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Making of the Constitution

DEMAND FOR A CONSTITUENT ASSEMBLY

It was in 1934 that the idea of a Constituent Assembly for India was put forward for the first time by M. N. Roy, a pioneer of communist movement in India. In 1935, the Indian National Congress (INC), for the first time, officially demanded a Constituent Assembly to frame the Constitution of India. In 1938, Jawaharlal Nehru, on behalf the INC declared that ‘the Constitution of free India must be framed, without outside interference, by a Constituent Assembly elected on the basis of adult franchise’.

The demand was finally accepted in principle by the British Government in what is known as the ‘August Offer’ of 1940. In 1942, Sir Stafford Cripps, a member of the cabinet, came to India with a draft proposal of the British Government on the framing of an independent Constitution to be adopted after the World War II. The Cripps Proposals were rejected by the Muslim League which wanted India to be divided into two autonomous states with two separate Constituent Assemblies. Finally, a Cabinet Mission¹ was sent to India. While it rejected the idea of two Constituent Assemblies, it put forth a scheme for the Constituent Assembly which more or less satisfied the Muslim League.

COMPOSITION OF THE CONSTITUENT ASSEMBLY

The Constituent Assembly was constituted in November 1946 under the scheme formulated by the Cabinet Mission Plan. The features of the scheme were:

1. The total strength of the Constituent Assembly was to be 389. Of these, 296 seats were to be allotted to British India and 93 seats to the Princely States. Out of 296 seats allotted to the British India, 292 members were to be drawn from the eleven governors' provinces² and four from the four chief commissioners' provinces³, one from each.
2. Each province and princely state (or group of states in case of small states) were to be allotted seats in proportion to their respective population. Roughly, one seat was to be allotted for every million population.
3. Seats allocated to each British province were to be divided among the three principal communities—Muslims, Sikhs and general (all except Muslims and Sikhs), in proportion to their population.
4. The representatives of each community were to be elected by members of that community in the provincial legislative assembly and voting was to be by the method of proportional representation by means of single transferable vote.
5. The representatives of princely states were to be nominated by the heads of the princely states.

It is thus clear that the Constituent Assembly was to be a partly elected and partly nominated body. Moreover, the members were to be indirectly elected by the members of the provincial assemblies, who themselves were elected on a limited franchise⁴.

The elections to the Constituent Assembly (for 296 seats allotted to the British Indian Provinces) were held in July–August 1946. The Indian National Congress won 208 seats, the Muslim League 73 seats, and the small groups and independents got the remaining 15 seats. However, the 93 seats allotted to the princely states were not filled as they decided to stay away from the Constituent Assembly.

Although the Constituent Assembly was not directly elected by the people of India on the basis of adult franchise, the Assembly comprised representatives of all sections of Indian Society—Hindus, Muslims, Sikhs, Parsis, Anglo-Indians, Indian Christians, SCs, STs including women of all

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

WORKING OF THE CONSTITUENT ASSEMBLY

The Constituent Assembly held its first meeting on December 9, 1946. The Muslim League boycotted the meeting and insisted on a separate state of Pakistan. The meeting was thus attended by only 211 members. *Dr Sachchidanand Sinha, the oldest member, was elected as the temporary President of the Assembly, following the French practice.*

Later, Dr. Rajendra Prasad was elected as the President of the Assembly. Similarly, both H.C. Mukherjee and V.T. Krishnamachari were elected as the Vice-Presidents of the Assembly. In other words, the Assembly had two Vice-Presidents.

Objectives Resolution

On December 13, 1946, Jawaharlal Nehru moved the historic ‘Objectives Resolution’ in the Assembly. It laid down the fundamentals and philosophy of the constitutional structure. It read:

1. “This Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and to draw up for her future governance a Constitution:
2. Wherein the territories that now comprise British India, the territories that now form the Indian States, and such other parts of India as are outside India and the States as well as other territories as are willing to be constituted into the independent sovereign India, shall be a Union of them all; and
3. wherein the said territories, whether with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter according to the law of the Constitution, shall possess and retain the status of autonomous units together with residuary powers and exercise all powers and functions of Government and administration save and except such powers and functions as are vested in or assigned to the Union or as are inherent or implied in the Union or resulting therefrom;

- and
4. wherein all power and authority of the Sovereign Independent India, its constituent parts and organs of Government are derived from the people; and
 5. wherein shall be guaranteed and secured to all the people of India justice, social, economic and political; equality of status of opportunity, and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality; and
 6. wherein adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes; and
 7. whereby shall be maintained the integrity of the territory of the Republic and its sovereign rights on land, sea and air according to justice and the law of civilized nations; and
 8. This ancient land attains its rightful and honoured place in the world and makes its full and willing contribution to the promotion of world peace and the welfare of mankind.”

This Resolution was unanimously adopted by the Assembly on January 22, 1947. It influenced the eventual shaping of the constitution through all its subsequent stages. Its modified version forms the Preamble of the present Constitution.

Changes by the Independence Act

The representatives of the princely states, who had stayed away from the Constituent Assembly, gradually joined it. On April 28, 1947, representatives of the six states⁵ were part of the Assembly. After the acceptance of the Mountbatten Plan of June 3, 1947 for a partition of the country, the representatives of most of the other princely states took their seats in the Assembly. The members of the Muslim League from the Indian Dominion also entered the Assembly.

The Indian Independence Act of 1947 made the following three changes in the position of the Assembly:

1. The Assembly was made a fully sovereign body, which could frame any Constitution it pleased. The act empowered the Assembly to abrogate or alter any law made by the British Parliament in relation to India.

2. The Assembly also became a legislative body. In other words, two separate functions were assigned to the Assembly, that is, making of a constitution for free India and enacting of ordinary laws for the country. These two tasks were to be performed on separate days. Thus, the Assembly became the first Parliament of free India (Dominion Legislature). Whenever the Assembly met as the Constituent body it was chaired by Dr. Rajendra Prasad and when it met as the legislative body⁶, it was chaired by G V Mavlankar. These two functions continued till November 26, 1949, when the task of making the Constitution was over.
3. The Muslim League members (hailing from the areas⁷ included in the Pakistan) withdrew from the Constituent Assembly for India. Consequently, the total strength of the Assembly came down to 299 as against 389 originally fixed in 1946 under the Cabinet Mission Plan. The strength of the Indian provinces (formerly British Provinces) was reduced from 296 to 229 and those of the princely states from 93 to 70. The state-wise membership of the Assembly as on December 31, 1947, is shown in [Table 2.4](#) at the end of this chapter.

Other Functions Performed

In addition to the making of the Constitution and enacting of ordinary laws, the Constituent Assembly also performed the following functions:

1. It ratified the India's membership of the Commonwealth in May 1949.
2. It adopted the national flag on July 22, 1947.
3. It adopted the national anthem on January 24, 1950.
4. It adopted the national song on January 24, 1950.
5. It elected Dr Rajendra Prasad as the first President of India on January 24, 1950.

In all, the Constituent Assembly had 11 sessions over two years, 11 months and 18 days. The Constitution-makers had gone through the constitutions of about 60 countries, and the Draft Constitution was considered for 114 days. The total expenditure incurred on making the Constitution amounted to ` 64 lakh.

On January 24, 1950, the Constituent Assembly held its final session. It, however, did not end, and continued as the provisional parliament of India

from January 26, 1950 till the formation of new Parliament⁸ after the first general elections in 1951–52.

COMMITTEES OF THE CONSTITUENT ASSEMBLY

The Constituent Assembly appointed a number of committees to deal with different tasks of constitution-making. Out of these, eight were major committees and the others were minor committees. The names of these committees and their chairmen are given below:

Major Committees

1. Union Powers Committee – Jawaharlal Nehru
2. Union Constitution Committee – Jawaharlal Nehru
3. Provincial Constitution Committee – Sardar Patel
4. Drafting Committee – Dr. B.R. Ambedkar
5. Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas – Sardar Patel. This committee had the following five sub-committees:
 - (a) Fundamental Rights Sub-Committee – J.B. Kripalani
 - (b) Minorities Sub-Committee – H.C. Mukherjee
 - (c) North-East Frontier Tribal Areas and Assam Excluded & Partially Excluded Areas Sub-Committee – Gopinath Bardoloi
 - (d) Excluded and Partially Excluded Areas (Other than those in Assam) Sub-Committee – A.V. Thakkar
 - (e) North-West Frontier Tribal Areas Sub-Committee^{8a}
6. Rules of Procedure Committee – Dr. Rajendra Prasad
7. States Committee (Committee for Negotiating with States) – Jawaharlal Nehru
8. Steering Committee – Dr. Rajendra Prasad

Minor Committees

1. Finance and Staff Committee – Dr. Rajendra Prasad
2. Credentials Committee – Alladi Krishnaswami Ayyar
3. House Committee – B. Pattabhi Sitaramayya

4. Order of Business Committee – Dr. K.M. Munshi
5. Ad-hoc Committee on the National Flag – Dr. Rajendra Prasad
6. Committee on the Functions of the Constituent Assembly – G.V. Mavalankar
7. Ad-hoc Committee on the Supreme Court – S. Varadachari (Not an Assembly Member)
8. Committee on Chief Commissioners' Provinces – B. Pattabhi Sitaramayya
9. Expert Committee on the Financial Provisions of the Union Constitution – Nalini Ranjan Sarkar (Not an Assembly Member)
10. Linguistic Provinces Commission – S.K. Dar (Not an Assembly Member)
11. Special Committee to Examine the Draft Constitution – Jawaharlal Nehru
12. Press Gallery Committee – Usha Nath Sen
13. Ad-hoc Committee on Citizenship – S. Varadachari

Drafting Committee

Among all the committees of the Constituent Assembly, the most important committee was the Drafting Committee set up on August 29, 1947. It was this committee that was entrusted with the task of preparing a draft of the new Constitution. It consisted of seven members. They were:

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)

The Drafting Committee, after taking into consideration the proposals of the various committees, prepared the first draft of the Constitution of India, which was published in February 1948. The people of India were given eight months to discuss the draft and propose amendments. In the light of the public comments, criticisms and suggestions, the Drafting Committee prepared a second draft, which was published in October 1948.

The Drafting Committee took less than six months to prepare its draft. In

all it sat only for 141 days.

ENACTMENT OF THE CONSTITUTION

Dr B R Ambedkar introduced the final draft of the Constitution in the Assembly on November 4, 1948 (first reading). The Assembly had a general discussion on it for five days (till November 9, 1948).

The second reading (clause by clause consideration) started on November 15, 1948 and ended on October 17, 1949. During this stage, as many as 7653 amendments were proposed and 2473 were actually discussed in the Assembly.

The third reading of the draft started on November 14, 1949. Dr B R Ambedkar moved a motion—‘the Constitution as settled by the Assembly be passed’. The motion on Draft Constitution was declared as passed on November 26, 1949, and received the signatures of the members and the president. Out of a total 299 members of the Assembly, only 284 were actually present on that day and signed the Constitution. This is also the date mentioned in the Preamble as the date on which the people of India in the Constituent Assembly adopted, enacted and gave to themselves this Constitution.

The Constitution as adopted on November 26, 1949, contained a Preamble, 395 Articles and 8 Schedules. The Preamble was enacted after the entire Constitution was already enacted.

Dr B R Ambedkar, the then Law Minister, piloted the Draft Constitution in the Assembly. He took a very prominent part in the deliberations of the Assembly. He was known for his logical, forceful and persuasive arguments on the floor of the Assembly. He is recognised as the ‘Father of the Constitution of India’. This brilliant writer, constitutional expert, undisputed leader of the scheduled castes and the ‘chief architect of the Constitution of India’ is also known as a ‘Modern Manu’.

ENFORCEMENT OF THE CONSTITUTION

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. This day is referred to in the Constitution as the ‘date of its commencement’, and celebrated as the Republic Day.

January 26 was specifically chosen as the ‘date of commencement’ of the Constitution because of its historical importance. It was on this day in 1930 that *Purna Swaraj* day was celebrated, following the resolution of the Lahore Session (December 1929) of the INC.

With the commencement of the Constitution, the Indian Independence Act of 1947 and the Government of India Act of 1935, with all enactments amending or supplementing the latter Act, were repealed. The Abolition of Privy Council Jurisdiction Act (1949) was however continued.

CRITICISM OF THE CONSTITUENT ASSEMBLY

The critics have criticised the Constituent Assembly on various grounds. These are as follows:

1. *Not a Representative Body*: The critics have argued that the Constituent Assembly was not a representative body as its members were not directly elected by the people of India on the basis of universal adult franchise.
2. *Not a Sovereign Body*: The critics maintained that the Constituent Assembly was not a sovereign body as it was created by the proposals of the British Government. Further, they said that the Assembly held its sessions with the permission of the British Government.
3. *Time Consuming*: According to the critics, the Constituent Assembly took unduly long time to make the Constitution. They stated that the framers of the American Constitution took only four months to complete their work. In this context, Naziruddin Ahmed, a member of the Constituent Assembly, coined a new name for the Drafting Committee to show his contempt for it. He called it a “**Drifting Committee**”.
4. *Dominated by Congress*: The critics charged that the Constituent Assembly was dominated by the Congress party. Granville Austin, a British Constitutional expert, remarked: ‘The Constituent Assembly was a one-party body in an essentially one-party country. The Assembly was

- the Congress and the Congress was India'⁹.
5. *Lawyer–Politician Domination*: It is also maintained by the critics that the Constituent Assembly was dominated by lawyers and politicians. They pointed out that other sections of the society were not sufficiently represented. This, to them, is the main reason for the bulkiness and complicated language of the Constitution.
 6. *Dominated by Hindus*: According to some critics, the Constituent Assembly was a Hindu dominated body. Lord Viscount Simon called it 'a body of Hindus'. Similarly, Winston Churchill commented that the Constituent Assembly represented 'only one major community in India'.

IMPORTANT FACTS

1. Elephant was adopted as the symbol (seal) of the Constituent Assembly.
2. Sir B.N. Rau was appointed as the constitutional advisor (Legal advisor) to the Constituent Assembly.
3. H.V.R. Iyengar was the Secretary to the Constituent Assembly.
4. S.N. Mukerjee was the chief draftsman of the constitution in the Constituent Assembly.
5. Prem Behari Narain Raizada was the calligrapher of the Indian Constitution. The original constitution was handwritten by him in a flowing italic style.
6. The original version was beautified and decorated by artists from Shantiniketan including Nand Lal Bose and Beohar Rammanohar Sinha.
7. Beohar Rammanohar Sinha illuminated, beautified and ornamented the original Preamble calligraphed by Prem Behari Narain Raizada.
8. The calligraphy of the Hindi version of the original constitution was done by Vasant Krishan Vaidya and elegantly decorated and illuminated by Nand Lal Bose.

Table 2.1 *Allocation of seats in the Constituent Assembly of India (1946)*

<i>Sl.No.</i>	<i>Areas</i>	<i>Seats</i>
1.	British Indian Provinces (11)	292
2.	Princely States (Indian States)	93

3.	Chief Commissioners' Provinces (4)	4
	Total	389

Table 2.2 *Results of the Elections to the Constituent Assembly (July–August 1946)*

<i>Sl.No.</i>	<i>Name of the Party</i>	<i>Seats won</i>
1.	Congress	208
2.	Muslim League	73
3.	Unionist Party	1
4.	Unionist Muslims	1
5.	Unionist Scheduled Castes	1
6.	Krishak – Praja Party	1
7.	Scheduled Castes Federation	1
8.	Sikhs (Non-Congress)	1
9.	Communist Party	1
10.	Independents	8
	Total	296

Table 2.3 *Community-wise Representation in the Constituent Assembly (1946)*

<i>Sl.No.</i>	<i>Community</i>	<i>Strength</i>
1.	Hindus	163
2.	Muslims	80
3.	Scheduled Castes	31
4.	Indian Christians	6

5.	Backward Tribes	6
6.	Sikhs	4
7.	Anglo-Indians	3
8.	Parsees	3
	Total	296

Table 2.4 *Statewise Membership of the Constituent Assembly of India as on December 31, 1947*

<i>S.No.</i>	<i>Name</i>	<i>No. of Members</i>
A. Provinces (Indian Provinces)—229		
1.	Madras	49
2.	Bombay	21
3.	West Bengal	19
4.	United Provinces	55
5.	East Punjab	12
6.	Bihar	36
7.	C.P. and Berar	17
8.	Assam	8
9.	Orissa	9
10.	Delhi	1
11.	Ajmer-Merwara	1
12.	Coorg	1
B. Indian States (Princely States)—70		
1.	Alwar	1

2.	Baroda	3
3.	Bhopal	1
4.	Bikaner	1
5.	Cochin	1
6.	Gwalior	4
7.	Indore	1
8.	Jaipur	3
9.	Jodhpur	2
10.	Kolhapur	1
11.	Kotah	1
12.	Mayurbhanj	1
13.	Mysore	7
14.	Patiala	2
15.	Rewa	2
16.	Travancore	6
17.	Udaipur	2
18.	Sikkim and Cooch Behar Group	1
19.	Tripura, Manipur and Khasi States Group	1
20.	U.P. States Group	1
21.	Eastern Rajputana States Group	3
22.	Central India States Group (including Bundelkhand and Malwa)	3
23.	Western India States Group	4
24.	Gujarat States Group	2

25.	Deccan and Madras States Group	2
26.	Punjab States Group	3
27.	Eastern States Group I	4
28.	Eastern States Group II	3
29.	Residuary States Group	4
		Total 299

Table 2.5 *Sessions of the Constituent Assembly at a Glance*

<i>Sessions</i>	<i>Period</i>
First Session	9–23 December, 1946
Second Session	20–25 January, 1947
Third Session	28 April–2 May, 1947
Fourth Session	14–31 July, 1947
Fifth Session	14–30 August, 1947
Sixth Session	27 January, 1948
Seventh Session	4 November, 1948–8 January, 1949
Eighth Session	16 May–16 June, 1949
Ninth Session	30 July–18 September, 1949
Tenth Session	6–17 October, 1949
Eleventh Session	14–26 November, 1949

Note: The Assembly met once again on 24 January, 1950, when the members appended their signatures to the Constitution of India.

NOTES AND REFERENCES

1. The Cabinet Mission consisting of three members (Lord Pethick Lawrence, Sir Stafford Cripps and A V Alexander) arrived in India on

March 24, 1946. The Cabinet Mission published its plan on May 16, 1946.

2. These include Madras, Bombay, U P , Bihar, Central Provinces, Orissa, Punjab, NWFP, Sindh, Bengal and Assam.
3. These include Delhi, Ajmer–Merwara, Coorg and British Baluchistan.
4. The Government of India Act of 1935 granted limited franchise on the basis of tax, property and education.
5. These include Baroda, Bikaner, Jaipur, Patiala, Rewa and Udaipur.
6. For the first time, the Constituent Assembly met as Dominion Legislature on November 17, 1947 and elected G V Mavlankar as its speaker.
7. These are West Punjab, East Bengal, NWFP, Sindh, Baluchistan and Sylhet District of Assam. A separate Constituent Assembly was set up for Pakistan.
8. The Provisional Parliament ceased to exist on April 17, 1952. The first elected Parliament with the two Houses came into being in May 1952.
- 8a. One of the political consequences of the British Government's statement of June 3, 1947, was that following a referendum, the North-West Frontier Province and Baluchistan became part of the territory of the Dominion of Pakistan and as a result the tribal areas in this region became a concern of that Dominion. The Sub-Committee on the Tribal Areas in the North-West Frontier Province and Baluchistan was not therefore called upon to function on behalf of the Constituent Assembly of India. (B. Shiva Rao, *The Framing of India's Constitution : Select Documents, Volume III, P.681.*)
The members of this Sub-Committee were : Khan Abdul Ghaffar Khan, Khan Abdul Samad Khan and Mehr Chand Khanna. The information about the Chairman is not found.
9. Granville Austin, *The Indian Constitution—Cornerstone of a Nation*, Oxford, 1966, P. 8.