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Introduction

- ➔ The Indian Constitution, came into effect on 26 January 1950
- ➔ The Constitution of India was framed between December 1946 and November 1949
- ➔ The framing of constitution sought

1 to heal wounds of the past and the present, to make Indians of different classes, castes and communities come together in a shared political experiment.

2 it sought to nurture democratic institutions in what had long been a culture of hierarchy and deference.

Constituent assembly

- ➔ Drafts were discussed clause by clause in the Constituent Assembly of India.
- ➔ the Assembly held **11 sessions**, with sittings spread over **165 days**.
- ➔ In between the sessions, the work of revising and refining the drafts was carried out by various committees and sub-committees.
- ➔ This chapter will introduce you to the history that lies behind the Constitution, and the intense debates that were part of its making.

1. A Tumultuous Time

The political background of constituent assembly

Events

- The Quit India struggle of 1942
- The INA and Subhash Chandra Bose and INA trials
- Riot of Royal Indian Navy in Bombay and other cities (1946).
- Mass protests of workers and peasants in different parts of the country (1940s)
- The Great Calcutta Killings of August 1946
- The violence culminated in the massacres that accompanied the transfer of populations when the Partition of India was announced.
- On 15 August 1947, India had been made free, but it had also been divided.
- Millions of refugees were on the move, Muslims into East and West Pakistan, Hindus and Sikhs into West Bengal and the eastern half of the Punjab.
- When the British left India, the constitutional status of these princes remained ambiguous.
- Some maharajas wanted to become independent power

1.1 The making of the Constituent Assembly

- The members of the Constituent Assembly were not elected on the basis of universal franchise.
- In the winter of 1945-46 provincial elections were held in India.
- The Provincial Legislatures then chose the representatives to the Constituent Assembly.
- The Constituent Assembly was dominated by one party: the Congress.
- The Congress swept the general seats in the provincial elections, and the Muslim League captured most of the reserved Muslim seats.
- But the League chose to boycott the Constituent Assembly, pressing its demand for Pakistan with a separate constitution.
- The Socialists too were initially unwilling to join (they believed the Constituent Assembly was a creation of the British)

- ➔ Some congress members were inspired by socialism while others were defenders of landlordism.
- ➔ Some were close to communal parties while others were assertively secular.
- ➔ Debates in constituent assembly reported in newspapers
- ➔ Criticisms and counter-criticisms in the press in turn shaped the nature of the consensus
- ➔ Public was also asked to send in their views on what needed to be done.
- ➔ Many of the linguistic minorities wanted the protection of their mother tongue
- ➔ Religious minorities asked for special safeguards
- ➔ Dalits demanded an end to all caste oppression and reservation of seats in government bodies.
- ➔ Important issues of cultural rights and social justice raised in these public discussions were debated on the floor of the Assembly.

1.2 The dominant voices in constituent assembly

- ➔ The Constituent Assembly had 300 members.
- ➔ Of these, six members played particularly important roles.
- ➔ Three were representatives of the Congress,
 - Jawaharlal Nehru,
 - Vallabh Bhai Patel
 - Rajendra Prasad.

Role of six members

- ➔ 1 Nehru moved the crucial “Objectives Resolution”, as well as the resolution proposing that the National Flag of India be a “horizontal tricolour of saffron, white and dark green in equal proportion”, with a wheel in navy blue at the centre.

- 2 Patel, worked mostly behind the scenes, playing a key role in the drafting of several reports, and working to reconcile opposing points of view.
- 3 Rajendra Prasad's role was as President of the Assembly to steer the discussion along constructive lines while making sure all members had a chance to speak.
- 4 B.R.Ambedkar lawyer and economist served as Chairman of the Drafting Committee of the Constitution.(at Independence B.R.Ambedkar joined the Union Cabinet as law minister
- 5 K.M. Munshi
6 Alladi Krishnaswamy Aiyar
B.R.Ambedkar Serving with him were two other lawyers, K.M. Munshi from Gujarat and Alladi Krishnaswamy Aiyar from Madras, both of whom gave crucial inputs in the drafting of the Constitution.

B. N. Rau, S. N. Mukherjee

These six members were given vital assistance by two civil servants.

- 1 B. N. Rau, Constitutional Advisor to the Government of India, who prepared a series of background papers based on a close study of the political systems obtaining in other countries.
- 2 Chief Draughtsman, S. N. Mukherjee, who had the ability to put complex proposals in clear legal language.

2. The vision of the Constitution

Nehru's vision

"Objectives Resolution" by Nehru

- On 13 December 1946, Jawaharlal Nehru introduced the "Objectives Resolution" in the Constituent Assembly.
- It proclaimed India to be an "Independent Sovereign Republic", guaranteed its citizens justice, equality and freedom, and assured that "adequate safeguards shall be provided for minorities, backward and tribal areas, and Depressed and Other Backward Classes..."

Nehru's historical perspective of constitution

- Nehru placed the Indian constitution in a broad historical perspective.
- His mind went back to the historic efforts in the past to produce such documents of rights.

Nehru's speech (Source 1 see text)

- Nehru referred American, French, Russian Revolution and located the history of constitution-making in India within a longer history of struggle for liberty and freedom.

"We are not going just to copy"

- Nehru did not define the specific form of democracy, and suggested that this had to be decided through deliberations.
- And he stressed that the ideals and provisions of the constitution introduced in India could not be just derived from elsewhere.
- "We are not going just to copy", he said.
- The system of government established in India had to "fit in with the temper of our people and be acceptable to them".
- It was necessary to learn from the people of the West, from their achievements and failures
- Western nations too had to learn from experiments elsewhere, they too had to change their own notions of democracy.
- The objective of the Indian Constitution would be to fuse the liberal ideas of democracy with the socialist idea of economic justice, and re-adapt and re-work all these ideas within the Indian context.
- Nehru's plea was for creative thinking about what was appropriate for India.

2.1 The will of the people

Was Constituent Assembly under the shadow of British Guns?

- In the winter of 1946-47, as the Assembly deliberated, the British were still in India.

- An interim administration headed by Jawaharlal Nehru was in place, but it could only operate under the directions of the Viceroy and the British Government in London.
- A Communist member, **Somnath Lahiri** saw the dark hand of British imperialism hanging over the deliberations of the Constituent Assembly.
- He thus urged the members, and Indians in general, to fully free themselves from the influences of imperial rule.
- Lahiri exhorted his colleagues to realise that the Constituent Assembly was British-made and was “working the British plans as the British should like it to be worked out”.

Nehru's response

- Nehru admitted that most nationalist leaders had wanted a different kind of Constituent Assembly.
- British Government had a “**hand in its birth**”, and it had attached certain conditions within which the Assembly had to function.
- “But,” emphasised Nehru, “you must not ignore the source from which this Assembly derives its strength.
- “Governments are, in fact the expression of the will of the people”.
- “We have met here today because of the strength of the people behind us and we shall go as far as the people – not of any party or group but the people as a whole – shall wish us to go”

The Constituent Assembly and the aspirations of those who had participated in the movement for independence and social struggles

- **Democracy, equality and justice** were ideals that had become intimately associated with social struggles in India since the 19th century.
- When the social reformers in the 19th century opposed child marriage and demanded that widows be allowed to remarry, they were pleading for **social justice**.

- When Swami Vivekananda campaigned for a reform of Hinduism, he wanted religions to become more just. (justice)
- When Jyotiba Phule in Maharashtra pointed to the suffering of the depressed castes he was demanding social justice
- Communists and Socialists organised workers and peasants, they were demanding economic justice.
- The national movement was inevitably a struggle for democracy and justice, for citizens' rights and equality.

Unbroken continuity of earlier constitutional development

- British government passed A number of Acts in 1909, 1919 and 1935, gradually enlarging the space for Indian participation in provincial governments.
- The executive was made partly responsible to the provincial legislature in 1919, and almost entirely so under the Government of India Act of 1935.
- When elections were held in 1937, under the 1935 Act, the Congress came to power in eight out of the 11 provinces.
- Constituent assembly from 1946 was unbroken continuity of earlier constitutional developments
- But even in 1935 the electorate limited to no more than 10 to 15 per cent of the adult population
- The vision that Nehru was trying to outline on 13 December 1946 was of the Constitution of an independent, sovereign Republic of India

3. Defining Rights

The questions to be answered by constituent assembly

- How were the rights of individual citizens to be defined?
- Were the oppressed groups to have any special rights?
- What rights would minorities have?
- Who, in fact, could be defined as a minority?

- ➔ The answers were evolved through the clash of opinions and the drama of individual encounters.
- ➔ In his inaugural speech, Nehru had invoked the “will of the people” and declared that the makers of the Constitution had to fulfil “the passions that lie in the hearts of the masses”. This was no easy task.

3.1 The problem with separate electorates

- ➔ On 27 August 1947, B. Pocker Bahadur from Madras made a powerful plea for continuing separate electorates for minorities.
- ➔ This demand for separate electorates provoked anger and dismay amongst most nationalists.
- ➔ Most nationalists saw separate electorates as a measure deliberately introduced by the British to divide the people.

R.V. Dhulekar to Pocker Bahadur

- ➔ “The English played their game under the cover of safeguards with the help of it they allured you (the minorities) to a long lull. Give it up now... Now there is no one to misguide you.”
- ➔ Sardar Patel declared “Separate electorates was a “poison that has entered the body politic of our country” “Do you want peace in this land? If so do away with it (separate electorates)”
- ➔ Govind Ballabh Pant declared that it was not only harmful for the nation but also for the minorities. “There is the unwholesome and to some extent degrading habit of thinking always in terms of communities and never in terms of citizens,” said Pant. And he added: “Let us remember that it is the citizen that must count.
- ➔ Behind all these arguments was the concern with the making of a unified nation state.
- ➔ The Constitution would grant to citizens rights, but citizens had to offer their loyalty to the State.
- ➔ Communities could be recognised as cultural entities and assured cultural rights.
- ➔ Politically, however, members of all communities had to act as equal members of one State, or else there would be divided loyalties.

- Not all Muslims supported the demand for separate electorates.
- Begum Aizaas Rasul, felt that separate electorates were self- destructive since they isolated the minorities from the majority.
- By 1949, most Muslim members of the Constituent Assembly were agreed that separate electorates were against the interests of the minorities.

3.2 “We will need much more than this Resolution”

Questions of economic backward people

N.G. Ranga and ‘Real Minority’

- N.G. Ranga, a socialist leader of the peasant movement, urged that the term minorities be interpreted in economic terms.
- The real minorities for Ranga were the poor and the downtrodden.
- He welcomed the legal rights the Constitution was granting to each individual but pointed to its limits.
- In his opinion it was meaningless for the poor people in the villages to know that they now had the fundamental rights
- It was essential to create conditions where these constitutionally enshrined rights could be effectively enjoyed.
- For this they needed protection. “They need props. They need a ladder,” said Ranga.
- Ranga also drew attention to the gulf that separated the broad masses of Indians and those claiming to speak on their behalf in the Constituent Assembly

Jaipal singh about tribals

- The tribals, had among its representatives to the Assembly the gifted orator Jaipal Singh.
- In welcoming the Objectives Resolution, Singh said: as an Adibasi, I am not expected to understand the legal intricacies of the Resolution.

- ➔ But my common sense tells me that every one of us should march in that road to freedom and fight together.
- ➔ Sir, if there, is any group of Indian people that has been shabbily treated it is my people.
- ➔ “They have been disgracefully treated, neglected for the last 6,000 years”
- ➔ “now we are going to start a new chapter, a new chapter of independent India where there is equality of opportunity, where no one would be neglected”
- ➔ Singh spoke eloquently on the need to protect the tribes, and ensure conditions that could help them come up to the level of the general population.
- ➔ Tribes were not a numerical minority, he argued, but they needed protection.
- ➔ They had been dispossessed of the land they had settled, deprived of their forests and pastures, and forced to move in search of new homes.
- ➔ Perceiving them as primitive and backward, the rest of society had turned away from them, spurned them.
- ➔ He made a moving plea for breaking the emotional and physical distance that separated the tribals from the rest of society: “Our point is that you have got to mix with us”
- ➔ We are willing to mix with you ... ”. Singh was not asking for separate electorates, but he felt that reservation of seats in the legislature was essential to allow tribals to represent themselves.

3.3 “We were suppressed for thousands of years”

Questions of Depressed classes

- ➔ Some members of the Depressed Castes emphasised that the problem of the “Untouchables” could not be resolved through protection and safeguards alone.
- ➔ Their disabilities were caused by the social norms and the moral values of caste society.

Nagappa

- ➔ “We have been suffering, but we are prepared to suffer no more,” said J. Nagappa from Madras.

- ➔ “We have realised our responsibilities. We know how to assert ourselves.”
- ➔ Nagappa pointed out that numerically the Depressed Castes were not a minority: they formed between 20 and 25 per cent of the total population.
- ➔ Their suffering was due to their systematic marginalisation, not their numerical insignificance.
- ➔ They had no access to education, no share in the administration.

K.J. Khanderkar

- ➔ Addressing the assembly, K.J. Khanderkar of the Central Provinces said: We were suppressed for thousands of years. ... suppressed... to such an extent that neither our minds nor our bodies and now even our hearts work, nor are we able to march forward”
- ➔ After the Partition violence, Ambedkar too no longer argued for separate electorates.
- ➔ The Constituent Assembly finally recommended that untouchability be abolished, Hindu temples be thrown open to all castes, and seats in legislatures and jobs in government offices be reserved for the lowest castes.

4. The Powers of the State

- ➔ One of the topics most vigorously debated in the Constituent Assembly was the respective rights of the Central Government and the states.
- ➔ Among those arguing for a strong Centre was Jawaharlal Nehru.
- ➔ As he put it in a letter to the President of the Constituent Assembly, “it would be injurious to the interests of the country to provide for a weak central authority”

Three lists of subjects: Union, State, and Concurrent

- ➔ The Draft Constitution provided for three lists of subjects: Union, State, and Concurrent.
- ➔ The subjects in the first list were to be the preserve of the Central Government, while those in the second list were vested with the states. As for the third list, here Centre and state shared responsibility.
- ➔ Besides, Article 356 gave the Centre the powers to take over a state administration on the recommendation of the Governor.

A complex system of fiscal federalism

- ➔ The Constitution also mandated for a complex system of fiscal federalism.
- ➔ In the case of some taxes (for instance, customs duties and Company taxes) the Centre retained all the proceeds; in other cases (such as income tax and excise duties) it shared them with the states; in still other cases (for instance, estate duties) it assigned them wholly to the states.
- ➔ The states, meanwhile, could levy and collect certain taxes on their own: these included land and property taxes, sales tax, and the hugely profitable tax on bottled liquor.

4.1 “The centre is likely to break”

The rights of the states

K. Santhanam

- ➔ The rights of the states were most eloquently defended by K. Santhanam from Madras.
- ➔ “There is almost an obsession that by adding all kinds of powers to the Centre we can make it strong.”
- ➔ This was a misconception, said Santhanam.
- ➔ If the Centre was overburdened with responsibilities, it could not function effectively.
- ➔ By relieving it of some of its functions, and transferring them to the states, the Centre could, in fact, be made stronger.
- ➔ As for the states, Santhanam felt that the proposed allocation of powers would cripple them.
- ➔ The fiscal provisions would impoverish the provinces since most taxes, except land revenue, had been made the preserve of the Centre.
- ➔ “I do not want any constitution in which the Unit has to come to the Centre and say ‘I cannot educate my people. I cannot give sanitation, give me a dole for the improvement of roads, of industries.’
- ➔ “Let us rather wipe out the federal system and let us have Unitary system.”

- ➔ In a few years, he said, all the provinces would rise in “revolt against the Centre”.
- ➔ Many others from the provinces echoed the same fears.
- ➔ They fought hard for fewer items to be put on the Concurrent and Union lists.
- ➔ A member from Orissa warned that “the Centre is likely to break” since powers had been excessively centralised under the Constitution.

4.2 “What we want today is a strong Government”

The need for a strong centre

Ambedkar

- ➔ Ambedkar had declared that he wanted “a strong and united Centre (hear, hear) much stronger than the Centre we had created under the Government of India Act of 1935”.
- ➔ Reminding the members of the riots and violence that was ripping the nation apart, many members had repeatedly stated that the powers of the Centre had to be greatly strengthened to enable it to stop the communal frenzy.

Gopalaswami Ayyangar

- ➔ Reacting to the demands for giving power to the provinces, Gopalaswami Ayyangar declared that “the Centre should be made as strong as possible”.

Balakrishna Sharma

- ➔ One member from the United Provinces, Balakrishna Sharma, reasoned at length that only a strong centre could plan for the well-being of the country, mobilise the available economic resources, establish a proper administration, and defend the country against foreign aggression.
- ➔ After Partition most nationalists felt that the earlier political pressures for a decentralised structure were no longer there.
- ➔ The violence of the times gave a further push to centralisation
- ➔ The Constitution thus showed a distinct bias towards the rights of the Union of India over those of its constituent states.

5. The Language of the Nation

→ Within the Constituent Assembly, the language issue was debated over many months

Plea for Hindustani

- By the 1930s, the Congress had accepted that Hindustani ought to be the national language.
- Hindustani – a blend of Hindi and Urdu – was a popular language of a large section of the people of India,
- This multi-cultural language, Mahatma Gandhi thought, would be the ideal language of communication between diverse communities: it could unify Hindus and Muslims, and people of the north and the south.
- As communal conflicts deepened, Hindi and Urdu also started growing apart.
- On the one hand, there was a move to Sanskritise Hindi, purging it of all words of Persian and Arabic origin.
- On the other hand, Urdu was being increasingly Persianised.
- As a consequence, language became associated with the politics of religious identities.
- Mahatma Gandhi, however, retained his faith in the composite character of Hindustani.

5.1 A plea for Hindi

R. V. Dhulekar

- R. V. Dhulekar, a Congressman from the United Provinces, made an aggressive plea that Hindi be used as the language of constitution-making.
- When told that not everyone in the Assembly knew the language, Dhulekar retorted: “People who are present in this House to fashion a constitution for India and do not know Hindustani are not worthy to be members of this Assembly. They better leave.”
- On this occasion peace in the House was restored through Jawaharlal Nehru’s intervention
- But the language issue continued to disrupt proceedings and agitate members over the subsequent three years.

- ➔ Almost three years later, on 12 September 1947, Dhulekar's speech on the language of the nation once again sparked off a huge storm.

Language Committee report of the Constituent Assembly

- ➔ the Language Committee report of the Constituent Assembly had thought of a compromise between those who advocated Hindi as the national language and those who opposed it.
- ➔ It had decided, but not yet formally declared, that Hindi in the Devanagari script would be the official language, but the transition to Hindi would be gradual.
- ➔ For the first fifteen years, English would continue to be used for all official purposes.
- ➔ Each province was to be allowed to choose one of the regional languages for official work within the province.
- ➔ By referring to Hindi as the official rather than the national language, the Language Committee of the Constituent Assembly hoped a solution that would be acceptable to all.
- ➔ Dhulekar was not one who liked such an attitude of reconciliation.
- ➔ He wanted Hindi to be declared not an Official Language, but a National Language.
- ➔ Several times during his speech, the President of the Assembly interrupted Dhulekar and told him: "I do not think you are advancing your case by speaking like this." But Dhulekar continued nonetheless

5.2 The fear of domination

Shrimati G. Durgabai

- ➔ A day after Dhulekar spoke, Shrimati G. Durgabai from Madras explained her worries about the way the discussion was developing
- ➔ "Mr President, the question of national language for India which was an almost agreed proposition until recently has suddenly become a highly controversial issue"
- ➔ "Whether rightly or wrongly, the people of non-Hindi-speaking areas have been made to feel that this fight, or this attitude on behalf of the Hindi-speaking areas, is a fight for effectively preventing the natural influence of other powerful languages of India on the composite culture of this nation"

- ➔ Durgabai informed the House that the opposition in the south against Hindi was very strong: “The opponents feel perhaps justly that this propaganda for Hindi cuts at the very root of the provincial languages...”
- ➔ Yet, she along with many others had obeyed the call of Mahatma Gandhi and carried on Hindi propaganda in the south, braved resistance, started schools and conducted classes in Hindi.
- ➔ She had accepted Hindustani as the language of the people, but now that language was being changed, words from Urdu and other regional languages were being taken out.

Shri Shankarrao Deo

- ➔ A member from Bombay, Shri Shankarrao Deo stated that as a Congressman and a follower of Mahatma Gandhi he had accepted Hindustani as a language of the nation, but he warned: “if you want my whole- hearted support (for Hindi) you must not do now anything which may raise my suspicions and which will strengthen my fears.”

T. A. Ramalingam Chettiar

- ➔ T. A. Ramalingam Chettiar from Madras emphasised that whatever was done had to be done with caution; the cause of Hindi would not be helped if it was pushed too aggressively.
- ➔ The fears of the people, even if they were unjustified, had to be allayed, or else “there will be bitter feelings left behind”. “When we want to live together and form a united nation,” he said, “there should be mutual adjustment and no question of forcing things on people ...”

Conclusion

- ➔ The Constitution of India thus emerged through a process of intense debate and discussion.
- ➔ Many of its provisions were arrived at through a process of give-and-take, by forging a middle ground between two opposed positions.

The granting of the vote to every adult Indian

- ➔ One central feature of the Constitution there was substantial agreement-the granting of the vote to every adult Indian.

- Other democracies the vote had been granted slowly, and in stages.
- In countries such as the United States and the United Kingdom, only men of property were first granted the vote

Emphasis on secularism.

- A second important feature of the Constitution was its emphasis on secularism.
- There was no ringing pronouncement of secularism in the Preamble, but operationally, its key features as understood in Indian contexts were spelled out in an exemplary manner.
- This was done through the carefully drafted series of Fundamental Rights to “freedom of religion” (Articles 25-28), “cultural and educational rights” (Articles 29, 30), and “rights to equality” (Articles 14, 16, 17)
- A certain legal space was created for social reform within communities, a space that was used to ban untouchability and introduce changes in personal and family laws.
- In the Indian variant of political secularism, then, there has been no absolute separation of State from religion, but a kind of judicious distance between the two.

Importance of debates in Constituent Assembly

- The Constituent Assembly debates help us understand the many conflicting voices that had to be negotiated in framing the Constitution
- They tell us about the ideals that were invoked and the principles that the makers of the Constitution operated with.
- But in reading these debates we need to be aware that the ideals invoked were very often re-worked according to what seemed appropriate within a context.
- At times the members of the Assembly also changed their ideas as the debate unfolded over three years.
- Hearing others argue, some members rethought their positions, opening their minds to contrary views
- Others changed their views in reaction to the events around.

TIMELINE

1945

26 July	Labour Government comes into power in Britain
December-January	General Elections in India

1946

16 May	Cabinet Mission announces its constitutional scheme
16 June	Muslim League accepts Cabinet Mission's constitutional scheme
16 June	Cabinet Mission presents scheme for the formation of an Interim Government at the Centre
16 August	Muslim League announces Direct Action Day
2 September	Congress forms Interim Government with Nehru as the Vice-President
13 October	Muslim League decides to join the Interim Government
3-6 December	British Prime Minister, Attlee, meets some Indian leaders; talks fail
9 December	Constituent Assembly begins its sessions

1947

29 January	Muslim League demands dissolution of Constituent Assembly
16 July	Last meeting of the Interim Government
11 August	Jinnah elected President of the Constituent Assembly of Pakistan
14 August	Pakistan Independence; celebrations in Karachi
14-15 August	At midnight India celebrates Independence

1949

December	Constitution is signed
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