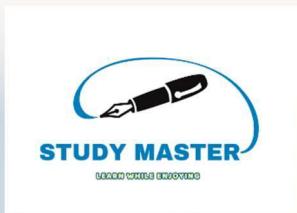


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## 1. MAKING OF THE CONSTITUTION

### DEMAND FOR CONSTITUENT ASSEMBLY (CA):

- 1924 → Idea first given by Swaraj Party.
- 1934 → M.N. Roy put forward the demand for C.A.
- 1935 → INC officially demanded C.A. to frame Indian Constitution.
- 1940 → Demand accepted in principle in August Offer.
- 1942 → Cripps Proposal for Constitution rejected.
- 1946 → Cabinet Mission Plan (CMP) accepted by all parties. (Lord Patrick Lawrence, Sir Stafford Cripps, A V Alexander were its members). CMP rejected two C.A. ideas.

### COMPOSITION OF THE CONSTITUENT ASSEMBLY:

- C.A. constituted in Nov 1946 under CMP. (Cabinet Mission Plan).
- Seats allotted as per population proportion.
- Voting by method of proportional representation by means of single transferable vote in case of provincial representation.
- C.A. was partly nominated (by heads of Princely states) & partly elected body (In British Provinces)
- Indirectly elected members.
- Mahatma Gandhi was not part of C.A.
- The 93 seats allotted to the princely states were not filled as they decided to stay away from the Constituent Assembly.

| Total Strength                      | 389 |
|-------------------------------------|-----|
| 1. British India Governors Province | 292 |
| 2. Chief Commissioners Province     | 4   |
| 3. Princely States                  | 93  |

### WORKING OF THE CONSTITUENT ASSEMBLY

- First meeting held on Dec 9, 1946 (Muslim League boycotted)
- Temporary President of the Assembly → Dr. Sachidanand Sinha, the oldest member, was elected as following the French practice.
- Dr. Rajendra Prasad was elected President of C.A. later.
- Vice - Presidents (Two) → Both H.C. Mukherjee and V.T. Krishnamachari.

### OBJECTIVES RESOLUTION

- Jawaharlal Nehru moved this historic resolution in Dec 13, 1946 in the Assembly.
- It contained the fundamentals & philosophy of Constitutional structure.
- This resolution was adopted on Jan 22, 1947 by Assembly.
- Preamble is modified version of Objective Resolution.

### CHANGES BY THE INDEPENDENCE ACT 1948

- Members of Princely states & Muslim League (from Indian Dominion) gradually began to join after acceptance of Mountbatten plan of June 3, 1947. (This Plan provided for Partition).
- Indian Independence Act, 1947 made three changes in C.A. position: -
  1. Assembly was made a **fully sovereign body**, free to abrogate or alter any law.
  2. **Two separate functions** were assigned to the Assembly (performed on separate days) - **legislative body** (Chaired by G V Mavalankar) and **Constituent body** (chaired by Dr. Rajendra Prasad); first Parliament of free India (Dominion Legislature); These two functions continued till November 26, 1949.
  3. After withdrawal of Muslim League members, total strength came down to 299 as **against 389 under the Cabinet Mission Plan**.

## FUNCTIONS PERFORMED BY C.A.

- **Ratified** India's membership of **Commonwealth** in May, 1949.
- Adopted **National Flag** on July 22, 1947.
- Adopted **National Song & National Anthem** on Jan 24, 1950.
- **Elected** **Rajendra Prasad** as first President of India on Jan 24, 1950.
- **Final session of C.A. on Jan 24, 1950.** However, it continued as provisional Parliament of India from Jan 26, 1950 till formation of new Parliament (May, 1952).
- Total sessions = 11; Total time = 2 years, 11 months, 18 days

## MAJOR COMMITTEES

1. Union Powers Committee / Union Constitution Committee / States Committee → Jawaharlal Nehru
2. Rules of Procedure Committee / Steering Committee → Dr. Rajendra Prasad
3. Provincial Constitution Committee → Sardar Patel
4. Drafting Committee → Dr. B.R. Ambedkar
5. Advisory Committee on FRs, Minorities & Tribal & Excluded Areas → Sardar Patel

Of all the Committees of C.A. **Drafting Committee** was most important set up on Aug 29, 1947. It **consisted of 7 members**.

## ENACTMENT OF THE CONSTITUTION

- After general & clause by clause reading of draft Constitution. It was **adopted on Nov 26, 1949**. At that time, it contained Preamble, 395 Articles, & 8 Schedules.
- The Preamble was enacted **after** the entire Constitution was already enacted to align with philosophy of constitution.

## ENFORCEMENT OF THE CONSTITUTION

- Some provisions of Constitution came into force on Nov 26, 1949 itself, viz. Citizenship, Elections, provisional parliament, temporary and transitional provisions, and short title contained in Articles 5, 6, 7, 8, 9, 60, 324, 366, 367, 379, 380, 388, 391, 392 and 393 came into force on November 26, 1949, itself.
- **Major part came into force on Jan 26, 1950** (commencement day). (Jan 26, 1930 – Purna Swaraj Day was celebrated)
- Indian Independence Act, 1947 & GoI Act, 1935 with all its enactments were repealed. However, **The Abolition of Privy Council Jurisdiction Act (1949)** continued.

## OTHER IMPORTANT FACTS

- **Elephant** adopted as C.A. symbol.
- **Sir B.N. Rau** was **Constitutional Adviser** to C.A.
- **H.V.R. Iyengar** was Secretary to C.A.
- **S.N. Mukherjee** was chief draftsman of constitution in C.A.
- **Prem Behari Raizada** was the **calligrapher** of the Constitution.
- **Nand Lal Bose & B.R. Sinha** decorated & beautified the Constitution.
- **Hindi version** calligraphy done by **Vasant Krishan Vaidya** & illuminated by **Nand Lal Bose**.

## STUDENT NOTE

## 2. SALIENT FEATURES OF THE CONSTITUTION

- 42<sup>nd</sup> Constitutional Amendment (1976) is also known as 'Mini Constitution'.
- KESAVANANDA BHARTI CASE (1973): SC ruled, constituent power of parliament doesn't allow it to change the 'basic structure' of the constitution.

### IMPORTANT FEATURES OF THE CONSTITUTION:

- Lengthiest Written Constitution- The Indian Constitution is the lengthiest of all written constitution. Presently, it consists of a Preamble, about 470 articles and 12 schedules.
- Dominance of legal luminaries in the Constituent Assembly.
- Single Constitution for both the Centre and the states .
- Drawn from various sources:

| Sr. | Sources                        | Features borrowed   |
|-----|--------------------------------|---|
| 1.  | Govt. of India Act,1935        | Federal scheme, Governor's office, Judiciary, Public Service Commission, Emergency Provisions and administrative details.   |
| 2.  | British Constitution           | Parliamentary govt., Rule of Law, Single Citizenship, Cabinet System, Parliamentary privileges, Bicameralism, prerogative writs.                                  |
| 3.  | US Constitution                | Fundamental Rights, Independent Judiciary, Impeachment of President, Judicial review, Removal of supreme court and high court judges and post of vice-president.  |
| 4.  | Irish Constitution             | DPSP, method of election of president and nomination of members to Rajya Sabha.   |
| 5.  | Canadian Constitution          | Federation with a strong centre, vesting Residuary powers to centre, appointment of state governors by the centre and advisory jurisdiction of the Supreme Court. |
| 6.  | Australian Constitution        | Concurrent List, Joint sitting of both the Houses of Parliament.  |
| 7.  | Weimar Constitution of Germany | Suspension of Fundamental Rights during Emergency   |
| 8.  | USSR Constitution              | Fundamental Duties and the ideal of justice (social, economic and political) in the Preamble.   |
| 9.  | French Constitution            | Republic and the ideals of liberty, equality and fraternity in the Preamble.  |
| 10. | South African Constitution     | Procedure for amendment of the Constitution and election of members of Rajya Sabha  |
| 11. | Japanese Constitution          | Procedure established by Law.   |

| Part of Constitution                                  | Derived From                                  |
|---|---|
| Structural part of the Constitution                   | Government of India Act,1935.                 |
| Philosophical part of the Constitution (FR and DPSPs) | American and Irish Constitution respectively. |
| political part of the constitution                    | British Constitution.                         |

- Rigidity and Flexibility- The Indian Constitution is neither rigid nor flexible, but a blend of both.
- Federal system with unitary bias:

|                               |  |
|-------------------------------|--|
| features of federation System | Two government, division of powers, written Constitution, bicameralism, supremacy of Constitution etc. |
|-------------------------------|--|

|                                   |  |
|-----------------------------------|--|
| <b>features of Unitary System</b> | Strong centre, single constitution, single citizenship, integrated judiciary, all-India services, emergency provisions, etc. |
|-----------------------------------|--|

- **Parliamentary form of Government**-The Indian Constitution has preferred British Parliamentary System of government to American Presidential System of government. **Features of Parliamentary form of government are:** Presence of nominal and real executives + Rule of majority party + Leadership of the Prime Minister or the chief minister + Membership of the ministers in the legislature + Dissolution of the lower house (Lok Sabha).
- **Synthesis of Parliamentary Sovereignty and Judicial Supremacy**- The sovereignty of parliament is associated with the British Parliament while Judicial supremacy is associated with American system. The framers of the Indian Constitution have preferred a proper synthesis between the British principle of parliamentary sovereignty and the American principle of judicial supremacy.
- **Integrated and Independent Judiciary**-The Supreme Court stands at the top of the integrated judicial system in the country followed by High courts in states and subordinate courts and other lower courts. **The Supreme Court is the highest court of appeal, the guarantor of the fundamental rights of the citizens and the guardian of the constitution.**
- **Fundamental Rights**- Part III of the constitution guarantees 6 FRs to all the citizens → (1) Right to equality(Article 14-18) + (2) Right to freedom(Article 19-22) + (3) Right against exploitation(Article 23-24) + (4) Right to Freedom of Religion(Article 25-28) + (5) Cultural and Educational Rights(Article 29-30) + (6) Right to Constitutional Remedies(Article 32). If a fundamental right of any Indian citizen is violated, then the aggrieved person can directly go to the Supreme Court which can issue the writs of **Habeas corpus, mandamus, prohibition, certiorari, and quo warranto** for the restoration of his rights.
- **Directive Principles of State Policy**- Mentioned in Part IV of the constitution. The DPSPs are meant to promote the ideals of social and economic democracy. However, unlike the FRs, the directives are non-justiciable in nature, i.e. they are non- enforceable by the courts for their violation.

**NOTE- MINERVA MILLS CASE(1980):** SC held that 'the Indian Constitution is founded on the bedrock of the balance between the Fundamental Rights and the DPSPs – Basic Structure

- **Fundamental Duties**- Added to the Constitution only after the recommendations of Swaran Singh Committee. The 86<sup>th</sup> CAA, 2002 added one more fundamental duty. The duties are also non-justiciable in nature.
- **A Secular State**- The term 'secular' was added to the Preamble of the Indian Constitution by the 42<sup>nd</sup> CAA, 1976. The Indian Constitution embodies the positive concept of Secularism, i.e. giving equal respect to all religions or protecting all religions equally.
- **Universal Adult Franchise**-The voting age was reduced to 18 years from 21 years in 1989 by 61<sup>st</sup> CAA, 1988.
- **Single Citizenship**- Enjoy the same political and civil rights of citizenship all over the country.
- **Independent Bodies**-Certain Independent Bodies are envisaged by the Constitution as the bulwarks of the democratic system of Government of India. These are: **Election Commission + Comptroller and Auditor-General + Union Public Service Commission + State Public Service Commission.**
- **Emergency Provisions** - National Emergency (Art. 352), State Emergency or President's Rule (Art. 356 and Art. 365) and Financial Emergency (Art. 360). During an emergency, the federal structure converts into unitary one without a formal amendment of the Constitution and the Central government becomes all-powerful.
- **Three-tier Government**- The 73<sup>rd</sup> and 74<sup>th</sup> CAA, 1992 have added a third-tier of government (local) which is not found in any other constitutions of the world. The 73<sup>rd</sup> CAA of 1992 gave constitutional recognition to Panchayats by adding a **new part IX and a new schedule 11** to the constitution. The 74