

HS4.108 Making of Contemporary India

Assignment 2

Q:

Take up any of these themes from the Constituent Assembly Debates and describe the contours of the debate. Also, write about how this theme played out in the years after independence, both in the Courts and the country's social and political life. Keep your essay to about 1,500 words.

- Uniform Civil Code
- Federalism
- Fundamental Rights
- Citizenship
- Reservations
- Religion and State

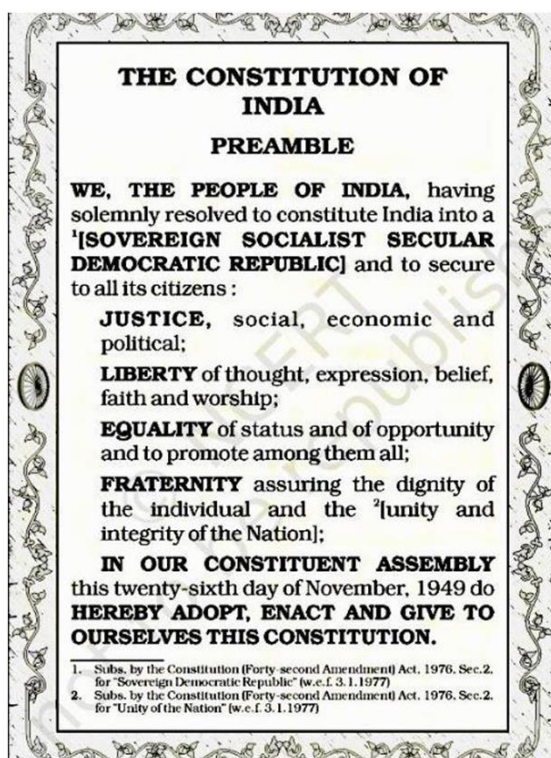
Reading List:

1. The Constitution-Making Process:
https://www.constitutionofindia.net/constitution_making_process
2. Paul R Brass: The Politics of India since Independence
3. Granville Austin: The Indian Constitution – Cornerstone of a Nation
4. NCERT Class IX Textbook on Indian Constitution

Ans:

India was a British colony for about two centuries, and Indians continuously fought for their land. India and various other colonies fought for independence to establish themselves as democracies. Democracies are now the most popular way of governance because citizens and rulers are entitled to rules. The book of this set of rules for a state to follow is called its Constitution, the state's supreme law. A constitution brings a degree of trust and coordination among different people that is elementary for harmony in a society. It guides how the government constitutes and who has the decision-making authority. It also put limits on the powers of the government. It tells the citizens about their fundamental rights, directive principles, and duties. And also the aspirations for the formation of a good society.

After gaining independence, India needed to have a constitution. After tremendous research, numerous debates, discussions and proposals Indian Constitution became effective on 26 January 1950 after 2 years, 11 months and 18 days of sheer hard work. Dr BR Ambedkar, who studied the Constitution of about 60 countries to make the Indian Constitution, is considered the "Father of the Indian Constitution". Thanks to him, the Indian Constitution has features from various countries such as the USA, UK, Australia, France, Canada, Soviet Union, Japan, Ireland and South Africa. And the Indian Constitution has several features, such as a delicate balance between rigidity and amendment flexibility. One of the vital parts of the Constitution is its preamble.



The preamble of India starts with "WE, THE PEOPLE OF INDIA". But there was no definition for "the people of India". One of the critical tasks for the constituent assembly was to define who was a citizen of India. There were huge debates on who should be considered a citizen of India, most of which happened between 10 and 12 August 1949, and the articles were adopted on 12 August 1929. The second part of the Constitution talks about citizenship in the following seven articles:

PART II

CITIZENSHIP

5. Citizenship at the commencement of the Constitution.
6. Rights of citizenship of certain persons who have migrated to India from Pakistan.
7. Rights of citizenship of certain migrants to Pakistan.
8. Rights of citizenship of certain persons of Indian origin residing outside India.
9. Persons voluntarily acquiring citizenship of a foreign State not to be citizens.
10. Continuance of the rights of citizenship.
11. Parliament to regulate the right of citizenship by law.

Article 5:

5. Citizenship at the commencement of the Constitution.—At the commencement of this Constitution, every person who has his domicile in the territory of India and—

(a) who was born in the territory of India; or

(b) either of whose parents was born in the territory of India; or

(c) who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement,

shall be a citizen of India.

Eminent members such as P.S. Deshmukh argued that every Hindu or Sikh who is not a citizen of any other country should be entitled to Indian citizenship regardless of where he lives. Because he believed that the draft article made Indian citizenship cheaper by providing citizenship on the above criteria, in this regard, it was pointed out that the draft article is stricter than the US citizenship law. However, Jawahar Lal Nehru and various others opposed the notion, and he said that it is impossible to make everyone happy. The proposed draft covers the maximum population that desires to live in India post-partition, and the proposed amendment would discriminate against Muslim families who chose India over Pakistan. He argued that the rules should be based on justice and fairness, not unfamiliar conditions.

Besides religion, Prof KT Shah showed his interest in dual citizenship to benefit those born in India. However, taking up citizenship in foreign and dual citizenship should be offered to people who live in countries on friendly terms with India. However, after a considerable debate, the notion was refused. Few members voluntarily withdrew their amendments, while other amendments put to the vote were rejected. On August 12, 1949, the Constituent Assembly passed the draft Article 5 submitted by the Drafting Committee.

Article 6:

6. Rights of citizenship of certain persons who have migrated to India from Pakistan.—Notwithstanding anything in article 5, a person who has migrated to the territory of India from the territory now included in Pakistan shall be deemed to be a citizen of India at the commencement of this Constitution if—

(a) he or either of his parents or any of his grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted); and

(b) (i) in the case where such person has so migrated before the nineteenth day of July, 1948, he has been ordinarily resident in the territory of India since the date of his migration, or

(ii) in the case where such person has so migrated on or after the nineteenth day of July, 1948, he has been registered as a citizen of India by an officer appointed in that behalf by the Government of the Dominion of India on an application made by him therefor to such officer before the commencement of this Constitution in the form and manner prescribed by that Government:

Provided that no person shall be so registered unless he has been resident in the territory of India for at least six months immediately preceding the date of his application.

Article 6 was not included in the 1948 draft constitution. Dr BR Ambedkar proposed to insert the following as draft Article 5A. This article establishes citizenship principles for people who immigrated to India from Pakistan during the partition.

Jaspat Roy Kapoor proposed to add "because of civil disturbance or fear of such" in the first clause. He added that adding this phrase would clarify the true intention behind the clause: to promote immigration from Pakistan after or after the civil disturbance. Prof KT Shah wishes to provide evidence to prove his descent compulsorily and intends to live in India permanently. He believes Indian citizenship should be considered a great privilege, not an easy or cheap one. But Alladi Krishnaswami Ayyar of the General Assembly said that this article was intended to establish the basic principles of citizens, not to seek a "nationality code." He said that, compared with the Indian Constitution, no other constitution comprehensively addresses all aspects of nationality law.

Towards the conclusion of the debate, only some members voluntarily withdrew their proposals, while other amendments were rejected. The General Assembly adopted draft Article 5A.

Article 7:

7. Rights of citizenship of certain migrants to Pakistan.—Notwithstanding anything in articles 5 and 6, a person who has after the first day of March, 1947, migrated from the territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India:

Provided that nothing in this article shall apply to a person who, after having so migrated to the territory now included in Pakistan, has returned to the territory of India under a permit for resettlement or permanent return issued by or under the authority of any law and every such person shall for the purposes of clause (b) of article 6 be deemed to have migrated to the territory of India after the nineteenth day of July, 1948.

Dr BR Ambedkar proposed to insert the draft Article 5AA (Article 7). This article stipulates the citizenship application of persons who migrated to Pakistan. Many critics of this article, including Jaspat Roy Kapoor, considered this article "obnoxious" because once people immigrate, they hold their loyalty to another country. This article will make it easier for migrants to obtain Indian citizenship. Instead, they should also be treated as any other foreigner.

In addition, Dr BR Ambedkar reminded the General Assembly that the Indian government has committed to taking rehabilitation and resettlement measures for immigrants from Pakistan and has established a permit system for citizen applications. Contradicting themselves would be "invidious" and lead to the "grossest injustice". Bhopinder Singh Man questioned that under the law, property left by immigrants is considered "property of evacuees." After a person returns and obtains Indian citizenship, how will their property claims be resolved? & Alladi Krishnaswami Ayyar clarified no relationship between citizenship and property rights in international or domestic law. The assembly approved this article without any amendment.

Article 8:

8. Rights of citizenship of certain persons of Indian origin residing outside India.— Notwithstanding anything in article 5, any person who or either of whose parents or any of whose grandparents was born in India as defined in the Government of India Act, 1935 (as originally enacted), and who is ordinarily residing in any country outside India as so defined shall be deemed to be a citizen of India if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country where he is for the time being residing on an application made by him therefor to such diplomatic or consular representative, whether before or after the commencement of this Constitution, in the form and manner prescribed by the Government of the Dominion of India or the Government of India.

Draft article 5B (article 8) was not initially included in the draft constitution of 1948. On the contrary, Dr BR Ambedkar proposed to insert the Draft Article 5B (Article 8). This article talked about the rights of persons of Indian origin living outside India.

Jaspat Roy Kapoor argued that this clause provides unfair special treatment for foreign Indians seeking Indian citizenship: it allows them to apply and register even after the Constitution comes into force. However, the previous article granting citizenship to people who immigrated from Pakistan did not receive similar potential applications. TT Krishnamachari provided counter-arguments for the claim, and the General Assembly approved the clause without amendment.

Article 9:

9. Persons voluntarily acquiring citizenship of a foreign State not to be citizens.— No person shall be a citizen of India by virtue of article 5, or be deemed to be a citizen of India by virtue of article 6 or article 8, if he has voluntarily acquired the citizenship of any foreign State.

This article prohibits dual citizenship. Initially, it was not a separate article. Still, it was discussed as a condition attached to draft article 5 (article 5) of the Constitution after Prof KT Shah showed interest in dual citizenship. During the review stage, the Drafting Committee decided that the prohibition of dual citizenship should be a general principle, not limited to the conditions in Article 5.

During the debate in the Constituent Assembly, KT Shah pointed out that dual citizenship should be limited to countries that extend it to Indians. However, the General Assembly voted against the proposal without a debate.

Article 10:

10. Continuance of the rights of citizenship.—Every person who is or is deemed to be a citizen of India under any of the foregoing provisions of this Part shall, subject to the provisions of any law that may be made by Parliament, continue to be such citizen.

Draft Article 5C (Article 10) was not part of the 1948 draft constitution. Instead, Dr BR Ambedkar proposed to insert the following as draft Article 5C. This draft article clarifies that persons declared citizens under the previous provisions on citizenship are still subject to any law made by the Parliament.

Although there was no substantive discussion surrounding this article, Mahboob Ali Baig Sahib Bahadur moved a motion to delete it because he considered it unnecessary and redundant. Draft article 6 (article 11) was sufficient for these purposes. But Dr BR Ambedkar reiterated that the provisions on citizenship are provisional, and the future Parliament will enact a comprehensive citizenship law. The General Assembly approved this article without amendment.

Article 11:

11. Parliament to regulate the right of citizenship by law.—Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.

This draft was initially proposed as Article 6 and later became Article 11. It gives Parliament the power to make laws related to citizenship. Dr BR Ambedkar introduced this draft article. He stated that the assembly's task is not to formulate any permanent citizenship law, but its goal is to lay down the fundamental principles governing citizenship when the Constitution commences. He said that the future Parliament could enact a comprehensive citizenship law. In addition, he clarified that the previous clauses do not bind the Parliament and can further restrict or regulate citizenship.

But Prof KT Shah does not want the power of Parliament to legislate citizenship to be free from constraints; instead, he proposed a qualifier. Parliament must not grant equal civil rights to foreign citizens who refuse to treat Indians equally. But, The General Assembly did not accept any amendment and approved draft Article 6 proposed by the Drafting Committee.

After the commencement of the Constitution, Indian legislation related to this matter was the Citizenship Act of 1955. It was amended by the Citizenship (Amendment) Laws of 1986, 1992, 2003, 2005, 2015 and 2019 as per the need of the hour. The current Indian nationality law mainly follows jus sanguinis (descent citizenship) rather than jus soli (citizenship born in the territory). The 1986 amendment restricted citizenship by birth, requiring at least one parent to be an Indian citizen. They were issued after the Assam State turmoil and the Assam State Agreement restricted the birth citizenship of children born to Indian citizens. At least one of the parents must be an Indian citizen for the child to be eligible for citizenship.

The 2003 amendment passed the requirement that no parent of the child is an illegal immigrant to qualify the child for citizenship, thereby further restricting the principle of personal law. It also ruled that illegal immigrants are not eligible to obtain citizenship through registration or naturalization. The 2003 amendment also authorized the Indian government to establish a national registry of citizens.

The Citizenship Amendment Act 2019 provides access to citizenship to religiously persecuted minorities in Afghanistan, Bangladesh and Pakistan, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians. Both houses approved the bill of Parliament on December 11, 2019. It faced widespread criticism and protests because it was discriminatory by ignoring Muslims and violating the Assam Agreement, promising 1971 as the deadline for illegal immigration into Bangladesh. Giving a concession of 6 years for residence-based citizenship only on religion is against secularism and the ideology of "Vasudhaiva Kutumbakam". The main reason behind these amendments is still debatable, and they affect people a lot. Many amendments were meant for political gain, an alarming number of illegal immigrants and national security.

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3. <https://scroll.in/article/953877/contested-citizenship-what-constituent-assembly-debates-from-70-years-ago-reveal-about-india-today>
4. <https://legislative.gov.in/sites/default/files/COI.pdf>
5. https://www.constitutionofindia.net/constitution_making_process
6. Paul R Brass: The Politics of India since Independence
7. Granville Austin: The Indian Constitution – Cornerstone of a Nation NCERT Class IX Textbook on Indian Constitution