

## Constitutional Values

### 1.1. HISTORICAL PERSPECTIVE OF INDIAN CONSTITUTION

#### 1.1.1. Demand for a Constitution

In 1922, Mahatma Gandhi had already asserted that the Indian people must have the sole authority to determine the nation's political future. In addition to this, the inability of the Statutory Commission and the Round Table Conference to meet Indian aspirations, which ultimately led to the Government of India Act of 1935, intensified the call for a constitution created by Indians themselves, free from external influence. This demand was formally expressed by the National Congress in 1935.

In 1938, Pandit Nehru clearly articulated the need for a Constituent Assembly, stating, "The National Congress stands for independence and a democratic state. It has been proposed that the Constitution of free India must be framed, without outside interference, by a Constituent Assembly elected on the basis of adult franchise." This position was reaffirmed by the Congress Working Committee in 1939.

#### 1.1.2. Major Sources from which the Indian Constitution has been Drawn (From The Regulating Act 1773 to Indian Independence Act 1947)

India's foundational legal framework traces its roots to legislation enacted during British rule, culminating in the establishment of the Constituent Assembly in 1946. This body was tasked with completing the historic process of drafting the Indian Constitution, which was formally adopted in 1950. The following charter acts became the major sources of the Indian Constitution:

- 1) **Regulating Act, 1773:** With the introduction of the Regulating Act of 1773 after the Company Rule, the series of statutes began in 1773. This marked the British government's first significant effort to reform the management of the East India Company in India. The act was introduced in response to a scenario where the officers of the East India Company were among the wealthiest individuals of the time, despite the company itself being deeply in debt. To prevent such mismanagement, the British government decided to revise the terms and conditions of the charter every twenty years. This charter act is considered the British Parliament's first major step toward restructuring the East India Company's operations. The establishment of the Supreme Court was also outlined in this charter act and later enshrined in **Article 124(1)** of the Indian Constitution.
- 2) **Pitts India Act, 1784:** To address the deficiencies of the 1773 Act, the Pitts India Act, 1784 was passed. A separation between the political and commercial functions of the East India Company was introduced by this act. This is a concept that is reflected in **Article 50** of the current Constitution, which separates the executive and judiciary.
- 3) **Charter Act, 1813:** The charter of the East India Company was extended for an additional 20 years by the Charter Act, 1813. It also established the constitutional framework for British Indian territories. This foundation is reflected in **Parts V and VI** of the Indian Constitution.

Additionally, the Act required the East India Company to take on the responsibility of educating the people of India, paralleling the constitutional mandate under **Article 21A**, which obligates the State to provide free and compulsory education.

- 4) **Charter Act, 1853:** The separation of powers between the legislative and executive functions, as outlined in the current Indian Constitution, was initially defined by the Charter Act, 1853.
- 5) **Charter Act, 1858:** The Act transferred the powers previously held by the British Crown to the Secretary of State for India. As a result of this transition, the role of the Crown itself has not been formalised in modern India.

- 6) **Indian Councils Act, 1861:** This Act provided for the creation of legislative councils at both the central and provincial levels. It is also outlined in **Article 169** of the current Constitution, which establishes State Legislative Councils and State Legislative Assemblies.
- 7) **Indian Council Act, 1892:** The system of indirect elections was introduced in this act. It is a process mirrored in the current Constitution under **Article 54**, where the president is elected through an electoral college.
- 8) **Morley Minto Act, 1909:** The concept of communal representation for Muslims through the provision of a “separate electorate” was introduced by this act. This act influenced the current Constitution in the following ways:
  - i) **Article 334** of the Constitution provides reserved representation for the Anglo-Indian community.
  - ii) **Article 330** reserves seats for Scheduled Tribes and Scheduled Castes.
  - iii) The recommendations of the **Mandal Commission** concerning ‘Other Backward Classes’ can be viewed as a contemporary reflection of the principles established by this Act.
- 9) **Montague-Chelmsford Act, 1919:** This Act introduced the foundational concept of bicameralism. Similarly, **Article 84** of the current Constitution outlines the qualifications required to serve in either house of Parliament.

The bicameralism at the state level is enshrined by **Article 169** through the creation of the Vidhan Sabha and Vidhan Parishad. The **Public Service Commission** was also established by this Act. This commission is a body that remains integral to aspects of the Constitution even after 111 years and comes under **Part XIV** of the Constitution, encompassing **Articles 315 to 322**.

- 10) **Government of India Act, 1935:** This act contained several provisions unfamiliar to Indians under British rule, which made this act incomprehensible for Indians. The concept of “provincial autonomy” was introduced by this Act.

This concept aligns with **Article 75(3)** of the current Constitution, where the council of ministers is held accountable to the Lok Sabha. Furthermore, by creating the Federal List, Provincial List, and Concurrent List, the Act laid the groundwork for the division of powers between the Centre and the states. Now it is reflected in the Union List, State List, and Concurrent List in the **Seventh Schedule** of the current Constitution.

- 11) **Indian Independence Act, 1947:** On August 15, 1947, India was partitioned into two dominions, India and Pakistan, under this Act. As a result, all laws in force in British India would remain applicable in both countries until amended by their respective legislatures. Until new constitutions were framed, each country, along with its provinces, was to be governed under the provisions of the Government of India Act, 1935.

The Act also specified the conditions under which the British Crown’s authority over the princely states would cease. From August 15, 1947, all treaties and powers held by the Crown over the princely states and their rulers would be terminated.

- 12) **The Constitution of India (January 26, 1950):** In February 1948, while serving as President of India, Dr. Rajendra Prasad prepared a draft of the country’s new Constitution. Subsequently, on November 26, 1949, the Constituent Assembly formally adopted the Indian Constitution, which came into effect on January 26, 1950, the day the Republic of India was officially established.

This legislation laid the foundation for accountable governments at both the federal and state or provincial levels, thereby affirming India’s status as an independent and sovereign state. The Indian Constitution drew inspiration from several existing constitutions worldwide, and the drafting committee incorporated various elements from these sources.

### 1.1.3. Framing of the Indian Constitution

The demand for a constitution was first made during a Round Table Conference in 1924-25, known as the “**National Demand**.” In 1928, the All-Parties Conference approved the formation of a commission, chaired by Motilal Nehru, to outline the foundational principles of the Indian Constitution. The commission delivered the “**Nehru Report**,” which became a significant milestone in laying the groundwork for India’s Constitution. This report was notable for proposing fundamental rights for Indian citizens and advocating for a parliamentary form of government.

Round Table discussions were held to deliberate on India's constitutional development between 1930 and 1932. The British government recognised that the Indian aspiration to draft their own constitution could not be appeased through incremental reforms. In 1933-34, **M.N. Roy** proposed the idea of a constituent assembly elected through adult suffrage to draft the constitution. In 1938, Pt. Jawaharlal Nehru reinforced this vision, stating that "the constitution of free India must be framed, without outside interference, by a constituent assembly elected based on adult franchise." The idea of a constituent assembly was always opposed by the British. However, with the outbreak of World War II, the British government began making concessions to India in an effort to gain its support for the war. In 1940, the "**August Offer**" was introduced, recognising for the first time the right of Indians to draft their own constitution. Despite this acknowledgement, most Indian political parties rejected the proposal.

After this, the "**Cripps Mission**" in 1942 and the "**Wavell Plan**" in 1945 both failed, primarily due to their focus on granting dominion status and the Muslim League's insistence on exclusive Muslim representation.

In February 1946, the British government announced the dispatch of a "**Cabinet Mission**" to address the issues of independence and constitution-making. The mission proposed the formation of a constituent assembly, with members chosen by the provincial legislative assemblies. The Constituent Assembly was entrusted with the monumental task of drafting the constitution for an independent India. This assembly comprised 299 members representing various communities and major provinces. Seats were allocated to the General, Sikh, and Muslim categories proportionate to their respective populations.

On December 9, 1946, the Constituent Assembly held its inaugural meeting. After India gained independence on August 14, 1947, the Assembly reconvened as the official Constituent Assembly for the Dominion of India. **Dr. Rajendra Prasad** was appointed as the permanent chairman, while **Dr. Sachidanand Sinha**, the oldest member, was made the provincial president.

On December 13, 1946, Jawaharlal Nehru introduced the "**Objective Resolution**" to the assembly, outlining the principles and foundation of the constitutional framework. The assembly adopted this resolution on January 22, 1947, and its revised version is now part of the Preamble of the current Constitution. The process for selecting members from Indian states was to be determined through consultation.

Following the Partition, Pakistan was granted its own Constituent Assembly in 1947 under the "**June 3 Plan**" or "**Mountbatten Plan**." Representatives from Bengal, Punjab, Sind, the North-Western Frontier Province, Baluchistan, and the Sylhet district of Assam (which had joined Pakistan through a referendum) were removed from the Indian Constituent Assembly, and new elections were held in the newly created provinces of West Bengal and East Punjab. When the Constituent Assembly reconvened on October 31, 1947, it had 299 members. Of these, 284 members were present and signed the Constitution on November 26, 1949. The Constituent Assembly formed 13 committees, one of which was the Drafting Committee. **Dr. Ambedkar** was elected as the "Head of the Drafting Committee" during its first meeting on August 30.

The Drafting Committee met on October 27, 1947, for 42 days to review every section of the initial draft. On February 21, 1948, the committee submitted a revised draft of the constitution to the President of the Constituent Assembly. This version included 315 articles and 8 schedules. In his cover letter, Dr. Ambedkar also acknowledged the contributions of **Shri S. N. Mukherjee** and **Sir B. N. Rau**, the draftsman and joint secretary. The next series of actions was handled by a special committee.

#### 1.1.4. The Constituent Assembly of 1948 and its Contribution to Indian Constitution

The British government was committed to exploring the possibility of granting India its own nation. To give the Indian people an opportunity to work on drafting a constitution, the British Government created the Constituent Assembly under the **Cabinet Mission Plan of 1946**. Some of the 389 members of the Constituent Assembly were elected by the provincial assemblies, while the remaining members were nominated by the princely states.

The newly formed Constituent Assembly convened for the first time on 9<sup>th</sup> December, 1946, and elected **Sachidananda Sinha** as its interim president. On December 11, Rajendra Prasad assumed the role of president of the assembly. In November 1947, the draft constitution prepared by the constitutional adviser was presented to the assembly. The assembly then submitted the text to the president for a final review in February 1948. On 4<sup>th</sup> November, 1948, the Constituent Assembly received the draft constitution for the final round of discussions. After an extensive 101-day debate, the proposed document was approved, and the constitution came into effect on **26<sup>th</sup> November, 1949**.