

BASIC TENETS OF CONSTITUENT ASSEMBLY **OF INDIA**

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Abstract

After the extensive fight for freedom, we at last got the independence on 15 August 1947 and an uphill struggle of a few years we made out our constitution and finally adopted it on 26 January 1950. And from then it sets an example to the world that a poor country can also have democracy and a well-written constitution for smooth running their nation. By experiencing, a lot of unsteadiness and wars, our country still able to preserve and run in accordance with the constitution and it triumph the popular democracy of the world in India. We fought for our independence and gave a message to the world that if there is a determination and efforts of the leaders of the nation, then a poor and over populated country can also build up at a high velocity of development and by giving equal rights and protections to all and each human being of the our society, shows the success and aspirations of constituent assembly.

Key Words - Constituent Assembly, India and Constitution.



Source - [https://en.wikipedia.org/wiki/Constituent Assembly of India - /media/File:Seal of the Constituent Assembly of India.svg](https://en.wikipedia.org/wiki/Constituent_Assembly_of_India_-_/media/File:Seal_of_the_Constituent_Assembly_of_India.svg)

A constitution means a document having a special legal sanctity which sets out the frame work and principal functions of the government, Constitution of a country gives idea about basic structure of the political system under which its people are to be governed. It defines the powers of the main organs of the state, demarcates their responsibilities and regulates their relationships which each other and with the people. It can also be termed as "Fundamental Law" of a country which reflects people's faith and aspirations.¹

The Indian Constitution is the longest written Constitution of the world, the living constitution and this is evolving from the day of its birth. The Constitution of India is the supreme law in India with 395 articles and 12 schedules. But originally it consisted of 395 articles arranged under 22 parts and 8 schedules. And now it has 448 article and 12 schedules and 25 parts with many amendments.

¹ http://www.mati.gov.in/docs/Constitution_of_India.pdf Retrieve on 01.03.2022.

Indian Constitution was drawn up by a Constituent Assembly which consists of an zenith committee, representatives from all the professions, that designs and adopts the constitution.

The Assembly met for the first time on December 9, 1946. The Assembly constituted a Drafting Committee, under the chairmanship of Dr.B.R.Ambedkar, to frame a constitution for India.

It was adopted by the Constituent Assembly of India on 26 November 1949 and became effective on 26 January 1950.²

The Constitution of India was made with great effort through a long process of formation the assembly which drafted, debated, discussed, deliberated, amended and at the end finally formed a final Constitution of India.

It is about those who acted upon the Constitution, how and why they did so, and about those the Constitution acted upon, or neglected. It is about Indians working their Constitution, for constitutions, however 'living', are inert. They do not work, they are worked. It is a history about what human beings do ill and well while governing them.³ The experience of other countries in working out successfully the Constituent Assembly method has encouraged Indian opinion to expect great things from the one proposed by the Cabinet Mission. The Indian National Congress has found it a workable arrangement for the peaceful transfer of power for which it has been fighting all these years. The meeting of the Indian Constituent Assembly marks the beginning of a new and important chapter in the political evolution of India.⁴

The Making of Constituent Assembly/ Formation -

India was then under British rule when the idea of constitution assembly was sowed. Constituent Assembly was formed under the provision called as the Cabinet Mission Plan. And under the framework set by the Cabinet Mission, the Constituent Assembly was formed on 9th of December 1946. The formation of the Constituent Assembly was to make the Constitution basically, which was based on the idea in 1934 proposed by Manabendra Nath Roy, who was an Indian Communist revolutionary, he was the founder of the Mexican Communist Party and the Communist Party of India. Later Indian National Congress demanded the formation of Constituent Assembly officially in 1935. In India 1936, April Indian National Congress held its

² "Introduction to Constitution of India". Ministry of Law and Justice of India. 29 July 2008.

³ Austin, G., Working a Democratic Constitution: A History of the Indian Constitution (Oxford University Press, 2003).

⁴ Indian Constituent Assembly.

session which was presided by Pt. Jawaharlal Nehru with the official demand for Constituent Assembly and Government of India Act, 1935,⁵ and though it was rejected by the Indians as it doesn't fulfilled the wills of the imposed Constitution. By 1940, August, the Britishers accepted the demand which was voiced by C. Rajagopalachari⁶ for the Constituent Assembly on 15 November 1939 on the basis of adult franchise. And then in 1946, under the Cabinet Mission Plan for the first time elections were held regarding the Constituent Assembly. Under the Plan, the members of the 1946 Provincial Legislative Assemblies, who were elected by limited franchise, would select the members of the Constituent Assembly through a single transferrable vote. Additionally, a Negotiating Committee worked to involve the Princely States in the Constituent Assembly.⁷

The Cabinet Mission proposed a confederation, a three tier structure, where the Union government would be responsible for affairs such as defence, revenue, and foreign affairs and communications. At each level of the confederation a separate constitution could be adopted, which by implication provided the space for autonomy demanded by the League. The three-tiered Constituent Assembly structure proposed by the Mission comprised of sections of states drawn from British India:

- Section A would consist of Hindu majority states such as Madras, United Province, Orissa, Bombay, Bihar and Central Provinces.
- Section B which would comprise of Muslim majority provinces of the north-west such as, Punjab, Sindh and N.W.F.P.
- Section C would include Assam and Bengal.⁸

Through the single, transferable-voting system of proportional representation the members of the Constituent Assembly were elected. The total membership of the Constituent Assembly was 389

⁵ (The Government of India Act of 1935 marked the second milestone towards a completely responsible government in India after the Act of 1919. This Act was passed by the British Government in the year 1935. It was one of the lengthiest Acts at that time as it contained 321 sections and 10 schedules. It was also the last constitution of British India, before the country was divided, in 1947, into two parts-India and Pakistan) <http://magadhmahilacollege.org/wp-content/uploads/2020/05/Government-of-India-Act-1935-converted-1.pdf>

⁶Rajagopalachari was the last Governor-General of India, as India became a republic in 1950. He was also the first Indian-born governor-general, as all previous holders of the post were British nationals. He also served as leader of the Indian National Congress, Premier of the Madras Presidency, Governor of West Bengal, Minister for Home Affairs of the Indian Union and Chief Minister of Madras state. Rajagopalachari founded the Swatantra Party and was one of the first recipients of India's highest civilian award, the Bharat Ratna. He vehemently opposed the use of nuclear weapons and was a proponent of world peace and disarmament. During his lifetime, he also acquired the nickname 'Mango of Salem'.https://en.wikipedia.org/wiki/C._Rajagopalachari

⁷ https://www.constitutionofindia.net/constituent_assembly_members Retrieve on 02.03.2022.

⁸Tripathi, Vikas. (2019). Making of The Constituent Assembly Of India, UGC-EPathshala.

of which 292 were representatives of the provinces, 93 represented the Princely States and four were from the chief commissioner provinces of Ajmer-Merwara, Delhi, Coorg and British Baluchistan. By July-August 1946 the elections for the 296 seats assigned to the British Indian provinces were completed. There Congress won 208 seats and Muslim league won 73 seats. With this congress failed to impress the Muslim league and so they refused to cooperate with Congress and thus later Hindu- Muslim riots and rampages started in the nation, Muslim league demanded a separate constituent assembly for the Muslims in the nation. Jinnah and other Muslim leaders declared their dissatisfaction with the Congress government and Muslim league decided to fight the elections. Ultimately Jinnah presented his fourteen-point formula for the Muslims in all legislatures and also in central and provincial cabinets.⁹ The claim for political self-determination of the Two Nation was put forward. The Hindu Muslim problem which culminated in the division of the sub-continent 1947. Muslim League leaders kept on talking of a physical division of India.¹⁰ After that the All India Muslim League held its session at Lahore. It was an important session because the resolution embodying demands of Pakistan or the establishments of Sovereign state of Muslims. The league fixed August 16, 1946 “Direct Action” day. It was against the Hindu not Muslim.¹¹ And lastly the Indian Independence Act, 1947, the Indian Independence Act, enacted and adopted by the British Parliament, receives royal assent on 18 July 1947. The Indian Independence Act creates two new independent Dominions: India (Hindu) and Pakistan (Muslim), the latter being divided into two territories (West Pakistan and East Pakistan). The provinces which were formerly administered directly by the British are attached to one or other of these two states, depending on whether the majority of the population is Hindu or Muslim. The princely states are free to decide whether they belong to Pakistan or India.¹² As a result two separate Constituent Assemblies were formed.¹³

The Constituent Assembly

The active engagement of people and groups, even from the margins of society, with visions for the future constitution, and the claims they made in the pursuit of their aspirations of the

⁹ Jamil-ud-din Ahmad; Speeches and writings of Mr. Jinnah 1946 (vol i) Pp.26

¹⁰ Resolution of the AIML quote in khalid bin syed, Pakistan the formative phase, pp.115-116

¹¹ United India Patriotic Association August offer, 172-3

¹² Indian Independence Act (1947) The National Archives of the United Kingdom

¹³ Bonney, R. (2004). Three Giants of South Asia: Gandhi, Ambedkar, and Jinnah on Self-determination. India: Media House.

Constituent Assembly, has been an unexplored facet in the study of the history of India's constitution-making.¹⁴

The constituent assembly was headed by Dr B.R. Ambedkar; under him members of constituent assembly were from all walks of life, like philosophers, lawyers, political leaders, economists, intellectuals and national leaders of India.

Membership of the Assembly kept changing for diverse reasons, other than resignation and death. Many public figures showed devotion to enter the Assembly but its membership was also denounced by definite groups like Muslim League, Communists and Socialists. Till the last day of the Assembly, new members kept amalgamating in. The Assembly took help of quite a few non-members in formulation of the Constitution.

The Sessions of the Constituent Assembly

The Constituent Assembly elected for an undivided India had earlier met for the first time on December 9, 1946, now reassembled on August 14, 1947. 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.¹⁵

The Constituent Assembly has met. Even if the heavens were to fall and the earth to split, it would meet; so had said Sardar Patel.

The Assembly met for the first time in New Delhi on 9 December 1946, and its last session was held on 24 January 1950.¹⁶ Their main task was to draft a constitution.

The Second Session was from 20th to 25th January, 1947, the Third Session set from 28th April to 2nd May, 1947, and then the assembly set for the Fourth time from 14th to 31st July of 1947, for the Fifth Session the Assembly set from 14th to 30th August, 1947. 27th of January marked as the Sixth Session of the Constituent Assembly, with this followed the Seventh from 4th November, 1948 to 8th January, 1949 and the Eighth Session from 16th May to 16th of June, 1949. The Ninth Session occurs on 30th July lasted till 18th September, 1949. And the Assembly met for the Tenth time on 6th of October till 17th, 1949 and lastly, for the Eleventh Session the Assembly set from 14th to 26th November, 1949. With the last voting on the Constitution, it was adopted by the

¹⁴ Austin, Granville, *The Indian constitution: cornerstone of a nation* (New Delhi, 2006; 1st edn 1966), p. 324

¹⁵ Jawaharlal Nehru

¹⁶ M. Lakshmikanth, *Indian Polity for Civil Services Examinations*, 3rd ed., (New Delhi: Tata McGraw Hill Education Private Limited, 2011), p. 2.3

Constituent Assembly. The President of the Assembly signed a copy of the Constitution to officially bring it in force. The memoranda and schemes for a constitution for India came from across the country, and dealt with disparate issues.¹⁷ Indians wrote their constitution for themselves. The creation of a democratic constitution in India in the late 1940s was at odds with the requisite conditions prescribed by democratic theory, and many at the time predicted that it would not succeed. In successfully institutionalizing a democratic constitution and creating the world's largest democracy, India defied many naysayers.¹⁸

The Constitution of India was adopted on 26 November, 1949 and the hon'ble members appended their signatures to it on 24 January, 1950. In all, 284 members actually signed the Constitution. On that day when the Constitution was being signed, it was drizzling outside and it was interpreted as a sign of a good omen.¹⁹

Main Features of the Objective Resolution:-

"(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 British India and the States as well as such 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

¹⁷ 7 Letters arrived, for example, from Ahmedabad, Ahmednagar, Alipur, Allahabad, Ambala, Benares, Berhampur, Bezwada, Bombay, Calcutta, Dacca, Dibrugarh, Coorg, Gauhati, Indore, Lucknow, Ludhiana, Lyallpur, Madurai, Nagpur, New Delhi, Nowgong, Patna, Poona, Raikwar, Saharanpur, Silchar, Simla, Surat, Sylhet, Tanjore, Tindivanam, and even from remote areas like the Chittagong Hill Tracts, Darjeeling, and the Lushai Hills.

¹⁸ The People and the Making of India's Constitution, Ornit Shani Department of Asian Studies, University of Haifa, Haifa, Israel.

¹⁹ Lok Sabha. [Http://164.100.47.194/loksabha/constituent/facts.html](http://164.100.47.194/loksabha/constituent/facts.html). Retrieve on 04.03.2022.

(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 honored place in the world and makes its full and willing contribution to the promotion of world peace and the welfare of mankind."²⁰

Challenges faced by the Assembly in framing the Constitution –

- To frame a constitution that would uplift downtrodden sections of society. This meant providing an assurance to minorities regarding the protection of their rights as well as creating a welfare State that could improve their social and economic status.
- To ensure democratic processes for citizens in perpetuity – the fathers wanted their vision of the country to remain after their death.
- To frame a constitution capable of effectively handling communal violence. This was largely motivated by the violence occurring due to the partition.
- To frame a constitution that could integrate princely states and their various demands.²¹

A Draft Constitution was submitted to the Assembly on November 4, 1947. This was debated for over two years, and more than 2000 amendments were moved. All the hard work culminated in the adopting of the Constitution on November 26, 1949. Two months later, India became a Republic.²² The Constituent Assembly took almost three years (two years, eleven months and seventeen days to be precise) to complete its historic task of drafting the Constitution for Independent India. During this period, it held eleven sessions covering a total of 165 days. Of these, 114 days were spent on the consideration of the Draft Constitution.²³

²⁰ CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)- VOLUME I

²¹ <https://takshashila.org.in/the-importance-of-the-constituent-assembly-in-framing-the-indian-constitution/> Retrieve on 03.03.2022.

²² <https://www.mapsofindia.com/on-this-day/26th-november-1949-the-constitution-of-india-was-adopted> Retrieve on 04.03.2022.

²³ Lok Sabha. [Http://164.100.47.194/loksabha/constituent/facts.html](http://164.100.47.194/loksabha/constituent/facts.html). Retrieve on 04.03.2022.

IMPORTANT COMMITTEES OF THE CONSTITUENT ASSEMBLY AND THEIR CHAIRMEN

Name of the Committee	Chairman
Committee on the Rules of Procedure	Rajendra Prasad
Steering Committee	Rajendra Prasad
Finance and Staff Committee	Rajendra Prasad
Credential Committee	Alladi Krishnaswami Ayyar
House Committee	B. Pattabhi Sitaramayya
Order of Business Committee	K.M. Muni
Ad hoc Committee on the National Flag	Rajendra Prasad
Committee on the Functions of the Constituent Assembly	G.V. Mavalankar
States Committee	Jawaharlal Nehru
Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas	Vallabhbhai Patel
Minorities Sub-Committee	H.C. Mookherjee
Fundamental Rights Sub-Committee	J.B. Kripalani
North-East Frontier Tribal Areas and Assam Excluded & Partially Excluded Areas Sub-Committee	Gopinath Bardoloi
Excluded and Partially Excluded Areas (Other than those in Assam) Sub-Committee	A.V. Thakkar
Union Powers Committee	Jawaharlal Nehru
Union Constitution Committee	Jawaharlal Nehru
Drafting Committee	B.R. Ambedkar

Source - [Http://164.100.47.194/Loksabha/Constituent/Facts.Html](http://164.100.47.194/Loksabha/Constituent/Facts.Html).

STATEWISE MEMBERSHIP OF THE CONSTITUENT ASSEMBLY OF INDIA AS ON 31 DECEMBER, 1947

PROVINCES-229

S.No	State	No. of Members
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

Source - [Http://164.100.47.194/Loksabha/Constituent/Facts.Html](http://164.100.47.194/Loksabha/Constituent/Facts.Html).

INDIAN 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 I	3
27.	Eastern States Group I	4
28.	Eastern States Group II	3
29	Residuary States Group	4
	Total	299

Source - [Http://164.100.47.194/Loksabha/Constituent/Facts.Html](http://164.100.47.194/Loksabha/Constituent/Facts.Html).

Critics of Constituent Assembly – The conventional understanding has been that the Indian constitution was a product of elite consensual decision-making, and that India’s nationalist leaders endowed it from above. The constitution was described as ‘a gift of a small set of India’s elites’²⁴ And some other points that are subjected to be the reasons of criticism of the Assembly are -

1. Not a Representative Body:

²⁴ Sunil Khilnani, ‘Arguing democracy: intellectuals and politics in modern India’, Centre of the Advanced Study of India Working Paper Series, University of Pennsylvania, 2009, 26. Also see Sunil Khilnani, The idea of India (London, 1997), pp. 34–5.

The members of the constituent assembly were not straightforwardly elected by the people of India on the ground of universal adult franchise. Our Preamble objectify that the Constitution has been adopted by the people of India but in actuality it was adopted by only a small number of individuals that were circuitously elected from British provinces by members of provincial assemblies and also representatives were also nominated by princely states.

2. Not a Sovereign Body:

The Constituent Assembly was not a sovereign body as it was formed by the proposals of the British Government, the critics maintained. They also stated that the Assembly organised its sessions with the consent of the British Government.

3. Time Consuming:

The Constituent Assembly took disproportionately long time to make the Constitution. As per the critics the American Constitution was set in only four months.

4. Borrowed constitution

Indian Constitution borrowed many provisions from a range of existing Constitutions. Thus, it is marked as borrowed constitution which contains a hodgepodge of numerous documents of existing constitutions.

5. Dominated by Congress:

Congress party tried to oblige their philosophy through this constitution as they subjugated the Constituent assembly. 'The Assembly was the Congress and the Congress was India'. 'The Constituent Assembly was a one-party body in an essentially one-party country. Granville Austin, a British Constitutional expert, remarked.

6. Lawyer–Politician Domination:

Constituent Assembly was dominated by lawyers and politicians and other sections of society were not represented. Attributed to this reason, the Constitution is immensely bulky and contains complex language.

7. Dominated by Hindus:

The Constituent Assembly was a Hindu dominated body and be short of religious heterogeneity. Winston Churchill commented that the Constituent Assembly stands for 'only one major community in India'. Lord Viscount Simon also called it 'a body of Hindus'.

Also, the Constituent Assembly Debates refer to the discussions and the debates which took place during the process of its making stresses on the eradication of untouchability, uniform civil code, federal structure, reservation for backwards classes, powers of major offices and the preamble.

The Constitution makes it mandatory to protect and promote freedoms, and to assure every citizen a decent standard of living. It makes a strong commitment to promoting the wellbeing of all citizens without any discrimination on the grounds of caste, creed, community or gender.

. The Constitution which lays down the basic structure of a nation's polity is built on the foundations of certain fundamental values. The vision of our founding fathers and the aims and objectives which they wanted to achieve through the Constitution are contained in the Preamble, the Fundamental Rights and the Directive Principles. These three may be described as the soul of the Constitution and the testament of the founding fathers to the succeeding generations together with the later Part on Fundamental Duties.²⁵

But India has been opportune to have leaders of magnificent quality. They brought to abide the philosophical moral and ethical values of our ethos to the carrying out of the institutions of our Parliamentary Democracy. In this way they make sure that democracy boomed and developed even well-built its roots in our society. Many of us would bring to mind the great concern and attention, the interest and personal involvement of Pt. Jawaharlal Nehru in the work of the Parliament, the honor of Democracy.

Speech by Pt. Jawaharlal Nehru,

"Long years ago we made a tryst with destiny, and now the time comes when we shall redeem our pledge, not wholly or in full measure, but very substantially. At the stroke of the midnight hour, when the world sleeps, India will awake to life and freedom. A moment comes, which comes but rarely in history, when we step out from the old to new, when an age ends, and when the soul of a nation, long suppressed, finds utterance...

...The ambition of the greatest man of our generation has been to wipe every tear from every eye. That may be beyond us, but so long as there are tears and suffering, so long our work will not be

²⁵ CHAPTER 3 FUNDAMENTAL RIGHTS, DIRECTIVE PRINCIPLES AND FUNDAMENTAL DUTIES.

over. And so we have to labour and to work, and work hard, to give reality to our dreams. Those dreams are for India, but they are also for the world."²⁶

Speech by Dr. BR Ambedkar,

"The task of the Drafting Committee would have been a very difficult one if this Constituent Assembly has been merely a motley crowd, a tessellated pavement without cement, a black stone here and a white stone there is which each member or each group was a law unto itself. There would have been nothing but chaos...

... The proceedings of this Constituent Assembly would have been very dull if all members had yielded to the rule of party discipline. Party discipline, in all its rigidity, would have converted this Assembly into a gathering of yes men."

"...let us not forget that this independence has thrown on us great responsibilities. By independence, we have lost the excuse of blaming the British for anything going wrong. If hereafter' things go wrong, we will have nobody to blame. Except ourselves...

...If we wish to preserve the Constitution in which we have sought to enshrine the principle of Government of the people, for the people and by the people, let us resolve not to be tardy in the recognition of the evils that lie across our path and which induce people to prefer Government for the people to Government by the people, nor to be weak in our initiative to remove them."²⁷

²⁶ Towards midnight on August 15, 1947, Jawaharlal Nehru, the first Prime Minister of independent India delivered a speech to the Indian Constituent Assembly in Parliament. This speech is a landmark oration and is considered one of the greatest speeches of the 20th century.

²⁷ Dr. Ambedkar's final speech in Constituent Assembly on Adaption of the Constitution.