

**INDIA'S  
CHARTER  
OF  
FREEDOM**



**AN ACCOUNT OF IMPORTANT  
PROVISIONS OF THE CONSTITUTION  
ALREADY AGREED TO BY THE  
CONSTITUENT ASSEMBLY OF INDIA**

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# 1. INTRODUCTORY

## EVOLUTION OF THE CONSTITUENT ASSEMBLY

IN 1922 Mahatma Gandhi first conceived the idea of a Constituent Assembly elected by the people. He observed, "Swaraj will not be a free gift of the British Parliament, it will be a declaration of India's full self-expression. That it will be expressed through an Act of Parliament is true but it will be merely a courteous ratification of the declared wish of the people of India even as it was in the case of the Union of South Africa." Nevertheless it was not until 1935 that the idea was officially and seriously put forward by the Indian National Congress. "The National Congress," wrote Pandit Jawaharlal Nehru in January 1938, "stands for independence and a democratic state. It has proposed that the constitution of a free India must be framed, without outside interference, by a Constituent Assembly elected on the basis of an adult franchise. That is the democratic way and there is no other way short of revolution which can bring the needed result. An Assembly so elected will represent the people as a whole and will be far more interested in the economic and social problems of the masses than in the petty communal issues which affect small groups. Thus it will solve without much difficulty the communal and other like problems."

Till World War II, the British Government resisted India's demand for a Constituent Assembly. But the war and the international situation created circumstances which opened the eyes even of the Churchill Government. The Cripps Plan sought to set up immediately upon the cessation of hostilities an elected body in order to frame a new constitution for the country. This plan, however, proved abortive. On March 15, 1946, Mr. Attlee, the Labour Prime Minister, declared in the House of Commons, "Is it any wonder that today India claims as a nation of 400 million people that has twice sent her sons to die for freedom that she should herself have freedom to decide her own destiny? What form of government is to replace the present regime is for India to decide; but our desire is to help her to set up forthwith the machinery for making that decision."

#### BORN WITH LIMITATIONS

The outcome was the present Constituent Assembly set up in 1946 according to the Cabinet Mission Plan. It was not a sovereign body. "it was born with limitations" both in respect of basic principles and procedure. Moreover, it was subject to the final authority of Parliament.

Notwithstanding these adverse conditions, the Congress agreed to join the Constituent Assembly. The Muslim League, on the other hand, refused to do the same despite the statement of December 6, which conceded

practically everything the League wanted. It fell back upon its original stand, according to which the "Muslim nation" would never participate in any single constitution-making machinery. It demanded two separate constitution-making bodies for the peoples of Pakistan and Hindustan.

-- The deadlock persisted till the June 3 Plan brought about the partition of the country.

#### A SOVEREIGN CONSTITUENT ASSEMBLY

The Indian Independence Act scrapped the Cabinet Mission Plan and established the sovereign character of the Constituent Assembly. On August 14, 1947, it re-assembled to assume power for the government of India.

#### SHAPING OF THE CONSTITUTION

In the first session of the sovereign Constituent Assembly of India, its President, Dr. Rajendra Prasad, spoke of a classless society for India. It was to be a co-operative commonwealth, the making of whose constitution was the supreme task of that Assembly. The foundation of its constitutional structure was laid by the Objectives Resolution which was moved by Pandit Jawaharlal Nehru. It said:

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

Wherein 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 attain its rightful and honoured place in the world and make its full and willing contribution to the promotion of world peace and the welfare of mankind."

The bricks and mortar of the structure were provided by the reports of the Union Powers Committee, the Union Constitution Committee, the Provincial Constitution Committee, the Advisory Committee on Minorities, Fundamental Rights, etc., Committees on Chief Commissioners and Financial Relations between the Union and the States, and the Advisory Committee on Tribal Areas. But the final shape and the form were given by the Drafting Committee with Dr. Ambedkar as Chairman. The Draft Constitution, fashioned after eight months' labour, was considered clause by clause by the Constituent Assembly in its last session and was amended in the light of criticism. Already 69 articles, covering such important items as Fundamental Rights, the Abolition of Untouch-

ability, Directive Principles of State Policy, Adult Franchise and Legislatures and the Union Executive have been adopted.

### NATIONAL FLAG

The Constituent Assembly has also given to the nation a national standard and emblem. On July 22, 1947, the Assembly adopted the Tricolour with the Asokan Chakra as India's flag. This flag, as Pandit Jawaharlal Nehru put it, "is not a Flag of an Empire, not a Flag of Imperialism, but a Flag of Freedom, not only for ourselves but a symbol of freedom to all people who may see it."

It was in keeping with India's tradition that this symbol of freedom was presented to the sovereign Constituent Assembly by a woman, Shrimati Hansa Mehta, on behalf of the women of India.

## 2. SOME ASPECTS OF THE CONSTITUTION

### A COMPREHENSIVE DOCUMENT

**T**HE Draft Constitution of India is a comprehensive document. Among others it deals with the following: (1) the structure of the government, (2) the function and the relationship between the various organs, (3) citizenship, (4) fundamental rights, (5) directive principles of state policy, (6) the services, (7) the federal judicature and the High Courts, and (8) various other matters of basic importance.

### SOURCES

The framers of the Constitution have drawn wisely upon the mature experience of the democratic countries. They have thus tried to avoid the defects of other constitutions and to accept only those features from them which would suit Indian conditions. In making certain fundamental departures from the prevalent theories and practices, they have adopted provisions which besides being original avoid rigidity and legalism in coping with



emergencies in peace and war. Moreover, they have given the Constitution a national character inasmuch as the *panchayats*, the most valuable of the surviving democratic institutions of ancient India, have been found a place in the country's constitutional structure.\*

#### POPULAR SOVEREIGNTY

The Draft Constitution seeks to enshrine the sovereignty of the people and establish a constitutional government, which, according to Woodrow Wilson, is "one whose powers have been adapted to the interests of the people and maintenance of individual liberty."

The Objectives Resolution unequivocally lays down that the ultimate sovereignty, both in the Union and the units, shall rest with the people and the principle has been incorporated in the preamble of the Draft Constitution. "We the people of India," it reads, "having solemnly resolved to constitute India into a Sovereign Democratic Republic—do Hereby Adopt, Enact and Give To Ourselves This Constitution."

#### GOVERNMENT BY THE PEOPLE

The Draft Constitution envisages a democratic govern-

\* Article 31-A agreed to by the Constituent Assembly.

ment and defines India as a sovereign democratic republic. In other words, India will have a system of government in which the average citizen has direct access to the sources of authority. The right to political power thus means not only the right to vote or choose representatives but also the right to hold and be chosen for any office. For the first time in the modern history of India, the Constitution confers that right on all adult persons, that is, people who have attained the age of 21, and removes all discriminations based on birth, wealth, colour, race or sex. By a single stroke of the pen the Constitution transforms, for instance, the status of the Indian ryots who form seventy per cent. of the population. They become genuine political masters of India. By parliamentary government and universal adult franchise, the Government becomes accountable to the people and to their representatives. The head of the State has only nominal functions and acts on the advice of his ministers.

#### SECULAR STATE

In spite of the existence of various communities in India, the Draft Constitution is opposed to communal polity and contemplates a secular State for India. Equality of citizenship will be assured to all irrespective of religion, caste, colour, creed or sex. The services provided by the State will thus be distributed equally among all its citizens. Every citizen of India will be free to practise the religion of his choice. The Government will scrupulously refrain

from practising discrimination on religious grounds or from patronizing or propagating any faith. The ideal is based on the theory that a secular State deals only with the relations between man and man and not between man and God. The State will regulate the individual's behaviour only in relation to other human beings.

A minor deviation from the principle of equality is contemplated in the Draft Constitution in the case of certain special backward classes. For the next ten years, seats will thus be reserved in the legislatures for the Scheduled Castes, including Mazhabis, Ramdasis, Kabirpanthis and Sikh-Ligris.

## UNION OF STATES

Under the Draft Constitution India becomes a Union of States. This implies the indestructible nature of its unity. Though the country is divided into different States for the convenience of administration it is "an integral whole, its people a single people living under a single *imperium* derived from a single source."

The word 'States' denotes all the units whether provinces, the chief commissioners' provinces, the state unions, the centrally administered states or other Indian states. This multiplicity of units is the legacy of the British regime. Thanks, however, to the process of integration and democratization, the difference in the status, constitu-

tion and the administration of the various units, especially of the Indian States, is rapidly disappearing. India can thus look forward to becoming in the near future a union of homogeneous States.

#### REDISTRIBUTION OF UNITS\*

The authority to admit and establish the new States as well as to alter the areas or boundaries or names of the existing States is vested in Parliament, *i.e.* the Central Legislature. In this matter the President will ascertain the views of the legislature of the province or state concerned. A law contemplating to change the boundaries of the Union will not be considered an amendment to the Constitution. This provision will considerably facilitate the process of integration of the states and the ultimate shaping of rational administrative units.

#### FEDERAL STATE

India is described in the Draft Constitution as a Union of States. It is in fact a Federation and has all the characteristics of the latter, namely, (1) a written constitution, (2) a clear demarcation of powers between the units and the centre, and (3) the existence of a supreme court to

\*Articles 2-4 agreed to by the Constituent Assembly.

settle disputes between the centre and the constituent units.

The Draft Constitution thus establishes a dual polity with the "union at the centre and the states at the periphery, each endowed with sovereign power to be exercised in the field assigned to them respectively by the Constitution." The proposed Union is not a League of States, nor are the States creatures of the Union deriving their powers from it. In this respect it conforms to the American, Canadian and Australian constitutions and differs from the Constitution of Great Britain.

A modern state needs uniformity in administration and the right to direct all activities from the centre according to a single plan executed uniformly. The Draft Constitution preserves this basic unity and uniformity in administration by three things: (1) a single judiciary, (2) uniformity in fundamental, civil and criminal laws, and (3) common all-India civil services.

#### FLEXIBLE CONSTITUTION

A good constitution must be flexible enough to change in accordance with changed circumstances. It should be elastic enough to meet various eventualities without having to undergo the formal process of amendment. The Indian Constitution has all these qualities. It has avoided the difficult and complicated process of convention and

referendum and has adopted the simpler amending process instead. Elasticity is further introduced by enabling the federal structure to be converted into a unitary one in the event of an emergency. The Central Government can then assume control of all affairs of the nation and the Central Legislature can exercise legislative powers which are otherwise exclusively vested in the States. Even in peace time Parliament can legislate on any of these subjects, provided that it is declared of national importance by a resolution of the Council of States, and adopted by a two-thirds majority. The adoption of a long list of the concurrent subjects further achieves this purpose. These provisions not only make the Constitution flexible but correct unnecessary legalism, the bane of federalism.

#### DIRECTIVE PRINCIPLES OF STATE POLICY\*

The chapter dealing with directive principles of State policy is a unique feature of our Constitution. Its inclusion was found necessary in the context of the Indian situation and the only parallel that can be cited in this respect is the Constitution of the Republic of Ireland. The word directive is used to lay down certain directions to the future legislature and the executive, showing the manner in which they have to exercise their authority. They are meant to be codes of constitutional propriety which will govern the future government in relation to the

\*Articles 28—40 agreed to by the Constituent Assembly.

people. These principles are meant to be an active and imperative basis of State policy.

The expression "State," however, has a dual meaning. As a collective entity, it represents the Government and Parliament of India and the Government and the legislature of each state. In a distributive sense it implies even the village *panchayats*, district boards and other local bodies.

#### TOWARDS ECONOMIC DEMOCRACY

To make democracy real and effective, one of the directive principles enjoins that it must be accompanied by economic democracy. This means "one man, one value," although the Constitution does not prescribe any specific method to achieve this goal. What it does direct, however, is that every government, whether at the centre or in the States, should strive to bring about economic democracy. As Dr. Ambedkar puts it, "it enjoins that however adverse the circumstances may be, the Government should always endeavour to achieve this principle."

Among certain economic rights and principles of social security which the Constitution specifically intends the State to secure for its teeming millions are :

- (1) adequate means of livelihood,
- (2) fair distribution of wealth,

- (3) equal pay for equal work,
- (4) prevention of exploitation of child and adult labour,
- (5) the right to work,
- (6) to receive education including free and compulsory education for all children up to the age of 14,
- (7) public assistance in case of unemployment, old age, sickness, disability and other cases of undeserved want,
- (8) the right to a living wage,
- (9) conditions of work assuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities, and
- (10) raising the level of nutrition and the standard of living of its people and the improvement of public health.

A special emphasis is laid on the promotion of educational and economic interests of the Scheduled Castes and the scheduled tribes and other less favoured sections of the community.

The directives also incorporate other important subjects for which the progressive people in this country have been asking for a long time. Some of these are :



- 1) the organization of the village *panchayats*,
- 2) a uniform civil code for all citizens,
- 3) prohibition,
- 4) organization of agricultural and animal husbandry,
- 5) prohibition of the slaughter of cows and other useful cattle, especially milch and draught cattle and their young,
- 6) the protection, preservation and maintenance of monuments and places and objects of national and historical importance, and
- 7) the separation of the judiciary from the executive.

Consistent with the high moral traditions of the country and her yearning for world peace, the directives also provide that the foreign policy of India should promote national peace and security, maintain just and honourable relations between nations, foster respect for international law and treaty obligations in the dealings of organized peoples with one another, and encourage the settlement of international disputes by arbitration.

#### OUR RESPONSIBILITY

The new Constitution of India is a flexible constitution designed to suit all eventualities. The federal struc-

ture may thus be converted into a unitary system in the event of an emergency like war. It endeavours to translate into practice the high concept of a co-operative commonwealth, a happy blending of the ballot paper and economic democracy. At the same time the Constitution is only a mechanism. Its success will depend upon the national character and the spirit in which it is operated and the goodwill of the people working it. But the ultimate form and character of our government will also rest on our laws, principles, conventions and precedents, but more than anything else on the sense of fairplay, justice and equity displayed by the political parties and on the active and willing co-operation of the people.

"If things go wrong under the new Constitution," said Dr. Ambedkar, "the reason will not be that we had a bad constitution. What we will have to say is that man was vile."

### 3. FUNDAMENTAL RIGHTS AND THE ABOLITION OF UNTOUCHABILITY

**R**IGHTS are the groundwork of the State. They are the quality which gives to the exercise of its power a moral character. And they are natural rights in the sense that they are essential for the good life." Their inclusion in the constitution of a country makes them inviolable, commanding the respect of the people and the government alike. Being fundamental to each citizen, they are made justiciable, but some rights, which cannot be enforced in the courts, are more imperative and less violable because of their place in the Constitution. They have a great educational value and provide training in citizenship.

The theory of fundamental rights implies limited government. It aims at preventing the government and the legislature from becoming totalitarian, and in doing so it affords the individual an opportunity for self-development. But these rights are not absolute; they are subject to the limitations imposed by the State in order to secure or promote the greater interests of the community or the State.

## A CHARTER OF RIGHTS

The Indian Constitution\*, provides for all citizens individually and collectively the best fruits of democracy and those basic freedoms and conditions of life which alone make one's life significant and productive. Certain rights contained in the Constitution are declared fundamental and justiciable. All other laws which are inconsistent with them or take away or abridge these rights are null and void. The fundamental rights are classified as :

- 1) Rights of Equality
- 2) Rights Relating to Religion,
- 3) Cultural and Educational Rights, and
- 4) Rights to Constitutional Remedies.

### RIGHTS OF EQUALITY

The new Constitution postulates civic and social equality as the bedrock of Indian polity. Discriminations against any citizen on grounds of religion, race, caste, sex or place of birth is prohibited. In public employment the Constitution assures equality of opportunity for all. The only exception is the right given to the legislature to

\*Articles 7—27 agreed to by the Constituent Assembly.

prescribe in certain cases residential qualifications and to reserve some posts for backward classes, who, in the opinion of the State, are not adequately represented in the services. The definition of "backward class" has been left to the decision of the local bodies.

Another important step which the Constitution has taken towards the establishment of social equality in India is the abolition of titles, local or foreign, which created odious, artificial barriers in the past. Only military or academic distinctions will now be permitted.

#### ABOLITION OF UNTOUCHABILITY

The Constitution also puts the legal stamp on the great social revolution brought about by Mahatma Gandhi. It uplifts about 50 million untouchables of India from their ageold low social status. It lays down that "untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "untouchability" shall be an offence punishable in accordance with law." To many this single clause outlawing untouchability is more precious than all the rights of equality guaranteed under the Constitution. It puts an end to the most degrading of social inequalities that have vitiated Hindu society. Such social customs and disabilities as enforced segregation of "untouchables" at wells, in streets, schools and places of worship are declared illegal. In fact, the ban covers all forms of untouchability

specified or unspecified. Some of the prevalent social disabilities are tabooed and equality in public places is guaranteed to all people. It is provided that "No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to :

- (a) access to shops, public restaurants, hotels and places of public entertainment, or
- (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public."

With the statutory equality of status accorded to "untouchables," a new chapter of social democracy opens in India.

#### INDIVIDUAL LIBERTY

Consistent with its democratic professions, the new Constitution seeks to guarantee basic rights and freedom to all people in India. Every citizen enjoys freedom of speech and expression, the right to assemble peacefully and without arms, form associations or unions, move freely throughout the territory of India, reside and settle in any part of the territory of India, acquire, hold and dispose of property, and practise any profession or to carry on any occupation, trade or business.

These rights, however, can by no means be absolute nor are they so in practice. The Constitution enables the State to restrict these rights in the interest of public order, decency, morality, and security of State and authorizes it to impose any reasonable restrictions in the public interest.

Personal liberty and the rule of law also find their due place in the Constitution. It is provided that no person shall be convicted of any offence except for the violation of the law in force at the time of the commission of that offence. Nor will he be subject to a penalty greater than what may have been included under the existing laws. The other legal reliefs which are made available to the individual are that no person shall be prosecuted and punished for the same offence twice over and that no person accused of any offence shall be compelled to be a witness against himself. The principle of the rule of law is recognized by other provisions, namely, that no person shall be deprived of his life or personal liberty except in accordance with the procedure established by law, and that no person shall be denied equality before the law or the equal protection of the laws in the country.

The section on "Rights of Equality" also guarantees the freedom of trade and commerce throughout the territory of India and prohibits traffic in human beings and enforced labour and the employment of children in factories, mines and other hazardous employments.

## RELIGIOUS FREEDOM

True to the tradition of religious toleration and the catholicity of the Objective Resolution, India's new Constitution guarantees religious freedom to all. Subject only to public order, morality, health and some other essential provisions, all persons are equally entitled to freedom of conscience and the right to profess, practise and propagate religion freely. The right has been further guaranteed by the autonomy given to every religious denomination to manage its religious affairs and to own, acquire and administer properties for religious or charitable purposes. The Sikhs have thus the right to wear and carry *kirpans*. But certain restrictions are imposed on religious freedom in order that none may misuse religion as a political weapon or as a bulwark of social reaction. Accordingly, no one will be compelled to pay taxes for the promotion and the maintenance of any particular religious denomination or to attend religious instruction or religious worship at institutions which are either recognized by the State or receive aid out of State funds. The Constitution taboos religious instruction in all educational institutions run and maintained by the State.

## CULTURAL AND EDUCATIONAL RIGHTS

The new Constitution, as one member of the Constituent Assembly puts it, "opens a new era of the rights of the minorities." Besides, it tends to safeguard freedom of



every minority to practise its own religion, and to preserve its own culture, language and script. The term minority is used in a much wider sense than what it means technically so as to include even cultural minorities which exist in a particular locality. The main idea in ensuring cultural and educational rights, as Dr. Ambedkar explained, is to see that "if there was a cultural minority which wanted to preserve its own language and culture, the State would not by law impose upon it any other culture which might be local or otherwise." All minorities, religious or linguistic, have been given the right to establish and administer educational institutions and the State is prohibited from discriminating against any such institution in matters of granting aid. Further, no citizen is denied admission to the educational institutions maintained or aided by the State on grounds only of religion, race, caste, language or any of them. Thus, in addition to their own educational facilities, the minorities will have all other educational facilities which are enjoyed by the majority.

#### RIGHT TO CONSTITUTIONAL REMEDIES

<sup>k</sup> The provision relating to the constitutional remedies was described by Dr. Ambedkar as the "heart and soul of the whole Constitution." Rights are meaningless unless there are constitutional methods to enforce and safeguard them. The Constitution guarantees the right to every citizen to move the Supreme Court for the enforcement of all the fundamental rights. And for that purpose the

Supreme Court is given general powers to safeguard these rights as well as the power to propose particular remedies, such as *habeas corpus*, *mandamus*, etc.

The inclusion of these writs in the Constitution is a guarantee of the freedom of the individual. At present they are at the mercy of the legislature and can be scrapped at will. But after the Constitution comes into force they will become a part of the fundamental law and will not be changeable unless the Constitution is amended. Under this provision Parliament is also authorized to confer these powers on any other court to exercise them within the local limits of its jurisdiction, but the right to constitutional remedies cannot be suspended, save in case of emergency declared by the President. Parliament is, however, authorized to modify the fundamental rights in their application to the Armed Forces and is directed to pass legislation to give effect to these rights and provide punishment for acts declared to be offences under it. Laws and punishment in force at present with regard to these matters will continue to be in force until altered or repealed by Parliament. The power to make those laws and prescribe punishment for offences is for the time being vested only in Parliament and not in the Legislature of any state. This provision, Dr. Ambedkar explained, is necessary to make the fundamental rights and the punishment for their breach uniform throughout India.

## 4. ADULT FRANCHISE AND THE NEW PARLIAMENTS

**I**N the Indian Constitution\* the Central Legislature is called Parliament. It consists of the President and two Houses to be known respectively as the Council of States and the House of the People. The President is an integral part of Parliament. All bills passed by the two Houses must have his formal assent and all Acts are enforced and promulgated by him.

### COUNCIL OF STATES

Like all other federal states, the Indian Constitution envisages a bi-cameral system. The Council of States, as its name implies, will be a representative chamber of the States, the constituent units of the Indian Union. Its maximum strength is 250, that is, half that of the House of the People. Out of these, 12 members will be nominated by the President from amongst well-known per-

\*Articles 66-67 and 148-149 agreed to by the Constituent Assembly.

sonalities in the realm of arts and letters, science and social services. The rest will be representatives of the States. The allocation of seats to the representatives of the States in the Council of States will be in accordance with specific provisions.

The method of election prescribed for the Council of States is indirect. In other words, the representatives will not be elected directly by the people. Instead they will be elected by an electoral college consisting of the elected members of the legislature of a State and where it is bicameral by the elected members of its lower House only. The process of voting envisaged is the system of proportional representation by means of the single transferable vote. According to this system, although a voter must vote for only one candidate, he indicates the sequence of candidates for whom he would be willing to have his vote considered. By means of this arrangement of the transferable vote, he is reasonably assured that his vote would not be wasted. In the case of a State where there is no legislature the system is to be prescribed by Parliament.

#### HOUSE OF THE PEOPLE

It is proposed to include a provision for the reservation of seats for the Scheduled Castes. Subject to this provision, the maximum strength of the House of the People is fixed at 500 members, directly elected by the voters in the States.

## ADULT FRANCHISE

One of the outstanding features of the Indian Constitution is the provision relating to adult franchise. It is laid down that "the election of the House of the People shall be on the basis of adult suffrage; that is to say, every citizen who is not less than twenty-one years of age and is not otherwise disqualified under this Constitution or under any Act of Parliament on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice shall be entitled to be registered as a voter at such elections."

This provision which is characterized by some as the "fountain spring of democracy" makes every adult in India, male or female, a co-sharer in the Government and casts on about 188 million people the mantle of political masters. It sweeps away all the antiquated and undemocratic qualifications — property, income, status, titles, literacy, etc., which debarred 97 per cent. of the people of India under the Act of 1919 and 90 per cent. under the 1935 Act from exercising their elementary right of citizenship, namely, the right to choose a representative. The Constitution removes the notorious system of communal electorate which corroded the body politic in the past and stultified society into statutory communal compartments. It will mean that citizens in India will now vote as individuals, not as Hindus, Muslims or Christians.

## COSTITUENCIES

For the purpose of election the States are to be divided into territorial constituencies "and the number of representatives to be allotted to each such constituency shall be so determined as to ensure that there shall be not less than one representative for every 750,000 of the population and not more than one representative for every 500,000 of the population." The over-all condition is that the ratio between the number of representatives allotted to a constituency and its total population (as ascertained at the last preceding census) must be uniform throughout India.

## REDISTRIBUTION OF CONSTITUENCIES

The Constitution requires a periodical redistribution of constituencies in the House of the People and readjustment of representatives of the several States in the Council of States. The object of this course is to keep electoral units substantially equal so that each vote will count as much in one place as in the other. The Constitution directs Parliament to appoint after every census an authority to achieve that redistribution, subject to the condition that such readjustment shall not affect representation to the House of the People until the dissolution of the House existing at that time.

## THE STATE LEGISLATURE

Like the Centre the provincial legislature will consist of the Governor and the Legislative Chamber or Chambers of the province. The provinces of Madras, Bombay, the United Provinces, East Punjab, West Bengal and Bihar will have a bi-cameral legislature consisting of the Legislative Assembly and the Legislative Council and the rest of the provinces a unicameral legislature called the Legislative Assembly. The bi-cameral system has been adopted on an experimental basis on the advice of the representatives of the provinces concerned.

### LEGISLATIVE ASSEMBLY

The Legislative Assembly of a State will be elected on the basis of adult-suffrage. The total number of its members will not exceed 500 nor be less than 60, the actual strength being determined on the ratio of one to every 75,000 of the population. The exception is the autonomous districts of Assam and the constituency comprising the cantonment and municipality of Shillong where, in view of the small population, the proportion cannot be maintained. The population of a State is to be ascertained on the basis of the published figures of the last census.

The provision relating to the redistribution of the constituencies and the re-allotment of the members is

similar to that of Parliament, except that here instead of Parliament the Legislative Assembly must initiate the necessary legislation.



## 5. THE UNION EXECUTIVE

### PARLIAMENTARY GOVERNMENT

**T**HE Indian Constitution\* provides for a parliamentary form of government. Accordingly, the executive is individually and collectively responsible to the legislature in respect of all its functions and decisions and actions. The legislature controls the executive through legislation, questions, no-confidence motions as well as by controlling the purse. At general elections the common people are given an opportunity to give their verdict and elect a new parliament.

This system of government differs vitally from that of the United States of America where the President is the real executive and the Cabinet is only his shadow. Under the Indian Constitution, however, "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. His place in the administration is that of a ceremonial device on a seal by which the nation's decisions are made known."

\*Articles 41-65 agreed to by the Constituent Assembly.

The Constitution vests all executive authority of the Union, including the Supreme Command of the Defence Forces of India, and the power to grant pardon and to remit punishment or to commute the sentence of any convict, in the President and provides that it shall be exercised by him in accordance "with the Constitution and the Law."

All executive actions of the Government shall be executed in the name of the President. But this does not mean that the President will exercise his authority in an arbitrary manner. He will be only a titular head. The real head of the executive will be the Prime Minister and the executive functionary will be the Cabinet, *i.e.* the Council of Ministers. The Indian Constitution ensures the leadership and dominance of the Cabinet and leaves it to Parliament, the courts and the people to keep a check on its action.

#### ELECTION OF THE PRESIDENT

The President will be indirectly elected by an electoral college consisting of the elected members of both Houses of Parliament and the Legislatures of the States. The election will be by the method of proportional representation by means of a single transferable vote. The President being a nominal head, direct election was considered unnecessary. Moreover, it is difficult to provide a suitable electoral machinery for all the adult voters, that is, for about 188 million people.

In the presidential election, the number of votes each elected member of the legislature of a particular State can cast will be ascertained by a method which will be clear from the following example given in the Constitution :

“The population of Bombay is 20,849,840. Let us take the total number of elected members in the Legislative Assembly of Bombay to be 208 (*i.e.* one member representing one lakh of the population). To obtain the number of votes which each such elected member will be entitled to cast at the election of the President, we have first to divide 20,849,840 (which is the population) by 208 (which is the total number of elected members), and then to divide the quotient by 1,000. In this case, the quotient is 100,239. The number of votes which each such member will be entitled to cast would be  $100,239/1000$ , *i.e.*, 100 (disregarding the remainder 239 which is less than five hundred).”

In the case of an elected member of either House of Parliament, *i.e.* the Central Legislature, he can cast such number of votes as may be obtained by dividing the total number of votes to be cast by all the elected members of the legislatures of the States by the total number of the elected members of both the Houses of Parliament.

#### QUALIFICATIONS

The the qualifications needed by the candidate for the office of the President are that he (1) should be a citizen

of India; (2) must have completed the age of 35 years; and (3) is qualified for election as a member of the House of the People. He would not be eligible for election as President if he holds any post of profit under the Government of India or any other Local Government. However, a governor of a State or a minister either for India or a State is exempted from this ban. The object of this exemption, according to Dr. Ambedkar, is to give to such people freedom to stand for election and prevent the rule of office coming in their way.

#### TERM OF OFFICE

The term of office of the President is 5 years unless he resigns earlier or is removed from office by impeachment. He is, however, permitted to continue in office after the expiry of his term until the new incumbent takes over. In case he resigns his office, it is required that he should address the resignation to the Vice-President who would forthwith communicate it to the Speaker of the House of the People. A person who holds office of the President or has held one is eligible for re-election for that office.

It is required by the Constitution that the President should not be a member of any legislature nor shall he hold any office of profit. If he is a legislator at the time of assuming office, his seat shall be deemed to have fallen vacant from the same date. The Constitution stipulates that the President shall have an official residence and

draw such salary and allowance as would be determined by Parliament. This salary cannot be reduced during his term of office. Every President is required also to swear in the name of God or affirm in the presence of the Chief Justice of India or, in his absence, the seniormost judge of the Supreme Court available that he would "faithfully execute the office of President (or discharge the functions of the President) of India" and would to the best of his ability "preserve, protect and defend the Constitution and the Law" and that he would devote himself to the service and well-being of the people of India.

#### IMPEACHMENT

The Indian Constitution provides for the impeachment of the President for "the violation of the Constitution." The terms treason, bribery and corruption are not included among the charges as the expression "violation of the Constitution" is considered wide enough to include them.

The procedure of impeachment lays down that a motion to that effect might be initiated in either of the Houses of Parliament but must be passed in the form of a resolution by a two-thirds majority. Fourteen days' notice, signed by one-fourth of the total members of the House, must be given in advance, while the charges must be investigated by a House other than the one framing them. At the same time, the President must be given the right to appear and be represented at such an investigation. Also the

House must sustain the charges by a resolution adopted by a two-thirds majority. Finally, if such a resolution is passed the President is forthwith removed from office.

#### FILLING OF VACANCIES

If a vacancy is caused by the expiry of term then the election of the President must be held prior to it; if, on the other hand, by death, resignation or removal then within six months of the vacancy. The new incumbent in any case is entitled to hold office for the full term of 5 years.

#### THE VICE-PRESIDENT

The Constitution provides for a Vice-President of India, who is an *ex officio* Chairman of the Council of States. In this respect, his office corresponds to that of the Vice-President of the U.S.A. If the President is ill, if he resigns or dies or is removed or is for any reason absent, the Vice-President shall officiate as President. But unlike the American Vice-President he does not automatically become the President when the latter resigns or dies.

#### ELECTION

The Vice-President is elected in a joint meeting of both the Houses of Parliament in accordance with the system of

proportional representation by means of single transferable vote. Any citizen of India who has attained the age of 35 years and is qualified for membership of the Council of States is eligible for the office. The Vice-President may be removed from his office for incapacity or want of confidence by a resolution of the Council of States passed by a majority of all the members of the Council and agreed to by the House of the People. Explaining the reason why the process of removal in his case is different from that of the President, Dr. Ambedkar observed, "Although the Constitution spoke of a Vice-President, he really was Chairman of the Council of States, and so far as his functions are concerned he was merely an opposite number of the Speaker of the House of the People. The same provisions which were made applicable to the removal of the Speaker were, therefore, made applicable to the removal of the Vice-President."

#### COUNCIL OF MINISTERS

The Constitution provides that there shall be a Council of Ministers, with the Prime Minister at the head, to aid and advise the President in the exercise of his functions. The leadership of the Prime Minister is explicitly recognized. It is laid down that while the Prime Minister shall be appointed by the President, the other ministers shall be appointed by the President on the advice of the Prime Minister. It is the Prime Minister who is the link between the Cabinet and the President. It is

for him to communicate to the President all decisions of the Cabinet relating to the administration and legislative affairs of the Union and to furnish to him all other information that would be sought by him. The President is, however, authorized to submit for consideration of the Council of Ministers any matter on which a decision has been taken by a minister and which still awaits consideration by the Council.

The ministers hold office during the pleasure of the President, but this provision is coupled with another which stipulates their collective responsibility to the House of the People. This means that "a minister would be liable to removal on two grounds, namely, want of confidence and impurity of administration." The ministers are required to take the oaths of office and secrecy and their salaries will be determined by Parliament.





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