

**MALUKA IAS**

# **INDIAN POLITY**



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## CHAPTER 1

### Overview of Constitution and Constituent Assembly

#### WHAT IS CONSTITUTION

A constitution is a body of fundamental principles according to which a state is constituted and governed.

#### FUNCTIONS OF CONSTITUTION

##### FIRST FUNCTION OF CONSTITUTION

- First, it specifies the basic allocation of power in a society.

**Example :**

- In a monarchical constitution, a monarch decides;
- In the old Soviet Union, one single party was given the power to decide.
- But in democratic constitutions, the people get to decide
- In the Indian constitution parliament to decide laws and policies,

##### SECOND FUNCTION OF CONSTITUTION

- The second function of a constitution is to set some limits on what a government can impose on its citizens.
- These limits are fundamental that government may never trespass them.

##### NOW THE QUESTION ARISES....HOW

- 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.
- Constitutions fragment power in society intelligently so that no single group can subvert the constitution.
- That is to ensure that no single institution acquires monopoly of power.
- For example, horizontal fragmentation of power across different institutions like the legislature, executive and the judiciary

##### THIRD FUNCTION OF CONSTITUTION

- But many twentieth century constitutions, of which the Indian constitution is the finest example, also provide an enabling framework for the government to do certain positive things, to express the aspirations and goals of society
- For example, India aspires to be a society that is free of caste discrimination.
- These provisions are found in the section on fundamental rights. The directive principles of state of policy
- They also give powers to the government for pursuing collective good of the society.

##### FOURTH FUNCTION OF CONSTITUTION

- A constitution expresses the fundamental identity of a people.
- This means the people as a collective entity come into being only through the basic constitution.
- It defines the fundamental values that we may not trespass. So the constitution also gives one a moral identity
- For example, German identity was constituted by being ethnically German.
- The Indian constitution, on the other hand, does not make ethnic or language or religion identity a criterion for citizenship.

##### IS CONSTITUTION NEEDS TO BE MANDATORILY WRITTEN

- Some countries, the United Kingdom for instance, do not have one single document that can be called the constitution. Rather they have a series of documents and decisions that, taken collectively, are referred to as the constitution.
- Many constitutions around the world exist only on paper; they are mere words existing on a parchment.

##### PROMULGATION

- Refers to how a constitution comes into being.
- Who crafted the constitution and how much authority did they have?

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- In many countries constitutions remain defunct because they are crafted by military leaders or leaders who are not popular and do not have the ability to carry the people with them.
- The most successful constitutions, like India, south Africa and the United States, are constitutions which were created in the aftermath of popular national movements

## POWER DEPENDS ON ACCEPTANCE

- It was drawn up by people who enjoyed immense public credibility, command the respect of a wide cross-section of society, and who were able to convince the people that the constitution was not an instrument for the aggrandizement of their personal power.
- The final document reflected the broad national consensus at the time.
- It is the hallmark of a successful constitution that it gives everyone in society some reason to go along with its provisions.
- It has to convince people that it provides the framework for pursuing basic justice

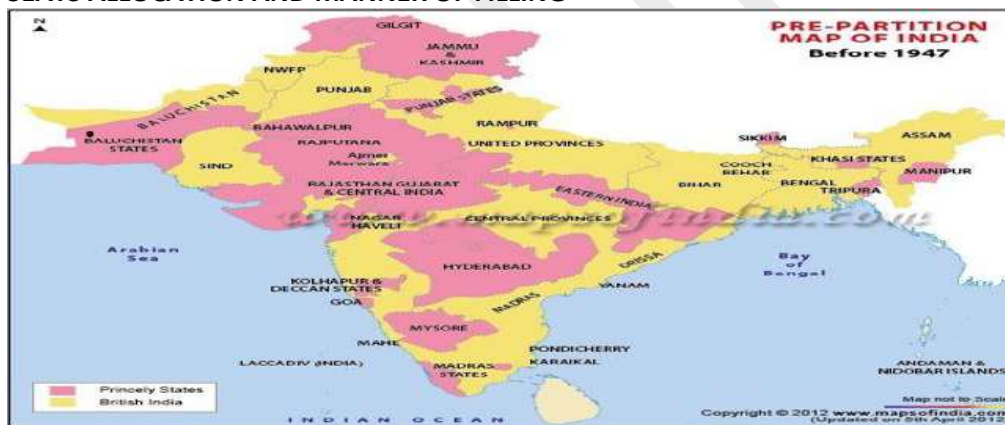
## A LIVING DOCUMENT

- 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;
- A constitution that is, flexible, will give no security, predictability to a people.

## THE BUILDERS

- Constitution was made by the Constituent Assembly which had been elected for undivided India. It held its first sitting on 9 December 1946 and reassembled as Constituent Assembly for divided India on 14 August 1947.
- Its members were chosen by indirect election by the members of the Provincial Legislative Assemblies that had been established under the Government of India Act, 1935.
- The Constituent Assembly was composed suggested by the plan proposed Cabinet Mission

## SEATS ALLOCATION AND MANNER OF FILLING



- Each province and each princely state or group of states were allotted seats proportional to their respective population roughly in the ratio of 1:10,00,000. As a result the provinces (that were under direct British rule) were to elect 292 members while the
- Princely states were allotted a minimum of 93 seats.
- The seats in each province were distributed among the three main communities, Muslims, Sikhs and General, in proportion to their respective populations.
- Members of each community in the provincial legislative assembly elected their own representatives by the method of proportional representation with single transferable vote.
- The method of selection in the case of representatives of princely states was to be determined by consultation.

## ALLOCATION OF SEATS IN THE CONSTITUENT ASSEMBLY OF INDIA (1946)

SI.NO.	AREAS	SEATS
01	British Indian Provinces (11)	292
02	Princely States (Indian States)	93
03	Chief Commissioners Provinces (4)	4
<b>TOTAL</b>		<b>389</b>

### REPRESENTATIVENESS

- Although, the members of the Assembly were not elected by universal suffrage, there was a serious attempt to make the Assembly a representative body.
- Members of all religions were given representation under the scheme described above; in addition, the Assembly had twenty eight members from the Scheduled Castes.
- In terms of political parties, the Congress dominated the Assembly occupying as many as eighty-two per cent of the seats in the Assembly after the Partition. The Congress itself was such a diverse party that it managed to accommodate almost all shades of opinion within it.

## RESULTS OF THE ELECTIONS TO THE CONSTITUENT ASSEMBLY (JULY-AUGUST 1946)

SI.NO.	NAME OF THE PARTY	SEATS WON
01	Congress	208
02	Muslim League	75
03	Unionist Party	1
04	Unionist Muslims	1
05	Unionist Scheduled Castes	1
06	Krishak - Praja Party	1
07	Scheduled Castes Federation	1
08	Communist Party	1
09	Communist Party	1
10	Independents	8
<b>TOTAL</b>		<b>296</b>

## COMMUNITY-WISE REPRESENTATION IN THE CONSTITUENT ASSEMBLY (1946)

SI.NO.	COMMUNITY	STRENGTH
01	Hindus	165
02	Muslim	80
03	Scheduled Castes	31
04	Indian Christians	6
05	Backward Tribes	6
06	Sikhs	4
07	Anglo - Indians	3
08	Parsees	3
<b>TOTAL</b>		<b>296</b>

### THE EXCEPTION

- The Assembly included all important personalities of India at that time, with the exception of Mahatma Gandhi.

### RESHUFFLING

- As a consequence of the partition under the Mountbatten plan of 3 June 1947 those members who were elected from territories which fell under Pakistan ceased to be members of the constituent assembly.
- The number of members in the assembly was reduced to 299.
- The constitution was adopted on 26 November 1949.
- 284 members were actually present on 24 January 1950