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India's Constitutions in the Making?

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India's Constitutions in the Making?*

The Constitution of India (the longest in the world) and its drafting process has attracted significant scholarly attention, including both its original drafting and its operation and features since 1950. In the years after its adoption, it was the subject of major studies by B. Shiva Rao (whose brother B. N. Rau was the adviser to the Constituent Assembly) and the American scholar Granville Austin. These works were followed by others, including of course textbooks. Yet, in many ways, Rao and Austin set the framework for later scholarly discussions.

In the 21st century, the pace of publications has, if anything, intensified. This new book by Rohit De and Ornit Shani, however, argues that what no previous study has done is to interrogate the drafting process beyond the Constituent Assembly itself and the work of elite figures like Rau. Theirs is therefore an effort at writing the people back into the process. De is the author of *A People's Constitution: The Everyday Life of Law in the Indian Republic* (2018) while Shani's first book, *How India Became Democratic* (2018), was a history of the momentous first elections in what became the world's largest democracy.

The book begins with a missive from the leaders of the Moshalchi community from Char Balasia village in Bengal. This letter – like so many others cited in this volume – was passed to the secretariat of the Constituent Assembly in Delhi. The collection of such messages, housed in the National Archives in Delhi and first investigated by Shani a few years ago, opens the way to the kind of approach adopted here. This study also profits from sources such as All India Radio and newspapers as well as teasing out intriguing references to a range of issues and groups in the comparatively well mined India Office Records in the British Library and the private papers of prominent politicians in major Indian archives. Of course, they do not ignore the Constituent Assembly, the work of the Assembly's various committees or later publications like Rau's *India's Constitution in the Making* either. Some of this material is in itself voluminous. Punctuated by breaks, the Assembly met for over three years across twelve sessions. As its President Rajendra Prasad pointed out, from the first draft of the committee in February 1948 to November 1949, »there were not less than 7,635 amendments of which 2,473 amendments were moved« (Constituent Assembly Debates, 26 November 1949, 11, 987).

One of the things this book may tell us then is that apart from the final constitution adopted, there were multiple constitutions that could have ended up being drafted instead, based on the statements, proposals and petitions of various individuals, groups and communities. Perhaps this is true of any polity that goes through a drafting process (though as the authors point out, the Indian case included complete uncertainty about borders as the Constituent Assembly began prior to the implementation of partition). However, while the book highlights various constitutions being drafted and various constitutional ideas proposed, it is not a counterfactual history. It is rather the story of how all these individuals and groups helped to ›assemble‹ the constitution outside the main chamber in Delhi. The analysis of this is nuanced, engaging and highly stimulating.

For example, in the first chapter, which sets out the active role played by the public in engaging with the process from the earliest stages, we learn of a proposal from Nalinkanta Barkakati in Assam to institute a recall feature for members of parliament. Above all, the chapter highlights how the public initiated its engagement with the Constituent Assembly and the »burst of constitutional consciousness […] emerged organically from below« (24). In discussing the All-India Women's Conference and the Scheduled Caste Federation, the chapter argues the abolition of untouchability »was far more transformative than has been acknowledged« (62).

Chapter Two demonstrates public demands for input when Rau launched his questionnaire to members of the central and provincial legislatures in March 1947 to criticism from a member of the

* Rohit De, Ornit Shani, Assembling India's Constitution: A New Democratic History, Cambridge: Cambridge University Press 2025, 374 p., ISBN 978-1-009-33005-3

upper house at the centre (75). Pointing out that publishing the draft (as the Assembly did in February 1948) had not been the original intention, we also learn that K. M. Munshi had wanted the Constituent Assembly to sit in private like had been the case in the US. Covering impressive geographic range and including discussion of Indians broad, the chapter paints a picture of a dynamic ongoing dialogue in these years with publications emerging which analysed the process of constitution writing as it was being drafted. In fact, De and Shani argue that such engagement actually helped establish the ›legitimacy‹ of both the Constituent Assembly and the Constitution.

One of the most significant chapters of the book is Chapter Three, which deals with the Princely States – territories ruled indirectly under British rule with their own monarchical leaders. While the difficulties of integration of other states may be more well known, analysing in particular Rewa, Ratlam and Manipur, De and Shani make the perhaps bold claim that the constitutional initiatives taken by such leaders actually contributed to the construction of the Indian Union and the form of (asymmetric) federalism eventually adopted in the 1950 Constitution. They point to the relatively early adoption of support for fundamental rights from the rulers of some Princely States. In fact, in their words, the constitutionalism in the states were »an insistent refrain to India's constitution making« (113).

Chapter Four moves to consider the role of the emerging state and the civil service – a key transitional node in any new nation-state at the moment of independence. However, in common with the rest of the book, the chapter's remit is really much wider with a dedicated look at the output of the Madras Legislative Assembly. Once again, the question of wider publics taking ownership of the new charter is to the fore. While Constituent Assembly debates in Delhi were in English, Hindi / Hindustani, the provincial assemblies were conducted in a range of other Indian languages. In the view of the authors, they therefore, »vernacularized the constitution and disseminated it through the provinces. By December 1949, all the provincial assemblies had formally made proclamations adopting the Indian constitution as their own« (175).

Chapter Five intriguingly titled »Theatre of Assembly« interrogates the physical space of the Constituent Assembly chamber itself, but also plays with the ideas of space and place. As well as reflecting on Rau's global travels to learn about other constitutions, the discussion of the contributions of Hansa Mehta are particularly effective at illustrating some of the book's larger themes. Here, De and Shani highlight the role of a Constituent Assembly member who did much work away from Delhi without speaking nearly as much as some of the most regular contributors to the debates.

Chapter Six on »the horizons of India's constitutional imagination« does much to re-centre the few tribal members of the Constituent Assembly. Interestingly, while the authors argue the Assembly »largely ignored the constitutional aspirations of India's tribal publics« (316), they also highlight how recognising »Scheduled Tribes« saw »reservations in legislatures, government jobs and educational institutions in proportion to their population« (307) – a radical break with their treatment under British rule. For De and Shani, the number of amendments and schedules concerning tribal peoples since have been »neither symptom nor cause of instability, but rather represent a key mechanism through which India's constitution has become a meaningful tool of action and an open site of struggle« (315). This last phrase is really the *leitmotif* of the book – the idea of struggle whereby the authors argue the »public […] turned the making of the constitution into an enduring momentum for India's democracy and its democratic politics« (316).

One of their major arguments is to reject the view that the textual overlap between the British Government of India Act of 1935 and the 1950 Constitution (roughly two-thirds) means that the charter is a »colonial« document and De and Shani are critical of scholars who have made this suggestion (319–320). Rather they insist it is in fact a »decolonial document«. In their view, »the state in India in 1946, was an amorphous entity and multiple authorities, from provincial legislatures to bureaucrats were actively mobilising to transform and expand the meaning of the text« (323).

That Indian people practised constitutionalism before the Constitution came into being at all represents a challenge to conventional constitutional theory (321). But this book is intended to be a challenge. De and Shani's arguments, supported by a breadth and depth of research, succeed in contesting previous assumptions in perhaps much the same way their subjects contested their role in the process of constitution writing itself at India's moment of independence. ■