

# INDIA TO BE SOVEREIGN DEMOCRATIC REPUBLIC

## Constitution Leaves Ties with Britain For Future Decision

### CITIZENS GUARANTEED JUSTICE, FREEDOM & EQUALITY

### Provision Of Adequate Safeguards For Minorities

FROM OUR SPECIAL REPRESENTATIVE.

NEW DELHI, FEBRUARY 25.

**INDIA IS TO BE A "SOVEREIGN DEMOCRATIC REPUBLIC" UNDER THE NEW DRAFT CONSTITUTION RELEASED TO THE PRESS TODAY.**

*The question of the relationship between this democratic Republic and the British Commonwealth of Nations is to be decided subsequently by the Constituent Assembly, which is expected to be convened some time in April to give final shape to the constitution.*

The constitution guarantees to all citizens justice, social, economic and political; liberty of thought, expression, belief, faith and worship; equality of status and of opportunity; and fraternity assuring the dignity of the individual and the unity of the nation.

It is claimed for this draft constitution that it has derived benefit from the experience and mistakes of other written constitutions in the world, particularly of the United States of America, the Irish Republic, France, Canada and Switzerland.

The Drafting Committee, which consisted of Dr. B. R. Ambedkar as Chairman and Mr. N. Gopalaswami Ayyangar, Mr. Alladi Krishnaswami Ayyar, Mr. K. M. Munshi, Saiyid Mohamed Saadulah, Mr. N. Madhav Rau and Mr. D. P. Khaitan, concluded their labour last week and submitted their report to the President of the Constituent Assembly of India on February 21, 1948.

The Objectives Resolution adopted by the Constituent Assembly in January, 1947, declared that India is to be a Sovereign Independent Republic. The Drafting Committee has adopted the phrase "Sovereign Democratic Republic" because independence is usually implied in the word "sovereign," so that there is hardly anything to be gained by adding the word "independent."

The Committee has added a clause about fraternity in the preamble to the constitution, although it does not occur in the Objectives Resolution. The Committee felt that the need for fraternal concord and goodwill in particular was never greater than now and that this particular aim of the new constitution should be emphasised by special mention in the preamble.

India has been described in the draft as a union of States. For uniformity the Committee has thought it desirable to describe the units of the Union in the new Constitution as States, whether they are known at present as Governors' provinces, or Chief Commissioners' provinces, or Indian States.

#### QUESTION OF CITIZENSHIP

As regards citizenship, it has been laid down that, in order to be a citizen of the Union at its inception, a person must have some kind of territorial connection with the Union, whether by birth, or descent, or domicile. Indians residing in Burma, Ceylon or Malaya and who have their domicile in Indian territory may also become citizens of the Indian Republic.

In the case of the large number of displaced persons who have had to migrate to India within recent months, a specially easy mode of acquiring domicile and, thereby, citizenship has been provided for in the

draft. All that they have to do is to declare before a District Magistrate in India that they desire to acquire domicile in India and to reside in India for at least a month before the declaration.

Considerable powers have been bestowed on the President of the Republic. Unlike the President of the French Republic, the President of India will be more than a nominal head of the State, though his powers will not be as vast as those of the United States President.

The President shall be elected by the members of an electoral college consisting of the members of both Houses of Parliament and the elected members of the legislature of the States.

The President's term of office will be five years and he is eligible for re-election only once.

There will be a Vice-president who will preside over the Upper House of the Central Legislature and is to be elected by members of both Houses of Parliament assembled at a joint meeting in accordance with the system of proportional representation by means of the single transferable vote.

A Council of Ministers, with the Prime Minister at the head, will aid and advise the President in the exercises of his functions.

#### PRIME MINISTER OF UNION Choice By President

The Prime Minister shall be appointed by the President and the other ministers shall be appointed by the President on the advice of the Prime Minister. The Council shall be collectively responsible to the House of the People (Lower House).

The Parliament of the Union is to consist of the President and two Houses to be known respectively as the Council of States and the House of the People. The Council of States will consist of 250 members, of whom 15 members are to be nominated by the President, and the remainder will be representatives of the States. The criterion for the nomination of the 15 members is to be their special knowledge or practical experience in literature, art, science, etc. Originally the Constituent Assembly had recommended that 25 members of the Council of States should be elected from panels or constituencies on a functional basis. The panel system having hitherto proved unsatisfactory in the country from which it was copied (Ireland), the Drafting Committee has thought it best to provide for 15 members to be nominated by the President on the aforesaid basis.

#### LABOUR REPRESENTATION

The Committee considers that no special representation for labour or commerce and industry among these nominations is necessary, in view of the fact that they are certain to be adequately represented in the elected element of the Union Parliament owing to adult franchise.

The House of the People (Lower House) shall consist of not more than 500 representatives of the people of the territories of the States directly chosen by the voters.

There will be a Supreme Court for the State, which will be the custodian of the Constitution and laws of the country. Following the practice prevailing in the United Kingdom and the United States of America, the Committee has proposed that in certain circumstances retired judges may be invited to serve in particular

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Dr. B. R. Ambedkar.

# DRAFT CONSTITUTION FOR INDIA

## Two-Chamber Parliament For Union Suggested

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cases both in the Supreme Court and in the High Courts.

As to the provinces, which will hereafter be known as States, the Constituent Assembly had originally proposed an elective Governor, but the Drafting Committee has preferred a Governor appointed by the President of India because it considered that the co-existence of a Governor elected by the people and a Prime Minister responsible to the Legislature might lead to friction and consequent weakness in the administration.

As at the Centre, the Governor will have a Council of Ministers, with the Chief Minister at its head, to aid and advise the Governor in the exercise of his functions.

Except that each State shall decide for itself whether it shall have a bicameral or a unicameral legislature, the general structure of the State Legislature will follow the lines of the Union Legislature. Members of the State Legislature will be chosen by direct election on the basis of adult suffrage.

The draft constitution provides for a strong Union Centre with overall and residuary powers vested in it.

A special feature of the constitution is the elaborate safeguards for minorities to which a separate chapter is devoted. These include reservation of seats in the House of the People for Muslims and Scheduled Tribes and for the Indian Christian community in the States of Madras and Bombay. Besides, it is laid down that the President may, if he is of the opinion that the Anglo-Indian community is not adequately represented in the House of the People, nominate not more than two members of the community to the House of the People.

### PROTECTION OF MINORITIES

Seats are to be reserved to Scheduled Castes and the Scheduled Tribes (except the Scheduled Tribes in the autonomous districts of Assam) in the Legislative Assemblies of every State. Indian Christians will have reservation of seats in the Legislative Assemblies of Bombay and Madras. Similarly, in the State of Assam, seats will be reserved for autonomous districts of tribals. For the Anglo-Indians, the Governor of a State is empowered to nominate their representatives if they fail to get adequate representation in the State Assembly.

This reservation of seats for the minorities is to last for ten years. Special provision has been made for the safeguarding of the interests of the Anglo-Indians in certain services as well as their education grants.

In addition, a special officer both in the Union and the States will be appointed to look after the interests of the minorities. In Bihar, the Central Provinces and Orissa there will be a minister in charge of the welfare of tribal people.

## DRAFT CONSTITUTION Divided Into 18 Parts: 315 Articles

The Constitution prepared by the Drafting Committee, released today, is divided into 18 parts, consists of 315 articles and eight schedules.

The Preamble of the draft constitution closely follows the Objectives resolution of the Constituent Assembly adopted in January last.

It says: "We, the people of India, having solemnly resolved to constitute India into a sovereign democratic Republic and to secure to all its citizens justice, social, economic and political; liberty of thought, expression, belief, faith and worship; equality of status and opportunity, and to promote among them all fraternity assuring the dignity of the individual and the unity of nation; in our Constituent Assembly this . . . \* \* \* day of May, 1948. A.D., do hereby adopt, enact and give to ourselves this constitution . . ."

The Preamble follows the decision taken by the Constituent Assembly, and the question of the relationship between the Republic and the British Commonwealth of Nations remains to be decided subsequently.

Part I of the constitution deals with the Union and its territory and jurisdiction.

The territory of India includes the Andamans and the Nicobar Islands and any other territory which may be acquired by the nation. Provision has been made for the admission, establishment and formation of new States.

In regard to the question of linguistic provinces, the drafting committee refer to the fact that there was recently a statement by the Government on this subject, in which it was said that Andhra could be included among the provinces in the constitution, as was done in the case of Orissa and Sind under the Government of India Act, 1935. The drafting committee were at one stage inclined to mention Andhra as a distinct State in the schedule.

On fuller consideration, the Committee feel that the bare mention of the State in the schedule will not suffice to bring it into being from the commencement of the new constitution. Preparatory steps will have to be taken immediately under the present constitution in order that the new State, with all the machinery of Government, may be in being from the commencement of the new constitution.

This was what was done in the case

of Orissa and Sind under the Act of 1935. They were made separate provinces with effect from April, 1936, while the Act came into force in April 1937.

The Committee, therefore, recommend that a commission should be appointed to work out or inquire into all relevant matters, not only as regards Andhra, but also as regards other linguistic regions, with instructions to submit its report in time to enable any new State whose formation it may recommend to be created under the Act of 1935 and not to be mentioned in the schedule of this draft before the constitution is finally adopted.

Part I of the constitution says that India shall be a Union of States. The committee have used the term "Union" instead of "Federation". Nothing much turns on the name, but the drafting committee have preferred to follow the language of the preamble of the British North America Act, 1867, and considered that there are advantages in describing India as a Union, although her constitution may be federal in structure.

Part II of the constitution deals with citizenship and Part III with fundamental rights.

Part IV deals with the directive principles of State policy, which include the State securing social order for the promotion of the welfare of the people, certain principles of policy to be followed by the State, and the right to work, to education and to public assistance in certain cases.

## PRESIDENT AS HEAD OF EXECUTIVE Five-Year Term

Part V deals with the Union Executive. The head of the State is to be the President of India. All executive power of the Union is vested in the President, to be exercised by him on the advice of responsible Ministers.

The President is to be elected by the members of an electoral college consisting of the members of both Houses of Parliament, and the elected members of the Legislatures of the States. He is to hold office for a term of five years, and is eligible for re-election once, but only once.

The President must be a citizen not less than 35 years of age and qualified for election as a member of the Lower House of Parliament.

The President may, for the violation of the Constitution, be removed from office by impeachment.

The draft makes provision for a Vice-President also. He is to be the *ex-officio* Chairman of the Council of States and is to be elected by the members of both Houses of Parliament assembled at a joint sitting, in accordance with the system of proportional representation by means of the single transferable vote. He is to hold office for a term of five years. Whenever the office of President becomes vacant, the Vice-President is elected.

All doubts and disputes arising out of, or in connection with, the election of a President or Vice-President are to be decided by the Supreme Court, whose decision is to be final.

### COUNCIL OF MINISTERS

The draft also provides for a Council of Ministers, with the Prime Minister at the head, to aid and advise the President in the exercise of his functions. The Council is to be collectively responsible to the House of the People. All executive action of the Government of India is to be expressed as taken in the name of the President. It is the duty of the Prime Minister to furnish information to the President relating to the administration of the affairs of the Union and proposals for legislation whenever the President may call for the same.

Provision has been made also for the appointment of an Attorney-General, corresponding to the Advocate-General of India under the existing constitution.

## UNION PARLIAMENT OF TWO HOUSES Election Of Members

The Union Parliament: The Union Parliament is to consist of two Houses to be known respectively as the Council of States and the House of the People.

The Council of States will consist of 250 members, of whom 15 members are to be nominated by the President to represent literature, art, science, and similar subjects, and the remainder are to be representatives of the States.

The House of the People is to consist of not more than 500 representatives of the territories of the States, elected on the basis of adult suffrage, and there is to be not less than one representative for every 750,000 of the population and not more than one representative for every 500,000 of the population.

The Council of States will not be subject to dissolution, but as nearly as possible one-third of the members will retire on the expiration of every second year.

The House of the People is to continue for a period of five years, and the expiration of that period operates as its dissolution; but provision has been made for the extension of the duration of the House of the People for a period not exceeding one year during any emergency.

### LEGISLATIVE PROCEDURE

The usual provisions for the summoning, prorogation and dissolution of the Houses of the Union Parliament, the conduct of business therein, the disqualification of the members thereof and the legislative procedure of the two Houses, including procedure in financial matters, have been included generally on the lines of similar provisions contained in the Government of India Act, 1935.

It has, however, been provided, following the practice prevalent in the Parliament of the United Kingdom, that at the commencement of every session, the President shall address both Houses of Parliament assembled together and inform Parliament of the cause of its summoning.

A special procedure has been prescribed with regard to money Bills on the lines of the practice in the Parlia-

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# GOVERNORS TO HOLD OFFICE FOR FIVE YEARS

## Alternative Provisions For Mode Of Selection

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ment of the United Kingdom.

It has been also provided that in the Union Parliament business shall be transacted in Hindi or English, but that the presiding officer of the House may permit any member who cannot adequately express himself in either of these languages, to address the House in his mother tongue.

**Legislative powers of the President:** Power has been given to the President to promulgate Ordinances at any time, except when both the Houses of Parliament are in session. The President will promulgate such Ordinances on the advice of his Ministers, and such Ordinances will cease to operate at the expiration of six weeks from the re-assembly of the Union Parliament.

**Federal Judicature:** There will be a Supreme Court of India, consisting of a Chief Justice of India and no fewer than seven Judges. Provision has been made for the appointment by the Chief Justice of India of Judges of High Courts as *ad hoc* Judges at the sittings of the Supreme Court for specified periods, following the practice prevalent in the Supreme Court of Canada. Provision has also been made for the attendance of retired Judges at sittings of the Supreme Court as in the United Kingdom and in the United States of America. Any person who has held office as a Judge of the Supreme Court (or of a High Court) is prohibited from practising in any court in India.

The Supreme Court is to have Original, Appellate and Advisory jurisdiction. Its Original jurisdiction extends to disputes between the Union and a State or between two States, if and insofar as the dispute involves any question whether of law or fact on which the existence or extent of a legal right depends. Disputes arising out of certain agreements have, however, been left out of the purview of the Supreme Court.

The Appellate jurisdiction of the Court extends to cases involving the interpretation of the constitution and to all other cases from which an appeal now lies to the Federal Court or to His Majesty-in-Council. The minimum pecuniary limit of the subject-matter of the dispute in the case of civil appeals has been fixed at Rs. 20,000.

The Supreme Court has Advisory jurisdiction in respect of questions which may be referred to that Court by the President for opinion.

### LEAVE TO APPEAL

Provision has been also made for special leave to appeal to the Supreme Court from any judgment, decree or final order in any cause or matter passed or made by any court or tribunal in the territory of India.

In a footnote, the committee have observed that in the Supreme Court of the United States of America all the Judges of the court are entitled to participate in the hearing of every matter, that the court never sits in divisions and that the Judges of that court attach the greatest importance to this practice. The Committee have expressed the opinion that this practice should be followed in India at least in two classes of cases, namely, those which involve questions of interpretation of the constitution and those which are referred to the Supreme Court for opinion by the President, and that whether the same practice should not be extended to other classes of cases may be left to be regulated by Parliament by law.

**Auditor-General of India:** Provisions similar to those existing in the Government of India Act, 1935, have been made for an Auditor-General of India.

Part VI deals with States which correspond to the Governors' provinces. Each State will have a Governor and the executive power of the State is vested in him.

As to the mode of selection of the Governor, the draft contains alternative provisions. One alternative, follow-

ing the decision of the Constituent Assembly, provides that the Governor shall be elected by a direct vote of all persons who have the right to vote at a general election for the Legislative Assembly of the State.

The other alternative, favoured by some of the members of the committee who feel strongly that the co-existence of a Governor elected by the people and a Chief Minister responsible to the Legislature might lead to friction and consequent weakness in administration, provides that the Governor shall be appointed by the President from a panel of four persons (who need not be residents of the State concerned) elected by the Legislature of the State.

The term of office of the Governor is to be five years. Provision has been made for impeachment of a Governor for violation of the constitution.

The Committee has not thought it necessary to make any provision for Deputy Governors, because a Deputy Governor will have no function to perform so long as the Governor is there. At the Centre, the position is different, because the Vice-President is also the *ex-officio* Chairman of the Council of States; but in most of the States there will be no Upper House and it will not be possible to give the Deputy Governor functions similar to those of the Vice-President. There is a provision in the draft enabling the Legislature of the State (or the President) to make necessary arrangements for the discharge of the functions of the

Governor.

The Legislative Assembly is to continue for five years, and the expiration of that period operates as its dissolution.

The Legislative Council will not be subject to dissolution, but as nearly as may be one-third of the members will retire on the expiration of every third year.

The usual provisions for summoning proroguing and dissolving the House or Houses of the Legislature of the State, the conduct of business therein, the disqualifications of members thereof and the legislative procedure, including procedure in financial matters, have been included.

It has been provided that in the Legislature of a State business shall be transacted in the language or languages generally used in that State or in Hindi or English, but that the presiding officer of the Legislature may permit any member who cannot adequately express himself in either of these languages to address the Legislature in his mother tongue.

### GOVERNOR'S POWERS

**Legislative powers of the Governor:** Power has been provided for the promulgation of Ordinances by the Governor of a State at any time except when the Legislature of the State is in session. The Governor will promulgate such Ordinances on the advice of his Ministers and they cease to operate at the expiration of six weeks from the re-assembly of the Legislature of the State.

Provision in cases of grave emergencies: Provision has been made empowering the Governor in cases of grave emergency threatening the peace and tranquillity of the State to issue a proclamation suspending certain provisions of the Constitution for a period of two weeks only, and the Governor is required to report the matter to the President.

disputes regarding inter-State water-supplies on the lines of the existing provision in the Government of India Act, 1935, has also been included.

As regards inter-State trade and commerce, all preferences or discrimination to one State over another have been prohibited. Provision has, however, been made to enable any State to impose reasonable restrictions in the public interest.

Part X deals with finance, property, contracts and suits.

Provisions relating to the distribution of revenues between the Centre and the States and the grant of financial aid to the States have been retained for the present as in the Government of India Act, 1935. A provision has been included for the appointment of a finance commission at the end of five years from the commencement of the new Constitution to make recommendations as to the distribution of such revenues and other matters between the Union and the States.

The other provisions in this part are mostly the same as in the Government of India Act, 1935.

Part XI deals with emergency powers. The President has been given power to issue a proclamation of emergency when a grave emergency exists, whereby the security of India is threatened whether by war or domestic violence. The provisions relating to the proclamation of emergency are modelled on the existing provision in the Government of India Act, 1935.

Part XII deals with services. Detailed provisions as to the Services have been left to be regulated by Act of the appropriate Legislature. Provisions for the Union and the State Public Service Commission have been included on the lines of the existing provisions in the Government of India Act, 1935.

Part XIII deals with elections. Provision has been made for the superintendence, direction and control of all elections to Parliament by an election