

The Making of Independent India's Constitution

Revisiting Indian Constitution

To begin with read chapter 13 in class VIII Social Studies textbook and complete the following tasks regarding the Indian Constitution:

- Task 1) Some significant contributors to the Indian Constitution were: _____; _____; _____; _____
- Task 2) What are the basic ideals of Indian Constitution as reflected in its Preamble?
- Task 3) Read the following two preambles along with the Indian Preamble and see how they are similar or different. Remember each Constitution also reflects political events around the making of their nations. Try to relate to the political events that may have influenced the thought that went into the Constitution. (*You can re-read the background of Japan in chapter 13 and look at page 234 to understand the background of Nepal.*)

Nepal Interim Constitution Preamble 2007

WE, THE SOVEREIGNTY AND STATE AUTHORITY INHERENT PEOPLE OF NEPAL, Respecting the people's mandate expressed in favour of democracy, peace and progression through historical struggles and people's movements launched by the people of Nepal at various times since before 2007 (1951) to till the date; Pledging to accomplish the progressive restructuring of the State in order to solve the problems existing in the country relating to class, ethnicity, region and gender;

Expressing our full commitment to democratic values and norms including the competitive multi-party democratic system of governance, civil liberties, fundamental rights, human rights, adult franchise, periodic elections, complete freedom of the press, independent judiciary and concepts of the rule of law;

Guarantee the basic rights of the people of Nepal to make a constitution for them on their own and to take part in a free and fair election to the Constituent Assembly in an environment without fear;

Putting democracy, peace, prosperity, progressive socio-economic transformation and sovereignty, integrity, independence and prestige of the country in the center;

Declaring Nepal as a federal, democratic, republican state upon duly abolishing the monarchy;

HEREBY DECLARE, with a view to institutionalising the achievements made through the revolutions and movements till now, the promulgation of this Interim Constitution of Nepal 2063 (2007), which has been made through a political understanding and to be in force until a new Constitution is framed by the Constituent Assembly.

Japan Constitution Preamble 1946

We, the Japanese people, acting through our duly elected representatives in the National Diet, determined that we shall secure for ourselves and our posterity the fruits of peaceful cooperation with all nations and the blessings of liberty throughout this land, and resolved that never again shall we be visited with the horrors of war through the action of government, do proclaim that sovereign power resides with the people and do firmly establish this Constitution. Government is a sacred trust of the people, the authority for which is derived from the people, the powers of which are exercised by the representatives of the people, and the benefits of which are enjoyed by the people. This is a universal principle of mankind upon which this Constitution is founded. We reject and revoke all constitutions, laws, ordinances, and rescripts in conflict herewith. We, the Japanese people, desire peace for all time and are deeply conscious of the high ideals controlling human relationship and we have determined to preserve our security and existence, trusting in the justice and faith of the peace-loving peoples of the world. We desire to occupy an honoured place in an international society striving for the preservation of peace, and the banishment of tyranny and slavery, oppression and intolerance for all time from the earth. We recognise that all people of the world have the right to live in peace, free from fear and want. We believe that no nation is responsible to itself alone, but that laws of political morality are universal; and that obedience to such laws is incumbent upon all nations who would sustain their own sovereignty and justify their sovereign relationship with other nations. We, the Japanese people, Pledge our national honour to accomplish these high ideals and purposes with all our resources.

- What do you think is similar or different in the political context of these nations? What were the immediate prior events? Who were the previous rulers?
- Which Preamble refers to the word gender?
- Which Preamble reflects the desire for peace?

- How are people movements reflected in the Preamble?
- What is similar or different for Preambles in their reflection of the past?
- What types of promises are made up about the future society in the three countries?
- What promises are made about the nature of political system?
- What promises are made to the citizen of these nations?

Background of Nepal

In 1959, the first elections were held in Nepal under a new constitution issued by King Mahendra. However, within a year the elected government was overturned, and substantial power reverted back to the King. The continuous peoples struggle for a democratic representative government finally led to elections in 1991. In these elections, the Congress party of Nepal came to power, with a huge majority. The Communist party was however not satisfied with this system of government in which the monarchy still had a dominant say. They wanted a complete overhaul of the political system and an abolition of monarchy. The movement transformed itself into an armed conflict between the pro and anti-monarchy groups. This struggle culminated in 2007 with the abolition of monarchy.

Reading debates

The Constitution of any country provides a certain basic structure and principles according to which its state would function and future of the nation would be built. Thus a Constitution has a double purpose: a) outlining the role and rights of citizens and structure and powers of the government and its organs like executive, legislature, judiciary, etc; b) indicating the nature of future society which has to be built by the joint efforts of the state and the society. The Constitution thus essentially maps the framework for the future highlighting how the current situation needs to be modified to move forward.

In Nepal the process of making of Constitution began in 2007 and it was still not completed in 2014. This was largely because different political trends of Nepal could not come to a common agreement on many basic issues. The process of making a Constitution is thus a process of debate, discussion, ironing out differences and working out a framework acceptable to all conflicting opinions. Let us see how this happened in India.

The making of Indian Constitution

The Constitution of India was prepared and adopted by the Constituent Assembly. This was the culmination of the long struggle of the Indian people for freedom from British colonial rule. As the British government decided to give freedom to the people of India, a new Constitution was needed by which the people of India can rule themselves and also set long term objectives for themselves.

For this purpose Constituent Assembly was formed in 1946 following the election to the provincial assemblies. The Constituent Assembly members were elected indirectly by

the members of the provincial assemblies. The Cabinet Mission appointed in 1946 allotted seats to each Province and each Princely State or group of States. Accordingly, Provinces or areas under direct British rule elected 292 members and all Princely States together elected 93 members. The plan also guaranteed that

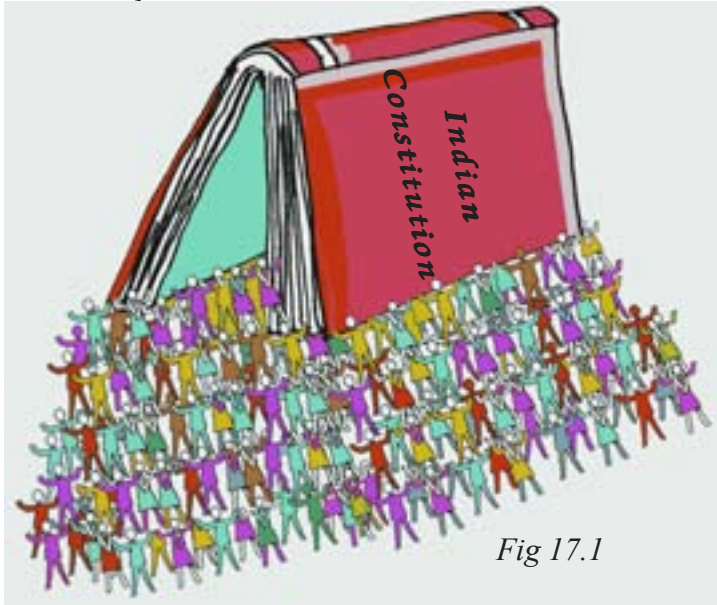


Fig 17.1

seats in each Province had members three main communities, Muslims, Sikhs and general, in proportion to their respective populations. The Council also ensured that 26 members from Scheduled Castes are represented in the Assembly. While elections were held in Provincial legislative houses, representatives of Princely States were identified through consultation. In all it had only nine women members. The Indian National Congress was the single largest party with 69% of all seats

followed by the Muslim League which had most of the seats reserved for Muslims. In the beginning it had members from all parts of British India and after 14 August 1947, as the country was partitioned between India and Pakistan, the members from Pakistan formed a separate Constituent Assembly for Pakistan.

As you can see the Constituent Assembly (CA) was not elected through universal adult franchise, but indirectly and as such did not represent all sections of Indian society. Only about 10% of the population could vote in the provincial elections then. In fact the members from the princely states were not elected at all and were decided through consultation with the concerned princely states. Such a decision was taken keeping in view the special situation that had arisen due to intense political activity on the eve of freedom and mounting tensions among the people. The princely states had not yet agreed to become part of the Indian Union and many of them



Fig 17.2 : Discuss the idea of equality and justice in this picture.

hoped to remain independent kingdoms. That is why their representatives were asked to join the Assembly. In the beginning the Muslim League members did not attend the meetings though they joined it later.

Even though the C A was not strictly representative, it took

great care to consider all shades of opinion and give wide publicity to its own work so that all kinds of people could provide their inputs through letters, writing in the newspapers, and other ways. Jawaharlal Nehru made this significant statement in the Assembly on 13th December, 1946:

“... the future of India that we have envisaged is not confined to any group or



Fig 17.3

section or province or other, but it comprises all the four hundred million people of India... there is a duty cast upon us and that is to bear the absentees in mind, to remember always that 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 millions that comprise India. ...it seems to me, the time has come when we should, so far as we are capable of it, rise above our 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 worthy of India as a whole and should be such that the world should recognise that we have functioned, as we should have functioned, in this high adventure.”

A ‘Drafting Committee’ was set up under the chairmanship of Dr. B. R. Ambedkar and its task was to prepare the final draft taking in account all view points. Various important aspects of the Constitution were discussed in great depth and the Assembly gave broad directions on them. The final draft was presented before the CA for discussion and approval. The Constitution was finally adopted by the CA on 26th November 1949 and it came into force on 26th January 1950. In the following section we will read about some of the important debates in the CA in order to understand how some of these important provisions of Indian Constitution were arrived at.

- The Constitution of India begins with the statement, “We the people of India...”. Do you think this claim to represent all the people of India was justified?
- Do you think all people of India can participate in the formulation of Constitution for the entire country? Was it important for all people to participate actively in this process or could it have been left to some wise people?
- If a Constitution for the entire school had to be drafted, who all should be involved in it and how?

Reading Constituent Assembly Debates

Dr. BR Ambedkar presented the draft of the Constitution before the CA on 1948. Read the extracts from his speech. These are recorded in the “Proceedings of CA of India, [Certain parts of the speech have been shortened and are marked with ...]

Dr. Ambedkar begins with the process by which the draft was prepared. As the Assembly was not elected by universal suffrage, see the steps taken to ensure maximum participation of members and also general public.

Thursday, the 4th November 1948 DRAFT CONSTITUTION

The Honourable Dr. B. R. Ambedkar ...: Mr. President, Sir, I introduce the Draft Constitution as settled by the Drafting Committee and move that it be taken into consideration.

The Drafting Committee was in effect charged with the duty of preparing a Constitution in accordance with the decisions of the Constituent Assembly, on the reports made by the various Committees appointed by it such as the Union Powers Committee, the Union Constitution Committee, the Provincial Constitution Committee and the Advisory Committee on Fundamental Rights, Minorities, Tribal Areas, etc. The Constituent Assembly had also directed that in certain matters the provisions contained in the Government of India Act, 1935, should be followed. ...I hope the Drafting Committee will be found to have faithfully carried out the directions given to it.

The Draft Constitution... is a formidable document. It contains 315 Articles

- Drafting Committee was appointed roughly ____ days after the Independence.
- The Assembly first appointed special committees on specific issues like, ____, ____, and ____.
- The reports of these committees were discussed by the ____ and key decisions were taken by it.
- The ____ Committee headed by Dr. Ambedkar had to incorporate these decisions.
- The Draft also drew upon provisions of the ____ passed by the British Government.
- It was then made available to public for ____ months so that they could criticise and give their suggestions on it.
- In the Draft Constitution there were ____ Articles and ____ Schedules.

and 8 Schedules. It must be admitted that the Constitution of no country could be found to be so bulky as the Draft Constitution.

The Draft Constitution has been before the public for eight months. During this long time friends, critics and adversaries have had more than sufficient time to express their reactions to the provisions contained in it.

Now we will see how our Constitution draws from the experiences of other nations with regard to political organisation. In this presentation

Dr. B.R. Ambedkar, the chairperson highlights the process of borrowing from other Constitutions. As you read through them, try to identify the institutional structure for parliamentary government provided in the draft. Remember this presentation is being made after one year of attaining Independence.

Parliamentary system

“A student of Constitutional Law, if a copy of a Constitution is placed in his hands is sure to ask two questions. Firstly, what is the form of Government that is envisaged in the Constitution; and secondly, what is the form of the Constitution? ...I will begin with the first of the two questions.

“In the Draft Constitution there is placed at the head of the Indian Union a functionary who is called the President of the Union. The title of this functionary reminds one of the President of the United States. But beyond identity of names there is nothing in common between the form of Government prevalent in America and the form of Government proposed under the Draft Constitution. The American form of Government is called the Presidential system of Government. What the Draft Constitution proposes is the Parliamentary system. The two are fundamentally different.

“Under the Presidential system of America, the President is the Chief head of the Executive. The administration is vested in him. Under the Draft Constitution the President occupies the same position as the King under the English Constitution. He is the head of the State but not of the Executive. He represents the Nation but does not rule the Nation. He is the symbol of the nation. His place in the administration is that of a ceremonial device or a seal by which the nation's decisions are made known. Under the American Constitution the President has under him Secretaries in charge of different Departments. In like manner the President of the Indian Union will have under him Ministers in charge of different Departments of administration. Here again there is a fundamental difference between the two. The President of the United States is not bound to accept any advice tendered to him by any of his Secretaries. The President of the Indian Union will be generally bound by the advice of his Ministers. He can do nothing contrary to their advice nor can he do any thing without their advice.



Fig 7.4: Dr. BR Ambedkar

- The powers given to Indian President are more similar to _____ of _____ than _____ of _____.
- Constituent Assembly visualised that the Indian President follows the advice of _____.
- What do you think was the difference between the position of the British King and the President of India?

The President of the United States can dismiss any Secretary at any time. The President of the Indian Union has no power to do so long as his Ministers command a majority in Parliament. ...”

Federalism

“Two principal forms of the Constitution are known to history - one is called Unitary and the other Federal. The two essential characteristics of a Unitary Constitution are: (1) the supremacy of the Central Polity [the word polity means system of government or political organisation] and (2) the absence of subsidiary Sovereign polities. Contrariwise, a Federal Constitution is marked: (1) by the existence of a Central polity and subsidiary polities side by side, and (2) by each being sovereign in the field assigned to it. In other words, Federation means the establishment of a Dual Polity [dual system of government central and state]. The Draft Constitution is, Federal Constitution inasmuch as it establishes what may be called a Dual Polity. This Dual Polity under the proposed Constitution will consist of the Union at the Centre and the States at the periphery each endowed with sovereign powers to be exercised in the field assigned to them respectively by the Constitution.

“This dual polity resembles the American Constitution. The American polity is also a dual polity, one of it is known as the Federal Government and the other States which correspond respectively to the Union Government and the State

Governments of the Draft Constitution. Under the American Constitution the Federal Government is not a mere league of the States nor are the States administrative units or agencies of the Federal Government. In the same way the Indian Constitution proposed in the Draft Constitution is not a league of States nor are the States administrative units or agencies of the Union Government. Here, however, the similarities between the Indian and the American Constitution come to an end. The differences that distinguish them are more fundamental and glaring than the similarities between the two. ...

- Under federal polity there are more than one government and in the Indian context we have them at _____ and _____ levels. You belong to _____ state while you belong to _____ nation.
- Which type of Constitution gives more powers to the governments at the Centre?
- Which type of Constitution gives definite powers to both Central and State governments?
- In what ways Indian states are not “administrative units or agencies of the Union Government”?
- Why do you think the framers of the Indian Constitution rejected the idea of dual citizenship (of India and of the state)?

“The proposed Indian Constitution is a dual polity with a single citizenship. There is only one citizenship for the whole of India. It is Indian citizenship. There is no State citizenship. Every Indian has the same rights of citizenship, no matter in what State he resides. ...

“There is another special feature of the proposed Indian Federation which distinguishes it from other federations. A Federation being a dual polity based on divided authority with separate legislative, executive and judicial powers for each of the two polities is bound to produce diversity in laws, in administration and in judicial protection. Up to a certain point this diversity does not matter. It may be welcomed as being an attempt to accommodate the powers of Government to local needs and local circumstances. But this very diversity when it goes beyond a certain point is capable of producing chaos and has produced chaos in many federal States. One has only to imagine twenty different laws - if we have twenty States in the Union - of marriage, of divorce, of inheritance of property, family relations, contracts, torts, crimes, weights and measures, of bills and cheques, banking and commerce, of procedures for obtaining justice and in the standards and methods of administration. Such a state of affairs not only weakens the State but becomes intolerant to the citizen who moves from State to State only to find that what is lawful in one State is not lawful in another. The Draft Constitution has sought to forge means and methods whereby India will have Federation and at the same time will have uniformity in all basic matters which are essential to maintain the unity of the country. The means adopted by the Draft Constitution are three

- (1) a single judiciary,
- (2) uniformity - in fundamental laws, civil and criminal, and
- (3) a common All-India Civil Service to man important posts.

“A dual judiciary, a duality of legal codes and a duality of civil services, as I said, are the logical consequences of a dual polity which is inherent in a federation. In the U. S. A. the Federal Judiciary and the State Judiciary are separate and independent of each other. The Indian Federation though a Dual Polity has no Dual Judiciary at all. The High Courts and the Supreme Court form one single integrated Judiciary having jurisdiction and providing remedies in all cases arising under the Constitutional law, the civil law or the criminal law. This is done to eliminate all diversity in all remedial procedures. Canada is the only country which furnishes a close parallel. The Australian system is only an approximation. [Explanation: In some federal countries the Supreme cannot over rule the judgements of the State courts relating to laws of the State. However in India the Supreme Court can hear appeals against the decision of any court and give judgement.]



Fig 17.5 : An Aerial view of Republic Day from 1950's

“Care is taken to eliminate all diversity from laws which are at the basis of civic and corporate life. The great Codes of Civil & Criminal Laws, such as the Civil Procedure Code, Penal Code, the Criminal Procedure Code, the Evidence Act, Transfer of Property Act, Laws

of Marriage, Divorce, and Inheritance, are either placed in the Concurrent List [or central list] so that the necessary uniformity can always be preserved without impairing the federal system.” [Explanation: The chapters on which law can be made are divided into Central list, State list, and Concurrent list. Only the Central government can make laws on the Central list and only the State Government can make the laws on the State list. Both the Central and the State Government can make laws on the Concurrent list. However in case where a State makes a law contradictory only the Central law will be valid.]

“The dual polity which is inherent in a federal system as I said is followed in all federations by a dual service. In all Federations there is a Federal Civil Service and a State Civil Service. The Indian Federation though a Dual Polity will have a Dual Service but with one exception. It is recognised that in every country there are certain posts in its administrative set up which might be called strategic from the point of view of maintaining the standard of administration. It may not be easy to spot such posts in a large and complicated machinery of administration. But there can be no doubt that the standard of administration depends upon the calibre of the Civil Servants who are appointed to these strategic posts. Fortunately for us we have inherited from the past system of administration which is common to the whole of the country and we know what these strategic posts are. The Constitution provides that without depriving the States of their right to form their own Civil Services there shall be an All India service recruited on an All- India basis with common qualifications, with uniform scale of pay and the members of which alone could be appointed to these strategic posts throughout the Union.” [Ambedkar is referring here to the creation of the Public

Service Commission (IAS, IPS) it is through with most important officials are recruited both for the State and the Central Government.]

- Can you point out the main differences between Indian federalism and American federalism?
- Does the Indian Constitution allow the states to have their own civil servants (officers)?
- Are all officials of a state from the state's civil services?
- In America the judiciary of the Central Government and the judiciary of the states are distinct and separate. In India we have a judiciary in the centre and the states – Explain.

Examples of critiquing in CA debates

There were many criticisms of the draft Constitution – some like Maulana Hasrat Mohani argued that Constitution is merely a copy of the 1935 Act. It was reminded that during the freedom movement when Cabinet Mission visited India, political groups like INC demanded Universal Adult Suffrage, and opposed 1935 Act. People like Damodar Swarup Seth a socialist pointed out that draft does not adapt from more recent Constitutions of the time like Soviet Union and ignores the centrality of villages in the Indian context. D S Seth also argued that members of the CA were not elected by adult franchise. Let us read them.

D S Seth: “Sir, our Indian Republic should have been a Union - a Union of small autonomous republics. ...The Union that would have been formed in our country in this way, would not have required so much emphasis on centralisation as our learned Dr. Ambedkar has laid. Centralisation is a good thing and is useful at times but we forget that all through his life Mahatma Gandhi emphasised the fact that too much centralisation of power makes that power totalitarian and takes it towards fascist ideals. The only method of safeguarding against totalitarianism and fascism is that power should be decentralised to the greatest extent. We would have thus brought about such a centralisation of power through welding of heart as could not be matched anywhere in the world. But the natural consequence of centralising power by law will be that our country which has all along opposed Fascism - even today we claim to strongly oppose it - will gradually move towards Fascism. ...”

- How were the ideas of Seth and Draft Committee similar or different?
- Find out what form of autonomy is now been made available to villages after the 73rd amendment of the Constitution?

Example of debate on Fundamental Rights

In the context of right to equality it was decided to legally put an end to the practice of ‘untouchability’. Let us read a part of the discussion on Fundamental Rights to understand the different view points.

Tuesday, the 29th April, 1947

Mr. President (The Hon’ble Dr. Rajendra Prasad) in the Chair.

Mr. Promatha Ranjan Thakur: Sir, ... [A] point to which I wish to refer is in relation to clause 6 regarding ‘untouchability’ where it is said that-

“Untouchability in any form is abolished and the imposition of any disability only on that account shall be an offence.”

I do not understand how you can abolish untouchability without abolishing the very caste system. Untouchability is nothing but the symptom of the disease, namely, the caste system... Unless we can do away with the caste system altogether there is no use tinkering with the problem of untouchability superficially.

S. C. Banerjee: Mr. President, the word ‘untouchability’ actually requires clarification. We have been accustomed to this word for the last 25 years, still there is a lot of confusion as to what it connotes. Sometimes it means merely taking a glass of water and sometimes it has been used in the sense of admission of ‘Harijans’ into temples, sometimes it meant inter-caste dinner, sometimes inter-caste marriage. Mahatma Gandhi who is the main exponent of ‘untouchability’, has used it in various ways and on different occasions with different meanings. So when we are going to use the word ‘untouchability’, we should be very clear in our mind as to what we really mean by it. What is the real implication of this word?

I think we should make no distinction between untouchability and caste distinction, because as Mr. Thakur has said, untouchability is merely a symptom, the root cause is caste distinction and unless and until the root cause, that is caste distinction is removed, untouchability in some form or other is bound to exist and when we are going to have an independent India, we should expect everyone to be enjoying equal social conditions.

Sri Rohini Kumar Chaudhury: ...[For] defining untouchability, it may be clearly stated that: ‘Untouchability’ means any act committed in exercise of discrimination on grounds of religion, caste or lawful vocation of life ...

Mr. K. M. Munshi: Sir, I oppose this amendment. The definition is so worded that if it is accepted, it will make any discrimination even on the ground of place of birth or caste or even sex ‘untouchability’.



The Statesman

LATE CITY EDITION



Published daily except on Sundays, public holidays, Good Friday and Christmas Day.
PUBLISHED WEEKLY FOR THE PROPRIETOR BY THE MANAGER AT NO. 11, MARKET STREET, CALCUTTA.

ISS. No. 419

CALCUTTA, THURSDAY, JANUARY 26, 1950

Price, including 25 Paise Postage, TWO ANNAS

INDIA EMERGES AS REPUBLIC TODAY



Mr. Nehru, President of the Constituent Assembly, was crowned as the first President of the Republic of India today at the Constituent Assembly in New Delhi. He is surrounded by other members of the Assembly.

Of Significance To People, Says Nehru

CALL FOR UNITY AND TOLERANCE

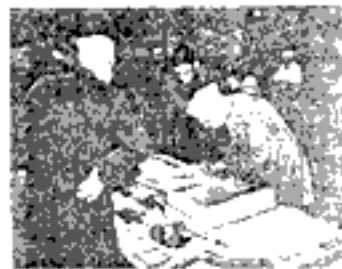
Offer Of Friendship To All Nations

NEW DELHI, JAN 26.—INDIA EMERGES TODAY AS A "SOVEREIGN DEMOCRATIC REPUBLIC" UNDER THE NEW CONSTITUTION.

The proclamation of India as a Republic will take place at a ceremony at 11.30 a.m. in the Chamber of Princes at Government House.

"Undoubtedly, Jan 26, 1950, is a day of high significance for India and the Indian people," declared Pandit Nehru, Prime Minister, in a broadcast to the people last night.

Calling upon India "to build her republican tradition on the basis of unity and tolerance and to stand for a high standard of morality and discipline and to build a spirit of freedom and independence and to stand for the welfare of all her people and to stand for the welfare of all the nations of the world."



Members of the Constituent Assembly are seen in the Chamber of Princes at Government House today.

SOEKARNO ADDRESSES INDIAN M.P.s

CONGRATULATIONS ON BIRTH OF NEW REPUBLIC

NEW DELHI, Jan 26.—The President of the Republic of Indonesia, Mr. Soekarno, addressed the members of the Constituent Assembly in New Delhi today.

Communists Expel British Managers

Reported incidents near Taino.

BURMA CHINESE WORKERS CLAIM

They are being treated as slaves.

Gunmen Kill Two Policemen

Incident in Howrah village.

Incident in Howrah Village

Two policemen were killed in an incident in Howrah village.

Incident in Howrah Village

Two policemen were killed in an incident in Howrah village.

Incident in Howrah Village

Two policemen were killed in an incident in Howrah village.

Incident in Howrah Village

Two policemen were killed in an incident in Howrah village.

Proclamation As Republic Ceremony This Morning

The Republic of India will be proclaimed at 11.30 a.m. today.

2 Of Crew Killed In Plane Crash

On way to Calcutta from Coochabhar.

On Way To Calcutta From Coochabhar

Two crew members were killed in a plane crash on the way to Calcutta from Coochabhar.

On Way To Calcutta From Coochabhar

Two crew members were killed in a plane crash on the way to Calcutta from Coochabhar.

On Way To Calcutta From Coochabhar

Two crew members were killed in a plane crash on the way to Calcutta from Coochabhar.

On Way To Calcutta From Coochabhar

Two crew members were killed in a plane crash on the way to Calcutta from Coochabhar.

On Way To Calcutta From Coochabhar

Two crew members were killed in a plane crash on the way to Calcutta from Coochabhar.

PROVINCIAL BORDERS TO BE "RATIONALIZED"

PLYMOUTH, Jan 25.—Congress of the "rationalization" of the borders of the provinces will be held in Plymouth today.

Night Curfew In Bandooing

Bandooing in the city will be strictly enforced during the night curfew.

THE REPUBLIC OF INDIA
26th January 1950

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 of opportunity, and to promote among them all FRATERNITY assuring the dignity of the individual and the unity of the Nation.

IN OUR CONSTITUENT ASSEMBLY DO HEREBY ADOPT ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

Hallmarks of quality
"REXINE" & "VYNIDE"

Years of manufacturing experience and technical know-how have produced "Rexine" and "Vynide"—the finest I.C.I. products.

Available in a wide variety of finishes, colors and textures, they are the most durable, easy-to-care-for and most economical, long-lasting covering, book-binding and all similar applications.

They are rubber-like, hardwearing, water-resistant, stain-proof and washable. The only synthetic leather that never needs to be oiled.

THE "REXINE" and "VYNIDE" are available in a wide variety of finishes, colors and textures.

Imperial Chemical Industries (India) Ltd., Calcutta Branch, Madras Branch, Bombay Branch, Coimbatore Branch.

Fig 17.6 : Newspaper report from 26th January 1950. What Items can you read on this page?

- What are the differences of opinion that are being raised in the above debate?
- If you were given the choice to participate in the debate, what solution would you suggest?
- Do you think it was a good idea to leave the term undefined in the Constitution? Give reasons for your argument.
- Do you agree with the view that the Constitution should have put an end to all aspects of the caste system instead of just ending untouchability? How do you think it could have been done?

Mr. Dharendra Nath Datta : Sir, it seems to me that whether the definition suggested by Mr. Rohini Kumar Chaudhury is accepted or not, it is necessary that there should be some definition put in. Here it is said that 'untouchability' in any form is an offence. A magistrate or a judge dealing with offences shall have to look to the definition. One magistrate will consider a particular thing to be untouchability, while another magistrate may hold a different thing to be untouchability, with the result there will be no

uniformity on the part of the magistracy in dealing with offences. It will be very difficult for the judge to decide cases.

Moreover, untouchability means different things in different areas. In Bengal, untouchability means one thing, while in other provinces, it means an entirely different thing.

Mr. President, ... I take it that the Union legislature will define the word 'untouchability' so that the courts might prescribe proper punishment.

[Eventually it was decided to leave the definition of untouchability out of the Constitution and leave it to the legislature to make appropriate laws in future.]

Constitution and 'social engineering'

The makers of Indian Constitution confronted the fact that Indian society was ridden with inequality, injustice and deprivation and was victim of colonial policies which had exploited its economy. Thus the Constitution had to facilitate social change and also development. Jawaharlal Nehru said the Constituent Assembly represents "the nation on a move throwing away the shell of its past political and possibly social structure and fashioning for itself a new garment in its own making".

The Constitution thus has many provisions facilitating social change. You have read about abolition of Untouchability. The best example of this is the provision for reservations for Scheduled Castes and Scheduled Tribes in the Constitution. The makers of the Constitution believed that the mere granting of the right to equality was not enough to overcome age-old injustices suffered by these groups or to give real meaning to their right to vote. Special Constitutional measures were required to advance their interests. Therefore the Constitution makers provided a number of special measures to protect the interests of Scheduled Castes and Scheduled Tribes

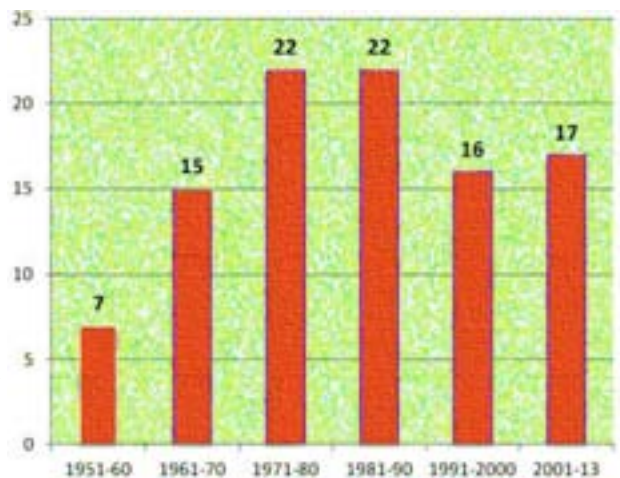
such as the reservation of seats in legislatures. The Constitution also made it possible for the government to reserve public sector jobs for these groups.

The Constitution also has in it the “Directive Principles of State Policy” which sets out main social systems before the government. One important aspects of the social engineering is the problem of the right of minorities. The sad experience of suppression of Jewish minority in Nazi Germany weighed in the minds of the Constitution makers. They decided to give special protection to the minority community so that they don’t feel marginalised by the majority. One such right is the right of religious minorities to run their own educational institutions. Such institutions may even receive government funds.

The Constitution Today

The Constitutional makers were aware that laws will have to be amended from time to time. Thus it laid down the provisions for amending the laws and the articles in the Constitution as well. Often laws can be made with approval of more than half the members in legislative houses. However, amending the articles in the Constitution can be initiated only by the Parliament. And it needs the approval of 2/3rd members in both the houses of parliament - Rajya Sabha and Lok Sabha. And some articles may be amended only with acceptance (or ratification) from the state legislature as well. It is further necessary that the President of the country also approves the new amendment bill like other laws.

Major changes in the Constitution were made during 1970s. First among them is the inclusion of two words into the Preamble of the Constitution “Secular” and “Socialist”. Many words in the preamble like “Equality”, “Liberty”, “Justice” etc emphasised the values of secularism and socialism and hence these words were added. The second major event in the life of Indian Constitution has been a Supreme Court judgement popularly known as Keshavanada Bharati case. It was argued here that certain provisions in the Indian Constitution cannot be changed under any circumstances. One among them is the Fundamental Right. In the judgement on Keshavanada Bharati case Supreme Court argued that there are certain basic principles upon which the nation continues to exist. While there have been different



Graph 1 : Since the Constitution was adopted on 26th January 1950 till 2013 nearly 99 amendments were made.

- What are the examples and explanations you can identify with basic features of Indian Constitution?

opinion on what constitutes the basic principles across judges a common listing could include the following: Form of the government; federal character; supremacy of the Constitution; sovereignty of the nation; provisions for justice and welfare state etc.

Key words

Drafting committee	Constituent Assembly	Preamble
Concurrent list	Unitary and Federal principles	Citizenship
Presidential and Parliamentary system		Amendment

Improve your learning

1. Find the odd one out:
 - Indian Constitution adopts from experiences of freedom struggle
 - Indian Constitution adopts from already existing constitutions
 - Indian Constitution has remained the same since its drafting
 - Indian Constitution provides principles and provisions for ruling the country
2. Correct the false statements:
 - There was unanimity of opinion on all provisions during CA debates
 - The makers of Constitution represented only certain regions of the country
 - Constitution provides certain provisions to amend articles in it
 - Supreme Court of India has said that basic features of Constitution may also be amended
3. Describe the unitary and federal principles of Indian government as discussed in the CA debates.
4. How does the Constitution reflect the political events of the time? Draw from previous chapters on freedom struggle.
5. What difference would it have made to the making of our Constitution if the Assembly had been elected through universal adult franchise?
6. Write a short note on basic principles of Indian Constitution.
7. How has the Constitution defined and changed political institutions in the country?
8. While Constitution provides basic principles it is the engagement of people with the system that brings in social change. Do you agree with this statement, give reasons.