

DAY 1

POLITY

- ➔ Making of Indian Constitution
- ➔ Union and States
- ➔ Citizenship

Making of Indian Constitution

It was in 1934 that the idea of a Constituent Assembly for India was put forward for the first time by M. N. Roy, a pioneer of communist movement in India and an advocate of radical democratism.

The demand was finally accepted in principle by the British Government in what is known as the 'August Offer' of 1940.

The Constituent Assembly was constituted in November 1946 under the scheme formulated by the Cabinet Mission Plan.

Each province and princely state (or group of states in case of small states) were to be allotted seats in proportion to their respective population.

The representatives were to be elected by members in the provincial legislative assembly and voting was to be by the 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.

It is thus clear that the Constituent Assembly was to be a partly elected and partly nominated body. Moreover, the members were to be indirectly elected by the members of the provincial assemblies, who themselves were elected on a limited franchise.



High Yielding Facts

The Constituent Assembly held its first meeting on December 9, 1946. The Muslim League boycotted the meeting and insisted on a separate state of Pakistan. 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.



UPSC Googly

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. Out of 296 seats allotted to the British India, 292 members were to be drawn from the eleven governors' provinces and four from the four chief commissioners' provinces, one from each.



High Yielding Facts

On December 13, 1946, Jawaharlal Nehru moved the historic 'Objectives Resolution' in the Assembly. It laid down the fundamentals and philosophy of the constitutional structure. This Resolution was unanimously adopted by the Assembly on January 22, 1947. It influenced the eventual shaping of the constitution through all its subsequent stages. Its modified version forms the Preamble of the present Constitution.



High Yielding Facts

In addition to the making of the Constitution and enacting of ordinary laws, the Constituent Assembly also performed the following functions:

1. It ratified the India's membership of the Commonwealth in May 1949.
2. It adopted the national flag on July 22, 1947.
3. It adopted the national anthem on January 24, 1950.
4. It adopted the national song on January 24, 1950.
5. It elected Dr Rajendra Prasad as the first President of India on January 24, 1950.

In all, the Constituent Assembly had 11 sessions over two 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 the first general elections in 1951–52.

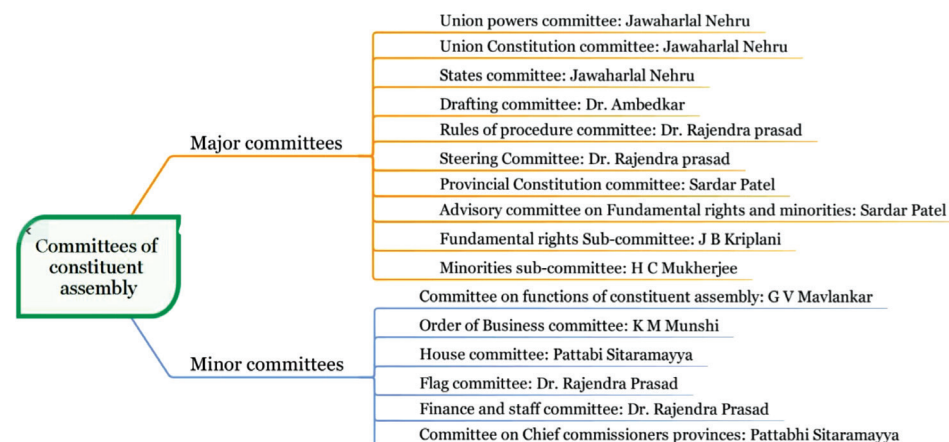
Effects of Indian Independence Act of 1947

The Indian Independence Act of 1947 made the following three changes in the position of the constituent Assembly:

1. The Assembly was made a fully sovereign body, which could frame Constitution as per its pleasure. The act empowered the Assembly to abrogate or alter any law made by the British Parliament in relation to India.
2. The Assembly also became a legislative body i.e. apart from forming the constitution for free India, enacting of ordinary laws also became a function. These two tasks were to be performed on separate days. Thus, the Assembly became the first Parliament of free India (Dominion Legislature). Whenever the Assembly met as the Constituent body it was chaired by Dr. Rajendra Prasad and when it met as the legislative body, it was chaired by G V Mavlankar. These two functions continued till November 26, 1949, when the task of making the Constitution was over.
3. The Muslim League members (hailing from the areas included in the Pakistan) withdrew from the Constituent Assembly for India. Consequently, the total strength of the Assembly came down to 299 as against 389 originally fixed in 1946 under the Cabinet Mission Plan.

Committees of the Constituent Assembly

The Constituent Assembly appointed a number of committees to deal with different tasks of constitution-making. Out of these, eight were major committees and the others were minor committees.



The Drafting Committee, after taking into consideration the proposals of the various committees, prepared the first draft of the Constitution of India, which was published in February 1948. The people of India were given eight months to discuss the draft and propose amendments. In the light of the public comments, criticisms and suggestions, the Drafting Committee prepared a second draft, which was published in October 1948.

The Drafting Committee took less than six months to prepare its draft. In all it sat only for 141 days.



Furious Fact

Drafting Committee

Among all the committees of the Constituent Assembly, the most important committee was the Drafting Committee set up on August 29, 1947. It was this committee that was entrusted with the task of preparing a draft of the new Constitution. It consisted of seven members. They were:

1. Dr B R Ambedkar (Chairman)
2. N Gopalaswamy Ayyangar
3. Alladi Krishnaswamy Ayyar
4. Dr K M Munshi
5. Syed Mohammad Saadullah
6. N Madhava Rau (He replaced B L Mitter who resigned due to ill-health)
7. T T Krishnamachari (He replaced D P Khaitan who died in 1948)

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ENACTMENT OF THE CONSTITUTION

The motion on Draft Constitution was declared as passed on November 26, 1949, and received the signatures of the members and the president. The Constitution as adopted on November 26, 1949, contained a Preamble, 395 Articles and 8 Schedules. The Preamble was enacted after the entire Constitution was already enacted.



High Yielding Facts

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.



High Yielding Facts

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 Purna Swaraj day was celebrated, following the resolution of the Lahore Session (December 1929) of the INC.

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CRITICISM OF THE CONSTITUENT ASSEMBLY

The critics have criticised the Constituent Assembly on various grounds. These are as follows:

1. Not a Representative Body:
Members were not directly elected by the people of India on the basis of universal adult franchise.
2. Not a Sovereign Body: It was created by the proposals of the British Government.
3. Time Consuming: According to the critics, the Constituent Assembly took unduly long time to make the Constitution.
4. Dominated by Congress: The critics charged that the Constituent Assembly was dominated by the Congress party.



High Yielding Facts

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.

The Abolition of Privy Council Jurisdiction Act (1949) was however continued.



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5. Lawyer–Politician Domination: It is also maintained by the critics that the Constituent Assembly was dominated by lawyers and politicians. They pointed out that other sections of the society were not sufficiently represented. This, to them, is the main reason for the bulkiness and complicated language of the Constitution.
6. Dominated by Hindus: According to some critics, the Constituent Assembly was a Hindu dominated body. Lord Viscount Simon called it 'a body of Hindus'. Similarly, Winston Churchill commented that the Constituent Assembly represented 'only one major community in India.

Important sources of the constitution at a glance

1. Government of India Act of 1935

Federal Scheme, Office of governor, Judiciary, Public Service Commissions, Emergency provisions and administrative details.

2. British Constitution

Parliamentary government, Rule of Law, legislative procedure, single citizenship, cabinet system, prerogative writs, parliamentary privileges and bicameralism.

3. US Constitution

Fundamental rights, independence of judiciary, judicial review, impeachment of the president, removal of Supreme Court and high court judges and post of vice-president.

4. Irish Constitution

Directive Principles of State Policy, nomination of members to Rajya Sabha and method of election of president.

5. Canadian Constitution

Federation with a strong Centre, vesting of residuary powers in the Centre, appointment of state governors by the Centre, and advisory jurisdiction of the Supreme Court.

6. Australian Constitution

Concurrent List, freedom of trade, commerce and inter-course, and joint sitting of the two Houses of Parliament.

7. Weimar Constitution of Germany

Suspension of Fundamental Rights during Emergency.

8. Soviet Constitution (USSR, now Russia)

Fundamental duties and the ideal of justice (social, economic and political) in the Preamble.

9. French Constitution

Republic and the ideals of liberty, equality and fraternity in the Preamble.

10. South African Constitution

Procedure for amendment of the Constitution and election of members of Rajya Sabha.

11. Japanese Constitution

Procedure established by Law.

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Schedules of the constitution at a glance**1. First Schedule (Art 1 and 4)**

- a. Names of the States and their territorial jurisdiction.
- b. Names of the Union Territories and their extent.

2. Second Schedule (Art: 59, 65, 75, 97, 125, 148, 158, 164, 186 & 221)

Provisions relating to the emoluments, allowances, privileges and so on of

- a. The President of India
- b. The Governors of States
- c. The Speaker and the Deputy Speaker of the Lok Sabha
- d. The Chairman and the Deputy Chairman of the Rajya Sabha
- e. The Speaker and the Deputy Speaker of the Legislative Assembly in the states
- f. The Chairman and the Deputy Chairman of the Legislative Council in the states
- g. The Judges of the Supreme Court
- h. The Judges of the High Courts
- i. The Comptroller and Auditor-General of India

3. Third Schedule (Art-75, 84, 99, 124, 146, 173, 188 and 219)

Forms of Oaths or Affirmations for:

- a. The Union ministers
- b. The candidates for election to the Parliament
- c. The members of Parliament
- d. The judges of the Supreme Court
- e. The Comptroller and Auditor-General of India
- f. The state ministers
- g. The candidates for election to the state legislature
- h. The members of the state legislature
- i. The judges of the High Courts

4. Fourth Schedule (Art. 4 and 80)

Allocation of seats in the Rajya Sabha to the states and the union territories

5. Fifth Schedule (Art 244)

Provisions relating to the administration and control of scheduled areas and scheduled tribes.

6. Sixth Schedule (Art. 244 and 275)

Provisions relating to the administration of tribal areas in the states of Assam, Meghalaya, Tripura and Mizoram

7. Seventh Schedule (Art 246)

Division of powers between the Union and the States in terms of List I (Union List), List II (State List) and List III (Concurrent List).

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in India, or partly the one and partly the other, for periods amounting in the aggregate to not less than eleven years;

- e. that he is of good character
- f. that he has an adequate knowledge of a language specified in the Eighth Schedule to the Constitution³, and
- g. that in the event of a certificate of naturalisation being granted to him, he intends to reside in India, or to enter into or continue in, service under a Government in India or under an international organisation of which India is a member or under a society, company or body of persons established in India.

However, the Government of India may waive all or any of the above conditions for naturalisation in the case of a person who has rendered distinguished service to the science, philosophy, art, literature, world peace or human progress. Every naturalised citizen must take an oath of allegiance to the Constitution of India.

5. **By Incorporation of Territory:** If any foreign territory becomes a part of India, the Government of India specifies the persons who among the people of the territory shall be the citizens of India. Such persons become the citizens of India from the notified date. For example, when Pondicherry became a part of India, the Government of India issued the Citizenship (Pondicherry) Order, 1962, under the Citizenship Act, 1955.



Concept Builder

Loss of Citizenship

The Citizenship Act, 1955, prescribes three ways of losing citizenship whether acquired under the Act or prior to it under the Constitution, viz, renunciation, termination and deprivation:

1. **By Renunciation:** Any citizen of India of full age and capacity can make a declaration renouncing his Indian citizenship. Upon the registration of that declaration, that person ceases to be a citizen of India. However, if such a declaration is made during a war in which India is engaged, its registration shall be withheld by the Central Government. Further, when a person renounces his Indian citizenship, every minor child of that person also loses Indian citizenship. However, when such a child attains the age of eighteen, he may resume Indian citizenship.
2. **By Termination** When an Indian citizen voluntarily (consciously, knowingly and without duress, undue influence or compulsion) acquires the citizenship of another country, his Indian citizenship automatically terminates. This provision, however, does not apply during a war in which India is engaged.
3. **By Deprivation** It is a compulsory termination of Indian citizenship by the Central government, if:
 - a. the citizen has obtained the citizenship by fraud;
 - b. the citizen has shown disloyalty to the Constitution of India;
 - c. the citizen has unlawfully traded or communicated with the enemy during a war;
 - d. the citizen has, within five years after registration or naturalisation, been imprisoned in any country for two years; and
 - e. the citizen has been ordinarily resident out of India for seven years continuously.



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Despite this, India has been witnessing the communal riots, class conflicts, caste wars, linguistic clashes and ethnic disputes.

Thus, the cherished goal of the founding fathers and the Constitution-makers to build an united and integrated Indian nation has not been fully realised.

The Citizenship Act, 1955 regulates the acquisition and determination of citizenship and details registration of overseas citizens of India and their rights. Under PIO, citizenship was extended up to great-grandchildren while in OCI and it was only till grand children. Now with the passing of this bill it has been extended to great grandchildren in OCI. It also says the government may shift a PIO card-holder, who enjoys fewer benefits, to be an OCI card-holder from a specified date.

KINDS OF MAJORITY

There are various kinds of majorities that are required in different situations which are described in the Indian situation.

SIMPLE MAJORITY

It means a majority of more than 50% of the members present and voting.

Example:

Total strength of Lok Sabha = 545

Members present at time of voting = 500

Members present and voting = 400

Simple majority in such case would mean consent of 201 or more members.

Motions or Bills passed by Simple Majority are:

1. No-confidence Motion
2. Confidence Motion
3. Vote of thanks to the President or Governor addressed
4. Censure Motion
5. Adjournment Motion
6. A motion under Article 352 in Lok Sabha (for the disapproval of the continuance of the National Emergency)
7. The removal of the Vice-President in the Lok Sabha
8. Money Bill
9. Financial Bill and Ordinary bill
10. State legislature can pass the constitutional Amendment Bill with simply majority.
11. The Government survives by means of Simple Majority.

ABSOLUTE MAJORITY

It refers to a majority of more than 50% of the total membership of the house. In Constitution such kind of majority is not required in isolation.

Parliament on March 3, 2015 passed the Citizenship Amendment Bill. The bill was passed by Lok Sabha on March 1, 2015 and was cleared by the upper house also called Rajya Sabha on March 3, 2015. The bill seeks an amendment in the Citizenship Act, 1955 and to merge the Person of Indian Origin (PIO) and Overseas Citizenship of India (OCI) schemes.



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