

Making of the Constitution



Subject: History

Unit: Emergence of a New State

Lesson: Making of the Constitution

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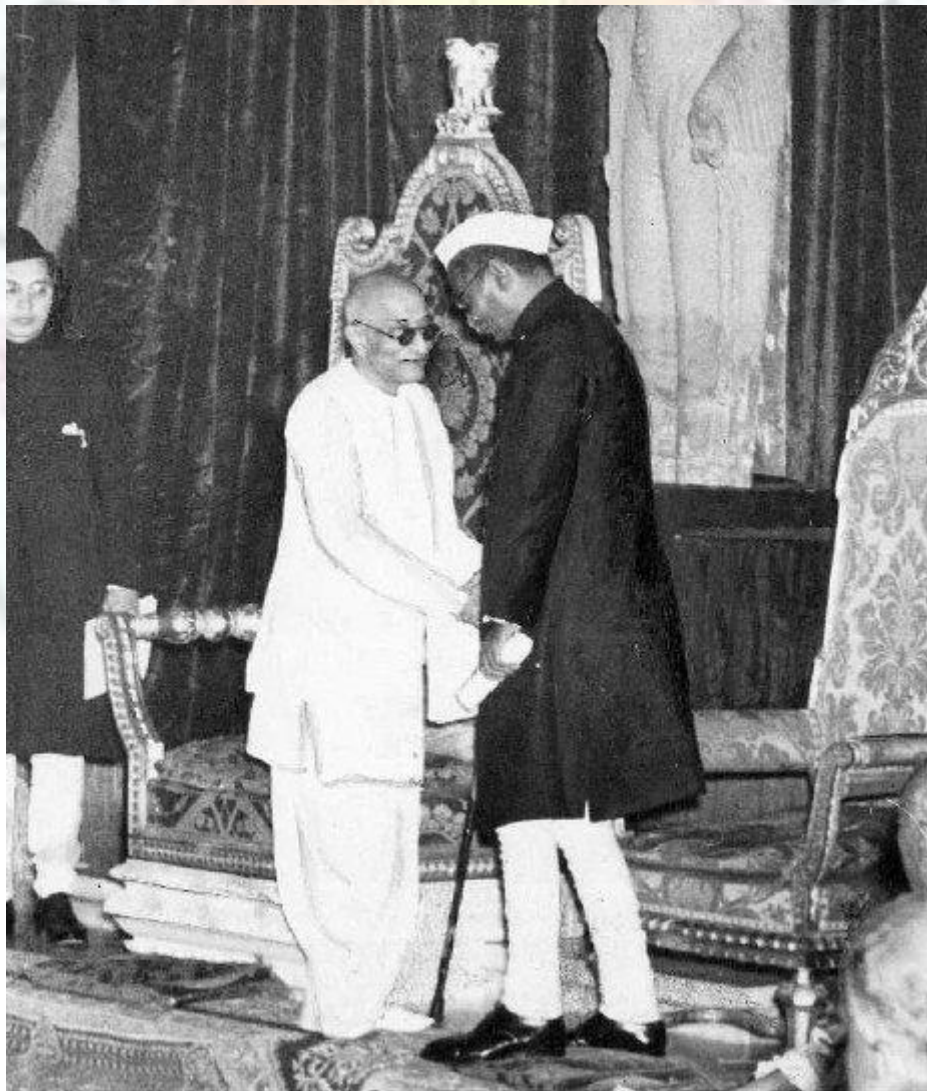
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13.1: Making of the constitution

On 26 January 1950, the Indian constitution came into effect. By this act, the Dominion of India transformed itself into the Republic of India. The constitution had been drafted, discussed, and finalized by the **Constituent assembly** between December 1946 and December 1949. Comprising 395 articles and 8 schedules, this lengthy document set out the architecture of the new state. The deliberations of the Constituent assembly were comparably long and painstaking. They provide a fascinating window into the range of ideas and institutions that the makers of the constitution envisioned for the new India. But these debates, and the resultant constitution, also reflected the wider context in which the Constituent assembly met and functioned.



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Figure 13.1.1: India's first President, Rajendra Prasad, is being led to the 'presidential chair' by Governor-General C. Rajagopalachari, January 1950

Source: <http://www.hinduonnet.com/af/india60/stories/2007081560020200.htm>

Video clip: watch this clip of Jawaharlal Nehru's famous 'tryst with destiny' speech on the eve of independence.

http://www.youtube.com/watch?v=1wUcw8Ufx_Y

The Constituent assembly of India was formed following the Cabinet Mission of 1946. The Mission's Plan rejected the idea of direct elections as too slow, and provided for indirect elections by the provincial legislatures. (The provincial legislatures, we will recall, were themselves elected on a very restricted franchise.) The princely states were given a fixed number of seats in the Constituent assembly. Elections to the Assembly were held in July 1946. But, owing to the fall-out between the Congress and the Muslim League over the terms of grouping in the Cabinet Mission Plan, the Muslim League boycotted the Assembly. Some members of the League would join it after Partition had been announced, and then only because they were staying behind in India. Representatives of the princely states, too, took their time to join the Assembly.

Thus when the Constituent assembly met for the first time on 9 December 1946, it was a remarkably small (numbering about 300) and unrepresentative body, dominated by the Congress Party. This trend, however, was kept in check by two factors. The Congress itself housed a variety of ideologies and viewpoints, and included a substantial 'opposition' within itself. These, as one scholar has observed, 'ranged from a rabid Hindi-supporter to a secular socialist, from a strong advocate of the presidential system to a convinced parliamentarian, from a protagonist of a highly centralized state to a protagonist of loose federalism' (Chaube 2000, 99). Second, the Constituent assembly sought submissions on various issues from the public at large. A draft of the constitution was also published in February 1948. The voluminous representations from practically every segment of Indian society might have slowed down its proceedings, but the process broadened its outlook and strengthened its legitimacy.

Much of the Constituent assembly's work was done in its numerous committees, sub-committees, and ad hoc committees. The drafting of the text was left to the seven-member Drafting Committee consisting mainly of lawyers and not politicians. The Committee was chaired by B.R. Ambedkar, the brilliant lawyer and leader of the low-castes, who was also minister for law in the Union cabinet. The work of the Constituent assembly was largely facilitated by four Congress leaders: Jawaharlal Nehru, Vallabhbhai Patel, Rajendra Prasad, and Abul Kalam Azad. The foremost historian of the Indian Constitution, Granville Austin, calls them an 'oligarchy', but one that was responsive to the various currents of opinion within the Assembly (Austin 1999, 21-25).

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Figure 13.1.2: B. R. Ambedkar with other members of the Drafting Committee

Source: <http://www.sankalpindia.net/drupal/ambedkar-the-architect-indian-constitution>

Video clip: watch this video clip showing the drafting committee at work with a speech by Ambedkar in the background.

<http://www.youtube.com/watch?v=yEC1cs85yC0&feature=related>

Value addition: biographical sketch

B. N. Rau

Among the influential 'makers of the constitution' was one individual who was not a member of the Constituent assembly. B. N. Rau served as constitutional advisor to the Government of India. After education at Trinity College, Cambridge, Rau joined the Indian Civil Service in 1910. He held a succession of legal appointments, including the post of the Reforms Commissioner in 1928. He had also been the prime minister of Kashmir in 1944-45. A gifted legalist and draftsman, Rau undertook a tour of western democracies to study their constitutional models. Thereafter he prepared a series of notes that informed the workings of Ambedkar's committee. Subsequently, Rau also served as India's representative to the UN and played an important role in the proceedings over Kashmir.

Source: Guha, Ramachandra. 2007. *India After Gandhi: The History of the World's Largest Democracy*. New Delhi: Picador, 107; Austin, Granville. 1998. *The Indian Constitution : Cornerstone of a Nation*. 2nd ed. New Delhi: Oxford University Press, 344-45.

The nature of political institutions

The Constituent assembly set itself a lofty goal: the creation of conditions for a major social and economic transformation of India. 'The first task of this assembly', Nehru told his colleagues, 'is to free India through a new constitution, to feed the starving people, and to clothe the naked masses, and to give every Indian the fullest opportunity to develop himself

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according to his capacity' (Constituent Assembly Debates, vol. 2, p. 316). Hence, the major question confronting the Assembly was what form of political institutions would enable and encourage such far-reaching change. This led first to the consideration of the basic constitutional pattern of the new state.

The experience of limited self-governance under colonial rule predisposed many members to look towards European-American constitutional tradition. Others, however, favoured drawing on India's own indigenous traditions. Advocates of a 'Gandhian' constitution called for the revival of the panchayati raj system of village councils. In this scheme, the village would function as the basic unit of politics and governance.

Value addition: interesting detail
The 'Gandhian' constitution
The most elaborate statements of a Gandhian constitution came not from Gandhi, but from his followers. Gandhi's own preferences can be glimpsed in two plans that he submitted (in January 1946 and January 1948) to the committee charged with revising the Congress' constitution. The second plan called for disbanding the Congress as a 'parliamentary machine' and turning it into a social service organization based on a country-wide network of panchayats. Each village panchayat would form a unit; two such units would constitute a working party with an elected leader. Fifty such leaders would elect a second-grade leader, who would coordinate their efforts and be available for national service. Second-grade leaders could elect a national chief to 'regulate and command all groups'. The Congress Working Committee, however, turned down these ideas. Its members held that the new state needed a centrally controlled, mass political party.
Source: Austin, Granville. 1998. <i>The Indian Constitution: Cornerstone of a Nation</i>. 2nd ed. New Delhi: Oxford University Press, 28-29.

In the event, the Constituent assembly settled for a parliamentary, federal constitution in the Euro-American model. In contrast to the 'Gandhian' model, this political system would be much more centralized. In deference to the Gandhian view, the constitution would promote administrative (as opposed to political) decentralization below the level of the provinces. The state's duty to promote the development of panchayats was written into the Directive Principles of State Policy (of which more below). In a more dramatic break with the past, the Assembly also settled for a direct election by adult suffrage. This was regarded as an essential prerequisite for socio-economic transformation. Many members of the Constituent assembly believed that universal suffrage would shift the balance of governmental power towards the poor, and encourage policies that would be really beneficial to them.

The decision in favour of a parliamentary, federal constitution was also prompted by several immediate considerations. First, in the aftermath of the Second World War, there was a severe food shortage in the country. The rise in food prices, the low grain reserve, and the differences between provinces with surpluses and with shortages, all pointed to the need for

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national government control of this crucial sector. More broadly, the Assembly believed that economic progress required a centralized authority and centralized planning. Second, The massive blood-bath preceding and accompanying Partition underlined both the weaknesses of the provincial law and order machinery, and the need for central power to uphold order and stability. Third, the Pakistan-abetted tribal invasion of Kashmir and the outbreak of the Communist rebellion in Telengana highlighted the importance of a strong central government capable of managing external defence and internal security.

Structure of political institutions

The structure of political institutions, too, drew on European and American models. The American presidential system and the Swiss Executive model were debated and discarded. The Assembly chose a slightly modified version of the British cabinet system. A President, indirectly elected for a term of five years, would be constitutional head of state. The President would be commander-in-chief of the armed forces and could refer bills back to Parliament. The position, as Nehru noted, had no 'real power' but 'great authority and dignity' (Constituent Assembly Debates, vol. 4, p. 734). As in Britain, there would be a council of ministers responsible collectively to the Parliament, to assist and advice the head of state. The Parliament would be elected by the British 'first-past-the-post' system. Given the diversity of interests and groupings in India, it was felt that this would make for strong government.

The Assembly provided for an independent election commission, and an independent comptroller general of accounts. To ensure the independence of the judiciary, judges of the Supreme Court and the High Courts would be appointed by the President in consultation with the chief justices. Their salaries would not be decided by Parliament but would be charged directly to the Treasury. The Supreme Court would have original jurisdiction in all 'federal' disputes between the units and the Union government. It would also have broad appellate jurisdiction. Any civil and criminal case could be appealed to it if an interpretation of the constitution was involved. The Supreme Court was thus seen as a guardian of the rights enshrined in the constitution.

The federal structure adopted by the Assembly was undoubtedly biased in favour of the centre as against the constituent units. The constitution provided for three areas of responsibility: Union, States, and Concurrent. Subjects in the first list were under the control of the central government, while those in the second fell under the remit of the provinces. The third list was the joint responsibility of the centre and the provinces. The Union list, however, was much larger than those in other countries. The centre's share in concurrent list, too, was more expansive. Further, Article 356 gave it power to take over a state's administration on the recommendation of the governor. Most significantly, the centre was empowered with Emergency Provisions. The President might proclaim a state of emergency if he was satisfied that national security was threatened by external aggression or internal unrest. During an emergency, the Union government and Parliament could practically dictate terms to the states.

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Historians have differed on the extent of resistance put up by the representatives of the provinces. Granville Austin suggests that 'states rights' issues never assumed much importance in the deliberations of the Constituent assembly. This was because provinces had never worked in a truly federal system like the United States or Australia (Austin 1999, 188-89). Ramachandra Guha argues, however, that not only did provincial politicians fight "hard for the rights of states ... they mounted on the principle [of centralization] itself." (Guha 2007, 111)

This set of decisions taken by the Assembly was influenced by wider concerns as well: communal violence during Partition and the need to resettle the massive flow of refugees; need to improve agricultural and industrial productivity. Three other factors contributed to this outcome. During the period when the constitution was being framed, the provinces of India were already functioning as part of a federal structure under the Government of India Act of 1935. Hence, their bargaining power was inherently limited. Furthermore, the creation of Pakistan convinced the Assembly that no new divisive forces should be encouraged. Finally, the Congress Party dominated the political landscape. The absence of strong regional or provincially-based parties eased the path to a strong federal centre.

Value addition: interesting detail
The tight federation
The representatives of the provinces were constrained by the fact that they were already operating in a federation created by the Government of India Act of 1935. Ambedkar reminded the Constituent assembly that 'The Federation was not the result of an agreement by the States to join in a Federation ... the Federation not being the result of an agreement, no State has the right to secede from it.'
Source: <i>Constituent Assembly Debates</i>. 1999 (reprint). New Delhi: Lok Sabha Secretariat. Vol. 7, 43.

The model of fiscal federalism adopted by the constitution drew on the Government of India Act of 1935. In the case of some taxes, such as customs duties and company taxes, the centre would keep all the revenue. In other cases, such as income taxes and excise duties, the revenue would be shared with the states. Yet other sources, for instance estate duties, were assigned wholly to the states. The states, for their part, could levy their own taxes, including sales tax, land and property taxes. On the whole, though, the financial provisions favoured the Union government. This trend towards fiscal centralization was strengthened by the unstable financial situation prevailing when the constitution was drawn up. Moreover, members of the Constituent assembly believed that the 'needs' of the provinces should determine how revenue was distributed. This was seen as a key to achieving socio-economic transformation. But it naturally required a greater role to be played by the Union government.

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Fundamental rights and directive principles

The core of the constitution's commitment to furthering socio-economic transformation lay in the **Fundamental rights** and Directive Principles of State Policy. Following the Bill of Rights of the American Constitution (and in contrast to the British model), the Constituent assembly outlined the rights of citizens that could not be abridged by the state. These Fundamental rights include: the Right of Equality, the Right of Freedom, the Right against Exploitation, the Right to Freedom of Religion, Cultural and Educational Rights, the Right to Property, and the Right to Constitutional Remedies. The Directive Principles went further and sought to ensure that the Indian people would be free in the positive sense—free from societal coercion and wretched physical conditions that prevented them from achieving all that they desired. These principles would not be justiciable, that is the courts could not enforce them. But they would be 'fundamental in the governance of the country'.

Much of the existing scholarship views these provisions as the culmination of a long process dating back to the late 19th century. In this reading, liberal democracy struck roots in India in the form of nationalism. The Indian National Congress' commitment to civil liberties and its vision of social justice and equality could be seen in a series of documents and declarations: the Motilal Nehru report of 1928, the Karachi Resolution of 1931, Nehru's address to the Faizpur Congress of 1936, and the Sapru report of 1946. (See Austin 1999, 52-57; Bhargava 2000). By contrast, Sunil Khilnani argues that the traditional account is steeped in both imperial and nationalist views of India's political development. The national movement certainly had 'a pragmatic attachment to forms of consensual decision-making'. But these practices 'do not exhaust even a narrow definition of democracy, or of liberalism'. The constitution of 1950, he contends, was actually a radical break with the past.

The Fundamental rights, however, were not considered to be absolute. The Constituent assembly considered in what ways and to what extent these rights should be limited. Broadly, two considerations impacted on the question of limiting these rights: social reform and national unity. Some of the concerns raised by the former could be tackled in the drafting of the provisions. For instance, some members opposed allowing 'free practice' of religion since this could include retrograde practices like sati, purdah, and the devadasi. In consequence, the constitution provided that the right to freedom of religion did not prevent the state from making laws for social welfare and reform. Other issues proved more difficult to deal with. The most protracted debates surrounded the right to property. Land-reform laws were being contemplated by many provinces, and the government wanted to prevent dispossessed landlords from approaching the courts. Eventually, the right of due process was not allowed in property legislation.

Considerations of national unity and public security also led to the curtailment of individual liberty. A majority in the Constituent assembly believed that public peace was essential to achieving social and economic progress. This stance was understandable against the backdrop of the communal violence that engulfed the country in 1947. But this led the Assembly to approve of provisions that went against liberal values. These included the powers given to the government during a national emergency and the provision of

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'preventive detention' without trial. The latter was seen as the only way to prevent or contain communal violence. But it also attracted the most public criticism of any provision in the draft constitution. Preventive detention, after all, had been a favoured legal mechanism of the British Raj.

The Assembly paid considerable attention to the rights of the minorities. Initially, some Muslim members sought to retain **separate electorates**. The Congress leadership was staunchly opposed to this, believing that it had been instrumental in leading to Partition. However, there were other Muslim members who believed that it was in the best interests of Muslims to align their identity with that of other citizens. Eventually, Muslim members came round to the view that instead of seeking separate electorates, they should organize themselves as voting blocs, and so acquire political importance. Female members of the Assembly, too, rejected the idea of reservation for women. They argued that ensuring equality, rather than special privileges, was the best way to protect women's rights. Reservations were, however, extended for the Untouchables. This was in recognition for the historic injustices they had suffered. Seats were set aside in legislatures and jobs in government agencies. Similar provisions were also extended to the tribals.

Language

The question of a 'national' language provoked some of the most heated and contentious debates in the Constituent assembly. It assumed such importance because it mattered, like fundamental rights, to everyone. Almost from the outset, proponents of Hindi made it clear that they would press their case to the utmost. They demanded initially that the official version of the constitution be in Hindi rather than English. The Drafting Committee refused to accept this, arguing that the English language was more suitable for the technical and legal nature of the document. The advocates of Hindi then demanded that each clause of the draft constitution be discussed in Hindi.

The case for Hindi was given additional vigour by partition. Hitherto, **Hindustani** rather than Hindi had been the lingua franca of much of Northern India. Hindustani was a mixture of Hindi (written in Devanagari script and drawing heavily on Sanskrit) and Urdu (written in modified Arabic script and drawing on Persian and Arabic). It could be written using either Hindi or Urdu script. Both Gandhi and Nehru had supported Hindustani as a bridge between north and south India, the Hindus and the Muslims. But partition more or less laid to rest. Hindi, on the other hand, began to turn increasingly Sanskritized.

The extreme advocates of Hindi not only wanted it to be the national language but also that it should replace English for official purposes in the central government. They also held that Hindi should soon replace English in the provincial governments. The militancy of the proponents of Hindi roused the ire of South Indian representatives. The latter bitterly opposed making Hindi the national language. Besides, there was a group of moderate Hindi speakers who believed that Hindi might be declared the 'official' language, but that it should

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only be the first among equals. Other regional languages should also have national status. English, they held, should be replaced very slowly and cautiously.



Figure 13.1.3: Purshottam Das Tandon, Congress leader and prominent advocate of Hindi in the Constituent assembly

Source:

<http://www.timescontent.com/tss/showcase/previewbuy/126030/Entertainment/Purshottam-Das-Tandon.html>

After months of heated debate, the moderates, led by Nehru, managed to get a majority to adopt most of their suggestions. Hindi in the Devanagari script would be the 'official language'. However, for an initial period of 15 years English would continue to serve as the official language. After this period Hindi would replace English, unless the Parliament legislated otherwise. The provincial governments could conduct their affairs either in one of their own languages or in English. Further, the major regional languages were listed in a schedule to the constitution. This compromise enabled the Assembly to avoid a deadlock on the emotive issue of language.

The Constituent assembly completed its task in two years, eleven months and seventeen days. Given the size of the constitution and the gravity of the issues under consideration, this was celerity itself. Historical judgments on this unprecedented exercise have mostly been favourable. Granville Austin, for instance, sees the constitution as a 'seamless web', which smoothly brought together the strands of democracy, social reform, and unity. Other scholars have questioned this assessment. Sunil Khilnani, for instance, argues that the makers of the constitution were oblivious of the ways in which character of representation, rights and equality might change with time; and in the process change the character of Indian democracy itself.

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The makers of the constitution themselves seem to have regarded their task as just the beginning of a long journey. As Ambedkar observed in his brilliant closing address, the principles embodied in the constitution were the views of his generation, open to modification in the light of the experience of succeeding generations. This was the reason why relatively simple procedures had been introduced for amending the constitution. Working the constitution was the task of the Indian people.

“On the 26th of January 1950,” Ambedkar said in peroration, “we are going to enter into a life of contradictions. In politics we will have equality and in social and economic life we will have inequality. In politics we will be recognizing the principle of one man one vote and one vote one value. In our social and economic life, we shall, by reason of our social and economic structure, continue to deny the principle of one man one value. How long shall we continue to live this life of contradictions? How long shall we continue to deny equality in our social and economic life? If we continue to deny it for long, we will do so only by putting our political democracy in peril. We must remove this contradiction at the earliest possible moment or else those who suffer from inequality will blow up the structure of political democracy which this Assembly has laboriously built up.”

Summary

- After independence, several layers of land reforms were initiated in India with deep-rooted social implications.
- The first round of land reform was aimed at abolishing landed intermediaries.
- The second round aimed at essentially securing tenurial security for the tenants.
- In another crucial intervention, the Indian government aimed at imposing an upper limit for individual land holdings.
- Various phases of land reforms ushered in key changes into the agrarian structure.
- The process of the making of a modern nation state was also critically connected with the foundation of the Indian Planning commission which led the way in developing India within the Nehruvian socialist framework.

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13.1 : Exercises

Essay questions

- 1) Why did the constituent assembly decide against adopting the 'Gandhian' model?
- 2) How convincing is the argument that the fundamental rights enshrined in the constitution reflected the Congress Party's longstanding attachment to democracy and liberalism?
- 3) Why did language become such a contentious issue in the constituent assembly?
- 4) Why did the Congress Party and the Muslim League adopt opposing stances on the rights of princely states to opt for independence?
- 5) The Indian government had all along planned for closer integration of the princely states that had acceded only on three subjects. Would you agree?
- 6) Why did the Indian government agree to hold a plebiscite in Kashmir?

Objective questions

Question Number	Type of question	LOD
1	True or False	1

Question

- a) The Drafting Committee of the Constituent Assembly was chaired by Rajendra Prasad.
- b) The Objectives Resolution was moved by Jawaharlal Nehru.
- c) The office of the President was modelled on the American system.
- d) Directive Principles of State Policy were designed to be enforced by the courts.
- e) The ruler of Travancore initially wished to stay independent after 15 August 1947.
- f) By late 1948, Indian leaders were open to the idea of partitioning Kashmir.

Correct Answer / Option(s)	a) False b) True c) False d) False e) True f) True
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Justification/ Feedback for the correct answer

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- a) It was chaired by Ambedkar.
- b) It was the overarching resolution of the constituent assembly and hence moved by the prime minister designate.
- c) In the American system the President is the head of the government.
- d) After much debate, it was decided that these would not be enforceable by courts.
- e) He changed course only after a popular protest forced his and his chief minister's hand.
- f) By this time the Indian leaders felt that the plebiscite was unlikely to occur, hence partition was seen as a practical option.

Resource/Hints/Feedback for the wrong answer

Reviewer's Comment:

Question Number	Type of question	LOD
2	Multiple choice question	2

Question

Elections to the Constituent Assembly were held in:

- a) January 1946
- b) November 1945
- c) July 1946
- d) September 1946

Correct Answer / Option(s)

c)

Justification/ Feedback for the correct answer

The constituent assembly was elected indirectly by members of the provincial legislative assemblies.

Resource/Hints/Feedback for the wrong answer

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Reviewer's Comment:

Question Number	Type of question	LOD
3	Multiple choice question	2

Question

The Constituent Assembly adopted which of the following models for electing the lower house of the parliament:

- a) British
- b) Swiss
- c) American
- d) A combination of British and American

Correct Answer / Option(s) a)

Justification/ Feedback for the correct answer

Direct election to the lower house by adult franchise is British system.

Resource/Hints/Feedback for the wrong answer

Reviewer's Comment:

Question Number	Type of question	LOD
4	Multiple choice question	2

Question

The Instrument of Accession gave the Union government the power to act in which of the following areas:

- a) defence, foreign affairs, finance
- b) foreign affairs, communications, finance

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c) defence, foreign affairs, communications, finance

d) defence, foreign affairs, communications

Correct Answer / Option(s)

d)

Justification/ Feedback for the correct answer

These were the only three areas where the central government had an undeniable role. Hence the accession was designed on these subjects.

Resource/Hints/Feedback for the wrong answer

Reviewer's Comment:

Question Number	Type of question	LOD
5	Multiple choice question	2

Question

In which of the following states was a referendum on accession held:

a) Junagadh

b) Hyderabad

c) Junagadh and Hyderabad

d) Bhopal

Correct Answer / Option(s)

a)

Justification/ Feedback for the correct answer

Junagadh was the only state where a referendum was held after partition- in February 1948.

Resource/Hints/Feedback for the wrong answer

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Glossary

Accession: a legal term referring to the formal association of a princely state to the central government

Constituent Assembly: the body elected in July 1946 to give a constitution for independent India

Fundamental Rights: a list of rights provided in the constitution, including the Right of Equality, the Right of Freedom, the Right against Exploitation, the Right to Freedom of Religion, Cultural and Educational Rights, the Right to Property, and the Right to Constitutional Remedies

Gandhian constitution: a system inspired by Gandhi's thinking, designed to be decentralized and based on the village as the basic unit

Hindustani: a mixture of Hindi and Urdu. It could be written using either Hindi script (Devanagari) or Urdu script (modified Arabic)

Paramountcy: an ill-defined term, it included among other things a system of British 'Residents' in princely states, British control over the states' foreign affairs, and regulation of succession within such states

Separate electorates: a system of divided representation, whereby a number of seats for each community would be fixed, and people belonging to a religious community could only vote for candidates from their community

Standstill agreement: an agreement to continue with existing arrangements till the question of accession was decided

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