

Chapter 3 - Making of the Constitution

Framing the Constitution for a vast and diverse country like India was a **difficult and complex task**. People were moving from being mere 'subjects' under colonial rule to becoming responsible 'citizens.' The country had just faced the **trauma of Partition**, in which more than a million people lost their lives. At the same time, the **integration of princely states** and the creation of workable administrative units was both uncertain and challenging. Naturally, the Constitution makers had many **fears and doubts** about the present situation and the future of the nation.

However, despite these difficulties, India had certain advantages. Most importantly, the consensus for the "idea of India" had already evolved during the freedom struggle. The Nehru Report, 1928 and the Karachi Resolution, 1931 dwelt on how India's constitution should look like. Furthermore, the familiarity with the political institutions of colonial rule helped develop an agreement. The Indian constitution, thus, adopted many institutional details from colonial laws like the Government of India Act, 1935. In addition, years of thinking and deliberation on the constitution gave our leaders the confidence and time to learn from other countries, but on our own terms. All these factors contributed to the making of our Constitution, which remains one of the most progressive and democratic constitutions in the world.

Precursor to the constitution

Despite these difficulties, India had certain advantages. Most importantly, the consensus on the "**idea of India**" had already developed during the freedom struggle. The **Nehru Report (1928)** and the **Karachi Resolution (1931)** had outlined what the future Constitution should look like. Moreover, the experience of working with the **political institutions of colonial rule** created a common ground, and the Constitution thus adopted several provisions from the **Government of India Act, 1935**. Years of **debate and deliberation** also gave Indian leaders both the confidence and the wisdom to **learn from other countries while adapting them to Indian needs**. Together, these factors made it possible for India to draft one of the **most progressive and democratic constitutions in the world**.

The Constituent Assembly:

The **Constituent Assembly**, set up in **1946 under the Cabinet Mission Plan**, was tasked to draft the Indian Constitution. This process took **2 years, 11 months, and 18 days**, from **9 December 1946 to 26 November 1949**. During this period, the Assembly held **11 sessions** and met for **165 days** (about five and a half months). The result was a **comprehensive document** in the form of the Constitution, comprising 395 articles and 8 schedules, that laid down the architecture of the new state.

Composition of the Constituent Assembly:

The Constituent Assembly had 389 members in total. Of these, 292 were elected members, while the Princely States sent 93 members and the Chief Commissioner's Provinces contributed 4 members. However, it is important to note that these members were not directly elected by the people through universal adult franchise. Instead, they were indirectly elected in July 1946 by the Provincial Assemblies, which themselves were elected on a highly limited franchise of only about 11% of the population. Voting rights were restricted on the basis of property, tax, education, and other qualifications.

Interestingly, each British province was divided into three principal communities comprising Muslims, Sikhs, and the General. Members of these communities elected their representatives to the Assembly through the system of proportional representation by means of the single transferable vote, with each seat representing nearly 10 lakh people.

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After Independence and Partition in 1947, the strength of the Indian Constituent Assembly was reduced to 299 members: 229 elected representatives from 12 Indian provinces and 70 nominated members from 29 princely states. Notably, it was only after Independence that the representatives of the princely states gradually began joining the Assembly.

Historical background of the Constituent Assembly

1934	M.N. Roy put forward the demand for a Constituent Assembly.
1935	Indian National Congress officially demanded a Constituent Assembly.
1940	In the August Offer, the demand was accepted in principle.
1942	A draft proposal on framing an independent constitution was made under the Cripps Mission. The proposal was rejected by the Muslim League
1946	Cabinet mission plan put forward a scheme for the Constituent Assembly. The Muslim League accepted the proposal on June 6.
July 1946	<p>The elections to the Constituent Assembly were held. The INC secured 208 seats, the Muslim League won 73 seats(second largest) and others got 15 seats, including the Communist Party of India's 1 seat. The Muslim League withdrew its acceptance for the Constituent Assembly on July 29.</p> <p>Another significant development was, INC appointed an Experts Committee under Jawaharlal Nehru to prepare material for the Constituent Assembly. This Committee's report later became the basis of the <i>Objectives Resolution</i>, moved by Nehru on December 13, 1946.</p>
November 1946	The Constituent Assembly was set up.
December 9, 1946	The Constituent Assembly held its first meeting which was attended by 211 members.
December 13, 1946	<p>J.L. Nehru moved the 'Objective Resolutions' which laid down the fundamentals and philosophy of Constitutional structure. It was unanimously adopted on January 22, 1947.</p> <p>Objectives Resolution – key points: It proclaimed India an Independent Sovereign Republic, asserted popular sovereignty, guaranteed equality of status and opportunity, and provided adequate safeguards for minorities & depressed classes.</p> <p>It envisaged a federal polity with residuary powers to the provinces (later shifted to Union in the Constitution).</p> <p>It served as the inspiration for the Preamble.</p>

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January 24, 1950	The Constituent Assembly held its final sitting, where 284 members were present and signed the Constitution of India.
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Working of the Constituent Assembly:

India's Independence, achieved through a non-violent struggle under Mahatma Gandhi's leadership, had great influence on the functioning of the Constituent Assembly. The Assembly worked in a systematic, open, and consensual manner and was organized around the deliberations regarding the Constitutional provisions, giving sanctity to the Constitution. The Constituent Assembly drafted the Constitution at two levels: committees and plenary.

At various stages, several committees (as discussed below) were appointed to function in smaller groups and take decisions on specific aspects of the Constitution, often through majority voting. Their primary task was to prepare draft articles, reports, and notes on assigned subjects. The reports of these committees were then compiled by the Constitutional Adviser, B. N. Rau, and submitted to the Drafting Committee, chaired by Dr. B. R. Ambedkar, which gave the final shape to the Draft Constitution.

At the plenary level, the initial Draft Constitution was introduced in the Assembly for consideration on 4 November 1948. More than two thousand amendments were considered which were either adopted or rejected by decisions through a majority vote. The clause-by-clause consideration of the initial Draft Constitution was completed between 15 November 1948 and 17 October 1949. The final draft was then prepared and moved in the Assembly. The third and final reading of the Draft Constitution took place on 17 November 1949. On this day itself, Dr. Ambedkar moved the motion "that the Constitution as settled by the Assembly be passed." The motion was thus adopted on 26 November 1949.

At the plenary stage, the Draft Constitution was first placed before the Assembly on 4 November 1948. During its consideration, over 2,000 amendments were debated, discussed, and either accepted or rejected by majority vote. The clause-by-clause discussion continued from 15 November 1948 to 17 October 1949, after which the final draft was prepared and presented. The third and final reading of the Draft Constitution was held on 17 November 1949, when Dr. B. R. Ambedkar moved the motion that "the Constitution as settled by the Assembly be passed." The motion was finally adopted on 26 November 1949, marking the completion of the Constitution.

It is interesting to note that every document presented, and every word spoken in the Constituent Assembly has been recorded and preserved as 'Constituent Assembly Debates.' To date, these debates and Committee reports are used to interpret the Constitution's meaning.

Committees in the Constituent Assembly

The Constituent Assembly at various points, appointed several Committees to conduct preliminary research and deliberations within smaller groups. There were 8 major and several minor committees in the constituent assembly for different subjects, as mentioned below:

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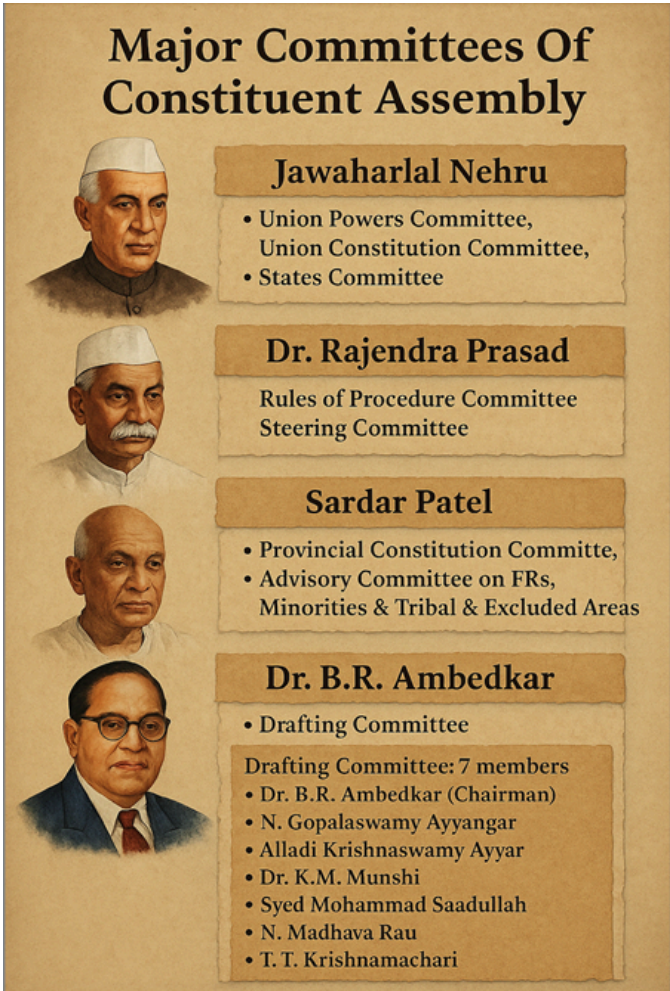
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Chairman	Major Committees
Jawaharlal Nehru	<ol style="list-style-type: none">1. Union Powers Committee (Drafting the actual text of the Constitution)2. Union Constitution Committee (PYQ 2005)3. States Committee (Negotiating the integration of princely states)
Dr. Rajendra Prasad	<ol style="list-style-type: none">1. Rules of Procedure Committee (Drafting rules of procedure for the Constituent Assembly)2. Steering Committee
Sardar Patel	<ol style="list-style-type: none">1. Provincial Constitution Committee (Drafting provisions related to the state governments)2. Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded areas (Drafting provisions in these domains)<ol style="list-style-type: none">a. Under Advisory committee, the Minorities Sub-Committee was chaired by H.C. Mookherjee.
Dr. B.R. Ambedkar	<ol style="list-style-type: none">1. Drafting Committee

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Major Committees Of Constituent Assembly



Jawaharlal Nehru
<ul style="list-style-type: none">• Union Powers Committee,• Union Constitution Committee,• States Committee
Dr. Rajendra Prasad
<ul style="list-style-type: none">• Rules of Procedure Committee• Steering Committee
Sardar Patel
<ul style="list-style-type: none">• Provincial Constitution Committee,• Advisory Committee on FRs, Minorities & Tribal & Excluded Areas
Dr. B.R. Ambedkar
<ul style="list-style-type: none">• Drafting Committee
Drafting Committee: 7 members
<ul style="list-style-type: none">• Dr. B.R. Ambedkar (Chairman)• N. Gopalaswamy Ayyangar• Alladi Krishnaswamy Ayyar• Dr. K.M. Munshi• Syed Mohammad Saadullah• N. Madhava Rau• T. T. Krishnamachari

Drafting Committee:

The Drafting Committee of the Constitution, formed on August 29, 1947, held paramount importance as it bore the responsibility of crafting the foundational document of India. It was chaired by Dr. B.R. Ambedkar, also known as the 'Father of the Indian Constitution,' 'Chief architect of the Constitution' or 'Modern Manu.'

The committee comprised 6 other members including K.M. Munshi, Gopalaswami Ayyangar, Alladi Krishnaswami Ayyar, Syed Mohammed Sadullah, N. Madhava Rau (in place of B.L. Mittar) and T.T. Ramakrishna Chari (in place of D.P. Khaitan). The primary task of the Drafting Committee was to assimilate inputs from various committees to provide a draft constitution.

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Chairman	Minor Committees
Jawaharlal Nehru	1. Special Committee to examine draft Constitution
Dr. Rajendra Prasad	1. Finance and Staff Committee (Managing the finances of the Constituent Assembly) 2. Ad-hoc committee on National Flag
B. Pattabhi Sitaramayya	1. House Committee (Day-to-day administration of the Constituent Assembly) 2. Committee on Chief Commissioners' Provinces
Alladi Krishnaswami Ayyar	1. Credentials Committee 2. Hindi Translation Committee
G.V. Mavalankar	1. Committee on the Functions of the Constituent Assembly
K.M. Munshi	1. Order of Business Committee
Usha Nath Sen	1. Press Gallery Committee
Muhammad Saadullah	1. Urdu Translation Committee
S. Varadachari (Not a member)	1. Ad-hoc Committee on the Supreme Court 2. Ad Hoc committee on citizenship
Nalini Ranjan Sarkar (Not a member)	1. Expert Committee on the Financial Provisions of the Union Constitution
S.K. Dar (Not a member)	1. Linguistic Provinces Commission

The division of labour among these committees facilitated the acceleration of the drafting process, ensuring that a wide range of perspectives were thoroughly examined. The work of these committees, thus, culminated in the formulation of one of the most comprehensive and inclusive constitutions in the world.

Functions of the Constituent Assembly:

The primary role of the Constituent Assembly was to function as a *Constituent body* tasked with framing the Constitution of India, under the chairmanship of Dr. Rajendra Prasad. At the same time, empowered by the Indian Independence Act of 1947, the Assembly also assumed the role of the first Parliament of independent (though dominion) India. In this capacity, it convened separate sessions as a *legislative body*, presided over by G.V. Mavalankar. Being a sovereign body, it also held the power to amend or repeal any laws enacted by the British Parliament relating to India. This dual arrangement continued until 26 November 1949, when the process of constitution-making was concluded. In addition to drafting the Constitution and adopting ordinary laws, the Constituent Assembly was responsible for various other tasks, like:

- On July 22, 1947, it adopted the National Flag.

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- In May 1949, the Constituent Assembly ratified India's membership of the Commonwealth.
- On January 24, 1950, it adopted the National Anthem and the National Song.
- On January 24, 1950, it elected Dr. Rajendra Prasad as India's first President.
- On 26 January 1950, it adopted the Lion Capital of Ashoka as the National Emblem.

On January 24, 1950, in the final sitting of the Constituent Assembly, 284 members were present (out of 299) and signed the Constitution of India. Following its final session, the Constituent Assembly continued as a Provisional Parliament, serving in this capacity from January 26, 1950, until the establishment of a new Parliament after the first general elections were held in 1951-52.

It is important to note that the Constituent Assembly did not appoint India's first Prime Minister. On 15 August 1947, Lord Mountbatten, the first Governor-General of the Dominion of India, swore in Jawaharlal Nehru as the country's first Prime Minister. Nehru, along with his colleagues, had already been part of the Interim Government (formed in 1946 under the Viceroy's Executive Council).

First Cabinet of Independent India (15 Aug 1947) – Key Portfolios

- **Jawaharlal Nehru** – Prime Minister; **External Affairs & Commonwealth Relations**; Scientific Research.
- **Sardar Vallabhbhai Patel** – **Home Affairs & States**; **Information & Broadcasting** (till 01-04-1949).
- **Maulana Abul Kalam Azad** – **Education**.
- **Rajkumari Amrit Kaur** – **Health**.
- **Dr. Rajendra Prasad** – **Food & Agriculture** (till 14-01-1948).

(Context: sworn in by Governor-General Mountbatten on 15-08-1947.)

Do you know? Somnath Lahiri, a member of Constituent assembly saw the dark hand of British imperialism hanging over the deliberations of the Constituent Assembly. He has warned his colleagues that the Constituent Assembly was British-made and was "working the British plan as the British should like it to be worked out".

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India's First General Election:

Another significant milestone in India's democratic journey was the conduction of the inaugural general election from October 25, 1951, to February 21, 1952. In this election, Indian National Congress (INC) emerged victorious securing 364 seats (45% of the total votes cast) out of 489 seats in the first Lok Sabha. Notably, the Communist Party of India became the largest opposition party, securing 16 seats.

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Facts about the Constituent Assembly	
Temporary President (French practice)	Dr Sachchidananda Sinha (PYQ 2024)
President (unanimously elected)	Dr Rajendra Prasad
Vice Presidents (2)	H.C. Mukherjee & Sir V.T. Krishnamachari
Constitutional (Legal) Advisor	Sir B.N. Rau
Secretary	H.V.R. Iyengar
Chief Draftsman	S.N. Mukerjee
Calligrapher	Prem Behari Narain Raizada
Hindi version Calligrapher	Vasant Krishnan Vidya
Artists for beautification and Decoration (from Shantiniketan)	Nand Lal Bose (also decorated the Hindi version) & Beohar Rammanohar Sinha (also beautified and ornamented the Preamble)
Symbol (Seal)	Elephant

Criticism and Counter Arguments:

Criticism of the Constituent Assembly revolves around several dimensions. Firstly, it lacked complete representation, as its members were indirectly elected by provincial legislatures rather than through universal adult franchise, thereby excluding large sections of Indian society from direct participation. Secondly, critics argue that the Assembly was not entirely *sovereign* since it was created under the framework of the British Cabinet Mission Plan and functioned within the limits of the Indian Independence Act, 1947. Furthermore, the overwhelming dominance of the Indian National Congress within the Assembly raised concerns about the marginalization of alternative political voices, which some believe restricted the diversity of perspectives in the constitution-making process.

Moreover, the dominance of the Indian National Congress within the Assembly raised doubts about whether it truly reflected the collective will of the people. Granville Austin, the noted constitutional expert, famously observed that “The Constituent Assembly was a one-party body in an essentially one-party country.” This perception was further reinforced by the absence of several prominent personalities of the time, such as Mahatma Gandhi, M.N. Roy, and M.A. Jinnah, whose participation could have diversified the ideological spectrum of the debates.

Critics also lamented the slow pace of its work, spanning over two years for drafting, as compared to other countries like the USA (less than 4 months) and South Africa (less than 1 year). Furthermore, reliance on foreign models in drafting drew criticism for potentially diluting the Indian spirit and neglecting the country’s unique circumstances. It would be fair to claim that the Assembly remained male- dominated, with only 15 female members.

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Further, Constituent Assembly avoided taking firm stands on both intra- and inter-religious issues. It sidestepped codifying a Hindu Code in the Constitution, leaving it to future parliamentary legislation. To address concerns of the Muslim minority, it included an ambiguous reference to the Uniform Civil Code in the non-enforceable Directive Principles of State Policy.

However, there have been significant achievements of the Constituent Assembly of India. Even though it was not directly elected by the people of India based on the Universal Adult franchise, the Assembly majorly represented all sections of Indian society. These included Christians (Frank Anthony), Parsis (Minoo Masani), Sikhs (G Gurmukh Singh) and Muslims (Maulana Abul Kalam Azad).

It also gave voice to women through the presence of Hansa Mehta, Rajkumari Amrit Kaur, Dakshayani Velayudhan, etc. The members from the so called lower caste were also represented including B.R. Ambedkar, who arguably played the most critical role in the assembly.

Through its deliberations and debates, the Constituent Assembly imbued the Constitution with core values of democracy, secularism, and pluralism, shaping the ethos of the Indian nation. This underscores the legacy of the Constituent Assembly in shaping India's democratic institutions and guiding principles.

Founding mothers:

Though women were only 15 in the 299-member Constituent Assembly, their contribution left a lasting impact on the Constitution of India. Hansa Mehta's insistence on using the inclusive term "all persons" instead of "all men" and her advocacy for substantive equality shaped Article 15(3), which empowers affirmative action for women and children. Dakshayani Velayudhan, the sole Dalit woman in the Assembly, brought attention to the multiple disadvantages faced by marginalized women and demanded strong safeguards. Leaders like Durgabai Deshmukh and Rajkumari Amrit Kaur championed social reform through constitutional means, calling for the abolition of practices such as purdah, sati, and untouchability, while also pressing for reforms in personal laws to uplift women's position in family and society.

Ambedkar's Tribute to the Assembly

B. R. Ambedkar, in his last speech to the Constituent Assembly, delivered on November 25, 1949, paid tribute to the contribution of the members of the Assembly:

"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."

Enactment and Enforcement of the Constitution:

The constitution of India was adopted and enacted on November 26, 1949, as explicitly mentioned in the Preamble. On this day itself, certain provisions also came into force. These were related to citizenship (Articles 5-9), elections (Articles 60, 324), definitions & interpretations (Articles 366-367), temporary and transitional provisions (Articles 379-380, 388,

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391-392) and short title (Article 393).

Other provisions of the Constitution, however, came into force on 26 January 1950. Thus, this day is said to be the day for the 'Commencement of the Constitution.' On this day in 1930, Purna Swaraj Day was celebrated following the resolution in the Lahore session of INC. With the commencement of the Constitution, 'The Indian Independence Act 1947' and 'The Government of India Act of 1935' were repealed but 'The Abolition of Privy Council Jurisdiction (1949)' was allowed to be continued.

26 January was chosen as the date of commencement of the Constitution to mark the 20th anniversary of the 1930 Lahore Session's declaration of Purna Swaraj (Complete Independence) and to symbolically represent India's transition into a Republic.

"Tryst with Destiny"

On the eve of India's independence, on August 14, 1947, Pandit Jawaharlal Nehru delivered his speech titled 'Tryst with Destiny' to the Constituent Assembly and the nation. Here are some excerpts from his speech:

"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 the new, when an age ends, and when the soul of a nation, long suppressed, finds utterance..." "...At the dawn of history, India started on her unending quest, and trackless centuries are filled with her striving and the grandeur of her success and her failures. Through good and ill fortune alike she has never lost sight of that quest or forgotten the ideals which gave her strength. We end today a period of ill fortune and India discovers herself again."

Concluding Remark:

The adoption of the Constitution was, however, not the culmination of India's constitutional journey. Even after its commencement on January 26, 1950, the Constitution continued to evolve through practical application, judicial interpretation, and periodic amendments. Its scope has steadily expanded, with fresh meanings being infused into its provisions to meet contemporary challenges. Even today, after 106 Constitutional Amendments, the process of constitution-making remains dynamic, constantly adapting to the aspirations and needs of an evolving India.

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