

Making of the Constitution for India

The Indian Constitution, which came into effect on January 26, 1950, has the distinction of being the longest in the world in terms of its length, content and complexity owing to country's size and diversity. At the time of framing of the constitution, India was deeply divided besides being large and diverse, and hence it was designed in a way to keep the country together. If in one way, it sought to make Indians of different classes, castes and communities come together for a shared vision, in another way it sought to nurture democratic institutions in what had long been a culture of hierarchy and deference.

Background

Although the Constitution of India was framed between December 1946 and December 1949, its roots deep lie in the Indian national movement against the colonial rule as well as in the movements for responsible and constitutional government in the princely states.

Mridula Mukherjee, in her work, *India Since Independence*, has rejected the idea that the British initiated modern, responsible and constitutional government in India and that the 1950 Constitution was merely the culmination of the series of constitutional initiatives made by the British

in 1861, 1892, 1909, 1919 and 1935. The fact that British concessions, at every stage, fell far short of what nationalists were demanding for.

In the modern sense, there appeared the Constitution of India Bill, also known as the Home Rule Bill in 1895, which envisaged 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. Although, there is no conclusive evidence to prove the authorship of the Home Rule Bill, Annie Besant believed that the Bill was inspired by Tilak.

In 1922, Mahatma Gandhi, in an article titled 'Independence' published in *Young India*, wrote that Swaraj would not be a free gift of the British Parliament but a declaration of India's full self-expression—the Constitution of India would be framed as per the wishes of the Indians.

The Commonwealth of India Bill, which was drafted in India and to which Annie Besant, Tej Bahadur Sapru, V.S. Srinivasa Shastri made important contributions, was accepted unanimously by the executive committee of the Parliamentary Labour Party. The Bill had its first reading in the House of Commons in December 1925; it was defeated, but it proved crucial as it had the support of very wide sections of Indian opinion, and specified in clear words that "India shall be placed on an equal footing with the self-governing dominions".

After the Non-Cooperation Movement, Motilal Nehru in February 1924 introduced in the Central Legislative Assembly a resolution that gave due regard to minority rights and interests and came to be known as the **National Demand**. It was passed by a large majority in the Assembly. For the first time, a demand for a constitution and the procedure for its adoption were expounded in clear terms.

Britain, in response to the National Demand, appointed the all-white Simon Commission in November 1927 to recommend further constitutional changes.

In response to Lord Birkenhead's challenge, the Nehru

Report, submitted on August 1928, was an outline of a draft constitution for India. Most of its features were later incorporated in the Constitution of independent India.

The Report embodied not only the perspective of the contemporary nationalist opinion but also an outline of a draft constitution for India. The latter was based on the principle of dominion status with full responsible government on the parliamentary pattern. It asserted the principle that sovereignty belongs to the Indian people, laid down a set of fundamental rights and provided for a federal system with maximum autonomy granted to the units but residuary powers vesting in the central government and joint electorates for elections to the federal lower house and the provincial legislatures with reservation of seats for minorities in certain cases for a limited period.

In the aftermath of the Nehru Report, the Simon Commission was boycotted and in December 1929, the Congress declared complete independence as its ultimate goal. The idea that India's Constitution should be framed via a Constituent Assembly elected for this very purpose and based on widest possible franchise gained support. Although, M.N. Roy had made such a suggestion earlier, Jawaharlal Nehru was the first national leader to enunciate the idea in 1933.

The Congress took up the demand for a constituent assembly as a part of its official policy in 1934 after refusing the Simon Commission's recommendations of 1933 as not expressive of the will of the people. Jawaharlal Nehru declared that the Congress had proposed "the Constitution of India must be framed, without outside interference, by a Constituent Assembly elected on the basis of adult franchise", and, the Working Committee of the Congress reiterated the stand. At the Lucknow session of the Congress in 1936, it was declared that "no constitution imposed by an outside authority and no constitution which curtails the sovereignty of the people" would be acceptable to the Congress.

In July 1937, after the Congress accepted office in a majority of provinces, Nehru pressed the legislators to introduce resolutions in the assemblies rejecting the present constitution and demanding a Constituent Assembly. In August, the CWC accepted a draft resolution prepared under Acharya Kripalani. Between August and October 1937, all the Congress ruled provinces and Sind passed this resolution and demanded repealment of the Government of India Act, 1935. In September 1937 itself, a resolution recommending the replacement of the 1935 Act by a constitution framed by a constituent assembly was introduced in the Central Legislative Assembly by S. Satyamurti. The same demand was reiterated in the Haripura session of 1938.

The **Cripps Proposals of 1942**, though rejected by the Congress as unacceptable, had one redeeming feature in that it conceded the request of Indians to frame their own constitution through a constituent assembly.

In September 1945, the newly elected Labour government in England announced that it planned to create a constituent assembly in India. On March 15, 1946, the **Cabinet Mission** came to India and, in the course of its stay, recommended the forming of (a) the Constituent Assembly, and (b) an interim government.

Constituent Assembly

■ Formation

It was decided that the Constituent Assembly was to be elected indirectly by the Provincial Assemblies. According to the plan, the provinces of British India were grouped into three categories, A, B and C. Each province was allotted seats on the basis of the population, in the ratio of one member for a million. The seats given to a province were decided among three communities on the basis of their number, the three communities being the Muslims, Sikhs and General including Hindus and all others who were not Muslims and

Sikhs. They were to be elected by the representatives of each community in their respective legislative assemblies by the method of proportional representation with single transferable vote. The number of members allotted to the Indian states was also to be fixed on the same basis of population as adopted for British India, but the method of their selection was to be settled later by consultation. The strength of the constitution-making body was to be 389. Of these, 296 representatives were to be from British India, (292 representatives drawn from the eleven Governors' Provinces of British India and a representative each from the four Chief Commissioners' Provinces of Delhi, Ajmer-Merwara, Coorg and British Baluchistan) and 93 representatives from the Indian states. The states' representatives were to be nominated by the respective rulers.

Elections for the 296 seats assigned to the British Indian Provinces were completed by July-August 1946. The Congress won 208 seats including all the General seats except nine and the Muslim League 73 seats, that is, all but five of the seats allotted to Muslims.

The 93 seats meant for the states' representatives remained vacant and the princely states decided not to participate in the Constituent Assembly. However, representatives of some of the states (Baroda, Bikaner, Jaipur, Patiala, Rewa, and Udaipur) entered the Assembly by April 1947 and by August 15, 1947 and, soon after, all the states had sent their representatives to the Assembly.

The Assembly was, however, not able to start its work immediately as Jinnah withdrew his acceptance and caused the Muslim League to boycott it. The Congress went ahead with its plan and appointed an expert committee to draft Fundamental Rights and arrange an early session of the Assembly. The party also accepted the viceroy's invitation to form an interim government, with Jawaharlal Nehru as prime minister. The Constituent Assembly opened on December 9, 1946 in the Constitution Hall—now the Central

Hall of Parliament House at New Delhi. Jawaharlal Nehru moved the historic Objectives Resolution on 13 December 1946, after it had been in session for some days. The resolution envisaged a federal polity with the residuary powers vesting in the autonomous units and sovereignty belonging to the people. The Resolution gave to the Assembly its guiding principles and the philosophy of constitution-making.

■ Two Constituent Assemblies: India and Pakistan

By the end of January 1947, it was clear that there was no possibility of the Muslim League's joining the Assembly; an uncompromising call for a separate constituent assembly for Pakistan had been given by Jinnah. On June 26, 1947, Lord Mountbatten, the Governor-General, announced the setting up of a separate Constituent Assembly for Pakistan. The Indian Independence Act, 1947, passed with surprising speed, came into force on July 18, 1947.

The Indian Independence Act, 1947 declared the Constituent Assembly of India to be a fully sovereign body and on the midnight of August 14-15, 1947, the Assembly assumed full powers of the governance of the country. Section 8 of the Act conferred on the Constituent Assembly full legislative power.

■ Evaluation of the Assembly for India

The assembly, set up under the Cabinet Mission Plan, was a result of compromises made by the Congress on its ideological and philosophical sphere. The assembly was not fully sovereign despite the efforts of the Congress, whereas the Congress' demand was for a fully sovereign assembly. Nor was it elected on the basis of universal adult franchise as the Congress had demanded. The Congress caved in to accept communal representation too, and the grouping plan for the provinces. It also went along with the limits imposed

on the powers of the central government. So the Constituent Assembly set up was quite far from what the Congress had demanded in the later years of the freedom struggle.

The Constituent Assembly was indirectly elected by the provincial assemblies which themselves were elected on the basis of a limited franchise established by the Government of India Act of 1935. The 1935 Act imposed qualifications on the basis of tax, property and education. This kept out more than 70 per cent of the adult population from the voting. The Constituent Assembly thus reflected the composition of the provincial assemblies in which the Congress had a comfortable majority (which rose to more than 80 per cent after partition).

The composition of the Assembly reflected the different ideological views present in the country at the time. There were Socialists, the Marxian as well as the democratic variety. Both groups were opposed to private ownership of important means of production and wanted an egalitarian society; while the Marxian variety wanted a revolutionary reconstruction. It was the more moderate group (of which Nehru was a member) preferring peaceful parliamentary methods that held sway. Sardar Patel may be considered a leader of the Rightist views supporting private enterprise. The rightist point of view was also represented by Purushottam Das Tandon and S.P. Mukherjee. There were also the Gandhians proposing decentralised village government through panchayats. All these viewpoints influenced the Constitution, to an extent, but the dominant influence was that of the liberals and the democratic socialists.

■ After Independence

With independence of India on August 15, 1947, the Constituent Assembly became a sovereign body responsible for framing the constitution as well as making ordinary laws. Now the work of Constituent Assembly was organised into five stages: **first**—committees were required to present

Drafting Committee

(1) Dr. B.R. Ambedkar (Chairman) (2) G.B. Pant (3) K.M. Munshi (4) Alladi Krishnaswamy Iyer (5) N. Gopalaswami Ayengar (6) B.L. Mitra (later replaced with Madhav Rao) (7) Sayyid Muhammad Sadullah (7) D.P. Khaitan died in 1948 and hence T.T. Krishnamachari was appointed.

reports on basic issues; **second**—Benegal Narsing Rau, a judge of the Calcutta High Court and also the constitutional adviser of the constituent assembly, prepared an initial draft on the basis of the reports of these committees and on his own research into the constitutions of other countries; **third**—the drafting committee, under the chairmanship of Dr B.R. Ambedkar, presented a detailed draft constitution which was published for public discussion and comments. Criticisms and counter-criticisms in the press in turn moulded the nature of the consensus that was ultimately reached on specific issues; **fourth**—the draft constitution was debated and amendments proposed; **fifth**—the Constitution of India was adopted.

■ Work : Committees and Consensus

When the Constituent Assembly first met on December 9, 1946, J.B. Kripalani, the then Congress president, proposed the name of Dr Sachhidanand Sinha, the oldest member of the Assembly, for the post of the provisional president. Later, on December 11, Dr Rajendra Prasad was elected as the President of the Constituent Assembly.

The Constituent Assembly appointed several committees for framing the constitution.

These committees submitted their reports between April and August 1947 and on the basis of these reports, Dr B.N. Rau, the Constitutional Adviser, submitted a draft of the Constitution by the end of October 1947. This draft contained 240 Clauses and 13 Schedules. In order to consider this Draft Constitution, a Drafting Committee under the chairmanship

of Dr B.R. Ambedkar (the law minister at the time) was set up. (The other members were: Alladi Krishnaswami Iyer, N. Gopalaswami Ayyangar, K.M. Munshi, Saiyad Mohammad Saadulla, Sir B.L. Mitter and D.P. Khaitan. After the first meeting Sir B.L. Mitter resigned and in his place N. Madhava Rao was nominated, and T.T. Krishnamachari took the place of D.P. Khaitan on the latter's death in 1948.)

The Drafting Committee prepared the first draft of the Constitution. This was then circulated for the comments of jurists, lawyers, judges and other publicmen. In the light of their comments and criticism, the Drafting Committee prepared a second draft which consisted of 315 Articles and 9 Schedules. This second draft was placed before the Constituent Assembly on February 21, 1948. The draft was then considered clause by clause by the Assembly. The third reading commenced on November 14 and was finished on November 26, 1949. The Preamble was adopted last. It had taken 2 years, 11 months and 18 days to complete the task. As many as 7000 odd amendments had been proposed and nearly 2500 were actually discussed before the draft constitution was accepted.

Dr Ambedkar then moved a motion that the Constitution as settled by the Constituent Assembly be passed. On November 26, 1949, the people of India in the Constituent Assembly adopted, enacted and gave to themselves the Constitution of the Sovereign Democratic Republic of India. Dr Rajendra Prasad as president of the assembly signed the document.

The members of the Constituent Assembly appended their signatures to it on January 24, 1950—the last day of the Assembly. In all, 284 members actually signed the Constitution.

The Constituent Assembly, besides drafting the Constitution of India, adopted the National Flag on July 22, 1947, and adopted the National Anthem and National Song on January 24, 1950—the last day of its session.

View

[a]ny claim for the sharing of power by the minority...[is] called communalism while the monopolising of the whole power by the majority...[is] called Nationalism.

—B.R. Ambedkar

The Constituent Assembly elected Dr Rajendra Prasad as the first President of India on January 24, 1950.

Late in the evening of August 14, 1947, the Assembly met in the Constitution Hall and at the stroke of midnight, took over as the Legislative Assembly of an Independent India.

The Assembly continued as the provisional Parliament of India from January 26, 1950 till the new Parliament was installed after the first general elections.

It must, however, be noted that while the formal centres of the work of drafting the Constitution were, no doubt, the Constituent Assembly and the Drafting Committee, the Congress leaders held the important powers of decision-making. In a way, the Congress Working Committee was the real architect of the Constitution in that most of the important decisions were arrived at on the basis of what the Congress leaders suggested. Granville Austin points out that four men—Jawaharlal Nehru, Sardar Patel, Rajendra Prasad and Abul Kalam Azad—constituted a virtual oligarchy in the Assembly and dominated the proceedings by virtue of the prestige and power they enjoyed both in the Congress and in the government.

The manner in which the Constituent Assembly arrived at decisions was that of consensus, defined by Granville Austin as “the manner of making decisions by unanimity or near unanimity”. An effort was made to smoothen differences and arrive at compromises and agreement. The objective was to overcome the biases, and an element of overruling dissent, ingrained in decision by majority.