



Colonial Legacies And The Drafting Of The Indian Constitution: A Historical Re- Examination.

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Abstract:

The making of the Indian Constitution is often localised to the singular genius of Dr. B. R. Ambedkar; however, historical records and parliamentary proceedings reveal a more intricate, collaborative, and sometimes contentious process. This article examines the historical study of the Constitution's drafting, highlighting the foundational role of Sir Benegal Narsing Rau, who prepared the initial draft after researching sixty countries. While Dr. Ambedkar is celebrated as the "Father of the Indian Constitution," he personally described himself as a "hack" and admitted to performing tasks against his will due to the rigid framework set by the Objectives Resolution and British-imposed conditions. The study explores the divergence between the resulting document and the decentralised, village-level autonomy envisioned by M K Gandhi, noting that the final structure heavily mirrored the British Government of India Act of 1935. The narrative further delves into the disillusionment expressed by key figures, including Dr. Ambedkar's later assertion that he would be the first to burn the document. By analysing Constituent Assembly debates and the challenges faced by the Drafting Committee—where the primary burden often fell solely on Ambedkar—the article underscores that the Constitution was a product of colonial inheritance, technical drafting by bureaucrats like Rau, and the political boundaries of the Cabinet Mission Plan. Ultimately, it calls for a deeper investigation into the historical forces that shaped India's supreme law.

Keywords: Indian Constitution, Constituent Assembly, Drafting Committee, Objectives Resolution, Government of India Act 1935

A constitution is the fundamental law of a land, embodying the collective soul, cultural ethos, and forward-looking aspirations of its people. This supreme document serves as the ultimate yardstick against which every law, policy, and governmental action must be measured. Without such a foundational charter, governance would descend into arbitrariness, rights would remain unprotected, and the state machinery would lack clear direction. The Constitution is both the guardian of stability and the architect of progress. Expanding on this foundational thought, the article stresses that the Indian Constitution has fulfilled this dual role admirably since its enforcement. It has provided the structural framework for parliamentary democracy, federal power-sharing, fundamental rights, and directive principles aimed at social and economic justice. We are thankful to our ancestors for providing us with this constitution after a long period of struggle for independence.

But after a long period of adopting our mighty constitution, some questions remain unanswered or remain smoky regarding the history behind its writing. The textbooks and the knowledge system of our country provide the information that Baba Saheb Dr B. R. Ambedkar wrote the constitution, and he was considered the “Father of the Indian Constitution”. But the question arises when we see the Rajya Sabha proceedings, where Dr B. R. Ambedkar said, “Now, Sir, we have inherited a tradition. People always keep on saying to me: 'Oh, you are the maker of the Constitution. My answer is I was a hack.’”¹ The record said that Sir Benegal Narsing Rau was the man who drafted the initial constitution. After extensive research and visits to a number of countries, he prepared the draft constitution, which he shared with the drafting committee. Now the question is whether Dr Ambedkar was the real framer of the constitution or only a fine-tuner of the draft, which Sir Benegal Narsing Rau prepared. Why Dr. Ambedkar himself admit that this Constitution was not his making? Why did he say in the Parliament regarding his contribution, “What I was asked to do, I did much against my will.”² Hence, it requires some analytical study to understand the logic behind his historic statements.

The demand for a Constituent Assembly to frame India’s constitution emerged as a central aspiration of the freedom struggle, drawing inspiration from global precedents of self-determination. The history of constitution-making dates back to the eighteenth century, with the United States framing its own constitution in 1787 through the Philadelphia Convention, which later served as a model for other nations. After World War I, President Woodrow Wilson’s emphasis on the right of every national community to determine its own constitution and live freely inspired Indian leaders struggling against colonial rule. Influenced by Western democratic ideas, they began pressing for an elected body that would derive its mandate directly from the people and remain free from British authority.

In 1922, M K Gandhi demanded a representative assembly freely elected by the people. The Nehru Report of 1928, prepared at the All Parties Conference, underscored the necessity of such an assembly and outlined its constitutional framework, sparking public debate. In 1929, Marxist leader M.N. Roy proposed the idea, while in 1934 Jawaharlal Nehru explained how Indians needed a constituent assembly to shape their destiny and resolve communal problems through the widest possible franchise. The Swaraj Party rejected the British government’s 1934 constitutional proposals and insisted on a representative body. That same year, the All India Congress Committee at Patna passed a resolution calling for a constituent assembly, and in July the Indian National Congress declared it the only acceptable alternative to the British White Paper.

The demand gained further momentum at the Faizpur session of the All India Congress Committee in 1938 and through the Congress Working Committee’s resolution in September 1939, both insisting on an assembly elected on adult franchise. From 1940 onwards, the All India Muslim League demanded a separate constituent assembly for Muslim-dominated areas. The Cripps proposals of 1942 referred to the concept, and the Sapru Committee report of 1945 prepared a detailed scheme for its composition. Finally, on 16 May 1946, the British Cabinet Mission announced the plan for the Constituent Assembly.³ It would frame a constitution for the union government of India, while allowing provinces to create their own sectional constitutions, thereby translating long-standing national aspirations into institutional reality.

Interestingly, the Father of the Indian Constitution, Dr Ambedkar, had a strong objection to the formation of the Constituent Assembly. In the meeting of the All India Scheduled Castes Federation held on 6 May 1945, where Ambedkar stated that,

¹ Rajya Sabha Proceedings, 1953, page No. 875

² Ibid

³ For the announcement of the Cabinet Mission Plan and Lord Wavell's announcement, see Menser and Nicholson (eds.) Constitutional Relations between Britain and India: The Transfer of Power 1942-1947, Part 7 (New Delhi, 1978), Document No. 305, p. 582-91; Valmiki Chaudhary (Ed.) Dr. Rajendra Prasad Papers, Part 4.

"I must state that I am wholly opposed to the proposals of a Constituent Assembly. It is absolutely superfluous. I regard it as a most dangerous project, which may involve this country in a Civil War. In the first place, I do not see why a Constituent Assembly is at all necessary. Indians are not in the same position as the Fathers of the American Constitution were when they framed the Constitution of the United States. They had to evolve ideas suitable for the constitution for a free people. They had no constitutional patterns before them to draw upon. This cannot, however, be the case for Indians. Constitutional ideas and constitutional forms are ready at hand. Again, room for variety is very small. There are not more than two or three constitutional patterns to choose from.⁴ He also remarked that, "It is my considered opinion that the proposal of the Constituent Assembly is more dangerous than profitable and should not be entertained".⁵

However, Dr Ambedkar joined the Constituent Assembly, and in his speech on 17th December 1946, he stated, "I know, today we are divided politically, socially and economically. We are in warring camps, and I am probably one of the leaders of a warring camp. But with all this, I am convinced that, given time and circumstances, nothing in the world will prevent this country from becoming one and with all our castes and creeds, I have not the slightest hesitation in saying that we shall in some form be a united people."⁶

The Constitution of India was framed in a terrible and serious situation when the form of partition of the country was not even clear and only three months were given for the largest exchange of refugees in the history of the world, more than one crore people, during which about one million people died on both sides, about one lakh women were abducted and property worth crores of rupees was destroyed.⁷

However, the constitution, which came into force on 26 January 1950, was drafted in a very hasty manner. It represented only 13 per cent of the total population of 300 million, and that too by those who were elected in 1946 based on direct and proportional representation. Later, it included a few more elected members and also included some who had earlier supported the two-nation system or the creation of Pakistan. Concerns were expressed several times over their conduct in the Constituent Assembly.⁸ On 14th July 1947, Shri Balkrishna Sharma in the Constituent Assembly raised the question, "...that the election of some members, and their number is appreciable, has been through a special procedure and that they are participating in the Assembly while putting faith in the two-nation theory...Have you been given the assurance that those who have been elected on the basis of the two-nation theory will associate in your work after renouncing the two-nation theory and cooperate in furthering the common task?"⁹

The Indian Constitution was not the result of any serious discussion or national debate. A total of 165 meetings were held in the preparation of this Constitution, out of which 114 were spent on the formation of various committees under the Constitution and their preparation of drafts. The Constitution was debated or discussed in less than a month. To put it roughly, this Constitution was a hastily prepared Constitution. In the almost three years of its drafting (from 9 December 1946 to 26 November 1950), only 11 sessions of 165 days were held. In these sessions, 7635 amendments were introduced, out of which only 2473 amendments were discussed.¹⁰ The original Constitution had 395 Articles, 22 Chapters

⁴ Dr Babasaheb Ambedkar: Writing and Speeches, Vol. 1, p. 360

⁵ Ibid. p. 365

⁶ The Constituent Assembly of India, A. C. Bajerjee, 1947, p. 215

⁷ Satish Chandra Mittal, 'Arrival of Punjabi migrants in Haryana', Haryana Encyclopedia, History Volume, Part 2 (New Delhi, 2010), page 493

⁸ Constitutional Assembly Debate (C.A.D.), Part 4, p. 542, see the speeches of Sri Balkrishna Sharma on 14th July, 1947, Idea of Sri B. R. Alluwaliah, Part 7, 4th November 1948, p. 39

⁹ Ibid. Speeches of Sri Balkrishna Sharma on 14th July, 1947

¹⁰ CAD, Part 11, Page 987, for details see Satish Chandra Mittal, Relevance of the Bharatiya Constitution and expected changes' (Hindi), Itihas Darpan, Issue Part XIX, New Delhi, 2014.

and eight Schedules. All these proceedings were published in 4440 pages, and the total cost of this was Rs. 63,96,729. This Constitution contains ninety thousand words. B. D. Rasu called this constitution the most elaborate constitution in the world, and renowned journalist Professor M. B. Paily described it as heavy as an elephant.

In the drafting of the Constitution, Pandit Nehru had not the slightest resemblance to M K Gandhi's thinking. The Indian Constitution was not Gandhian in any sense. Gandhi strongly opposed British-style parliamentary democracy, calling the British Parliament a "sterile woman" and a "prostitute" due to its lack of real conscience and dependency on selfish party interests. He viewed Western representative democracy as ill-suited for India, preferring a decentralised, direct democracy based on self-rule (Swaraj) and village-level autonomy. This Constitution was never similar to Gandhiji's Hind Swaraj.¹¹ In this context, contradictory letters of Gandhi-Nehru are available.

It is also a bitter truth that the Indian Constitution is not based on the principles of democracy that were expected by Dr. B. R. Ambedkar. Dr. Ambedkar himself admitted that this Constitution was not his making. He himself said that "I was obliged, I did what I was told against my will". He also said, "I will be the first person to burn it, I do not want that. This Constitution is not suitable for any person."¹² Two years later on 19th March 1955 Dr Anup Singh asked in Rajya Sabha to Dr Ambedkar that, "Last time when you spoke, you said that you would burn the Constitution." In reply Dr Ambedkar said, "Do you want a reply to that? I would give it to you right here. My friend says that the last time when I spoke, I said that I wanted to burn the Constitution. Well, in a hurry, I did not explain the reason. Now that my friend has given me the opportunity, I think I shall give the reason. The reason is this: We built a temple for a god to come in and reside, but before the god could be installed, if the devil had taken possession of it, what else could we do except destroy the temple? We did not intend that it should be occupied by the Asuras. We intended it to be occupied by the Devas. That is the reason why I said I would rather like to burn it."¹³

It can be safely said that if a person of talent and diligence like Dr. B. R. Ambedkar had not been involved in this work, then the making of the Constitution would have been difficult. T. T. Krishnamachari, a prominent member of the Constituent Assembly, said, "The Drafting Committee of the Constitution, of which Dr. Ambedkar was the Chairman, had six members appointed. One died and his place was not filled. One went to America and the post remained vacant. One was too busy with his state affairs. One or two were away from Delhi and could not participate, perhaps due to ill health. The task of framing the Constitution fell on the shoulders of one man, Dr. Ambedkar."¹⁴

As soon as the Indian Constitution was formed, it was opposed and faced severe criticism. Some called it a European Constitution, some a European American Constitution, some a post-independence Indian Constitution given by Britain, or a constitution made to suit the wishes of Congress, or a hastily made constitution, etc. Some called it a constitution made by Lord Mountbatten, Pandit Nehru and the then ICS officer Sir B. N. Rao.

It would not be an exaggeration to say that the Indian Constitution showed a complete lack of Indian cultural heritage and historical vision. Shri Meher Chand Mahajan, the third Justice of the Supreme Court of India, in one of his articles, called it a "copy of slavery" based on the 1935 Act.¹⁵ The famous scholar Kasturichand Lalwani¹⁶ felt the imprint of the 1935 Act behind the preamble, fundamental rights, directive principles of the state, etc., of this constitution. Its old structure has been described as being made by the royal artists of India with a new polyester material which has completely

¹¹ Mohandas Karamchand Gandhi, Hind Swaraj (originally published in 1909)

¹² Rajya Sabha proceedings, 02 September, 1953

¹³ Rajya Sabha proceedings, 19th March, 1955

¹⁴ CAD Part 7, 04 November 1948

¹⁵ The Tribune, August 15, 1966

¹⁶ Kastur Chand Lalwani, India's Struggle and Constitution (Calcutta, 1950)

failed to give this constitution a permanent general form. Dr. Sampurnananda said in a lecture in Madras that there is nothing Indian in the Indian constitution. Shri Din Dayal Upadhyay said in this article that we shall neither reward, nor despise, nor boycott this constitution. However, Dr B. R. Ambedkar clarifies that, "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...The Constituent Assembly had also directed that, in certain matters, the provisions contained in the Government of India Act, 1935, should be followed."¹⁷

The reality is that most of the leaders did not have the mentality to leave the existing system. Independent India's first government maintained the existing system of governance, administrative practices, and administrative system. It also continued the colonial legal system and judicial systems.

Many members of the Constituent Assembly criticised the Indian Constitution. Dr. Rajendra Prasad, the President of the Constituent Assembly¹⁸, while signing the copy of the Constitution on 24 November 1950, expressed his dissatisfaction over the fact that the original copy was in English and not in any Indian language and that there was no educational qualification for a member of the Indian Parliament or a candidate for the Legislative Assembly. The leading member, Shri M. Anantasayanam Iyer, called it "a rehash of some old constitution of the West" and "a copy of the Act of 1935". Shri Kengal Hanumathaiiah said that we wanted the music of the Veena or Sitar, but we have the music of the English band¹⁹. Shri Hari Vishnu Kamat said that we have taken a lot from the constitutions of other countries, but have we not taken something from our own past?

Lastly, the Father of the Indian constitution Dr B. R. Ambedkar, said on 2nd September 1963 in the Rajya Sabha that, "we have inherited, on account of our hatred of the British, certain ideas about democracy which, it seems to me, are not universally accepted. We inherited the idea that the Governor must have no power at all, that he must only be a rubber stamp. If a Minister, however scoundrelly he may be, however corrupt he may be, if he puts up a proposal before the Governor, he has to ditto it. That is the kind of conception about democracy which we have developed in this country."

It is unusual for a constitution maker to express such dissatisfaction. This leads to a crucial question: Why was Dr Ambedkar so disillusioned with the Indian Constitution? A careful review of the Constituent Assembly debates and related historical records reveals several underlying factors that contributed to his frustration. The history of how the Drafting Committee was formed, along with the nature of discussions in the Constituent Assembly, highlights issues that may have influenced Dr Ambedkar's critical stance toward the Constitution.

In the constituent assembly on 25th Nov 1948, Dr Ambedkar said, "I was greatly surprised when the Assembly elected me to the Drafting Committee. I was even more surprised when the Drafting Committee chose me as its Chairman...The credit given to me does not truly belong to me. It belongs, in part, to Sir B. N. Rau, the Constitutional Adviser to the Constituent Assembly, who prepared a rough draft of the Constitution for the Drafting Committee's consideration."²⁰ The next day, President of the Constituent Assembly Dr Rajendra Prasad said,

"The method which the Constituent Assembly adopted in connection with the Constitution was first to lay down its 'terms of reference' as it were in the form of an Objective Resolution which was moved by Pandit Jawaharlal Nehru in an inspiring speech and which constitutes now the Preamble to our Constitution. It then proceeded to appoint a number of committees to deal with different aspects of the Constitutional

¹⁷ Constituent Assembly Debates, Part 7, 4th November, 1948

¹⁸ Constituent Assembly Debates, November 24, 1949

¹⁹ Constituent Assembly Debates, Part 11, November 17, 1949, pp. 616-617

²⁰ Constituent Assembly Debates, 25th Nov, 1949

problem... I have only to add that they all worked in a business-like manner and produced reports which were considered by the Assembly and their recommendations were adopted as the basis on which the draft of the Constitution had to be prepared. This was done by Mr. B. N. Rau, who brought to bear on his task a detailed knowledge of the Constitutions of other countries and an extensive knowledge of the conditions of this country as well as his own administrative experience. The Assembly then appointed the Drafting Committee which worked on the original draft prepared by Mr. B. N. Rau and produced the Draft Constitution, which was considered by the Assembly at great length at the second reading stage.²¹

Dr. Rajendra Prasad's statement makes it evident that the initial draft of the Constitution was prepared by Mr. B. N. Rau, and that the 'Objective Resolution' became the foundation of our Preamble. Upon close examination of the Objective Resolution, which J. L. Nehru presented to the Constituent Assembly on December 13, 1946, it is clear that he was alluding to external influences guiding the process.

On 13th December 1946, in the Constituent Assembly, while moving the resolution regarding the aims and objectives of the Constituent Assembly J. L. Nehru said,

"You all know that this Constituent Assembly is not what many of us wished it to be. It has come into being under particular conditions, and the British Government has a hand in its birth. They have attached to it certain conditions. We accepted the State Paper, which may be called the foundation of this Assembly, after serious deliberations, and we shall endeavour to work within its limits. But you must not ignore the source from which this Assembly derives its strength."²²

A careful reading of his statement reveals that the Constituent Assembly was established under specific conditions, with clear involvement and influence from the British Government. Moreover, the 'State Paper' served as the foundation for the Assembly, requiring its members to operate within the framework and instructions that had already been set.

Another prominent figure acknowledged by both the President of the Constituent Assembly and the Chairperson of the Drafting Committee was Sir B. N. Rau. An Indian Civil Service (ICS) officer and a dedicated British administrator, Rau served as the chief advisor to the Drafting Committee. He played a crucial role in facilitating the smooth operation of the Assembly and promoting informed debates. The British government highly valued Rau's expertise, especially his experience in implementing the Government of India Act, 1935.

J. L. Nehru knows Sir B. N. Rau very well, and in a letter to his father dated 28th May 1908, he wrote about Rau that, "He came here the same term as I did and ... he was so frightfully clever. He certainly works hard enough."²³ It was on the Viceroy's instruction that B. N. Rau, who was at that time on special duty in the Governor General's Secretariat, met J. L. Nehru on 21st November 1945 to ascertain his views on the constitutional problem.²⁴ It is noteworthy that the Prime Minister of India, Pandit Jawaharlal Nehru, initially wanted to give the important task of framing the Indian Constitution to Sir William Iber Jennings, a well-known constitutional expert from England.²⁵ Acknowledging his role, Dr. Ambedkar referred to him as the chief drafter of the Constitution, while Pt. Nehru called him one of its principal architects.

²¹ Constituent Assembly Debates, 26th Nov, 1949

²² Constituent Assembly Debates On 13 December, 1946

²³ Nehru Selected Works, Vol. 1, 1972, p. 56

²⁴ Nehru Selected Works, Vol. 14, 1972, p. 558

²⁵ Dattopant Thengadi, Dr. Ambedkar and the journey of social revolution (May, 2006) page 55

But still, we may consider that B. N Rau drafted the first draft, and under the chairmanship of Dr B. R. Ambedkar and under the guidance of the Constituent Assembly, we finally got our constitution. The role of B. R. Ambedkar also cannot be denied if we look at the statement of T. T. Krishnamachari, a prominent member of the Constituent Assembly, who said, "The Drafting Committee of the Constitution, of which Dr. Ambedkar was the Chairman, had six members appointed. One died, and his place was not filled. One went to America, and the post remained vacant. One was too busy with his state affairs. One or two were away from Delhi and could not participate, perhaps due to ill health. The task of framing the Constitution fell on the shoulders of one man, Dr. Ambedkar."²⁶

However, once again the doubt arises when we see the statement given by Syed Mohammed Saadulla, a member of the Drafting Committee. On 21 November 1949, in the Constituent Assembly, he said,

"The Drafting Committee was not a free agency. They were handicapped by various methods and circumstances from the very start. We were only asked to dress the baby and the baby was nothing but the Objectives Resolution which this Constituent Assembly passed. We were told that the Constitution must conform and remain within the four corners of that Objectives Resolution. Moreover, Sir, whatever we did had to be considered and accepted by this House. How dare any member of the Drafting Committee be so arrogant as to thrust the opinion of seven members against a total number of 308 in this House?"²⁷

Hence, the question arises regarding the hands behind the formation and execution of the Constituent Assembly as depicted in the *Objectives Resolution* read by J. L. Nehru. Therefore, understanding the history behind the drafting of our Constitution is essential. While constitutional debates, Babasaheb's statements, and Rajya Sabha proceedings provide some insight, very few public records extensively document this process. A deeper investigation is needed to uncover the full historical context of the Constituent Assembly and the making of our Constitution.

The creation of the Indian Constitution was never the work of one person alone, but rather a bright and complex fabric made from colonial influences, administrative skill, political give-and-take, and many quiet acts of bravery. Sir Benegal Narsing Rau's carefully prepared draft—based on a close look at the constitutions of sixty different countries—became the base for the work; Dr. B.R. Ambedkar, with his steady and relentless effort, added depth and strength to it, even while he honestly called himself "a hack" who worked "much against my will." M K Gandhi's idea of villages running themselves stayed out of reach, while the solid structure of the Government of India Act of 1935 could still be felt throughout the Constitution. Most leaders lacked the willingness to break away from inherited structures. As a result, independent India's first government largely preserved existing systems of governance, administration, and bureaucracy, continuing the colonial legal and judicial framework with minimal change.

Yet, it is this very lack of perfection that gives the Constitution its real beauty. Created during the pain of Partition and under the limits set by the Cabinet Mission, the Constitution did not come out as some perfect statue, but as a living structure—meant for the best, but sometimes filled by less noble interests. Seventy-five years later, this document still gives energy and direction to the world's largest democracy. It is not completely Gandhian, nor only Ambedkar's vision—not just Indian or entirely foreign—but truly Indian in its strong ability to change and grow. To truly respect it, we must go past legends and accept its complicated reality. Only then can we truly fulfil the important promise written in its Preamble: to ensure justice, liberty, equality, and fraternity for all citizens in the fullest way.

²⁶ Constituent Assembly Debates Part 7, 04 November 1948

²⁷ Constituent Assembly Debates, Vol-11, 21st November 1949

For by learning how the Constitution was created, we see not its weakness, but its lasting strength—the strength to be questioned, improved, and loved in new ways by every generation.

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