FRAMING OF THE CONSTITUTION

"We are here not to function for one party or one group, but always to think of India as a whole and always to think of the welfare of the four hundred million that comprise India.... The time comes when we have to rise above party and think of the Nation, think sometimes even of the world at large of which our nation is a great part. When I think of the work of this Constituent Assembly, it seems to me,....we have to rise above our i ordinary selves and party disputes and think of the great problem before us in the widest and most tolerant and most effective manner so that, whatever we may produce, should be such that the world should recognize that we have functioned, as we should have functioned, in this high adventure."

(Pandit Nehru, CAD 1999, Book 1, vol.1, p.60)

ahatma Gandhi expressed the truth firstthat Indians must shape their own destiny, that only in the hands of the Indians could India become herself- when in 1922 he said that Swaraj would not be the gift of the British Parliament, but must spring from 'the wishes of the people of India as expressed through their freely chosen representatives.' Twenty-four years later these words were repeated during the opening session of the Constituent Assembly: they were, some said, the Assembly's origin; all agreed that they were its justification.

In the various writings, debates and speeches that inform constitutional reflections in India during the late 1940s and onwards, certain issues have an unmistakable salience. Firstly, there is an overriding concern with national unity; secondly, there is a deep and anxious preoccupation with social issues such as poverty, illiteracy, economic development etc., and thirdly there is an intense concern with India's standing in the world and with foreign affairs more generally.

The Constituent assembly, brought into being by the will of the Indian people and in the last scene of the last act, with the help of the British, drafted a Constitution for India in the years from December 1946 to December 1949. In the Assembly,

Indians were for the first time in a century and a half responsible for their own governance. They were at last free to shape their own destiny, to pursue their long-prolonged aims and aspirations, and to create the national institutions that would facilitate the fulfillment of these aims. These tasks the members approached with remarkable idealism and strength of purpose born of a struggle for independence. A Constitution, Assembly members realized, could not by itself make a new India, but they intended it to light the way.

The idea of a Constituent Assembly for India had been in gestation for a long time both in the nationalist quarters and in the British ruling circles. As early as 1922, Mahatma Gandhi had published an article "Independence" in the Young India (5 January 1922) broaching the idea of a Constitution by Indians themselves. The Commonwealth of India Bill, 1925, sponsored by Mrs. Annie Besant was introduced in the House of Commons in 1925 mooting the idea of a constituent assembly for India, but with the defeat of the Labour Government in England, it lapsed. In 1927, Motilal Nehru moved a resolution at the Bombay session of the Congress that called upon the Congress Working Committee to initiate the process of drafting a Constitution for India in consultation with the elected members of the central and provincial legislatures and the major political parties in the country.

However, the first concrete step in constitution making was taken in 1928 by an all parties conference attended, in addition to the Congress, by the All India Muslim League, the All India Hindu Mahasabha, the Central Khilafat Committee, the All India Conference of Indian Christians, the States' Peoples' Conference, and the All India Liberal Federation in Delhi. The outcome of this endeavour was the Motilal Nehru Committee Report, 1928. This was the first detailed Constitution drafted by Indians for India that bore the imprints of the Canada Constitution Act, 1867, and the Constitutions of Australia and New Zealand. It proposed Dominion Status for India document that diverged from the tradition of Westminster-based parliamentary federalism was the inclusion of fundamental rights of citizens and minorities. The Nehru Committee Report could not be enacted into a statute by the British Parliament on account of subsequent differences among Indian political leaders and organizations, as well as resultant reservations against it by the British Government.

The demand for a Constituent Assembly continued to be made by the Indian nationalists including central and provincial legislatures. This demand received the first authoritative recognition by the British Government, albeit indirectly, in the August Offer of 1940 made by Viceroy Linlithgow. The Viceroy's statement included, among other things, the following: "There has been very strong insistence that the framing of that scheme should be primarily the responsibility of the Indians themselves and should originate from Indian conceptions of the social, economic and political structure of Indian life."

The Indian National Congress made the demand for a Constituent Assembly part of its official policy in 1934. Thereafter, in many provincial legislative assemblies and in the central legislative assembly in 1937, at the Congresses at Faizpur, Haripura, and Tripuri, and at the Shimla; Conference in 1945, the Congress reiterated that ! India could only accept a Constitution drawn from the people and framed 'without any,' interference by a foreign authority'.

During World War II, the mood of the Indian people became increasingly one of self-assertion, of a readiness to take its destiny into its own hands. By the time of independence, an acute observer wrote, Indians had 'a general awareness of nationality and national dignity. The Indian people felt themselves a corporate unit and felt as adults. Independence had been an ideal; now it was an axiom of public life.' In such a mood, even more than previously, Indians would accept only a Constitution drafted by themselves.

As a result, in December 1946, a Constituent Assembly which 'derived from the people... all power and authority' was convened. It prospered and ultimately provided Indians with an 'Indian-made' Constitution. And its

under the British Empire. A new feature of this indigenous nature has been the major reason for the Constitution's Success. Before turning to what the Assembly did, it is better to look at the way in which the Assembly came into being and how it worked, and so understand what an unusual body it was.

THE ORIGIN AND CREATION OF THE **ASSEMBLY**

By the end of the World War-II, India was ready for a Constituent Assembly and her leaders were demanding for one. Most important, Britain, in the person of Sir Stafford Cripps, had accepted the idea that an elected body of Indians should frame the Indian Constitution.

The greatly increased demand for selfdetermination was supported by India's waraugmented power- her industry had expanded, many of her men had been trained and armed, and her people had a new, stronger sense of unityand coincided with a marked decrease in the force Britain could exert in India, occupied as the British were with Palestine and other problems abroad and war weariness at home. It was in this atmosphere that the newly elected labour government announced in September 1945 that it was contemplating the creation of a Constituent body in India and ordered that national elections be held during the winter so that freshly created provincial legislatures would be ready to act as electoral bodies for a Constituent Assembly. The London government followed this move in January 1946 by sending a Parliamentary delegation to India, which reported that the tide of independence was running fast, and then by dispatching a Cabinet-level mission the following March.

The Cabinet Mission arrived in Delhi with the avowed purpose of assisting the Viceroy in setting up in India the machinery by which Indians can devise their own Constitution, and of mediating between the Congress and the Muslim league in order to find a middle ground upon which the communities of India could be Constitutionally united. The Cabinet- Mission realized that the most satisfactory method to constitute a Constitution making body would have been election based on adult franchise, but that could have caused a wholly unacceptable delay in the formulation of the new Constitution. The only

practicable course according to the mission was to utilize the recently elected Provincial Legislative Assemblies as electing bodies. The Mission recommended that the representation of the provinces in the Constitution making body be on the basis of population, roughly in the ratio of one member to a million and the seats allotted to the provinces be divided among the principal communities, classified for this purpose as Sikhs, Muslims and general (all except Sikhs and Muslims), on the basis of their numerical strength. The representatives of each community were to be chosen by members of that community in the provincial Assembly by the method of proportional representation with Single Transferable Vote System. The strength of the Constitution making body was to be 389. Of these 296 representatives were to be from British India and 93 from the Indian States.

Elections for the 296 seats assigned to the British Indian Provinces were completed by July- August 1946. The Congress 208 seats including all the general seats except nine and the Muslim league won 73 seats and independent and other won 15 seats.

THE PROCESS OF CONSTITUTION MAKING

The Constituent Assembly duly opened on 9th December, 1946. Dr. Sachidanand Sinha presided over the inaugural session. Two hundred and seven representatives, including nine women were present. The Muslim League boycotted the session. On 11th December, 1946, Dr. Rajendra Prasad was elected as the President of the Constituent Assembly. The historic objective resolution was moved in the Constituent Assembly by Pandit Jawaharlal Nehru on 13th December, 1946. The beautifully worded draft of the objective resolution cast the horoscope of the Sovereign Democratic Republic that India was to be. The Resolution gave to the assembly its guiding principles and the philosophy that was to permeate its tasks of Constitution making. It was finally adopted by the Constituent Assembly on 22nd January, 1947 and later took the form of the Preamble to the Constitution. Late in the evening of 14 August, 1947 the Assembly met in the Constitution Hall and at the stroke of midnight, took over as the Legislative Assembly of an Independent India.

FOCUS ON - Objective Resolution moved by Pt. Nehru

- This Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and to draw up for her future governance a Constitution;
- WHEREIN the territories that now comprise British India, the territories that now form the Indian States, and such other parts of India as are outside British India and the States as well as such other territories as are willing to be constituted into the Independent Sovereign India, shall be a Union of them all; and
- WHEREIN the said territories, whether with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter according to the law of the Constitution, shall possess and retain the status of autonomous Units, together with residuary powers and exercise all powers and functions of government and administration, save and except such powers and functions as are vested in or assigned to the Union, or as are inherent or implied in the Union or resulting therefrom; and
- 4. WHEREIN all power and authority of the Sovereign Independent India, its constituent parts and organs of government, are derived from the people; and
- WHEREIN shall be guaranteed and secured to all the people of India justice, social economic and political: equality of status, of opportunity, and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality; and
- WHEREIN adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes; and
- 7. WHEREBY shall be maintained the integrity of the territory of the Republic and its sovereign rights on land, sea, and air according to justice and the law of civilized nations; and
- This ancient land attains its rightful and honoured placed in the world and make its full and willing contribution to the promotion of world peace and the welfare of mankind.

The Constituent assembly had twenty two committees to look into different aspects of the Constitution. The major Committees were-Rules, Steering, Advisory, Drafting, Union subjects, Union Constitution, Provincial Constitution and States Committees. The Constituent Committee appointed the Drafting Committee 29th August, 1947. The members of the Drafting Committee were- Dr. B.R. Ambedkar (Chairman), N. Gopal Swami Ayyangar, Alladi Krishna swami Ayyar, K.M. Munshi, Mohammad Saadulla, B.L. Mittal (replaced by N.Madhav Rau), D.P.Khaitan (died in 1948 and replaced by T.T.Krishnamachari). The Committee embodied the decision of the Assembly with alternative and additional proposals in the form of a "Draft Constitution of India" which was published in February, 1948. The Constituent Assembly next met in November, 1948 to consider the provisions of the Draft, clause by clause. After several sessions the consideration of the clauses or second reading was completed by the 17th October, 1949. The Constituent Assembly next met on the 14th

November, 1949, for the third reading and finished it on the 26th November, 1949, on which date the Constitution received the signature of the President of the Assembly and was declared as passed. The provisions relating to citizenship, elections, provisional Parliament, temporary and provisional provisions were given immediate effect, i.e., from 26th November, 1949. The rest of the Constitution came into force on the 26th January, 1950, and this date is referred to in the Constitution as the Date of its Commencement. The Constituent Assembly held 11 sessions & took two years, 11 months and 18 days to complete the job.

The Constitution as originally adopted had 22 parts, 395 Articles and 8 Schedules. A number of new articles and parts have been added to the Constitution and several articles and parts have been repealed by amendments of the Constitution, but following the standard practice in this regard and to facilitate referencing, the existing number of articles, parts or chapters has not been changed.

	PARTS OF CONSTITUTION AT A GLANCE				
Part	Subject matter	Articles Covered			
1	The Union and its territory	1 – 4			
2	Citizenship Fundamental Rights	5-11			
3	Fundamental Rights	12-35			
4	Directive Principles of State Policy	36 – 51			
4A	Fundamental Duties	51 A			
5	The Union Government	52-151			
6	The State governments	152 – 237			
7	The Union Territories	239 – 242			
8	The Panchayats	243 – 243O			
9	The municipalities	243P – 243ZG			
9B	The Corporate Societies	243ZH – 243ZT			
10	The Scheduled and tribal areas	244 – 244A			
11	Relations between Union and States	245 – 263			
12	Finance, property, contracts and suits	264 – 300A			
Trade, commerce and intercourse within the territory of India		301 – 307			

Part	Subject matter	Articles Covered	
14	Services under the Union and States	308 – 323	
14A	Tribunals	323A – 323 B	
15	Elections	324 – 329A	
16	Special Provisions to SCs, STs, OBCs and Anglo Indians	330 – 342	
17	Official Language	343 – 351	
18	Emergency Provisions	352 – 360	
19	Miscellaneous	361 – 367	
20	Amendment of Constitution	368	
21	Temporary, transitional and special provisions	369 – 392	
22	Short title, commencement, authoritative text in Hindi and repeals	393 – 395	

India's founding fathers established in the Constitution both the nation's ideals and the institutions and the processes for achieving them. The ideals were national unity and integrity and a democratic and equitable society. The new society was to be achieved through a social democratic revolution pursued with a democratic spirit using Constitutional and democratic institutions.

During recent years, it has become fashionable among some citizens to disparage the founders i and their document. These individuals disappointed by developments in the country since 1950, have called for changing the Constitution, explaining that it has not worked. Constitutions do not work, they are inert, dependent upon being worked by citizens and elected and appointed leaders.

Looking back over the last fifty eight years, the Constitution has served the nation remarkably well. Each and every contingency the framers did not foresee- nor realistically, could they have been expected to. A combination of idealism and the multitude of issues confronting the country during the framing period apparently obscured their appraisal of several future contingencies. Other contingencies which they may have foreseen, they did not provide for it in the Constitution as they must be aware that no founding document can contain solutions to every situation, and the leaders in the future should find, within the Constitution's principles,

their own way out of difficulties that might confront them.

Important facts regarding the Constituent Assembly

4	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		
1	Fifth Session	:	14-30 August, 1947		
	Sixth Session	:	27 January, 1948		
	Seventh Session	:	4 November, 1948 - 8 January, 1949		
	Eighth Session	:	16 May - 16 June, 1949		
	Ninth Session		30 July - 18 September,		
	Tenth Session	:	6-17 October, 1949		
	Eleventh Session	:	14-26 November, 1949		

[The Assembly met once again on 24 January, 1950, when the members appended their signatures to the Constitution of India].

IMPORTANT COMMITTEES OF THE CONSTITUENT ASSEMBLY AND THEIR

CHAIRMEN				
	Name of the Committee	Chairman		
1.	Committee on the Rules of Procedure	Rajendra Prasad		
2.	Steering Committee	Rajendra Prasad		
3.	Finance and Staff Committee	Rajendra Prasad		
4.	Credential Committee	Alladi Krishnaswami Ayyar		
5.	House Committee	B. Pattabhi Sitaramayya		
6.	Order of Business Committee	K. M. Munsi		
7.	Ad hoc Committee on the National Flag	Rajendra Prasad		
8.	Committee on the Functions of the Constituent Assembly	G.V. Mavalankar		
9.	States Committee	Jawaharlal Nehru		
10.	Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas	Vallabhbhai Patel		
11.	Minorities Sub-Committee	H.C. Mookherjee		
12.	Fundamental Rights Sub-Committee	J.B. Kripalani		
13.	North-East Frontier Tribal Areas and Assam Exluded & Partially Excluded Areas Sub-Committee	Gopinath Bardoloi		
14.	Excluded and Partially Excluded Areas (Other than those in Assam) Sub- Committee	A. V. Thakkar		
15.	Union Powers Committee	Jawaharlal Nehru		
16.	Union Constitution Committee	Jawaharlal Nehru		
17.	Drafting Committee	B. R. Ambedkar		

STATEWISE MEMBERSHIP OF THE CONSTITUENT ASSEMBLY OF INDIA AS ON 31 DECEMBER, **1947 PROVINCES-229**

	1947 PROVINCES-229					
	S. No.	State	No. of Members			
	1.	Madras	49			
	2.	Bombay	21			
	3.	West Bengal	19			
	4.	United Provinces	55			
	5.	East Punjab	12			
	6.	Bihar	36			
	7.	C.P. and Berar	17			
	8.	Assam	8			
1	9.	Orissa	9			
	10.	Delhi	1			
	11.	Ajmer-Merwara	1			
	12.	Coorg	1			
	INDIAN STATES-70					
	1.	Alwar	1			
1	2.	Baroda	3			
7	3.	Bhopal	1			
	4.	Bikaner	1			
	5.	Cochin	1			
	6.	Gwalior	4			
	7.	Indore	1			
	8.	Jaipur	3			
	9.	Jodhpur	2			
	10.	Kolhapur	1			
	11.	Kotah	1			
	12.	Mayurbhanj	1			

S. No.	State	No. of Members	S. No.	State	No. of Members
13.	Mysore	7	22.	Central India States	3
14.	Patiala	2		Group (including Bundelkhand and)	
15.	Rewa	2	 	Malwa)	
16.	Travancore	6	23.	Western India States Group	4
17.	Udaipur	2	24.	Gujarat States Group	2
18.	Sikkim and Cooch Behar Group	1	25.	Deccan and Madras States Group	2
19.	Tripura, Manipur and	1	26.	Punjab States Group I	3
	Khasi States Group		27.	Eastern States Group I	4
20.	U.P. States Group	1	28.	Eastern States Group II	3
21.	Eastern Rajputana	3	29.	Residuary States Group	4
	States Group		 	Total	299

