

LEGALFOXES LAW TIMES

FRAMING OF INDIAN CONSTITUTION

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"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 recognizes liberty, equality and fraternity as the principles of life."¹

PART 1- The Constituent Assembly

DEMAND AND HISTORY

In 1934, the Stone for Framing the Indian Constitution by help of the Constituent assembly was laid down by M.N Roy. It was in the year of 1935, in which The Indian National Congress demanded a constituent assembly to frame the constitution of India. Jawaharlal Nehru, on behalf of the INC in 1938, declared that "The constitution of free India must be framed, without outside interference, by a Constituent assembly elected on the basis of adult franchise'.

The Government of Britain accepted the Demand of Nehru and named it as 'August offer' of 1940. It was the year of 1942 in which Sir Stafford Cripps, a cabinet member, came to India with a draft proposal of the British Government on framing of an independent constitution which was to be adopted after the World War 2. The proposal of Stafford Cripps was rejected by the Muslim league rejected as the Muslim league wanted India to be divided into two autonomous states with two separate Constituent Assemblies. After this on 24th March 1946 a cabinet mission consisting of three members arrived to India and rejected the idea of two constituent assemblies and put forth a scheme for the Constituent Assemble which Satisfied the Muslim league.

FORMATION OF CONSTITUENT ASSEMBLY

In November 1946, a scheme was formulated under the Cabinet Mission plan by which the Constituent assembly was constituted. The total strength of the Constituent Assembly was to be 389. The Bifurcation of the seats were done as follows: -

- 296 seats to the British India and 93 seats to the Princely States

Some other feature of the Cabinet mission plan was-

- i. The population of each province and princely state will decide the allocation of seats for them the allocation will be done proportionally with the population.

¹ Quote by Dr. B.R Ambedkar.

- ii. British Province allocated some seats which were divided among Three principal communities--- Muslims, Sikhs and general with proportion to their population.
- iii. Members of the community were responsible for election of each representatives of their community. They have to be elected in provincial legislative assembly and voting was to be by the method of proportional representation.
- iv. The heads of the Princely states have a duty to nominate the representatives of the princely states.

In the year of 1946 between the months of July and August The first election of the Constituent assembly was held and 208 seats were won by the INC (Indian National Congress), 73 seats were won by the Muslim league, and the remaining 15 seats were won by all the other small groups and independents.

Representatives of all sections of the Indian Society- Hindus, Sikhs, Anglo-Indians, Muslims, Parsis, Indian Christians, STs, SCs including women of all these sections altogether comprised the constituent assembly. The members of the assembly were not directly elected by the People of India. Except Mahatma Gandhi all the important personalities of that time were part of the assembly.

Muslim Leagues boycotted the First meeting of Constituent Assembly which was held on 9th December 1946 as they demand a separate state of Pakistan. The first president who is the temporary president of the assembly was its oldest member Dr. Sachchidananda Sinha. Later, Dr. Rajendra prasad was elected as the president of assemble along with two vice presidents namely H.C. Mukherjee and V.T. Krishnamachari.

CHANGES MADE IN THE CONSTITUENT ASSEMBLY AFTER ENACTMENT OF INDIAN INDEPENDENCE ACT

*The independence act of 1947 made three changes in the position of the assembly-

1. This act made the assembly a sovereign body, which could alter any law made by the British parliament in relation to India.
2. The Assembly was assigned two tasks i.e. Making od a constitution for free India and Enacting of Laws for the Country.
3. The Strength of the Constituent assembly now came down to 299 as the Muslim league members withdrew from the constituent assembly for India.

FORMATION OF DRAFTING COMMITTEE

On 29th August 1947 the most important committee of the constituent assembly was formed which was known as The Drafting Committee. Dr. Bhim Rao Ambedkar was the Chairman of this

committee he works along with his team of 6 members. Drafting committee consists of total 7 members. The First Draft prepared by the Drafting committee of the constituent assembly was published in February 1948. Eight months were given to the people of India to discuss the draft and propose amendments. The second draft with some amendments was again published in October 1948. The Final draft was introduced and firstly read by DR. B.R Ambedkar on November 4, 1948.

The Drafting Committee sat only for 141 Days.

PART 2- The Constitution of India

ENACTMENT AND ENFORCEMENT OF INDIAN CONSTITUTION

The Draft of the constitution of India was completed in three reading sessions which were done by the chairman of the constituent assembly Dr. B.R Ambedkar. The dates and the time taken in reading are as Follows-

1. First Reading- The first reading was done on November 4, 1948 after this reading the assembly had a discussion for around 5 days.
2. Second Reading- The Second Reading was started on November 15, 1948. This reading was special in its kind because it is done by clause to clause consideration. The reading took the longest time as it ended on October 17, 1949.
3. Third Reading- The third reading was done on November 14, 1949. After this the Draft Constitution was declared passed on November 26, 1949. The Draft received signatures of 284 member who were actually present on the day. The president also signed the draft.

We can see this Date (November 26, 1949) is mentioned in the preamble of Indian Constitution as the date on which people of India adopted and enacted the Constitution of India. This date is celebrated every year as Constitution Day.

PREAMBLE OF THE INDIAN CONSTITUTION

“Preamble” means the introduction or the opening to the Statute in other words the introductory part of the Constitution is known as its Preamble.

The preamble of the Indian Constitution is a mixture of 4 constitutions from different parts of the world. For instance-

1. The Idea of the preamble is taken from the Constitution of United States.
2. The Language of the Preamble is taken from the Australian Constitution.
3. The Expression “Justice” is taken from Russian Revolution.
4. Liberty, Equality and Fraternity is taken from the French Revolution.

*Till now the preamble is amended only once in 42nd amendment of the Indian constitution in which 3 changes are done that are-

1. Addition of the word Socialist in the Preamble.
2. Addition of the word Secular in the Preamble.
3. The Statement ‘Unity of Nation’ was changed to ‘Unity and Integrity of the Nation’

FEATURES AND UNIQUENESS OF INDIAN CONSTITUTION

The Constitution of India is one of its kind as it is a mixture of two types of Constitutions. The Constitution of India is also known as Quasi Federal Constitution. The term Quasi Federal means that the constitution is mixture of both federal and unitary form of constitutions.

*As Indian Constitution is quasi federal in nature, so it has both federal as well as unitary features.

FEDERAL AND UNITARY FEATURES OF INDIAN CONSTITUTION-

* In the Govt. of India Act,1935 the foundation for a federal setup for the nation was laid down. Some **federal** features of Indian constitution are-

1. Dual Polity- Federal kind of government consists two kinds of government, one is federal or national government and other is the government of the component units or states which is also known as state government powers of both the government vested according to the constitution.
2. Supremacy of Constitution- The supreme power of a federal kind of government is its constitution. Both central and regional government derive their powers from the constitution.
3. Rigid Constitution- A federal constitution is of rigid nature hence it cannot be interpreted in a liberal or flexible manner.
4. Division of Powers- A federal constitution provides for division of powers between the central and the regional government.
5. Special Position of Judiciary- This feature of federal constitution provides the provision to act as a guardian of the constitution. It decides all constitutional disputes between central and state government.

*The framers of the constitution of India have incorporated unique features for the constitution. Though being a federal constitution, it also acquires some **unitary** character in it which are-

1. Proclamation of Emergency- According to Article 352 of the Indian constitution the President of India can declare national emergency in some conditions. This feature of the Indian constitution makes it unitary in nature.
2. Appoint of Governors by president- According to Article 155 of the Indian Constitution the president of India has a power to appoint the governor of a state. This feature of the constitution makes it unitary in nature.
3. Single Citizenship- In Indian we get a single citizenship of our country which makes it unitary in nature as in federal kind of constitution there is a concept of Dual Citizenship and this concept is prohibit in our constitution (Article 9 of Indian Constitution).
4. Distribution of Power but center is favorable- it is right that there is distribution of powers in our country but if we can see the whole picture, we will always see that this distribution of power always favors the center which makes it unitary in nature.
5. Right of Parliament to tamper with territorial integrity of states- If we see the constitution of India we can find that Article 3 of the Indian Constitution vest some powers in the hand of the Parliament which allows the parliament to form new states or change names of the existing states or alter the area, boundaries of the existing states. This article of the constitution makes it unitary in nature.



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