

**Class 11<sup>th</sup> | Political Science**



**BOOK: Indian  
Constitution at work**

**Constitution: Why & How?**

**Chapter : 1 | Lecture 6**

# Constitution?

↳ functions of Constitution

— Coordination & Assurance

→ decision making power & how the govt is Constit

→ limit the power of govt

→ Aspiration & Goals of society

→ fundamental Identity of people

# The Authority of Constitution

→ How effective is the Const.

↓  
Mode of Prom

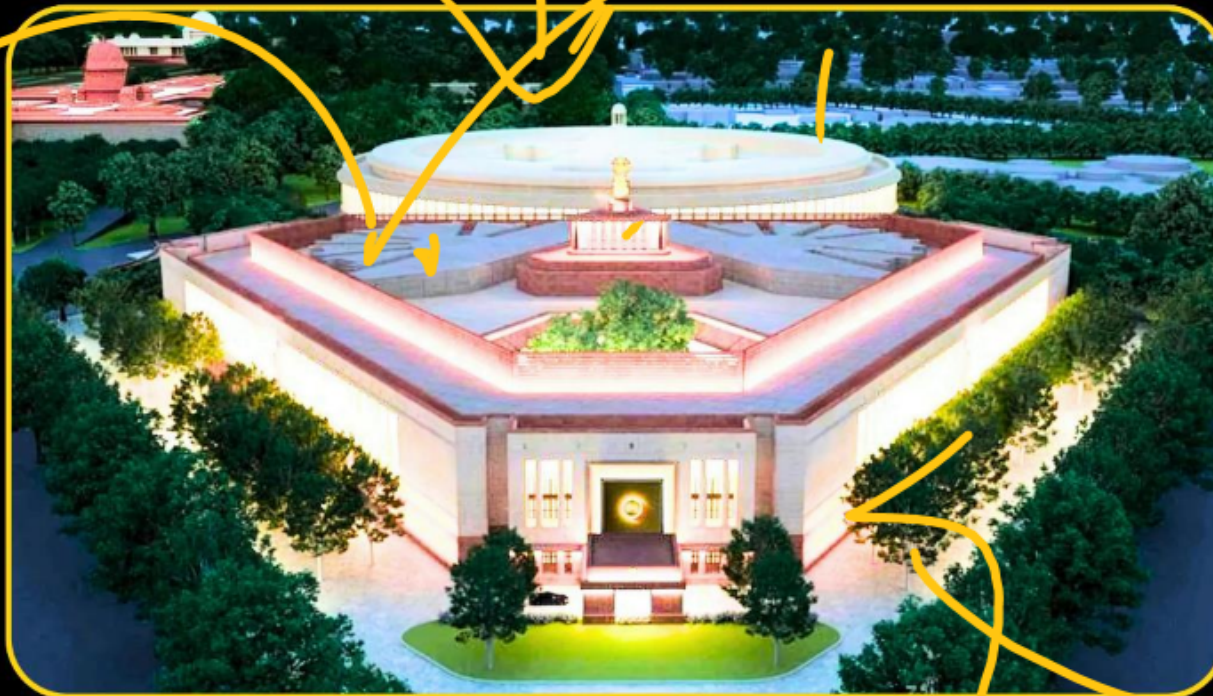
- Debate over the Const of Nepal
- Substantive Provision of Const

# BALANCED INSTITUTIONAL DESIGN

- Constitutions are often subverted, not by the people, but by small groups, who wish to enhance their own power.
- Well crafted constitutions fragment power in society intelligently so that no single group can subvert the constitution. One way of such intelligent designing of a constitution is to ensure that no single institution acquires monopoly of power.
- This is often done by fragmenting power across different institutions.
- The Indian Constitution, for example, horizontally fragments power across different institutions like the Legislature, Executive and the Judiciary and even independent statutory bodies like the Election Commission.



- This ensures that even if one institution wants to subvert the Constitution, others can check its transgressions.
- An intelligent system of checks and balances has facilitated the success of the Indian Constitution.
- This ensures that even if one institution wants to subvert the Constitution, others can check its transgressions.
- An intelligent system of checks and balances has facilitated the success of the Indian Constitution.



- Another important aspect of intelligent institutional design is: that a constitution must strike the right balance between certain values, norms and procedures as authoritative, and at the same time allow enough flexibility in its operations to adapt to changing needs and circumstances.
- Too rigid a constitution is likely to break under the weight of change; a constitution that is, on the other hand, too flexible, will give no security, predictability or identity to a people.
- Successful constitutions strike the right balance between preserving core values and adapting them to new circumstances.



- You will notice the wisdom of makers of the Indian Constitution in the chapter on the Constitution as a living document (Chapter 9).
- The Indian Constitution is described as 'a living' document.
- By striking a balance between the possibility to change the provisions and the limits on such changes, the Constitution has ensured that it will survive as a document respected by people.
- This arrangement also ensures that no section or group can, on its own, subvert the Constitution.

**Therefore in determining whether a constitution has authority you can ask yourself three questions:**

- Were the people who enacted the constitution credible? This question will be answered in the remaining part of this chapter.
- Secondly, did the constitution ensure that power was intelligently organised so that it was not easy for any group to subvert the constitution? And, most importantly, does the constitution give everyone some reason to go along with it? Most of this book is about this question.
- Also, is the constitution the locus of people's hopes and aspiration? The ability of the constitution to command voluntary allegiance of the people depends to a certain extent upon whether the constitution is just. What are the principles of justice underlying the Indian Constitution? The last chapter of this book will answer this question.



Govt of India Act, 1935

# HOW WAS THE INDIAN CONSTITUTION MADE?

15 Aug 1947

- Let us find out how the Indian Constitution was made.
- Formally, the Constitution was made by the Constituent Assembly which had been elected for undivided India. It held its first sitting on 9 December 1946 and reassembled as Constituent Assembly for divided India on 14 August 1947.
- Its members were chosen by indirect election by the members of the Provincial Legislative Assemblies that had been established under the Government of India Act, 1935.
- The Constituent Assembly was composed roughly along the lines suggested by the plan proposed by the committee of the British cabinet, known as the Cabinet Mission.

According to this plan:

1080

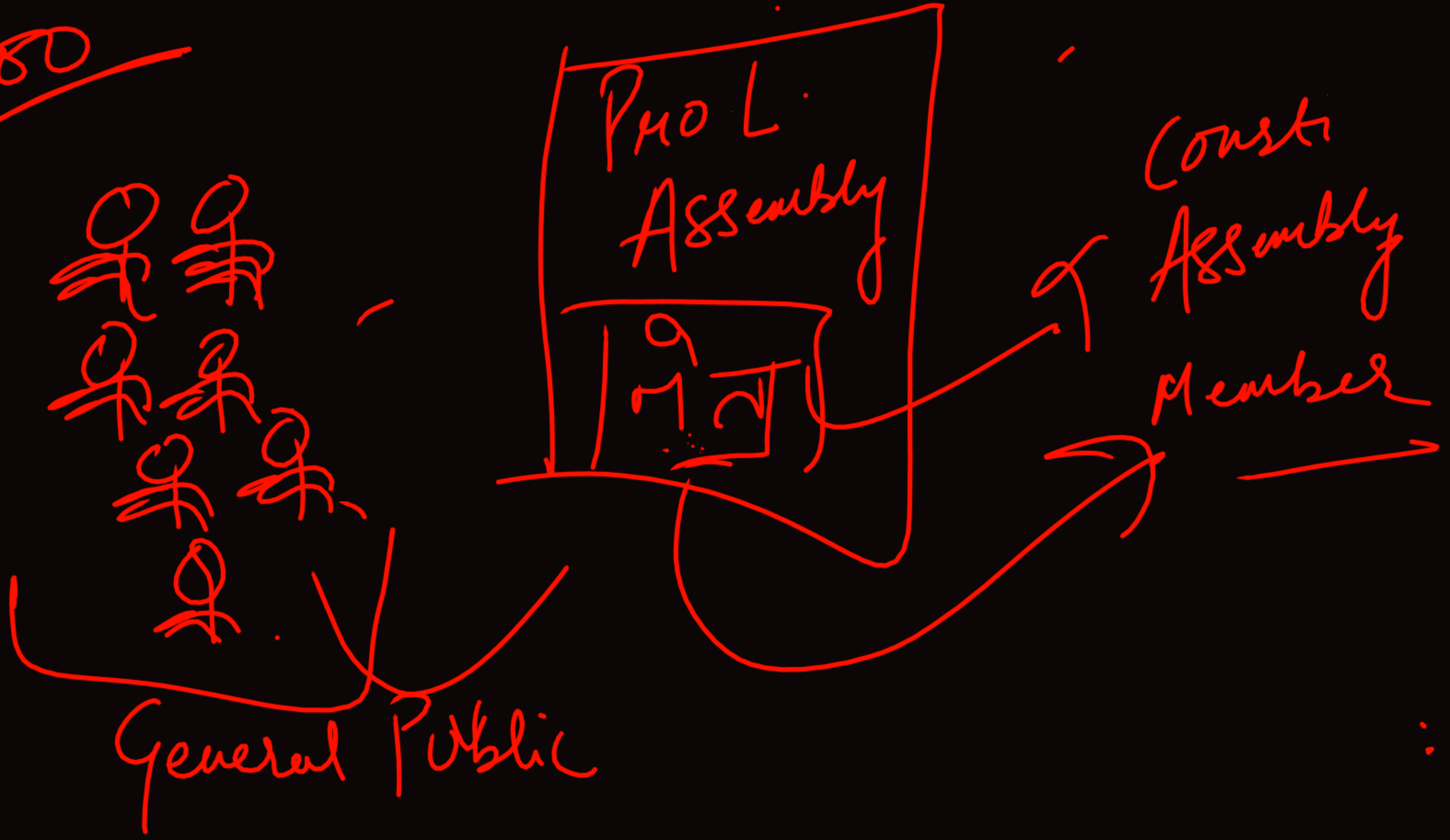


General Public

Pro L.  
Assembly

19  
21  
22

Consti  
Assembly  
Member





Each Province and each Princely State or group of States were allotted seats proportional to their respective population roughly in the ratio of **1:10,00,000**. As a result the Provinces (that were under direct British rule) were to elect **292** members while the Princely States were allotted a minimum of **93** seats.

The seats in each Province were distributed among the three main communities, Muslims, Sikhs and general, in proportion to their respective populations.

Members of each community in the Provincial Legislative Assembly elected their own representatives by the method of proportional representation with single transferable vote.

The method of selection in the case of representatives of Princely States was to be determined by consultation.







“We must make our political democracy a social democracy as well. Political democracy cannot last unless there lies at the base of it social democracy. What does social democracy mean? It means a way of life, which recognises liberty, equality and fraternity as the principles of life. These principles of liberty, equality and fraternity are not to be treated as separate items in a trinity. They form a union of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy. Liberty cannot be divorced from equality, equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity. Without equality, liberty would produce the supremacy of the few over the many. Equality without liberty would kill individual initiative. Without fraternity, liberty and equality could not become a natural course of things...”





Mujhe Ghar Jaana Hai

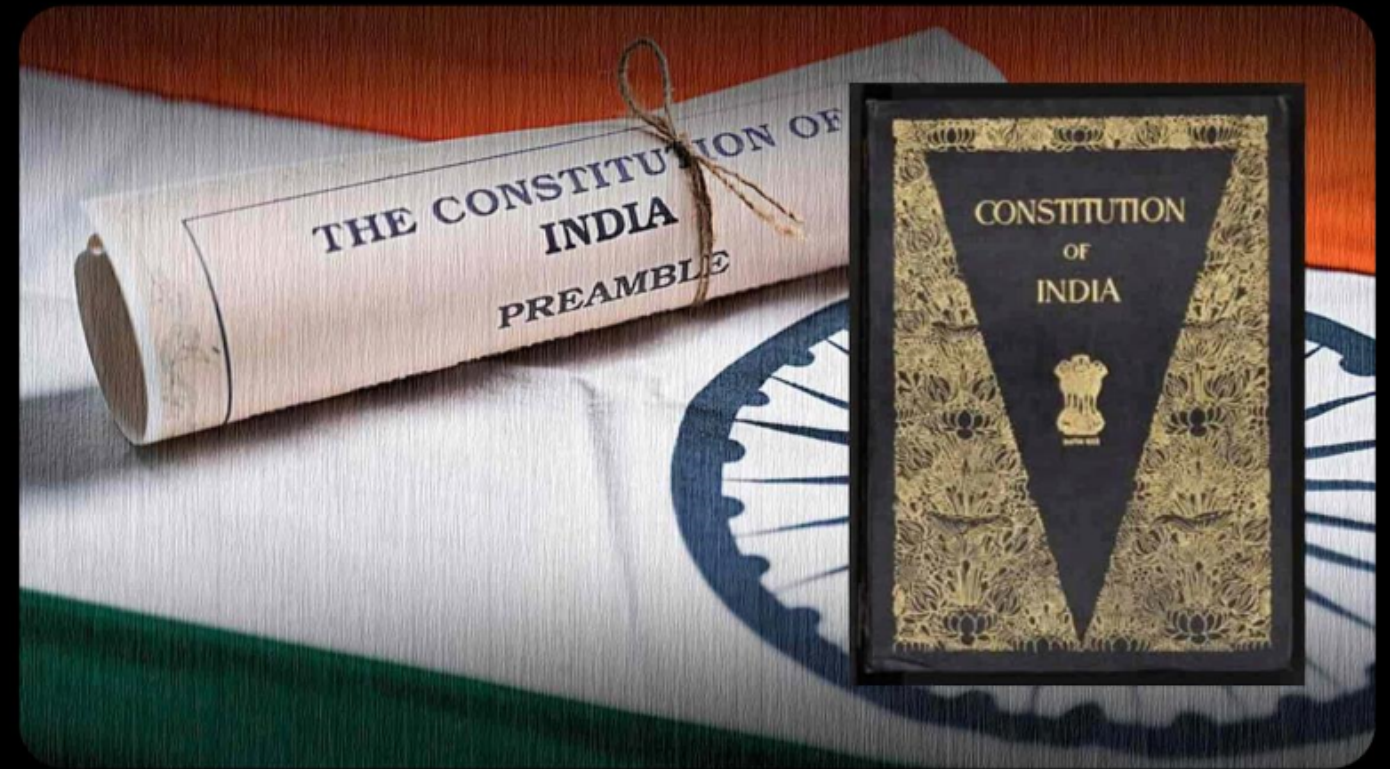


**RUKO ZARA**  
**SABAR KARO**



# COMPOSITION OF THE CONSTITUENT ASSEMBLY

- As a consequence of the Partition under the plan of 3 June 1947 those members who were elected from territories which fell under Pakistan ceased to be members of the Constituent Assembly. The number of members in the Assembly was reduced to 299.
- The Constitution was adopted on 26 November 1949. 284 members were actually present on 24 January 1950 and appended their signature to the Constitution as finally passed. The Constitution came into force on 26 January 1950.





# COMPOSITION OF THE CONSTITUENT ASSEMBLY



- The Constitution was thus framed against the backdrop of the horrendous violence that the Partition unleashed on the subcontinent.
- But it is a tribute to the fortitude of the framers that they were not only able to draft a constitution under immense pressure, but also learnt the right lessons from the unimaginable violence that accompanied the Partition.
- The Constitution was committed to a new conception of citizenship, where not only would minorities be secure, but religious identity would have no bearing on citizenship rights.



- But this account of the composition of the Constituent Assembly that drafted the Constitution touches upon only the surface of how our Constitution was made.
- Although, the members of the Assembly were not elected by universal suffrage, there was a serious attempt to make the Assembly a representative body.
- Members of all religions were given representation under the scheme described above; in addition, the Assembly had twentyeight members from the Scheduled Castes.
- In terms of political parties, the Congress dominated the Assembly occupying as many as eighty-two per cent of the seats in the Assembly after the Partition.
- The Congress itself was such a diverse party that it managed to accommodate almost all shades of opinion within it.

# THE PRINCIPLE OF DELIBERATION

- The authority of the Constituent Assembly does not come only from the fact that it was broadly, though not perfectly, representative. It comes from the procedures it adopted to frame the Constitution and the values its members brought to their deliberations.
- While in any assembly that claims to be representative, it is desirable that diverse sections of society participate, it is equally important that they participate not only as representatives of their own identity or community.
- Each member deliberated upon the Constitution with the interests of the whole nation in mind. There were often disagreements amongst members, but few of these disagreements could be traced to members protecting their own interests.

## **THERE WERE LEGITIMATE DIFFERENCES OF PRINCIPLE. AND THE DIFFERENCES WERE MANY:**

- should India adopt a centralised or decentralised system of government
- What should be the relations between the States and the centre?
- What should be the powers of the judiciary?
- Should the Constitution protect property rights?





- Almost every issue that lies at the foundation of a modern state was discussed with great sophistication. Only one provision of the Constitution was passed without virtually any debate: the introduction of universal suffrage (meaning that all citizens reaching a certain age, would be entitled to be voters irrespective of religion, caste, education, gender or income).
- So, while the members felt no need at all to discuss the issue of who should have the right to vote, every other matter was seriously discussed and debated. Nothing can be a better testament to the democratic commitment of this Assembly.



- The Constitution drew its authority from the fact that members of the Constituent Assembly engaged in what one might call public reason.
- The members of the Assembly placed a great emphasis on discussion and reasoned argument. They did not simply advance their own interests, but gave principled reasons to other members for their positions.
- The very act of giving reasons to others makes you move away from simply a narrow consideration of your own interest because you have to give reasons to others to make them go along with your view point.
- The voluminous debates in the Constituent Assembly, where each clause of the Constitution was subjected to scrutiny and debate, is a tribute to public reason at its best.
- These debates deserved to be memorialised as one of the most significant chapters in the history of constitution making, equal in importance to the French and American revolutions.



**चाणक्यनीति से लेके**  
**राजनीति तक**  
**तुम्हे जो चाहिए सब है मेरे पास ।**







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# PROCEDURES

- The importance of public reason was emphasised in the mundane procedures of the Assembly as well. The Constituent Assembly had eight major Committees on different subjects. Usually, Jawaharlal Nehru, Rajendra Prasad, Sardar Patel or B.R. Ambedkar chaired these Committees. These were not men who agreed with each other on many things. Ambedkar had been a bitter critic of the Congress and Gandhi, accusing them of not doing enough for the upliftment of Scheduled Castes. Patel and Nehru disagreed on many issues. Nevertheless, they all worked together. Each Committee usually drafted particular provisions of the Constitution which were then subjected to debate by the entire Assembly. Usually an attempt was made to reach a consensus with the belief that provisions agreed to by all, would not be detrimental to any particular interests.

- Some provisions were subject to the vote. But in each instance every single argument, query or concern was responded to with great care and in writing. The Assembly met for one hundred and sixty six days, spread over two years and eleven months. Its sessions were open to the press and the public alike.



# INHERITANCE OF THE NATIONALIST MOVEMENT

- But no constitution is simply a product of the Assembly that produces it. An Assembly as diverse as the Constituent Assembly of India could not have functioned if there was no background consensus on the main principles the Constitution should enshrine. These principles were forged during the long struggle for freedom. In a way, the Constituent Assembly was giving concrete shape and form to the principles it had inherited from the nationalist movement. For decades preceding the promulgation of the Constitution, the nationalist movement had debated many questions that were relevant to the making of the constitution — the shape and form of government India should have, the values it should uphold, the inequalities it should overcome. Answers forged in those debates were given their final form in the Constitution.

- Perhaps the best summary of the principles that the nationalist movement brought to the Constituent Assembly is the Objective Resolution (the resolution that defined the aims of the Assembly) moved by Nehru in 1946. This resolution encapsulated the aspirations and values behind the Constitution. What the previous section terms as substantive provisions of the constitution is inspired by and summed up by the values incorporated in the Objectives Resolution. Based on this resolution, our Constitution gave institutional expression to these fundamental commitments: equality, liberty, democracy, sovereignty and a cosmopolitan identity. Thus, our Constitution is not merely a maze of rules and procedures, but a moral commitment to establish a government that will fulfil the many promises that the nationalist movement held before the people.



# MAIN POINTS OF THE OBJECTIVES RESOLUTION

- India is an independent, sovereign, republic;
- India shall be a Union of erstwhile British Indian territories, Indian States, and other parts outside British India and Indian States as are willing to be a part of the Union;
- Territories forming the Union shall be autonomous units and exercise all powers and functions of the Government and administration, except those assigned to or vested in the Union;
- All powers and authority of sovereign and independent India and its constitution shall flow from the people;

- All people of India shall be guaranteed and secured social, economic and political justice; equality of status and opportunities and equality before law; and fundamental freedoms - of speech, expression, belief, faith, worship, vocation, association and action - subject to law and public morality;
- The minorities, backward and tribal areas, depressed and other backward classes shall be provided adequate safeguards;
- The territorial integrity of the Republic and its sovereign rights on land, sea and air shall be maintained according to justice and law of civilized nations;
- The land would make full and willing contribution to the promotion of world peace and welfare of mankind.



# INSTITUTIONAL ARRANGEMENTS

- The third factor ensuring effectiveness of a constitution is a balanced arrangement of the institutions of government. The basic principle is that government must be democratic and committed to the welfare of the people. The Constituent Assembly spent a lot of time on evolving the right balance among the various institutions like the executive, the legislature and the judiciary. This led to the adoption of the parliamentary form and the federal arrangement, which would distribute governmental powers between the legislature and the executive on the one hand and between the States and the central government on the other hand.

- While evolving the most balanced governmental arrangements, the makers of our Constitution did not hesitate to learn from experiments and experiences of other countries. Thus, the framers of the Constitution were not averse to borrowing from other constitutional traditions. Indeed, it is a testament to their wide learning that they could lay their hands upon any intellectual argument, or historical example that was necessary for fulfilling the task at hand. So they borrowed a number of provisions from different countries.
- But borrowing these ideas was not slavish imitation. Far from it. Each provision of the Constitution had to be defended on grounds that it was suited to Indian problems and aspirations. India was extremely lucky to have an Assembly that instead of being parochial in its outlook could take the best available everywhere in the world and make it their own.



“One likes to ask whether there can be anything new in a Constitution framed at this hour in the history of the world... The only new things, if there can be any, in a Constitution framed so late in the day are the variations made to remove the faults and to accommodate it to the needs of the country.”

Dr. B.R. Ambedkar CAD, Vol. VII, p.37, 4 November 1948



Dr. B.R. Ambedkar presiding over a discussion in the Constituent Assembly

# PROVISIONS ADAPTED FROM CONSTITUTIONS OF DIFFERENT COUNTRIES

**British Constitution** First Past the Post Parliamentary Form of Government The idea of the rule of law Institution of the Speaker and her/his role Law-making procedure

**Irish Constitution** Directive Principles of State Policy

**French Constitution** Principles of Liberty, Equality and Fraternity

**Canadian Constitution** A quasi-federal form of government (a federal system with a strong central government)  
The idea of Residual Powers

**United States Constitution** Charter of Fundamental Rights Power of Judicial Review and independence of the judiciary



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