

The Evolution of the Constitution and Main Provisions

The constitution of India came into force on 26 January 1950. Since then the day is celebrated as Republic Day. But before 1950, 26 January was called Independence Day. Since 26 January 1930, it was the day on which thousands of people, in villages, in mohallas, in towns, in small and big groups would take the independence pledge, committing themselves to the complete independence of India from British rule. It was only fitting that the new republic should come into being on that day, marking from its very inception the continuity between the struggle for independence and the adoption of the constitution that made India a republic.

The process of the evolution of the constitution began many decades before 26 January 1950 and has continued unabated since. Its origins lie deeply embedded in the struggle for independence from Britain and in the movements for responsible and constitutional government in the princely states.

More than passing resolutions on the need for, or framing proposals for constitutional reform, the heart of the national movement's contribution lay in its concrete political practice. This popularized among the people the notions of parliamentary democracy, republicanism, civil liberties, social and economic justice, which were among the essential principles of the constitution. For example, the idea of a parliamentary form of government was introduced into the Indian political consciousness by the inclusion of the term 'Congress' (the Lower House in the US), in the name of the Indian National Congress. The actual functioning of the Congress organization, especially from 1920 onwards, after Gandhiji modified the Congress constitution, was based on the elective principle. All office-bearers were chosen through election, be it the president of the All India Congress Committee (AICC) or the secretary of the village-level Congress Committee. The AICC, which consisted of delegates elected by the Provincial Congress Committees (PCCs), was the equivalent of the Lok Sabha or parliament, and the Working Committee was the equivalent of the cabinet. The Congress president was the counterpart of the prime minister. Thus, when the constitution in 1950 adopted a parliamentary form of government, with a cabinet led by a prime minister, it was not, as is commonly supposed, the British parliament that it was emulating. It was formalizing nationalist practices, which the people were already familiar with.

Even more than the form, it was the spirit of democracy, on which in the last and first resort the foundations of the constitution rest, that was inculcated among the people by the national movement. This found expression in widespread mass participation. It ensured a place for adult franchise after independence. Could women have been denied the vote in 1950 after Gandhiji as early as 1930 had entrusted crucial parts of the Civil Disobedience movement to their care? Could a property or income qualification coexist with the concepts of *daridranarayan* and *antodya*? Could the literacy or educational qualification be smuggled into the constitution once Gandhiji had based his entire struggle on the 'dumb millions'?

The struggle for the freedom of the Press under British rule was vigorously fought by many leaders, and especially by Lokamanya Tilak who paid a very heavy price for the combative tone

of his newspapers. Many other newspapers too like the *Leader*, *Amrita Bazar Patrika*, *Bombay Chronicle*, *The Hindustan Times*, *The Hindu*, the *Tribune*, *Searchlight*, *Andhra Patrika*, *Aaj*, *Ananda Bazar Patrika*, among others, functioned as unpaid organs of the national movement. This history ensured that freedom of expression became a fundamental right in the constitution.

Steps to the Constitution

Swaraj . . . will not be a free gift of the British Parliament. It will be a declaration of India's full self-expression. That it will be expressed through an Act of Parliament is true. But it will be merely a courteous ratification of the declared wish of the people of India even as it was in the case of the Union of South Africa . . . The British Parliament, when the settlement comes, will ratify the wishes of the people of India as expressed not through the bureaucracy but through her freely chosen representatives. Swaraj can never be a free gift by one nation to another. It is a treasure to be purchased with a nation's best blood. It will cease to be a gift when we have paid dearly for it.

This statement, made by Gandhiji in 1922,¹ makes clear that the British did not introduce any constitutional reforms or organs on their own initiative but always in belated and grudging response to sustained Indian nationalist pressure. There is a myth which has been carefully and often successfully purveyed by British administrators and later neo-imperialist scholars that the British initiated modern, responsible and constitutional government in India and that the constitution was merely the culmination of the series of constitutional initiatives made by them in 1861, 1892, 1909, 1919 and 1935. This can be disproved given the fact that their concessions, at every stage, fell far short of what Indians were demanding.

For example, the elective principle was first introduced by the British in the Indian Councils Act of 1892. The Congress and its nationalist precursors, and the Indian Press, had been demanding elections to the councils, elected majorities in them, and greater powers to the non-official members of councils for many years before that. Nationalist demands had already far exceeded what was granted in 1892.

It is also necessary to realize that nationalist demands were not just a little more advanced than British practice: they were far ahead. When the Congress demanded that at least half the members of the councils be elected, and that there should be male adult franchise, vote by ballot, power to the legislative councils to vote on the finance bills, etc., the actual British practice in India was that the Imperial or Central Legislative Council was a totally nominated body of a maximum of seventeen members with an official majority and a few token Indian members. The 1892 Act introduced elected members but they were still in a minority, and had very few powers. On the other hand, the nationalists' conception of the nature of India's constitutional framework was advancing rapidly. In 1895, there appeared the Constitution of India Bill, also known as the Home Rule Bill, about whose authorship there is no conclusive evidence, but which 'Annie Besant . . . thought . . . was probably issued under Lokamanya Bal Gangadhar Tilak's inspiration',² which conceived of basic human rights such as freedom of expression, equality

before the law, right to the inviolability of one's home, right to property, etc., for all citizens of India. Even the Government of India Act, 1935, the last British enactment, failed to satisfy the repeated Indian demand, first made in 1895, for a declaration of the rights of the people of India.

The Indian leaders felt no necessity to abandon the constitutional legacy of the pre-independence period at the time of the writing of the constitution and start on a clean slate—this was their own legacy for which they had fought hard and made many sacrifices. The constitution could thus borrow heavily from the Government of India Act of 1935 because those who drafted the constitution had no need to prove their independent credentials. They also believed that the advantages of familiarity which existing institutions had should not be rejected. Since they also freely rejected what was unsuitable in the old and added much that was new, they did not hesitate to retain what was of value.

Constitutional Development

Beginning in the 1880s and 1890s with the notion that Britain must grant responsible government to India, the national movement, by the end of the second decade of the twentieth century had begun to espouse the doctrine of self-determination or the right of Indians to frame their own constitution. Tilak and Annie Besant, during the First World War, had launched a Home Rule agitation (the name being inspired by the Irish Home Rule Movement). The Congress-Muslim League Scheme for constitutional reforms which emerged out of the Congress-League Pact of 1916 demanded that four-fifths of the members of the provincial legislatures be elected 'by the people on as broad a franchise as possible'.³ In 1918, the Congress session at Delhi resolved that: 'In view of the pronouncement of President Wilson, Mr Lloyd George, and other British statesmen, that to ensure the future peace of the world, the principle of Self-determination should be applied to all progressive nations, . . . this Congress claims recognition of India . . . as one of the progressive nations to whom the principle of Self-determination should be applied.'⁴ The arguments did not impress the British rulers, and the new instalment of reforms in 1919 was introduced with the assertion that the 'timing and pace' of constitutional reform would be decided by the British alone. The Indian answer to this was the Non-Cooperation movement led by Gandhiji. After this movement ended in 1922, and sections of Congressmen now constituted as the Swaraj Party fought elections to the legislative councils, the constitutional battle was joined with a renewed vigour.

One initiative in which Annie Besant, Tej Bahadur Sapru, V.S. Srinivasa Sastri played a leading role, was the Commonwealth of India Bill which was drafted in India, revised by Labour party leaders, accepted unanimously by the executive committee of the Parliamentary Labour Party, and had its first reading in the House of Commons in December 1925. It could not, however, survive the defeat of the Labour government. It is significant that the Bill, which had the support of very wide sections of Indian opinion, specified in clear terms that 'India shall be placed on an equal footing with the Self-Governing Dominions'.⁵ The Memorandum accompanying the Bill reminded the British of their history⁶

We seek an honourable agreement, such as Britain refused to her American Colonies and created a Republic, but made with her other Colonies and created peace and amity.

At this juncture, a very prominent role was also played by Motilal Nehru, who introduced a resolution on 8 February 1924 in the Central Legislative Assembly which asked the government 'to summon, at an early date, a representative Round Table Conference to recommend, with due regard to the protection of the rights and interests of important minorities, the scheme of a constitution for India'.⁷ This scheme would be ratified by a newly elected Indian legislature and then sent to the British parliament to be embodied in a statute. This was the first time that the demand for a constitution and the procedure for its adoption were spelt out in such clear terms. This resolution, which came to be known as the 'National Demand', was passed by a large majority in the Central Legislative Assembly—76 for and 48 against.

The British, showing their contempt for the 'National Demand', appointed the all-white Simon Commission in November 1927 to recommend further constitutional changes. The move was roundly condemned by all sections of political opinion in India. Lord Birkenhead, the Secretary of State, while announcing the commission in the House of Lords on 24 November 1927, also repeated his challenge to Indians, first delivered on 7 July 1925: 'Let them produce a constitution which carries behind it a fair measure of general agreement among the great peoples of India'.⁸

The challenge was accepted and, at the initiative of the Congress, an All Parties Conference was called in May 1928 which appointed a committee chaired by Motilal Nehru 'to determine the principles of the Constitution for India'.⁹ The Nehru Report, submitted on 10 August 1928, was in effect an outline of a draft constitution for India. Most of its features were later included in the Constitution of India. It visualized a parliamentary system with full responsible government and joint electorates with time-bound reservation of seats for minorities. The Nehru Report laid special emphasis on securing fundamental human rights for the people of India. These included the right to 'the freedom of conscience and the free profession and practise of religion', 'the right of free expression of opinion, as well as the right to assemble peaceably and without arms, and to form associations or unions', equal rights for men and women, and the right to free elementary education. Interestingly, the secular character of the state was listed as a fundamental right. Of the nineteen rights listed in the Nehru Report, ten were incorporated into the constitution. The Nehru Report also recommended that 'the redistribution of provinces should take place on a linguistic basis'.¹⁰

The Nehru Report was followed by a boycott of the Simon Commission and mass demonstrations wherever its members went. In December 1929, the Congress declared complete independence as its goal and followed this up with the launching of the mass Civil Disobedience movement in April 1930 which brought hundreds of thousands into the streets and saw around 100,000 jail. It was becoming increasingly clear that Indians were unlikely to be satisfied with anything less than the right to frame their own constitution. The idea that this should be done not through the conference method, as was the case with the Nehru Report, but via a Constituent Assembly elected for this specific purpose, on the basis of the widest possible franchise, began to

gain ground. Jawaharlal Nehru was the first national leader to articulate the idea in 1933 though M.N. Roy, the Marxist leader, had made the suggestion earlier. In June 1934, the Congress Working Committee (CWC), while rejecting the white paper presented by the British government on further constitutional reform, resolved that the 'only satisfactory alternative to the White Paper is a constitution drawn up by a Constituent Assembly elected on the basis of adult suffrage or as near it as possible'.¹¹

The demand for a Constituent Assembly was repeated frequently after 1934 and included in the Congress manifesto for the 1936–37 elections. The Congress won majorities in seven out of eleven provinces and decided to form ministries. However, it made sure that this was not construed as acceptance of the existing constitutional framework. The meeting of the CWC at Wardha on 27–28 February 1937 which decided in favour of accepting office also reminded the legislators that a resolution of the Faizpur Congress had bound them to articulate the demand for a Constituent Assembly as soon as possible in the new legislatures.

From 19 to 20 March, the promised convention of Congress legislators and AICC members was held at Delhi, with Jawaharlal Nehru in the chair. Nehru told the delegates that they had to work for a '*panchayati raj*, fashioned by a Constituent Assembly, a grand *panchayat* of the nation, elected by all our people'. In unequivocal terms, he said 'this constitution must therefore go, lock, stock and barrel, and leave the field clear for our Constituent Assembly'.¹²

In July 1937, Nehru again, this time a trifle impatiently, pressed the legislators to introduce resolutions in the assemblies rejecting the present constitution and demanding a Constituent Assembly. In August, the Congress Working Committee accepted a draft resolution prepared by Acharya Kripalani, which was sent to Congressmen in the provincial assemblies. Between August and October 1937, all the Congress provinces—Bombay, Madras, United Provinces, Bihar, Orissa, Central Provinces, North West Frontier Province (NWFP)—as well as Sind passed this resolution which demanded that 'the Government of India Act, 1935 . . . be repealed and replaced by a constitution for a free India framed by a Constituent Assembly elected on the basis of adult franchise'.¹³ On 17 September 1937, a resolution recommending replacement of the Government of India Act 1935 by a constitution framed by a Constituent Assembly was introduced in the Central Legislative Assembly. S. Satyamurti, the Congress leader who introduced it, urged the British government to grasp the hand of friendship extended by Mahatma Gandhi because 'once a great people make up their mind to obtain their freedom, there is no power on earth, not even Great Britain, which can stand in their way'.¹⁴ The Haripura session of the Congress in February 1938 repeated the same demand.

Following the outbreak of the Second World War, Congress ministries resigned in protest against their being made a party to the war without eliciting their opinion or consent. At this juncture the ministries passed resolutions in the legislative assemblies which asserted that 'India should be regarded as an independent nation entitled to frame her own constitution'. Soon after, Gandhiji added his voice to that of Nehru and the Congress. In an article titled 'The Only Way', he declared that he was now even more enthusiastic about the Constituent Assembly than Nehru himself. 'Look at the question from any standpoint you like, it will be found that the way to

democratic *Swaraj* lies only through a properly constituted Assembly, call it by whatever name you like.' He also thought that a body based on unadulterated suffrage including both men and women would do full justice to rival claims. 'I seem to see in it a remedy . . . for our communal and other distempers, besides being a vehicle for mass political and other education . . .'.¹⁵

A discussion between Gandhiji and Jawaharlal Nehru at a meeting of the CWC held at Wardha from 15 to 19 April 1940 brought out Gandhiji's outstanding qualities of foresight and pragmatism. While Jawaharlal Nehru maintained that the British government must first declare India independent and then call a Constituent Assembly, Gandhiji felt that the Assembly could be called first and be left free to decide on the issue of independence. As it happened, and not for the first time, Gandhiji's view was closer to the actual turn of events.¹⁶

The 'August Offer' made by Viceroy Linlithgow in 1940 in an attempt to secure Indian cooperation in the war effort for the first time conceded that the framing of the new constitution should be primarily (though not solely) the responsibility of Indians themselves. It also offered to set up, after the conclusion of the war, 'a body representative of the principal elements in India's national life in order to devise the framework of the new Constitution'. How this body was to be constituted—by direct or indirect elections based on adult or restricted franchise, or by nomination—was not spelt out.¹⁷

The August Offer was spurned by all the major political parties in India. Congress proceeded in December 1940 to launch the individual Civil Disobedience campaign to register its protest against being made a party to the war without its consent. The party refrained from active obstruction of the war effort since it sympathized with the aims of the war. What it denied was the right to Britain to presume cooperation on India's behalf. The door was still left open for negotiations.

In March 1942, in the wake of the British collapse in Southeast Asia and three days after the fall of Rangoon, Winston Churchill, the prime minister of Britain, announced the dispatch to India of Sir Stafford Cripps, a prominent Labour Party member of the War Cabinet and a friend of Nehru. The Cripps proposals, as these constitutional concessions came to be called, for the first time clearly spelt out the procedure for the setting up of the Constituent Assembly. To quote:¹⁸

Immediately upon the results being known of Provincial Elections which will be necessary at the end of hostilities, the entire membership of the Lower Houses of Provincial Legislatures shall as a single electoral college proceed to the election of the constitution-making body by the system of proportional representation . . . Indian States shall be invited to appoint representatives in the same proportion to their total population as in the case of representatives of British India as a whole and with the same powers as British Indian members.

The Cripps proposals were a major advance in the position of the British government. For the first time, it was clearly accepted that the constitution would be the sole responsibility of Indians alone. The idea of a Constituent Assembly was also unambiguously accepted and its modalities spelt out. However, other aspects of the Cripps proposals, which had divisive potential, stood in the way of

the scheme being accepted by the Congress.

The failure of the Cripps' Mission led to another round of confrontation between the national movement and the British. The famous AICC resolution of 8 August 1942 which asked the British to 'Quit India' and exhorted the Indians to 'Do or Die', also said that the provisional government of free India would evolve a scheme for a Constituent Assembly. The mass upsurge that followed left the British in no doubt that the time for the final negotiations had arrived. Therefore, soon after the war ended in Europe in May 1945, a white paper on India was issued. This was followed by the abortive Simla Conference in June–July 1945.

The victory of the Labour Party in the British elections in July 1945 provided the opportunity for a fresh initiative. The Viceroy, Lord Wavell, announcing the India policy of the new government on 19 September 1945, promised to convene a constitution-making body as soon as possible. On 19 February 1946, the British government declared that they were sending a Cabinet Mission to India to resolve the whole issue of freedom and constitution-making.

The Cabinet Mission, which arrived in India on 24 March 1946, held prolonged discussions with Indian leaders. On 16 May 1946, having failed to secure an agreement, it announced a scheme of its own. It recognized that the best way of setting up a constitution-making machinery would 'be by election based on adult franchise; but any attempt to introduce such a step now would lead to a wholly unacceptable delay in the formulation of the new constitution' ¹⁹ Therefore, it was decided that the newly elected legislative assemblies of the provinces were to elect the members of the Constituent Assembly on the basis of one representative for roughly one million of the population. Sikh and Muslim legislators were to elect their quota on the basis of their population. There were numerous other details about procedures and suggestions about the powers of the Union and the provinces. Particularly important were the provisions relating to grouping of provinces into sections A, B and C. Section A consisted of Madras, Bombay, U.P., Bihar, the Central Provinces and Orissa—the 'Hindumajority' provinces. Sections B and C similarly consisted of the 'Muslim-majority' provinces of Punjab, NWFP and Sind in the west and Assam and Bengal in the east. The Cabinet Mission scheme proposed that the Constituent Assembly, after meeting to elect the chairman and complete other formalities, should divide into sections. The provincial representatives meeting in their respective sections should first decide the constitutions of the constituent provinces and also whether they wanted to adopt any group constitution. It was only after this process had been completed that the representatives of all the provinces and those of the princely states were to meet again to settle the constitution of the Union. The Union of India was to deal with foreign affairs, defence and communications.

The Congress responded to the Cabinet Mission scheme by pointing out that in its view the Constituent Assembly, once it came into being, would be sovereign. It would have the right to accept or reject the Cabinet Mission's proposals on specifics. Though an assurance on those lines was not forthcoming from the British, the Congress nevertheless decided after a great deal of debate to accept the scheme, and try to work it, as there was a feeling that outright rejection would again delay the process of transfer of power. This is what the Muslim League hoped to achieve by its intransigence. The League continued to oppose the Constituent Assembly at every stage, before as well as after it was constituted.

The Constituent Assembly

The first task of this Assembly is to free India through a new constitution, to feed the starving people, and to clothe the naked masses, and to give every Indian the fullest opportunity to develop himself according to his capacity.

These were the hopes expressed by Jawaharlal Nehru before the Constituent Assembly [20](#)

The Constituent Assembly was to have 389 members. Of these, 296 were to be from British India and 93 from the princely Indian states. Initially, however, the Constituent Assembly comprised only members from British India. Election of these were held in July– August 1946. Of the 210 seats in the general category, Congress won 199. It also won 3 out of the 4 Sikh seats from Punjab. The Congress also won 3 of the 78 Muslim seats and the 3 seats from Coorg, Ajmer-Merwara and Delhi. The total Congress tally was 208. The Muslim League won 73 out of the 78 Muslim seats.

Especially since the Constituent Assembly was not elected on the basis of universal adult franchise and was thus not as truly representative in character as the Congress had wished and demanded, and also because only Muslims and Sikhs were recognized as ‘minorities’ deserving special representation, a special effort was made to see that the Assembly did indeed reflect the diversity of perspectives present in the country. The Congress Working Committee in early July 1946 specifically instructed the Provincial Congress Committees to include representatives of Scheduled Castes, Parsis, Indian Christians, Anglo-Indians, tribals and women in the Congress list for the general category.

The other important consideration in choosing names for election to the Assembly was that the very best talent available in the country must be involved in the task of the making of the constitution. The lead was given by Gandhiji himself who suggested the names of sixteen eminent persons for inclusion in the Congress list. Altogether thirty people who were not members of the Congress were thus elected on the Congress ticket. Further, ‘the ideological spectrum of the Assembly was broadened by . . . the diverse nature of the Congress membership itself’ [21](#)

Having failed to prevent the election of the Constituent Assembly, the Muslim League now concentrated its energies on refusing to join its deliberations. The Congress and Jawaharlal Nehru as president of the interim government continued to make conciliatory gestures, but to no avail. Accordingly, on 20 November 1946, the decision to convene the first session of the Constituent Assembly on 9 December 1946 was announced.

The Viceroy, Lord Wavell, in fact, had seemed reluctant to call the Assembly and it was Congress, which insisted that now that the Assembly had been elected, it was necessary that it begin to function, regardless of the wishes of those who chose to stay away. Nehru had also to firmly quash the Viceroy’s desire to appoint the provisional president of the Assembly and issue invitations to the members to attend the first session in his own name. At Nehru’s insistence, the oldest member of the Assembly, Dr Sachchidanand Sinha, became the provisional president and invitations were issued in the name of the secretary of the Constituent Assembly. In doing this

Nehru was establishing, for all to see, the independence of the Assembly from British control. It would hardly be fair if the Constituent Assembly, which from conception to fulfilment was an achievement of the Congress and particularly of Nehru, should be finally presented to the world as a child of the British government. Besides, its credibility as a legitimate constitution-making body for independent India depended not only on its being autonomous but on its being seen as autonomous.

At 11 a.m. on 9 December 1946, the Constituent Assembly of India began its first session. For all practical purposes, the chronicle of independent India began on that historic day. Independence was now a matter of dates. The real responsibility of deciding the constitutional framework within which the government and people of India were to function had been transferred and assumed by the Indian people with the convening of the Constituent Assembly. Only a coup d'état could now reverse this constitutional logic.

The first session was attended by 207 members. The Muslim League, having failed to prevent the convening of the Assembly, now refused to join its deliberations. Consequently, the seventy-six Muslim members of the League stayed away and the four Congress Muslim members attended the session. On 11 December, Dr Rajendra Prasad was elected the permanent chairman, an office later designated as President of the Assembly. On 13 December, Jawaharlal Nehru moved the famous Objectives Resolution, which was debated till 19 December but its adoption was postponed to enable the representatives of the Muslim League and the princely states to join. At the next session, which took place from 20–22 January 1947, it was decided to not wait any longer for the League, and the Objectives Resolution was passed.

The third session was held from 28 April to 2 May 1947 and the League still did not join. On 3 June, the Mountbatten Plan was announced which made it clear that India was to be partitioned. This completely altered the perspective of the Constituent Assembly, as the Cabinet Mission Plan, the essence of which was a compromise with the League, was no longer relevant.

With India becoming independent on 15 August 1947, the Constituent Assembly became a sovereign body, and also doubled as the legislature for the new state. It was responsible for framing the constitution as well as making ordinary laws. That its function as a legislature as well as its large size did not come in the way of its effectively performing its duties as a constitution-making body is due to the enormous preparatory work as well as organizational skills and hard work of its leading members. The work was organized into five stages: first, committees were asked to present reports on basic issues; second, B.N. Rau, the constitutional adviser, prepared an initial draft on the basis of the reports of these committees and his own research into the constitutions of other countries; third, the drafting committee, chaired by Dr Ambedkar, presented a detailed draft constitution which was published for public discussion and comments; fourth, the draft constitution was discussed and amendments proposed; and lastly the constitution was adopted.

In addition, a critical role was played by the Congress party. It had asked a committee of experts to prepare material and proposals for the constitution as early as 4 July 1946. The committee was chaired by Nehru and had Asaf Ali, K.T. Shah, D.R. Gadgil, K.M. Munshi, Humayun Kabir, R. Santhanam and N. Gopalaswamy Ayyangar as members. Nehru drafted the

Objectives Resolution and the CWC and AICC ratified it on 20 and 21 November 1946 well in time for its introduction in the first session of the Assembly. This practice continued till the constitution was adopted, with the Congressmen thoroughly discussing and examining each provision in their party forums, in addition to participating fully in the debates in the Assembly. The party's deep involvement in the process even made it open to the charge, made by one of its own members, Shibban Lal Saxena, that this reduced the proceedings in the Assembly to a formality! The overwhelming opinion, however, shared by Dr Ambedkar as well, was that its role had been all to the good as it ensured that every detail in the constitution was thoroughly scrutinized. To quote Granville Austin:²²

The Congress Assembly Party was the unofficial, private forum that debated every provision of the Constitution, and in most cases decided its fate before it reached the floor of the House. Everyone elected to the Assembly on the Congress ticket could attend the meetings whether or not he was a member of the party or even close to it.

Jawaharlal Nehru, who drafted the Objectives Resolution, which spelt out the philosophy and basic features of the constitution, set a formidable example by his keen involvement in every aspect of the process. Sardar Patel's interest was second, if at all, only to Nehru's. He played the decisive part in bringing in the representatives of the erstwhile princely states into the Constituent Assembly, in seeing to it that separate electorates were eliminated and in scotching any move for reservation of seats for religious minorities. Rajendra Prasad won acclaim for his impartiality and dignity as President of the Assembly. Maulana Azad brought his formidable scholarship and philosophical mind to bear on many issues of grave importance.

But perhaps above all, the Congress brought great credit to itself and enormous benefit to the nation by adopting a completely non-sectarian approach, freely recruiting the best available talent, always striving for consensus rather than imposing its will through numbers. Informed by a strong sense of its historic role in laying the foundations of independent India, the Congress party tried hard to do its best by the people it had led to freedom. In the words of Granville Austin, chronicler of the history of constitution-making in India:²³

The Constituent Assembly was a one-party body, in an essentially one-party country. The Assembly was the Congress and the Congress was India. There was a third point that completed a tight triangle, the government (meaning the apparatus of elected government both provincial and national), for the Congress was the government too . . . One might assume, aware of the character of monolithic political systems in other countries, that a mass party in India would be rigid and narrow in outlook and that its powerful leadership would silence dissent and confine policy and decision-making to the hands of the select few. In India the reverse was the case. The membership of the Congress in the Constituent Assembly and outside held social, economic, and political views ranging from the reactionary to the revolutionary, and it did not hesitate to voice them. The leaders of the Assembly, who played the same role in the Congress and in the Union Government, were national heroes and had almost unlimited power; yet decision-making in the Assembly was democratic. The

Indian Constitution expresses the will of the many rather than the needs of the few.

The Indian Constitution: Main Provisions

The Constitution of India lays down a set of rules to which the ordinary laws of the country must conform. It provides a framework for a democratic and parliamentary form of government. The constitution also includes a list of Fundamental Rights and Directive Principles—the first, a guarantee against encroachments by the state and the second, a set of directives to the state to introduce reforms to make those rights effective.

Though the decision to give India a parliamentary system was not taken without serious debate, yet the alternative—of panchayatbased indirect elections and decentralized government—did not have widespread support. Espoused by some Gandhians, notably Shriman Narayan, this alternative was discarded decisively in favour of a centralized parliamentary constitution.

The intellectual or emotional commitment of many members to socialism also confirmed the conviction about parliamentary government. What most members desired 'was not that socialism be embodied in the constitution, but that a democratic constitution with a socialist bias be framed so as to allow the nation in the future to become as socialist as its citizens desired or as its needs demanded'.²⁴

Adult Suffrage

The Congress had demanded adult suffrage since the 1920s. It was hardly likely to hesitate now that it had the opportunity to realize its dreams. A few voices advocated confining of adult suffrage to elections to the panchayats at the village level, and then indirect elections to higher-level bodies, but the overwhelming consensus was in favour of direct elections by adult suffrage—not a small achievement in a Brahmanical, upper-caste-dominated, male-oriented, elitist, largely illiterate, society!

Alladi Krishnaswami Ayyar, a foremost constitutional expert who played a crucial role in the framing of the constitution, said:²⁵

The Assembly has adopted the principle of adult franchise with an abundant faith in the common man and the ultimate success of democratic rule . . . The only alternative to adult suffrage was some kind of indirect election based upon village community or local bodies . . . That was not found feasible.

Austin has called direct election by adult suffrage the 'gong, the single note, whose reverberations might awaken—or at least stir—sleeping India'.²⁶ A very perceptive observation was also made by K.M. Panikar who said that 'adult suffrage has social implications far beyond its political significance . . . Many social groups previously unaware of their strength and barely touched by the political changes that had taken place, suddenly realised that they were in a position to wield power'.²⁷ The impact of adult suffrage is even now being felt, as new groups at the lower end of

the social hierarchy learn to experiment with different political parties and candidates for securing their felt needs. The beauty of adult suffrage is that it forces the most elitist of candidates to seek the favour of the vote of the humblest voter.

The extent of the leap made by the constitution can be fathomed only if it is recalled that, till the end of British rule, 'the franchise was restricted by property, educational, and other qualifications to approximately 15 per cent of the country's population'²⁸

Preamble

The basic philosophy of the constitution, its moving spirit, is to be found in the Preamble. The Preamble itself was based on the Objectives Resolution drafted by Nehru and introduced in the Assembly in its first session on 13 December 1946 and adopted on 22 January 1947. The Preamble states that the people of India in the Constituent Assembly made a solemn resolve to secure to all 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 of the nation.' It has been pointed out that the priority given to the concept of justice as compared to liberty, equality, fraternity, and to social and economic as compared to political justice, was deliberate. The order of the words indicates that the concept of social and economic justice was perhaps considered 'the most fundamental norm' of the Constitution of India.²⁹

Fundamental Rights and Directive Principles

The core of the commitment to the social revolution lies in parts III and IV, in the Fundamental Rights and in the Directive Principles of State Policy. These are the conscience of the Constitution.³⁰

While Fundamental Rights are justiciable and Directive Principles are not, the latter are no less important for that reason. The Universal Declaration of Human Rights also contains two sets of rights, the traditional civil and political rights and the new economic and social rights. In the Indian constitution, the first kind is included under Fundamental Rights and the second under Directive Principles. The reason for the distinction between the two is very simply that while the state could straightaway guarantee political and civil liberties contained under 'Fundamental Rights', it could only secure economic and social justice over a period of time as the economy developed and social change took place. The latter set of rights could not therefore be made justiciable, that is, a citizen could not go to a court of law in case of denial. But nonetheless, the state was enjoined upon to do its utmost to apply these precepts when making laws. By this process, rights contained in the Directive Principles could become justiciable as and when they were incorporated into laws.

The decision to have written rights, a list of rights, a declaration of rights in the constitution marked a sharp break with British constitutional tradition and practice. The British had consistently

rejected Indian demands for a list of rights. Indians, on the other hand, because of their colonial experience, had developed a healthy suspicion of government and preferred rights to be written down. Their preference was in keeping with international trends as well. Following the suppression of human rights in Germany, the Soviet Union, and other places, the Atlantic Charter, and the United Nations Charter had been drawn up and the United Nations Human Rights Commission established.

The inclusion of Fundamental Rights in the constitution was imperative also because the first Constitution of India Bill framed in 1895 had contained this concept in embryo, and it had figured prominently in the Motilal Nehru Report of 1928. Further, it not only represented 'advanced democratic thought' but was also 'a convenient way of setting at rest the fears of minorities' ³¹ Stung by the British claim that they had stayed on in India to protect the minorities who would otherwise be suppressed by the majority, the Congress was determined to show how patently false this assertion was. As Patel said: ³²

It is for us to prove that it is a bogus claim, a false claim, and that nobody can be more interested than us in India, in the protection of our minorities. Our mission is to satisfy every one of them . . .

At no point did the Assembly doubt the need for Fundamental Rights. The only question was, how to distinguish between those rights that could be granted immediately, such as political rights, and those that should be there as ideals to be reached and could be granted only over time, such as social and economic rights. The solution was found by borrowing a concept from the Irish constitution and encoding the socio-economic rights as 'Directive Principles of State Policy'. These were made non-judicial. The possibility of creating two kinds of rights, judicial and non-judicial, was suggested by the Sapru Report of 1945 (though not in the context of positive and negative rights) and the idea was possibly taken from there.

The Fundamental Rights are divided into seven parts: the right of equality, the right of freedom, the right against exploitation, the right to freedom of religion, cultural and educational rights, the right to property and the right to constitutional remedies. These rights, which are incorporated in Articles 12 to 35 of the constitution, primarily protect individuals and minority groups from arbitrary state action. But three of the articles protect the individual against the action of other private citizens: Article 17 abolishes untouchability; Article 15(2) says that no citizen shall suffer any disability in the use of shops, restaurants, wells, roads, and other public places on account of his religion, race, caste, sex, or place of birth; and Article 23 prohibits forced labour, which, though it was also extracted by the colonial state and the princely states, was more commonly a characteristic of the exploitation by big, semi-feudal landlords. These rights of citizens had to be protected by the state from encroachment by other citizens. Thus, the state had to not only avoid encroaching on the citizens' liberties, it had to ensure that other citizens did not do so either. A citizen whose fundamental right has been infringed or abridged can apply to the Supreme Court or High Court for relief and this right cannot be suspended except in case of declaration of Emergency. The courts have the right to decide whether these rights have indeed been infringed and to employ effective remedies including issuing of writs of habeas corpus, mandamus,

prohibition, quo warranto and certiorari.

The Directive Principles, as stated earlier, have expressly been excluded from the purview of the courts. They are really in the nature of guidelines or instructions issued to future legislatures and executives. While the constitution clearly intended the Directive Principles and Fundamental Rights to be read together and did not envisage a conflict between the two, it is a fact that serious differences of interpretation have arisen many times on this issue. It is generally agreed that till 1971 the courts gave greater importance to the Fundamental Rights than to the Directive Principles, but that the 25th and 42nd Amendments in 1971 and 1976 brought in by Indira Gandhi gave precedence to the Directive Principles. In 1980, however, in the landmark judgement in *Minerva Mills Limited v. Union of India*, the Supreme Court held that both Fundamental Rights and Directive Principles are equally important and one cannot be sacrificed for the other (AIR 1980 SC 1789).

The essence of the Directive Principles is contained in Article 38 which lays down that 'the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic, and political, shall inform all the institutions of the national life'. The state is thus to ensure that all citizens have adequate means of livelihood, that there is equitable distribution of material resources, and concentration of wealth and means of production is avoided. There is to be equal pay for equal work for men and women and the health of workers, children and pregnant women is to be protected. Workers should get a living wage and just and humane conditions of work. All citizens should have the right to work, to education and public assistance in case of unemployment, old age, sickness, etc. The Directive Principles expressed the hope that within ten years of the adoption of the constitution, there would be compulsory primary education of children up to the age of fourteen years. The objective of a common civil code was also desired. The state was to take steps to organize village panchayats, to improve standards of living and nutrition, provide free legal aid, and promote the educational and other interests of the Scheduled Castes and Tribes and other weaker sections. It was to protect and improve the environment and safeguard the forests and wildlife of the country. The state was also to promote international peace and security, maintain just and honourable relations between nations, inculcate respect for international law and treaty obligations and encourage settlement of international disputes by arbitration.

The Preamble, the Fundamental Rights and the Directive Principles read together make it clear that the constitution aimed at creating conditions for the building of an egalitarian society in which individual freedoms were secure. It did not visualize abandonment of one ideal for the preservation of the other principle. At the same time, the relationship between individual liberty and social change was rightly envisaged as dynamic. To quote Nehru:^{[33](#)}

The Directive Principles of State Policy represent a dynamic move towards a certain objective. The Fundamental Rights represent something static, to preserve certain rights which exist. Both again are right . . . Now it may be that in the process of dynamic movement certain existing relationships are altered, varied or affected. In fact, they are meant to affect those settled relationships and yet if you come back to the Fundamental Rights they are meant to preserve, not indirectly, certain settled

relationships. There is a certain conflict in the two approaches, not inherently, because that was not meant, I am quite sure.

Nonetheless, conflicts did emerge and a number of amendments to the constitution had to be made in the 1950s when the implementation of zamindari and jagirdari abolition legislation was blocked in the courts on the grounds of right to property etc. During the process of the framing of the constitution as well as after it came into force, the property provisions turned out to be the most controversial. Court cases challenging the agrarian reforms began to proliferate, and the 1st Amendment to the constitution became necessary. Introduced in 1951 in the Provisional Parliament, this amendment inserted new Articles 31A and 31B and the Ninth Schedule, thus securing the constitutional validity of zamindari abolition laws by, among other things, specifying that they could not be challenged on the grounds that they violated the Fundamental Rights.

There were other cases which showed that certain articles relating to Fundamental Rights were open to interpretation in a manner that was not envisaged by the constitution framers. Accordingly, in 1951 itself, in the Provisional Parliament, the 1st Amendment was passed. This made some important changes in Articles 15, 19 and 31, dealing with the Fundamental Rights of equality, freedom of expression, and of property. The amendments ensured that the zamindari abolition legislation could not be challenged, among other things, on the ground that the right to property was a fundamental right, that the reservation of seats in educational institutions and in government jobs could not be challenged on the ground that it denied the right to equality, and that the legislation which placed reasonable restrictions on freedom of speech, the Press, association, etc., could not be questioned on the ground that it violated the right to freedom of expression etc. Further amendments had to be made in later years, as for example in 1955, in Articles 31 and 31A, to make the quantum of compensation paid for acquired property non-justiciable as well as introduce other changes. In subsequent years as well, many important Supreme Court judgements as well as constitutional amendments continued to define and redefine the relationship between individual rights and social good, between Fundamental Rights and Directive Principles. This changing relationship is perhaps to be welcomed since it is proof of the ability of the constitution and of the other institutions it has helped flourish to adapt to the needs of new generations and to respond to the forces set in motion by the fast-changing world. It would perhaps be appropriate to conclude with Austin that the tension between the two sets of rights represents 'the classic dilemma of how to preserve individual freedom while promoting public good'.³⁴

A Secular State

The constitution declares India to be a sovereign, socialist, secular and democratic republic. Even though the terms secular (and socialist) were added only by the 42nd Amendment in 1976, the spirit embodying the constitution was secular. In 1973 the Supreme Court held the secular character of the constitution to be one of the basic features of the constitution. Further, the Fundamental Rights include prohibition of discrimination on grounds of religion and right to freedom of religion including freedom of conscience and free profession, practise and

propagation of religion, freedom to manage religious affairs, freedom to pay taxes for promotion of any particular religion and freedom of attendance at religious instruction or religious worship in certain educational institutions, cultural and educational rights including protection of interests of minorities and their right to establish and administer educational institutions.

The debate over the meaning of the term secular in the Indian context has been a heated one. Some people have argued that the Western context from which the term secular is borrowed is a very different one. In the West, the outcome of the struggle between the Church and the state led to the separation of the two; the Church was allowed to decide on religious rituals, the state was to regulate secular affairs. In India, the concept of secularism evolved as part of the struggle of nationalist forces against communal forces that wanted to use religion for political purposes and divide the emerging nation on the basis of religion.

Nehru put it best:^{[35](#)}

We call our State a secular one. The word 'secular', perhaps, is not a very happy one and yet for want of a better, we have used it. What exactly does it mean? It does not obviously mean a society where religion itself is discouraged. It means freedom of religion and conscience, including freedom for those who may have no religion. It means free play for all religions, subject only to their not interfering with each other or with the basic conceptions of our State.

Dr S. Radhakrishnan, the renowned scholar of Indian philosophy, who was President of India from 1962 to 1967, placed secularism within the Indian tradition:^{[36](#)}

We hold that no religion should be given preferential status of unique distinction . . . No group of citizens shall arrogate to itself rights and privileges that it denies to others. No person should suffer any form of disability or discrimination because of his religion but all alike should be free to share to the fullest degree in the common life . . . Secularism as here defined is in accordance with the ancient religious tradition of India.