**The Constituent Assembly and Framing of the Constitution**

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**Historical Background: One** of the demands of the Indian nationalist leaders during the freedom movement was that a constituent assembly consisting of the representatives of the Indian people should frame the constitution of free India. The Government of India Acts of 1909, 1919 and 1935 were the governmental systems in the framing of which the Indian people had no part. The long standing struggle of nationalist leaders provided a definite shape to such demand and more significantly events that followed after 1921, more particularly the resolution passed by Indian National Congress in the Lahore session in 1929 made the formation of Constituent Assembly an imminent possibility. India’s demand for setting up of Constituent Assembly to draw up her own Constitution was finally conceded by the British Parliament in the Cabinet Mission’s plan of May 16, 1946. The immediate cause was the declaration by Cripps Mission, which underlined the right of Indians to frame their own constitution through a Constituent Assembly. The following proposals put forwarded:

1. That the Constitution of India was to be framed by an elected Constituent Assembly of the Indian people;
2. That the Constitution should give India *Dominion Status* i.e. equal partnership of the British Commonwealth of Nations;
3. That there should be one Indian Union comprising all the provinces and Indian States; but
4. That any province (or States) which was not prepared to accepts the Constitution would be free to retain its constitutional position existing at that time and with such non-accepting Provinces the British Government could enter into separate constitutional arrangements.

However, the proposals were not acceptable to both the Congress and the Muslim League for separate reasons. At the close of the Second World War, the British Labour Party, which had sympathized with the aspirations of the Indian nationalist Movement, came to power in 1945. In February, 1946, Prime Minister Clement Attlee announced in the House of Commons that a Cabinet Mission, comprising of Lord Pethick Lawrence, (Secretary of State for India) Stafford Cripps and A.V.Alexander, members of the British Cabinet would go to India and discuss the issue of early realization of self-government with Indian leaders. It would explore all the possibilities that would enable India attain her freedom and it was for Indians to decide on what form of government they wanted. Thus the British, at last, recognized the Indian demand that it was the right of the representatives of the Indian people to draw up the constitution of free India.

**The making of the Indian Constitution**: The making of Constitution for independent India was a challenging task because of many formidable socio-economic challenges. The makers of Indian Constitution had to grapple with a complex inheritance and they were expected to synthesize many contradictory social challenges and some of the prominent among them were:

*First*, India inherited all the contradictions of a colonial economy. The whole of India was underdeveloped because of colonial exploitation and plunder.

*Second*, we inherited a wounded socio-cultural structure because of the policies of divide and rule followed by the colonial rulers. The constitution makers had to provide a healing touch and this required constitutional guarantees for the minorities.

*Third*, India inherited a highly authoritarian social structure which was based on privileges for the higher castes and disabilities for the lower castes. The constitutional makers had to concretely respond to the specific socio-cultural problems faced by the minorities and disadvantaged castes.

A multi-cultural, multi-religious and multi-lingual society poses complex questions for democratic political system and Indian Constitution had to reconcile many contending and competing pluralities of the society. It was not an easy task because the Constitution of India was to perform the tasks of conflict resolution. Historically, whenever a constitution has been framed, it has followed a revolution. A constitution has been intended to usher in a new social and political order.

**COMPOSITION AND FUNCTIONING OF CONSTITUENT ASSEMBLY**

The Constituent Assembly was indirectly elected by the provincial legislative Assemblies by a system of proportional representation. The provincial Assemblies were elected on the basis of a limited franchise, according to which only 20-24% of the population were able to vote. According to the Cabinet mission Plan. The election to the Assembly held as per the Schemes and these were:

1. Each provinces and states were allotted the total number of seats proportional to their respective populations roughly in the ratio of one to a million. As a result, the Provinces were to elect 292 members while the Indian States were allotted 93 seats.
2. The seats were distributed among the three main communities, Muslim, Sikh and General, in proportion to their respective populations.
3. The method to be adopted was proportional representation with single transferable vote.
4. The method of selection in the case of Representatives of Princely States was to be determined by consultation.

**Elections to the Assembly:** Elections to the Constituent Assembly were held in July, 1946.The Muslim League won all but seven of the seats reserved for Muslims and the Congress secured 203 of General seats. The Congress had also succeeded in capturing one Sikh and four Muslim seats, thus, making a tally of 208 seats out of total 296 seats allotted to the Provinces. The representatives of the States of Baroda, Bikaner, Jaipur, Jodhpur, Rewa, Udaipur and Patiala entered the Assembly in April, 1947.Representatives of States, other than Jammu and Kashmir and Hyderabad came in after the accession of these States in October, 1947 and November, 1948 respectively.

Partition of India into two independent nations by British resolution, resulted into the formation of two separate Constituent Assemblies. The Party-wise strength in the post Partition Assembly, including the representation from States was as follows: Congress 197, Muslim League 25, Akali 1, and Independents 7. The Congress won a majority in the Constituent Assembly. It captured 85 percent of the general seats. The Constituent Assembly was, now, a one-party body dominated by the Congress Party. In the selection of its candidates for election to the constituent Assembly, the Congress adopted two basic norms:

* that the congress candidates should represent the country as a whole and various viewpoints within the party itself must find due representation; and
* due care should be taken to bring on its list candidates capable of representing country’s dynamism irrespective of party affiliations.

**Composition:** The Constituent Assembly was a galaxy of top ranking leaders of the Congress and the Muslim League. Veteran Statesmen, seasoned administrators, eminent jurists, in fact, people from all walks of life and all parts of the country got represented. Thereby the efforts had been made to ensure full representation to all classes and interests of the Indian states. In a way we can say that the Constituent Assembly was representative in its character. Constituent Assembly consisted of following eminent persons:J.L.Nehru,Patel,Rajendra Prasad,Dr.B.R.Ambedkar,N.Goplaswamy Ayyar,Hridaynath Kunzru,Alladi Krishnaswamy Ayyar,,S. Radhakrishnan;Sardar Hukam Singh,P.S.Deshmukh;Prof. K.T.Shah, and Thakur Das Bhargava were few among other prominent members.

**COMMITTEES**: The Constituent Assembly worked with the help of a large number of committees on procedural and substantive matters. It had eight major committees:

1. Rules of Procedure Committee
2. Finance and Staff Committee
3. Steering Committee
4. House Committee
5. Order of Business Committee
6. Drafting Committee
7. Union Constitution Committee
8. Provincial Constitution Committee

There were in all more than twenty Committees. Most of them worked as standing committees. Only the Drafting Committee functioned till the end of Constitution making. All the important Committees were chaired by either Nehru, Patel or Prasad.

**Drafting Committee:** One of the most important committee was the Drafting Committee. It was appointed by the resolution of the Constituent Assembly on August 29, 1947 submitted its report on February 21, 1948. B.R.Ambedkar was the Chairman of Drafting Committee. The other eminent members were Alladi Krishnaswamy Ayyer, N.Gopalaswamy Ayyanger, K.M.Munshi, Saiyed Mohammed Sadadullah, B.L.Mathur, T.T. Krishnamachari and D.P.Khaitan. B.N.Rau acted as Committee’s constitutional adviser and S.N.Mukherjee as principal draftsman. The Draft Constitution prepared by this Committee was presented to the Constituent Assembly on November 4, 1948, for consideration, thereby providing a sufficient long opportunity to the public, the Press, and the Provincial Legislatures to discuss it. As many as 7,635 amendments were tabled out of which 2,473 were actually moved and discussed[[1]](#footnote-2). On November 26, it received the assent of the Assembly and was declared as passed.

***Who presided over which Committee***

J.L.Nehru Union Constitution Committee

Union Powers Committee

Vallabhbhai Patel Provincial Constitutional Committee

Advisory Committee on Fundamental Rights

B.N. Rau Constitutional Committee

**PROCEDURE:** The Procedure followed in the Assembly was similar to that followed in the legislature. Constitutional provisions were treated as parts of a bill and passed through three readings and committees. Decisions on most issues were arrived through Consensus. Broadly two methods were followed:

1. Decision by ***Consensus***: It was no ordinary task .According to Granville Austin, three factors helped in creation of consensus were:
   * atmosphere of Unity in the Constituent Assembly;
   * atmosphere of idealism;
   * national imperative
2. Principle of ***Accommodation***: wherever possible the decisions were also arrived through give and take i.e. accommodating the dissents. it was reflected in the following features of the Constitution;

* Federalism with Unitary features;
* Republican with Commonwealth membership;
* Coordination between Centre, States and Local Self Government synthesizing the centralization with decentralization.

1. Art of ***selection and modification***.

**Objective Resolutions**: The best summary of the principles that the nationalist movement brought to the Constituent Assembly is the Objective Resolution moved by Nehru in 1946.The resolution, in nutshell, encapsulated the aspirations and values behind the Constitution. Main points of the Objective Resolution are as follow:

* India is an independent, sovereign, republic;
* India shall be a Union of erstwhile British territories,Indian States,and other parts outside British India and Indian States as are willing to be a part of the Union;
* All powers and authority of sovereign and Independent India and its Constitution shall flow from the people;
* All people of India shall be guaranteed and secured social, economic and political justice; equality of status and opportunities and equality before law; and fundamental freedoms-of speech, expression, belief, faith,worship, vocation, association and action, subject to law and public morality;
* The minorities, backward and tribal areas, depressed and other backward classes shall be provided adequate safeguards;
* The territorial integrity of the Republic and its sovereign rights on land, sea and air shall be maintained according to justice and law of civilized nations;
* The land would make full and willing contribution to the promotion of world peace and welfare of mankind.

**Philosophy of the Constitution:** The Constitution of a country is the highest legal-political document for its government. It mainly serves these purposes: *one*, it provide a set of basic rules that allow for minimal coordination amongst members of society. *Second*, it specify who has the power to make decisions in the society, i.e., how the governmement will be constituted. *Third*, it set some limits on what a government can impose on its citizens. Last but not the least, Constitution enables the government to fulfill the aspirations of a society and create conditions for a just society. In a general sense it lays down the structure of power and obligations of the rulers toward the citizens. Indian Constitution, too, was guided by some ideals, vision and philosophy reflected in following manner:

1. ***Preamble***: Just as a book begins with a preface, a Constitution begins with a preamble. It shows what the Constitution aims at. Or, in other words, what kind of society it ought to be set up in the country. Though the Preamble is not a part of the legal section of the Constitution, still, it is very important. Because, it shows the way the government ought to run. The Preamble sets out what the objectives of our government and the kind of system the Constitution wishes to set up in India. It speaks of a sovereign, secular, socialist, democratic, republic, social, political and economic justice, liberty of thought, expression, belief, faith and worship, equality of status and of opportunity, fraternity assuring the dignity of the individual and the unity and the integrity of the nation. Thus the Preamble, by combining the ideals of social, political and economic democracy seeks to establish what Mahatma Gandhi described as the “India of my dreams”. These are the prominent characteristics of the Preamble of our Constitution:
   1. It clearly establishes at the outset that irrespective of the difference in socio-economic status the people of India are one and they are the ultimate source of all authority,
   2. The people of India has adopted in the Preamble the democratic ideal which assures to the citizens the dignity of the individual and other cherished human values as a means to the full evaluation and expression of his personality, and while delegating to the Legislature, the Executive and the Judiciary their respective powers in the Constitution, they have reserved to themselves certain fundamental rights.
   3. The four basic principles or the four pillars of an egalitarian society-Justice, Liberty, Equality and Fraternity are very categorically highlighted in the Preamble. Though they may sound grandiose and rhetoric, yet they serve as the goals which the nation will inspire and strive for.
   4. It also highlights the imperative need to establish a just society, where there would be no discrimination of any citizen on the basis of caste, creed, colour or sex.
   5. It declares the basic types of government and polity which is sought to be established in the country.

Thus, Preamble to our Constitution serves two important purposes:

* + - It indicates the source from which the Constitution derives its authority;
    - It states the objects which the constitution seeks to establish and promote.

1. **Sovereign, socialist, secular and Democratic**: The Constitution is not a gift of British Empire but ordained by the people of India to themselves.
2. **Republic:** The Preamble declares unequivocally that the source of authority is the people. While Pakistan remained a Dominion until 1956, India declared herself a ‘Republic’ in 1949.
3. **A Representative Democracy:** In our Constitution, the most abiding theme that crossed over the minds of members of the Assembly to establish a Democratic form of Government wherein people will elect their representative to reflect their views and sentiments.
4. **Economic and Social Justice**
5. **Liberty, Equality and Fraternity**
6. **Dignity of the Individual**
7. **Fundamental Duties**
8. **Promotion of International Peace**

**Salient Features of the Indian Constitution:** The Constitution adopted on 26 November, 1949 was a lengthy legal document owing its debt to sources both within and outside. The sources from within are some structural principles and terminology from the Montague- Chelmsford Act of 1919 and the Government of India Act of 1935; from outside, mostly British and American Constitutions and, too some extents, from Irish Constitution too. Main features of the Indian Constitutions are:

1. Written Constitution
2. The Lengthiest Constitution
3. Sovereign, Socialist, Secular, Democratic Republic
4. Parliamentary Form of Government
5. A Federation with a strong Centralizing Tendencies
6. Unique Blending of rigidity and Flexibility
7. Universal Adult Franchise
8. Single citizenship
9. Fundamental Rights and Duties
10. Directive Principle of State Policy
11. Independent Judiciary
12. Judicial Review

* A **Written Constitution**. The Republic of India has a written and enacted constitution. Originally it consisted of 395 Articles arranged under 22 Parts and 8 Schedules. So far 102 Amendments have been made into it. Today, after many amendments, it has 441 Articles and 12 Schedules.
* The **Lengthiest Constitution.** TheConstitution of India has the distinction of being the most lengthy and detailed constitutional document in the world barring one.[[2]](#footnote-3) In fact, it has been the endeavour of the framers of the constitution to provide for the solution of all the problems of administration and governance of the country. Thus, even those matters which are subject of conventions in other countries have been put in black and white. This extraordinary bulk of constitution may be attributed to the following reasons.
  + - In addition to the Union, the Indian Constitution includes the Constitutions of the states as well.
    - It contains detailed distribution of legislative, administrative and financial powers between the Union and the States.
    - The vastness of the country and its peculiar problems has also contributed to the bulk of the constitutions.
    - The Constitution carries on elaborate chapter on Fundamental Rights, Fundamental Duties and non-justiciable Directive Principles of State Policies.
* **Popular Sovereignty**. The popular sovereignty implies , *firstly* that the ultimate authority of all governmental agencies are embodied in the will of the people and *secondly*, the authority is subject to renewal from rime to time through popular election on periodic basis. The opening line of the Constitution “we, the people of India….” exemplifies the vision and desire of the great national leaders to see the power in the hand of the people. In short, the authority of the Constitution, as the Supreme Law of the land, is derived from the people and not from the grace of any external sovereign. Thus, in the affairs of the state, it is the will of the people that prevails ultimately and this is the principle of popular sovereignty.
* **Parliamentary Form of Government**. Our constitution prescribes Cabinet type of Government both at Centre and in the States. Under such a system, the Head of the State occupying a position of great dignity, but practically all authority nominally vested in him, is exercised by the Cabinet which assumes full responsibility for acts performed in his name. From the beginning it was the desire of the leaders to have a Parliamentary form of Government modelled on British line. The reason was that Indian was closely associated with this type of Government and will not face much difficulty in handling this type of government. As Dr. Ambedkar rightly point out the virtues of this system, that a democratically elected executive shall ensure twin ideals of stability as well as enforce responsibility.
* **Secularism**. On the backdrop of event that preceded partition and followed immediately after partition, secularism was felt indispensable to the needs of Indian society, mired in deep rooted conflicts based on religion. But due to some reasons it could not be incorporated at that time. Later in 1976 through 42nd Amendment, words ‘secular’ and ‘socialism’ were inserted in the Preamble. The distinguishing features of secular democracy as contemplated by the constitution of India are :
  + that the state will not identify itself with or be controlled by any religion;
  + that while the state guarantees to every one the right to profess whatever religion one chooses to follow (which includes also the right to be an agnostic or an atheist), it will not accord any preferential treatment to them;
  + that no discrimination will be shown by the state against any person on account of his religion and faith; and
  + that the right of every citizen, subject to any general condition to enter any office under the state will be equal to that of his fellow citizens.
* **Amending Process**. The adaptability of the Constitution to the every changing circumstance is of vital importance to its successful working as it has to run side by side with the swift current of nation’s growth. The Indian Constitution is partly rigid and partly flexible. The procedure laid down for constitutional amendment (*Art.368*) is neither very easy, as in England, nor very rigid as in the USA.It is only the amendment of a few of the provisions that require ratification by the state legislatures and even then ratification by only ½ of them would suffice(while the US Constitution requires ratification by ¾ of the states).The rest of the constitution may be amended by a special majority of not less than 2/3rd of the members present and voting, which again, must be a majority of the total membership of the House.

On the other hand, Parliament has been given the power to alter or modify many provisions of the constitution by a simple majority by laying down in the constitution that such changes shall not be deemed to be ‘amendments’ of the Constitution.

* **Universal Adult Franchise.** Under the Indian Constitution every man and woman above 18 years of age (the 61st Amendment Act, 1989, lowered the minimum voting age from 21 to 18 years) has been given the right to vote.Art.326 of the Constitution contains details about universal adult suffrage.
* **Directive Principles of State Policy.** The Constitution enjoins the state to regard these principles, enshrined in Part IV (from Arts.36-51) as fundamental in governance and to apply them in making laws. Though non-justiciable in character, nevertheless state will make a constant endeavour to attain the ideals envisioned through Directive Principles.
* **Single Citizenship**. The Indian Constitution, though federal, provides for one citizenship only, viz. the Citizenship of India. In federal states like the U.S.A. and Switzerland, there is a dual citizenship, i.e. the federal or national citizenship, and citizenship of the state where a person is born or permanently resides.
* **Independent Judiciary:** The very existence of a right depends upon the remedy for its enforcement. It is said that unless there is remedy, there is no right. Thus, an Independent judiciary with a power of judicial review has been established under the Indian Constitution. It is the custodian of the rights of the citizens. It also plays a significant role in determining the limits of the powers the centre and states.
* **Fundamental Rights**: Inspired by the principle of Natural Law and the need to enable the fullest development of the human personality, as well as to protect human dignity and worth, our constitution-makers were prompted to import a complete code of human rights in the Constitution, which have been elaborately detailed in Part III of the Constitution (Arts. 12-32).The state cannot make a law which take away or abridges any of the rights of the citizens guaranteed in Part III of the Constitution. If it passes such a law, it may be declared unconstitutional by the courts.
* **Fundamental Duties:** As per the recommendations of the Swarn Singh Committee, the Constitution 42nd Amendment Act, 1976, has, introduced a Code of “Fundamental Duties” for citizens to be observed, such as respecting the Constitution, preserving public property or national heritage etc.

**Evaluation:** A Constitution can not be made to function on dotted line and we need to keep in mind the spirits behinds the adoption of a particular ideology or Acts. The caution sounded out by Arthur James Belfour, while writing an introduction to the second edition of Walter Bagehot’s popular classic *The English Constitution*, can not be ignored as it reads as ‘*Constitutions are easily copied, temperaments are not; and if it should happen that the borrowed constitution and the temperament fail to correspond, the misfit may have serious results’*[[3]](#footnote-4). This ominous warning, if understood properly could perhaps explain some of the failings, normally attributed to the Constitution on some occasion, particularly the import of Secularism into our Constitution without taking into consideration the utility and practicality of this principle for large illiterate and religious minded Indian.

The most scathing remark about the Indian Constitution that it is *highly legalistic* is unfair since the Constitution of any country is regarded as the basic law of the land. Added to this, the framers of Constitution did not state the constitutional features in the form of maxims. In fact, they were required to provide requisite details to serve various occasions. Similarly the inclusion of ‘Judicial Review’ has been found fault with by prominent Constitutional expert, Sir Ivor Jennings. He termed it a ***“Lawyer’s paradise***” and chided that constitutions are intended to enable the government to work smoothly but not to provide fees for constitutional lawyers. Most of the eminent constitutional writers are critical of the legalistic nature of our Constitution and also the scope provided for judicial review. However as the nation progressed the importance of these provisions especially the judicial review clause became crystal clear for all to see. Hence these are misplaced apprehension having no substantial basis.

**Important Questions**

1. What were the problems which the Constituent Assembly had to face while framing the Indian Constitution? Elaborate.
2. How was the Constitution of India framed?
3. Explain the composition, working and major committees of the Constituent Assembly of India.
4. What is a Constitution? In what way is it important for a country?
5. Do you think that the Constitution of India is rightly termed as “Lawyer’s Paradise”?
6. Describe the various sources of the Constitution of India.
7. Discuss the main features of Indian Constitution.
8. Discuss in detail how the Preamble reflects the spirit of the Constitution of India.

**Suggested Readings**

1. D,D,Bau,Introduction to the Constitution of India,Wadhwa,Nagpur,2003

2 M.V. Pylee, An Introduction to the Constitution of India

1. B.Shiva Rao, Framing of India’s Constitution, Vol.1
2. Shivani Choube,Making of the India’s Constitution

1. .Choube,Shivani, Making of the Constitution of India, p.47 [↑](#footnote-ref-2)
2. The new Constitution of Yugoslavia after dismemberment is the lengthiest Constitution. [↑](#footnote-ref-3)
3. . Shiva Rao, B, Framing of India’s Constitutions, Vol..I, P.36. [↑](#footnote-ref-4)