

# **Making of Constitution**

## Provisions of the Act

- **1. All India federation:** An all-India federation was to be established consisting of Governors' Provinces, Chief commissioners' Provinces and the Indian states. Accession to the federation was optional to the states. There was to be an instrument of accession' laying down the terms on which a state joined the federation.
- **2. Dyarchy was introduced at the Centre:** The Governor-General was to administer defence, external affairs, ecclesiastical affairs and tribal areas with the assistance of a maximum of three councilors. He was to administer other subjects with the assistance and advice of a council of not more than 10 ministers of his choice who were to hold office during his pleasure. The Governor-General had special responsibilities in certain specified subjects like maintenance of peace.
- **3. Federal Legislature:** The Federal Legislature was to have two chambers, namely the Council of States and Federal Assembly. The Council of States was to be a permanent body, with one-third of its membership being vacated and renewed every third year. Among its members, 156 were to be elected members of British India and not more than 104 from the Indian states. The Federal Assembly was to be elected for five years. It was to consist of 250 representatives of British India and not more than 25 members from the Indian states. Elections to the Federal Assembly were to be indirect. Members of the Provincial Legislative Assemblies had the vote on the basis of proportional representation with single transferable vote.
- **4. Provincial autonomy:** Executive: Executive authority was vested in a Governor to represent the 'Crown in the Province. Administration was to be carried on by the Council of Ministers appointed by the Governor from among the elected members of the Provincial Legislature and responsible to that body. Ministers held office during the Governor's pleasure and the Governor could also dismiss the ministry. The Governor had 'special responsibilities' in certain specified subjects such as maintenance of peace. Governors were given 'discretionary' powers as well as powers of 'individual' judgment.

## THE CONSTITUENT ASSEMBLY

- Constituent Assembly was constituted in November 1946 under the scheme formulated by the Cabinet Mission Plan.
- The total strength of the Constituent Assembly was to be 389. Of these, 296 seats were to be allotted to British India and 93 seats to the Princely States.
- Each province and princely state were to be allotted seats in proportion to their respective population.
- Seats allocated to each British province were to be decided among the three principal communities—Muslims, Sikhs and general (all except Muslims and Sikhs), in proportion to their population.
- The representatives of each community were to be elected by members of that community in the provincial legislative assembly & voting was to be by method of proportional representation by means of single transferable vote.
- The representatives of princely states were to be nominated by the heads of the princely states.
- Thus the Constituent Assembly was to be a ***partly elected and partly nominated body***. Moreover, the members were to be indirectly elected by members of provincial assemblies, who themselves were elected on a limited franchise.
- The elections to Constituent Assembly were held in July- August 1946. The Indian National Congress won 208 seats, the Muslim League 73 seats, and others the remaining 15 seats. However, the 93 seats allotted to the princely states were not filled as they decided to stay away from the Constituent Assembly.
- Assembly included all important personalities of India at that time, with exception of Mahatma Gandhi and M A Jinnah.

Sessions of the Constituent Assembly	
First Session	9-23 December, 1946
Second Session	20-25 January, 1947
Third Session	28 April – 2 May, 1947
Fourth Session	14-31 July, 1947
Fifth Session	14-30 August, 1947
Sixth Session	27 January, 1948
Seventh Session	4 Nov, 1948 – 8 Jan, 1949
Eighth Session	16 May – 16 June, 1949
Ninth Session	30 July – 18 Sept, 1949
Tenth Session	6-17 October, 1949
Eleventh Session	14-26 November, 1949

## WORKING OF THE ASSEMBLY

- Constituent Assembly held its first meeting on December 9, 1946. The Muslim League boycotted the meeting. The meeting was thus attended by only 211 members.
- **Dr Sachchidanand Sinha**, the oldest member, was elected as the temporary President of the Assembly, following the French practice.
- Later, on December 11, 1946, **Dr Rajendra Prasad** and H C Mukherjee were elected as the President and Vice-President of the Assembly respectively.
- **Sir B N Rau** was appointed as the Constitutional advisor to the Assembly.
- The representatives of princely states, who had stayed away from the Constituent Assembly, gradually joined it.
- After Indian independence, the Assembly was made a fully sovereign body, which could frame any Constitution it pleased. The act empowered the Assembly to abrogate or alter any law made by British Parliament in relation to India.
- The Assembly also became a legislative body. Two separate functions were assigned to the Assembly that is, making of a constitution for free India and enacting of ordinary laws for the country. These two tasks were to be performed on separate days. Whenever the Assembly met as Constituent body it was chaired by Dr. Rajendra Prasad and when it met as legislative body, it was chaired by G V Mavlankar.
- After partition, the strength of Indian provinces was reduced from 296 to 229 and those of princely states from 93 to 70.
- In addition to the making of the Constitution and enacting of ordinary laws, the Constituent Assembly also performed the following functions:

## Ratified the India's membership of Commonwealth in 1949.

- o Adopted the national flag on July 22, 1947.
- o Adopted the national anthem on January 24, 1950.
- o Adopted the national song on January 24, 1950.
- o Elected Dr Rajendra Prasad as the first President of India on January 24, 1950.
- Constituent Assembly held total 11 sessions over 2 years, 11 months and 18 days. On January 24, 1950, the Constituent Assembly held its final session.
- It, however, did not end, and continued as the provisional parliament of India from January 26, 1950 till the formation of new Parliament after first general elections in 1951-52.

# COMMITTEES OF THE CONSTITUENT ASSEMBLY

- Union Powers Committee – Jawaharlal Nehru
- Union Constitution Committee – Jawaharlal Nehru
- Provincial Constitution Committee – Sardar Patel
- **Drafting Committee** – Dr. B.R. Ambedkar (other members: N Gopalaswamy Ayyangar, Alladi Krishnaswamy Ayyar, K M Munshi, Syed Mohammad Saadullah, N Madhava Rau (He replaced B L Mitter), T T Krishnamachari (He replaced D P Khaitan)
- Advisory Committee on Fundamental Rights, Minorities and Tribal and Ex-cluded Areas – Sardar Patel.
- (a) Fundamental Rights Sub-Committee – J.B. Kripalani
- (b) Minorities Sub-Committee – H.C. Mukherjee
- Rules of Procedure Committee – Dr. Rajendra Prasad
- States Committee (Committee for Negotiating with States) - Jawaharlal Nehru
- Steering Committee – Dr. Rajendra Prasad
- **Minor Committees:** Committee on the Functions of the Constituent As-semby – G.V. Mavalankar, Order of Business Committee – Dr. K.M. Mun-shi, House Committee – B. Pattabhi Sitaramayya, Ad-hoc Committee on the National Flag – Dr. Rajendra Prasad, Committee on Chief Commissioners' Provinces – B. Pattabhi Sitaramayya.

# ENACTMENT OF THE CONSTITUTION

- Dr. B R Ambedkar introduced the final draft of the Constitution in the Assembly on November 4, 1948 (first reading).
- The second reading (clause by clause consideration) started on November 15, 1948 and ended on October 17, 1949.
- The third reading of the draft started on November 14, 1949. The motion on Draft Constitution was declared as passed on November 26, 1949, and received the signatures of the members and the president. Out of a total 299 members of the Assembly, only 284 were actually present on that day and signed the Constitution.
- The Constitution as adopted on November 26, 1949, contained a Preamble, 395 Articles and 8 Schedules.

# ENFORCEMENT OF THE CONSTITUTION

- Some provisions of the Constitution pertaining to 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.
- The remaining provisions (the major part) of the Constitution came into force on January 26, 1950. This day is referred to in the Constitution as the ‘date of its commencement’, and celebrated as the Republic Day.
- January 26 was specifically chosen as the ‘date of commencement’ of the Constitution because of its historical importance. It was on this day in 1930 that Puma Swaraj day was celebrated, following the resolution of the Lahore Session (December 1929) of the INC.
- With the commencement of the Constitution, the Indian Independence Act of 1947 and the Government of India Act of 1935, with all enactments amending or supplementing the latter Act, were repealed.

<b>Provisions</b>	<b>Sources</b>
Parliamentary System	U.K.
Fundamental Rights	U.S.A.
The organization and powers of the Supreme Court	U.S.A.
Judicial review	U.S.A.
Post of vice president	U.S.A.
Federal system	Canada, Govt. of India act 1935
The directive principles of state policy	Ireland
Emergency provisions	Germany, Govt of India act 1935
Fundamental duties	Former Soviet Russia
Legislative procedure	U.K.
Parliamentary privileges	U.K.
Republic	France
Concurrent list	Australia
Constitution amendment	South Africa
Procedure established by law	Japan
Rule of law	U.K.

## CRITICISM OF THE CONSTITUENT ASSEMBLY

- **Not a Representative Body:** The critics have argued that the Constituent Assembly was not a representative body as its members were not directly elected by the people of India on the basis of universal adult franchise.
- **Not a Sovereign Body:** The critics maintained that the Constituent Assembly was not a sovereign body as it was created by the proposals of the British Government.
- **Time Consuming:** According to the critics, the Constituent Assembly took unduly long time to make the Constitution.

## Dominated by Congress

- **Lawyer-Politician Domination:** It is also maintained by the critics that the Constituent Assembly was dominated by lawyers and politicians. This, to them, is the main reason for the bulkiness and complicated language of the Constitution.
- **Dominated by Hindus:** According to some critics, the Constituent Assembly was a Hindu dominated body.