

# Some Particular Suggestions For The Constitution Of Free India

BY

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# SOME PARTICULAR SUGGESTIONS FOR THE CONSTITUTION OF FREE INDIA

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## PREFACE

India is certainly not peopled by several nations. But the Indian nation is not yet fully and homogeneously developed. It lacks co-ordination between its various parts. The existence of a single political government is essential for our full and harmonious development and strength as a nation. But the difference between the ideal of a free and united Indian nation and the realities is so great that any scheme in terms of a well-nigh permanent constitution may fail to find acceptance. Instead, therefore, of attempting to frame a permanent constitution, it might be wiser to frame one expressly for a stated period, say 10 to 15 years, containing provisions for instituting machinery for its revision. It should be so framed that it would give a good chance for the play of uniting forces and enable the framers to adopt transitory compromises and modifications for the satisfaction of suspecting parties. Experience of the working of the constitution (if it is properly worked) would remove those suspicions, and the revision would result in the reduction of compromises and deviations from the ideal. If the opposite happens, the drift would be in the direction of the hardening of divisions.

A free and united Indian government is necessary not only for her own right evolution and growth, but also for the part which she must necessarily play in solving the problems of Asia and Africa in particular and of the world in general. The constitution of free



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*Some Particular Suggestions For*

... must, therefore, be capable of allowing the country to take her due place in world politics.

In the following sections I have made bold to offer a few suggestions, which such constitution might well contain. Some of them might appear quite novel, but I hope their purpose will be manifest without argument. I draw the reader's particular attention to sections 6, 8, 10, 12, 15, 16 and 18. Generally the sections speak for themselves, but wherever necessary I have appended an explanatory note.

To avoid any possible misunderstanding, I should make it clear that these suggestions are not "Gandhian" as such. In my opinion, they are capable of laying a foundation as favourable for evolving in course of time a Gandhian order as any other consistent with democracy. It would be for the future generations to give such shape to the political frame as they think best. On two particular points my suggestions may not appear to accord with Gandhiji's expressed ideas. One is, Gandhiji's partiality for indirect election for all representative bodies above the lowest. I have kept that point open. Another is, Gandhiji's opposition to the double chamber system. But the second chamber suggested by me is entirely of a different character from that generally known, and I feel that during the transitional stage the one suggested by me will be found helpful rather than otherwise for the progress of the country. However, if a way could be found to dispense with it I would welcome it.

I hope all those taking interest in the solution of India's constitutional problems will find helpful suggestions in this pamphlet.

Acc. No. 1215

Date 1/11/1911

K. G. M.

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## SUGGESTIONS

### Period

1. The period of this constitution should be life<sup>The</sup> of three legislative assemblies or 12 years whichever is the longer.

### Objects

2. It should be agreed that the political constitution of the Government of India and the several units, which make up India, must be framed for achieving the following objects :

- (i) the full development of India as a single geographical region, as self-sufficient, self-reliant and strong as her resources might allow;
- (ii) the full development of every section of the Indian people without distinction of caste, creed, colour, race or sex into a single homogeneous nation;
- (iii) this development should be so achieved that, in the affairs of the world, India should become a natural and welcome spokesman of all Indian-Ocean-countries (q. v.), and her political constitution should possess the capacity of expanding into an Indian Ocean Union.

(Note—The following six might be regarded as the natural regional and cultural units of the world: Indian Ocean countries, i. e., all nations living in countries with an opening in the Indian Ocean — from Syria in the north-west and Madagaskar in the south-west to New Zealand in the far east, Pacific Ocean

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nations, Soviet Union nations, African nations, European nations and American nations.)

### Fundamental Principles

3. The following fundamental principles and policies should be accepted jointly and severally by all the units of India :—

- (i) equality of the political status of every unit irrespective of its size or population, and of every citizen irrespective of his social or economic position :
- (ii) adoption of a policy calculated to (a) remove caste, communal or racial spirit and social inequalities; (b) prevent exploitation of the masses; (c) end minority problems by adopting measures which will, as quickly as possible, bring backward sections of the people in line with the forward ones educationally, economically and socially; (d) encourage fusion of the people in spite of differences of religions, language, persistent caste-divisions, or race; and (e) generally discourage all tendencies to perpetuate the present differences, without interfering with harmless religious or social customs and observances of any section;
- (iii) acceptance of a uniform standard of civil liberty and sheltering refugees;
- (iv) freedom of every Indian to reside in any unit, subject to observance of the laws of that unit;
- (v) application of a uniform system of law to all persons residing in an unit and seeking state or

legal aid in respect of marriage, divorce, inheritance, succession, testamentary rights and medium of instruction;

(Note—I hold strong views on this point. I feel that one of the greatest obstacles to the formation of a homogeneous nation is the right to be governed by a law different from that prevailing in the adopted province,—that is, recognition of personal law in these matters. A number of people choose to settle in another province for their own ends, make money, acquire estate by exploiting the masses or resources of that province, and still refuse to adopt the laws and language of the new home or enter into intimate social relations even with the people of the same status of that province. They insist upon being governed by the laws prevailing in their original home, even to the extent of being educated in that tongue. This right should be done away with, though, I am afraid, the Karachi resolution of the Congress suggests otherwise. It goes without saying that this does not take away the liberty to follow one's own customs, if no legal or state aid is sought).

- (vi) a policy of progressive advance towards democratic forms and methods of government in every unit;
- (vii) co-operation of all units for bringing about an all-round and steady uplift of the masses of the whole country, the development of all-India interests, and the defence of the country;

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- (viii) acceptance of the principle of arbitration for settlement of disputes between the central government and any of the units, or between two or more units;
  - (ix) a policy of peace and disarmament, consistently with the prevention of exploitation of the coloured and so-called backward races of the world, and resistance to imperialistic and totalitarian policies and militarism; and
  - (x) consistently with the above principles and with the general well-being of the whole, complete liberty to every unit to evolve its political, social, economic and educational institutions in such manner as it chose.

### Units

4. Subject to the suggestion in section 5, the country should be divided, as far as practicable, on linguistic basis. Each linguistic division should be a separate unit, except where this is not practicable on account of its extreme smallness or largeness, or on account of other complications not easily resolvable. Where the division is too small, two linguistic divisions may form a single unit in respect of residuary powers. Where it is too large, there might be more units than one in spite of the same language.

5. The minimum conditions for the recognition of a unit should be defined; say, the population must not be less than twenty lakhs and the area (except for city units mentioned in the next section) not less than the smallest district at present recognised, and other

absolutely essential conditions for self-sufficient existence in normal times.

6. Units might be of three types: (a) Cities, whether in republican India or states, having a population of not less than ten lakhs (inclusive of suburbs); (b) Republics (British Indian provinces, so-called); and (c) States.

(Note—A state smaller than the minimum must elect to merge itself into either a neighbouring larger state, or a neighbouring republic, or two or more small adjoining states might combine together to form a unit).

#### Central Government

7. The Central Government should consist of representatives of every unit. But all cities should be under its direct jurisdiction, subject to local autonomy of a type more extensive than that enjoyed by municipal corporations, with legislative powers to a limited extent. In other respects they should be the joint responsibility and estate of the whole country; so that, cities would have autonomy without residuary powers, which would vest in the Central Government. Republics and states, on the other hand, would exercise all powers, except those delegated to the Central Government.

8. As the forms of government and rights of franchise in the various units might be dissimilar, elections for the Central Government should be direct and according to its own system of franchise throughout the country.

(Note—In suggesting that the elections to the Central Legislatures should be direct, I do not mean



that the representatives should necessarily be elected by the direct vote of the en-franchised elector. All that I mean is (i) that they should not be returned by the governments of the units, unless there is a uniform system of franchise and elections in all units, and (ii) that, if the election is indirect, there should be a uniform system of forming the electing agencies throughout the country for the purpose of the elections for the Central Legislatures).

9. The Central legislatures should consist of two houses, say, the Assembly and the Council.

### The Assembly

10. The Assembly should be elected on population basis with adult franchise, the electorate being divided into four classes with the following proportion of seats respectively:

<u>Class</u>	<u>Seats per cent</u>
I. Electors with annual income below Rs. 300	44
II.                   "                   between Rs. 300 & 2000	32
III.                  "                  "                  " 2000 & 25000	16
IV.                  "                  above " 25000	8

(Note—I offer this basis of separation of electorates as an alternative to that based on caste, religion, race etc. On a careful scrutiny of the economic condition of the various minorities, I believe that it will be found that a very large majority of them will be found grouped under class I or IV, or partly under I and partly under IV. A few minorities will almost wholly be found collected in class II. The percentage here proposed is not at all in keeping with the percentage

of population of each class. Class I is far less represented and Class IV over much. The suggestion has not been made because I regard it as quite just, but it is a concession to realities. Consequently, minorities under Class IV cannot complain of inadequate representation, and all the minorities in Class I put together will probably be larger in number than any single large community.

Another advantage of this basis is that it does not permanently place the electors in a particular group. A change in his economic condition will change his class. It will also provide a practical measure for testing the efficiency of government. The economic advance of the country and good government should show gradual and simultaneous reduction, and ultimately total elimination, of classes I and IV, and the closer approach of class II to class III.

Therefore, I suggest that communal or other special representation to this house should be entirely abolished. But if this cannot be achieved at once, then within the frame-work of the above classification, an arrangement might be made on some such lines as the following:

- (a) at least 40% of the seats in each class should be altogether joint and non-communal and open to any person eligible for election;
- (b) the rest—not more than 60%—special, equally divided as follows: Caste Hindu 1, Muslim 1, women 1, in special areas Sikhs, Christians, Harijans, Adivasis and other large communities, or sections (if any) 1 each, and unclassified 1;

- (c) there should be a minimum percentage of population—say, 5% of the total population in the constituency—for special grouping;
- (d) it should be permissible to any person, belonging by birth, religion or sex to a particular group, to renounce his or her right to be an elector of that group and apply for being put into the unclassified group; or conversely, only such persons should be placed in a special group as apply for it.

This arrangement would give two votes to every elector, one for general seats and the other for special seats, with a right to give up the communal or sex privilege. The increase or decrease of this class would measure the change in the communal-mindedness of the nation. It might be expected that non-communal organisations would exert to induce the people to renounce their right to be communally classified. The Congress could make it compulsory for its members.)

### The Council

11. The Council should be so constituted that it should become a body of persons of outstanding administrative or judicial experience, expert academical or technical knowledge, influence as leaders (not necessarily political), of organisers, rulers etc., and spokesmen of special bodies such as universities, industries, commerce, labour, charities, political and administrative units etc. There might be an age qualification, say 35 plus. The oath for a candidate for this house should provide that, if elected, he would perform his

duty as a person above party or other particular interest. This house must be much smaller than the Assembly. Its formation might be partly ex-officio, partly through various legislative bodies, municipalities, local boards etc., partly through representative institutions like universities, chambers of commerce, labour unions, registered charities etc., partly by co-option by the members of the council and partly by nomination by the head of the Central Government. Elections might be by single transferable vote. Normally, its proper function should be to give its considered advice on any matter brought in the Assembly as an expert body without the power of binding the Assembly to accept it.

#### Rule about Majority

12. Democracy is regarded as sufficiently fulfilled, if there is a rule of 50 over 49. But this is hardly good for any country, far less for a nation, which is still not well-knit together. I suggest, therefore, that for India, except for specified purposes, majority should mean not only consent of majority of members present, but also non-dissent of not more than 35% of the total strength of the house. (That is to say, if the total strength of a house is 100, of whom 85 are present, a proposition should be regarded as rejected, if it is rejected by 35 members, although as many as 50 members vote for it. But if it is negatived by 30 and approved by, say, 31, the remaining not voting, it should be deemed carried.) This would mean that for practical purposes a party or coalition must command not less than 65% majority for safe sailing.

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The constitution might provide that certain class of decisions might be taken by a bare majority, while, on the other hand, certain others might need a majority of not less than 70 or 75% of the members present.

13. With the principle of democracy so enlarged, the largest party in the Assembly, whether by itself or in coalition with other parties, as it deemed proper, should have the right to form the government. On its failure to do so, the next or another party might be called upon to do so. The party forming the government should be entitled to assure itself that colleagues chosen from other parties (if any) would work with it as a team. There should be no obligation to have every community or party represented in the cabinet, much less in a particular proportion. All the ministers, whether of a non-communal party or a communal one, should be pledged to run the government impartially and from a standard higher than merely communal, sectarian, or provincial, and to administer the government for the benefit of all the people under their jurisdiction.

(Note—I believe that with the franchise as classified in section 10 and the rule about majority as modified in section 12, no minority need have any apprehensions at all. Because, first, as shown above, a considerable part of the minorities will come under cl. I or cl. IV, and the two together comprise 52% of the seats; secondly, the power of veto vested in 35% of the representatives is a greater safe-guard than any hitherto thought of. It would be at the disposal of the representatives themselves. And lastly, practically speaking, no government of a single community could ever be formed. For this

reason, the further arrangement mentioned in the note to section 16 is hardly necessary. But, if that too is included, then the immunity against the so-called "majority tyranny" is complete.)

14. If no party or coalition is able to form a government, the President may order re-election or constitute a government of the President and the Referees (sec. 15).

#### Board of Referees

15. After the election of a new Council, the two houses should jointly (by single-transferable-vote) elect from amongst the members of the Council, a Board of Referees (their number to be fixed) with the following powers:

- (a) to form the president's Government, when a popular government is unable to function and re-election seems to the President ill-advised;
- (b) to be in charge of the judicial administration of the state, without interference from the ministers. (This would be its permanent department);
- (c) to deal with matters referred to it by the houses, or the ministers, or the President under such circumstances as may have been laid down in law; its decision should be binding on both the houses and government.

(Note—E. g., if the popular government fails in a particular measure brought by it to secure the necessary majority and a deadlock ensues, and an immediate decision is essential, or a re-election seems ill-advised, the matter might be referred to this board. Similarly,

if a matter is regarded by a very large section of the representatives of a particular community or unit to be particularly harmful to that interest, and the Council is also of the same opinion, but the cabinet and the Assembly think otherwise, the matter might be referred to the Board.)

### Responsibility of the Board-Government

16. The Board Government should be entitled to initiate policies and measures, and be responsible to it in the same manner as a popular government, except as follows: a decision approved by the Assembly as provided in section 12 should be binding upon it, even if it is not in accordance with its own recommendation. But their failure to get their own recommendation accepted need not be followed by their resignation. They should accept the decision and act upon it. The Board or any of its members should be removable only by a direct vote of censure.

### The President

17. The President of the Central Government should be elected by both the houses. He need not be a member of any of the houses, or, for the matter of that, his name might be even missing from the electoral rolls. He may be a ruling prince, but in that case, he must relinquish his powers in his own state during the period of his office. A person should not be re-eligible for Presidentship for more than 3 terms in succession. Normally, the President's term must not begin or end with that of the Assembly.

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### Government of Units

18. Government of Units may be of four types:

- (i) The local government of a city should be more or less similar to a municipal corporation, with enlarged powers and right to legislate on specified subjects. It should have only one house of legislature. The residuary legislative powers of cities should vest in the Central Government.
- (ii) The Government of a republic is expected to be on the same lines as the Central Government, with such modifications and peculiarities as its representatives might desire. It should enjoy residuary powers.
- (iii) The states might present various forms, subject to satisfaction of minimum requirements mentioned in section 3. They should also enjoy residuary powers. The legislative assembly of a state should have, *inter alia*, the right to depose a ruler for proper reasons. The Central Government should also have the same authority.
- (iv) Republics and large states—particularly multi-linguistic ones—should be sub-divided into smaller units, with powers similar to those enjoyed by city units.

(The result would be that the Central Government would have residuary jurisdiction over cities, and large states and republics over smaller units inside their territories. This would enable small states and uneconomical but linguistically different areas to enjoy a degree of autonomy with ~~sub-federation~~ short of complete merger).

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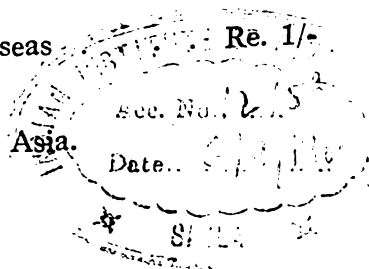


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