

The Making of India's Constitution

India gained freedom from British rule in 1947. The price India paid for freedom was partition. The partition agreement was a relatively simple one: a Muslim homeland was created out of north-western and eastern parts of India, with the finer details of the new international border decided by a commission headed by a British lawyer, Sir Cyril Radclyffe (incidentally, Radclyffe was so distressed by the death and destruction caused by the boundary that was created by him that he refused his salary for the task of 40,000 rupees).

India was rare in comparison to other ethnically or communally partitioned countries (Ireland, Cyprus, Bosnia-Herzegovina *de facto* but not *de jure*) in that it was able to develop a secular and pluralist constitution. How did this happen?

Firstly, India accepted partition as the price of independence, and put the focus on the latter. Ireland did not accept partition and only fully accepted it in 1997, with the Belfast peace agreement, and in the EU context that made borders invisible. Cyprus and Bosnia-Herzegovina *avoided* *de jure* partition but accepted it *de facto*, and included ethnic power sharing in their constitutional and/or political structures, the former without a formal agreement and the latter with one.

Secondly, India was large and diverse enough for partition to become relatively less important than freedom. The country was able to focus inward, on governance, reconstruction and reconciliation in a future dispensation that was for Indians to create.

In the most important sense, therefore, India's constitution was forged in the context of transition to democratic rule, not in the context of ethnic conflict and division.

Thirdly, the Indian leadership insisted that partition could not be tied to future constitutional dispensation, even if to avoid the former. Indeed, some would argue that the Indian leadership preferred partition to a predetermined constitutional or political structure. The constitutional structure of free India, they said, would be decided by the Constituent Assembly, established in December 1946, which would stand dissolved once the Constitution was passed.

Thus, it was as a free and new country that India designed its Constitution.

Fourthly, the process whereby the Constitution was drafted, adopted and came into effect helped make it a living document. The Constituent Assembly took three years to debate and draft a constitution, which was adopted on 26 November 1949 and came into effect on 26 January 1950, proclaiming India to be a sovereign, democratic republic. Though the length of time it took was much criticized, the constitutional debates touched on every aspect of Indian identities

and aspirations, and its key elements were discussed across the length and breadth of the country.

Finally, the issues covered during the constitutional debates touched upon the key political, social and economic issues that would transform India according to its people's aspirations. Among them were: the nature and structure of the Indian Union (federal and asymmetric), the rights and laws of all communities, religious, linguistic and cultural, labor, tribal/indigenous, language policy, anti-caste policy, women and the dispossessed, the nature of the executive and administration, civil-military and security issues.

As a result, the Constitution has withstood the tests of time and though it has been much amended, and in practice many of its principles have been violated, its core principles have been untouched, and amendments have added to its resilience. As said before, it is a living document that provides an executive frame for what we want to be, but have to work hard to realize.

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