions are not enforceable in courts of law.

### **Whether it can be amended or not?**

Earlier in Berubari it was held that since Preamble is not the part of the constitution it cannot be amended but this stance was overruled in Keshavananda Bharti Case:

- Preamble can be amended, subject to the condition that no amendment is done to the 'basic features.