

Perspective of Constituent Assembly of Draft Constitution: A Take on the Take of the Framers

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ABSTRACT

The constituent assembly debates, remain one of the most pivotal source of gathering primary and authentic source of data, whilst interpreting the constitution and other statutes. The prominent leaders of the constituent assembly all left their own marks of ideology on the pages of our constitution. Taking the sharp angles on critical and applauded views of the provisions of our constitution, Allow thy author to take you on a journey, towards knowing the key ideologies of the constituent assembly members, followed by putting you through some hypothetical situations and constitutional dilemmas. Thy author submits few humble suggestions and plans of action followed by a brief pilot survey. Also allow thy meek author the liberty to review some related research papers during this journey. The humble paper is at your disposal and benign scrutiny

KEYWORDS- constitution, draft committee, B.R.Ambedkar, interdisciplinary study, Dr Rajendra Prasad, constitutional debates, history and law, review of apeprs enlisted

INTRODUCTION:

what the mountbatten plan¹ intended to acknowledge the british rule of “divide and rule”, led to the constructive formation of 2 strong nations and their constitutions, namely the india² and pakistan³. constituent assembly, drafted the framework after much deliberation and sittings. However to understand the concept better allow the humble author to enlist the Prominent leaders⁴ (<https://en.m.wikipedia.org>) of those times and members of the constituent assembly of india. Led under the(temporary) chairmanship of Sachadananda Sinha and drafted under the aegis of B.R. Ambedkar, has withstood the test of times and and is a one of its kind initiative, which incorporates the best of ideologies from different nations and has successfully functioned since foundation⁵. lets looks at some of the provisions of the constitution, in light of the noteworthy drafting committee members draft constituent assembly.

1. That provinces be declared separate successor states
2. disbanded on 25 january 1946
3. 3 june 1947
4. Sourced through(<https://en.m.wikipedia.org>)
5. Nov 1946
6. Added by 42nd Amendment
7. Basic structure doctrine propounded by the supreme court
8. Indian National congress
9. Right to constitutional remedies

10. ibid
11. Subsequently his speeches over hindu code bill were retracted to ensure peace and curb riot
12. The atmosphere being of provinces divided amongst rulers
13. Ibid
14. The union and its territory
15. Administrative relations
16. Temporary, transitional, and special provisions
17. Services under the union and states
18. By 86th amendment
19. Special provisions relating to certain classes
20. Addition of panchayat systems to achieve grassroot level democracy
21. Official language
22. Re- berubari case

INTERNATIONAL DERIVATION OR COLLECTION OF PHRASES?

Where the part 3 (fundamental rights) has been borrowed from the constitution of U.S.A., part-4 (directive principles of the state policy find their roots in constitution of Ireland. With part 4-A⁶ (fundamental duties) added on lines of the then U.S.S.R, the parliamentary form of government is a gift of the British, emergency provisions have been derived from Germany. Although the constitution has been criticized on the ground of taking provisions from those of the other nations, it has been criticized on other grounds some of which involve:

- Lack of originality
 - Drafted by prominent leaders and unelected member (like mahatma Gandhi) had their ideologies incorporated into a democratic constitution
 - Too technical for the layman to understand
 - Rigid and lengthy
 - Not much scope of innovation with times⁷
 - Dominance of INC⁸ members in the drafting committee
- however it is worthy to mention here that what has worked and functioned successfully in a diversified nation like india, from the past 76 years, must not be spoken negatively about without an indepth study and knowledge of its makers and provisions

IDEOLOGIES OF THE LEADING CONSTITUENT ASSEMBLY MEMBERS:

DR B.R. AMBEDKAR- not only was he the leader of drafting committee of the constitution, but also the innovator of Art32⁹, which he in his own words, “described as the heart and soul of the constitution”. Also the first law minister and a person conferred with the honorary degree, resigned over the hindu code Bill⁹: someone who played a dominant part in framing of the constitution today, also during the round table conferences¹⁰. however in his last speech¹¹, B.R.Ambedkar “warned against anarchy¹², hero worship, which could again hamper the democratic setup. he was not only strongly against the caste system, but also believed in liberties not being laid at feet of even the greatest men”¹³ (cited from the excerpts of the speech of constituent assembly: sourced from <https://scroll.in>). All these point towards the fact that the strong principles of written constitution, basic structure, and part 1 of the constitution¹⁴ are gifts from the genius himself.

Also it points towards the conclusion that addition of provisions of reservation, were not the brain child of B.R.Ambedkar

JAWAHARLAL NEHRU-

The charismatic leader, and chairman of union power committee, reflected in chapter 2¹⁵, are the innovations of our leader of INC and former prime minister of India. It can be deduced from the spirit of article 256-263, that Pandit Jawaharlal Nehru strongly advocated a unitary constitution with a federal spirit. Though some accuse him of being biased towards keeping certain provisions from previous British laws, he is largely famous for uniting the states in India and making the centre strong. Also states committee (for negotiating between the states at that time) was under the chairmanship of Jawaharlal Nehru.

SARDAR VALLABH BHAI PATEL-

The leader of provincial constitutional committee and also former prime minister of India, Sardar Vallabh Bhai Patel's ideology is amply evident in the states reorganization act 1956, and also part 21¹⁶ of the constitution. His doctrine of eclipse as enunciated by the honourable Supreme Court can be attributed largely to Sardar Vallabh Bhai Patel's ideology. It is pertinent to mention here that the doctrines propounded by Supreme Court are all the core engravings of the constitution's basic structure.

J B KRIPLANI

Chairman of the fundamental rights sub-committee and player of dominant role in part 3 of the constitution J.B. Kriplani emphasized the role of civil and political rights, (though Dr B.R.Ambedkar strongly believed that political rights alone would never suffice a functional constitution) though part 3 ideology has been borrowed from the United States of America. Yet it is pertinent to mention that they have been moulded to suit the Indian democratic environment eg, change wording and context of article 21 (from due process laid down vs due procedure)

Dr ABDUL KALAM AZAD-

From being the minister of education to being president of India, Dr Kalam has vehemently contributed to the fields of science, politics and constituent assembly. He is accredited for laying the foundation stone for part 14, chapter 2¹⁷ and later on addition of 11th duty in part 4-A¹⁸ further strengthen the fact that the ideologies laid down at that time are relevant even today. Article 51-a(b),(g) and (h) also reminds us of the great virtues and contributions of our leaders and encourage scientific temperament. (though fundamental duties are non-justiciable but supplementary acts like Protection of Dishonour to National Honour Act, 1971, and the like).

HARINDER COOMAR MOOKHERJEE

He was the chairman of minorities sub-committee and played a crucial role in the reservation setup as we see today. Provisions for minorities have been granted under article 29 and 30 themselves as fundamental rights. Also part 16¹⁹ is the result of effortful and conscious planning of Harinder Coomar Mukherjee. Article 330-342 lay down provisions for the same and also the foundation for procedure of slowly reducing the reservation in different sectors, starting from the Rajya Sabha. Though the certain provisions as laid down by reservation clauses were against the principles of Dr B.R. Ambedkar, but the

conditions post partition, warranted a slow and peaceful procedure of bringing equality. Harinder Coomar Mookherjee's ideology was a strong step in this direction

MAHATMA GANDHI

Though officially MohanDasKaramChand Gandhi, known as the father of our nation did not become an active part of the constituent assembly but part 4 ,articles 4,43B and 73rd and 74th Amendment of the constitution²⁰ broadly emphasize his ideology and work as directives for the state.

DR. RAJENDRA PRASAD

The first president of independent india and steering committee chairman dr. rajinder Prasad is affectionately known for his speeches, provisions, unification of constituent elements and the like.

MOTURI SATYANARAYANA

He was the head of the language committee and part17²¹, chapter 1, 2, and 3 respectively dealing with (language of union, regional languages, languages of the supreme court and high court) , articles 343-349, are his contributions to the constitution.

REACHING A CONSENSUS WITH MINDFULNESS-

With so many prominent leaders , with different ideologies and takes, putting together the constitutuion must not have been an easy task. Even with 105 Amendments ,(as recorded in October 2021), the basic structure of the constitution still stands intact. The preamble, (also declared as part of constitution)²² affirms the cumulative ideology and essence for the interpretation of the constitution. It is humbly submitted , that Though it is easy to gain accesss to excerpts from the constituent assembly debates, the hardest part is getting access to the original debates , (duly preserved)

Which went on to make proceedings of parliament always being recorded as a rule and practice

Before tagging the above information as descriptive study of history of the constituent assembly, thy author seeks your humble attention towards some hypothetical situations.

HYPOTHETICAL SITUATIONS-

Situation 1- A judge x, oblivious of the draft constitution ideology, gives the words his own interpretation and delivers a judgement which is subsequently overruled by a larger bench , but further incorporated an amendment by legislature. (the state- judiciary decades long battle from golaknath vs state of Punjab to keshavnanda bharti case is example already before us).who is liable for the loss and damages of the parties and sideeffects of repeatedly overturned decisions creating chaos and uncertainty.

Situation 2 – a politician strictly following the constitutional history and presenting bills as per the basic structure of constitution and its spirit is unable to sign an important multinational treaty and resulting in boycott of India by other influential and uniformity seeking progressive nations. Who is liable?

Situation 3- a public spirited person x, files PIL, the verdict enlarges the scope of some constitutional provisions(as happened in slum dweller's case,article21)

Subsequently there arise situations where the enlarged scope of the provisions are misused or used as backdoor to unfair gains by the unscrupulous elements of the society, would overturning decisions not be infringement of article 14?

Situation 4- An unprecedented situation occurs (financial emergency) besides invoking article 360, new enactments and laws are laid down or different sort of emergency except the 3 provided for in the constitution arise, and apt legislation is made by the parliament. Would it stand on the same footing as the basic structure of the constitution as laid down by the draft constituent assembly?

Situation 5- the debates of the constituent assembly and proceedings of the parliament are made available and accessible to all. Opposition uses the same to distort the interpretation, thereby inciting the masses, leading to SC interpretation and vicious circle of amendments and landmarks. Who is liable? Or oppositely the same debates and parts of the speeches are retracted which are then, efficiently twisted by the speakers, is it not infringement of article 19, even more misuse of the parliamentary privileges. Who is liable?

It is utmost humbly submitted that such situations could be numerous and the need is for efficiently spreading the essence of constitution to masses from an early age.

Though it is presumed that law of the nation is supposed to be known to all, yet ironically its only the lawyers and criminals who know it more than others.

Before making any assumptions, allow thy humble author to take you on a pilot survey tour

PILOT SURVEY

For the purposes of this survey 100 subjects, including advocates of high court and district court, with experience above 7 years of practice were randomly chosen along with researchers from government universities from tricity from the fields of law history, political science and public administration and administered a questionnaire.

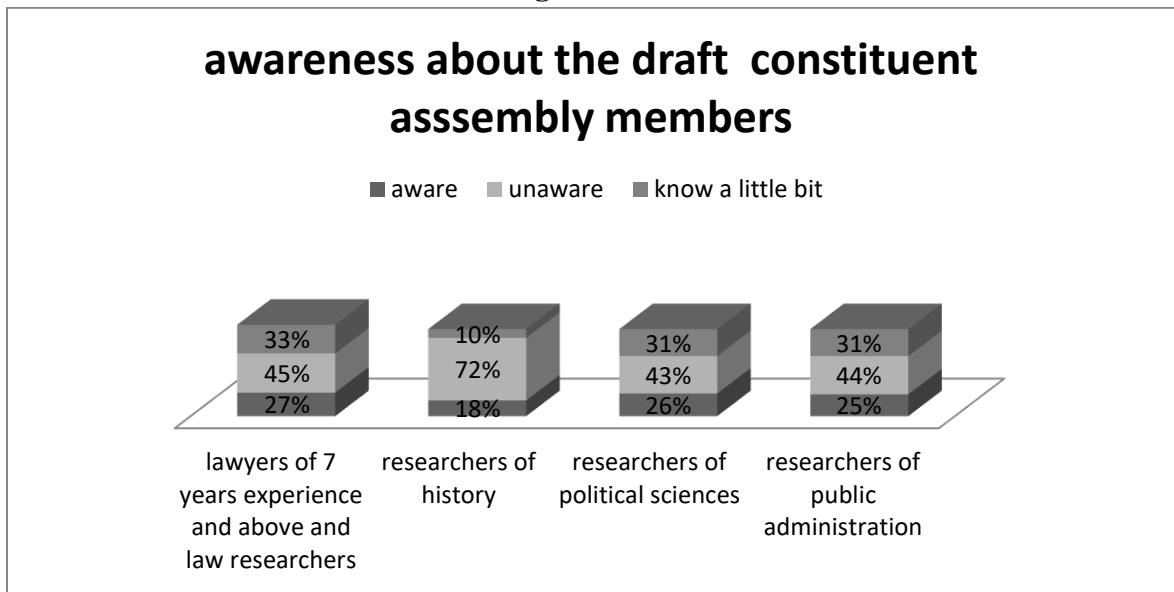
It is submitted that utmost confidentiality as to opinions has been maintained (also, sample of the questionnaire has been attached at the end of the paper)

The before elucidating data and statistics have drawn by the survey its pertinent to throw light on the drawbacks of the survey conducted:

- Only advocates that too with experience of 7 years and above have been included No time for refreshing of memory or revision was given prior to the survey
- No previous constitutional history was explained to them, so that guess work may not hamper the results of survey
- Advocates of tricity only have been taken as subjects and geographical limitations pose a threat to reliability in case direct inferences re drawn from the stats derived.
- Researchers from only government universities have been elected that too for limited disciplines of study

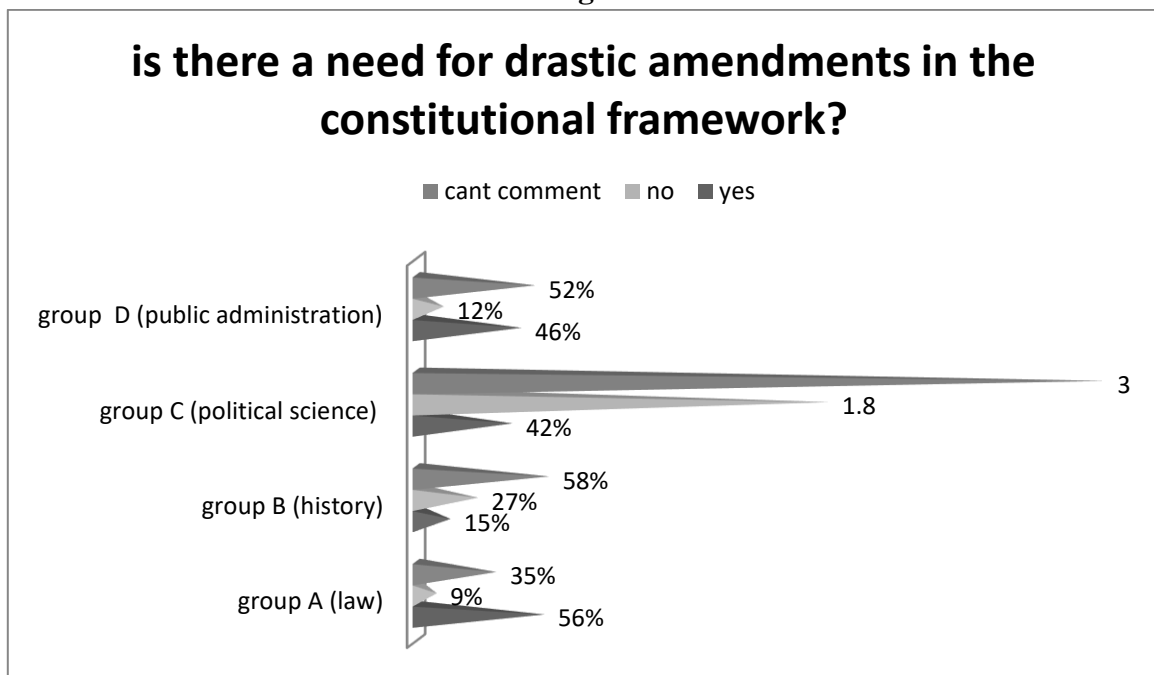
DATA AND STATISTICS DERIVED:

Fig1



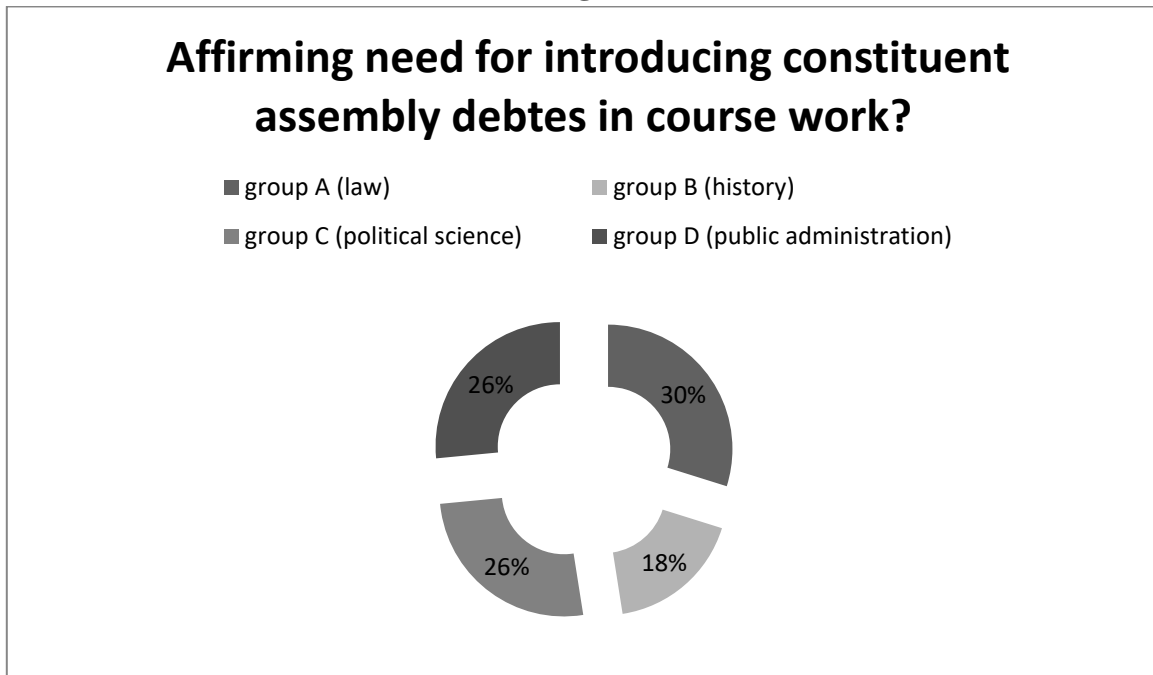
Awareness about members of constituent assembly (it is submitted that most subjects could recall only Dr Ambedkar’s name)

Fig 2



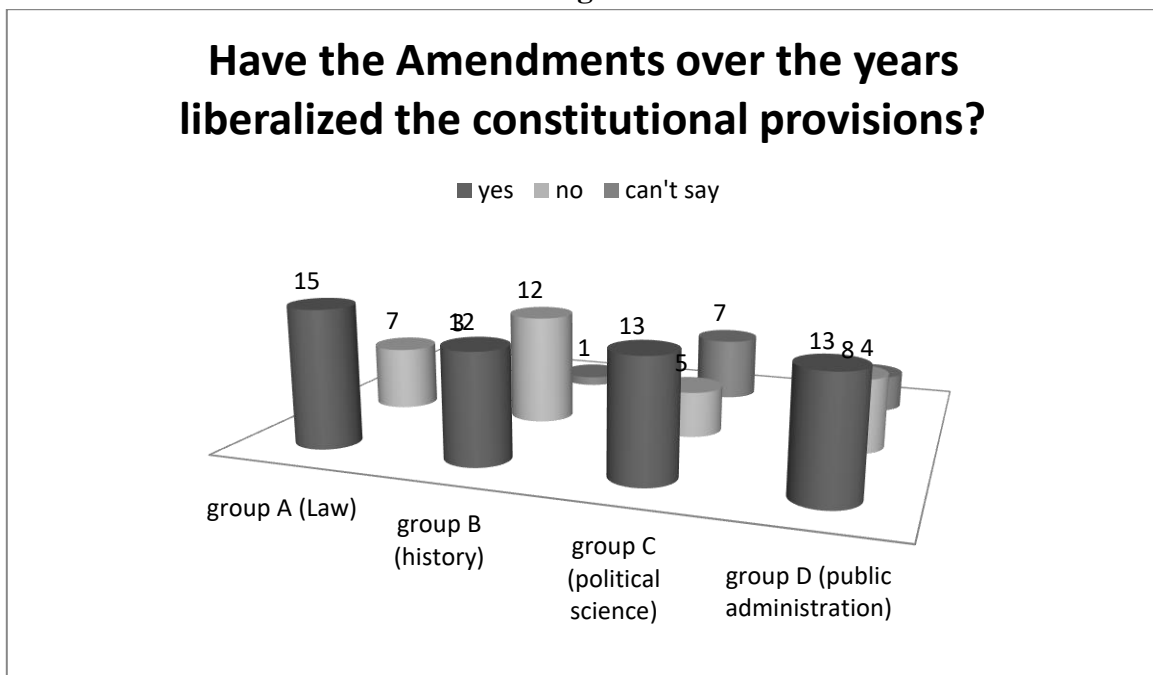
Need felt for changing basic structure of constitution

Fig 3



Should constituent assembly debates be inculcated as coursework in colleges?

Fig 4



Constitutional amendments and liberalization correlation

A CRITICAL TAKE:

The draft constituent assembly envisaged a democratic India and laid rules that could be functional in coming decades, article 32, rightly termed as heart and soul had been envisaged to ensure remedies are provided in cases of injustice and breach of rights through the judicial mechanism. However the loopholes left while drafting, or rather left for the sake of making provisions in future as per needsof

society and demands of time, have been used as an unscrupulous tool by various politicians and anti – social elements to satisfy personal motives.

Few questions are raised here:

- Is the judiciary solely responsible pillar for actively dispensing with constitutional lags?
- Has the intervention of media created more chaos than finding of solutions?
- Has the long procedure of legislation invited elements of crime?
- Is there an alternative model?

It is humbly submitted that the answer to these questions cannot be directly given objectively without adequate plan of action and survey at census level

PUTTING FORTH SUGGESTIONS:

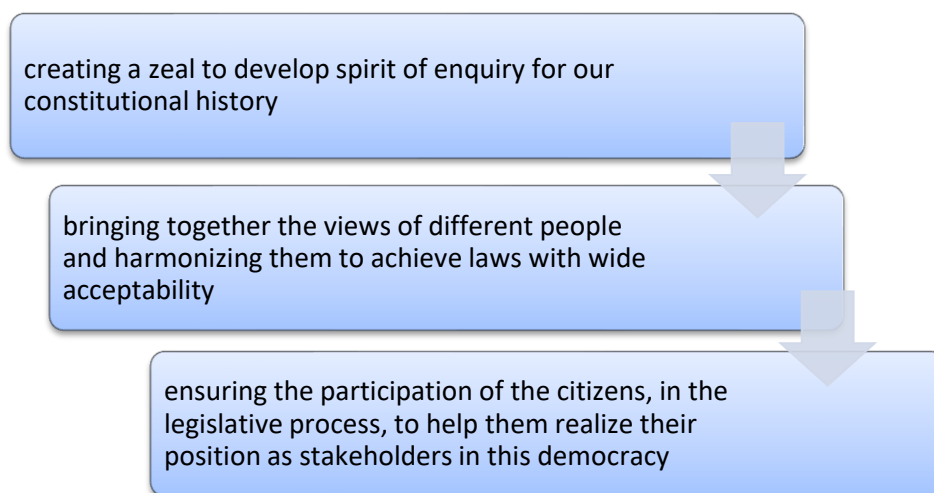
The framers of the draft constituent assembly are a feather in the cap of democracy but with evolving times, there is need for more effort. Thy author humbly puts forth the following suggestions:

- Census survey as to spread awareness towards constitution and other important law
- Seeking opinions of law commission on alternative model of election , within the basic structure of constitution and analyzing its workability and comparing efficiencies of both systems.
- Ensuring addition of relevant doctrines propounded by hon’ble supreme court from time to time in bare acts and books of constitution
- Making the autobiographies/biographies and authentic history of farmers of constitution at least in governmental libraries
- Comparing constitutions of different nations by an apt committee set up by legislature and introducing and exchanging provisions while have worked best at national and international level.

PROPOSED PLAN OF ACTION-

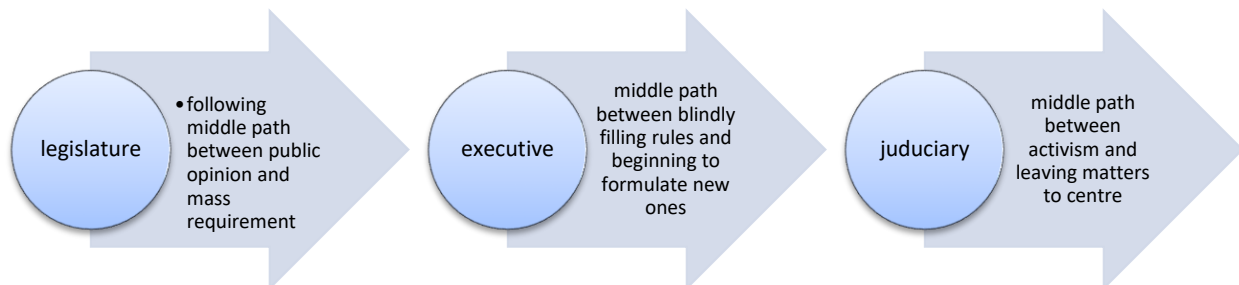
It took months of arduous drafting to reach the constitution, on which our democracy stands today. It is pertinent that the proposed plans of action are equally thoughtful to ensure smooth functionality

Fig5



Proposed POA1

Fig 6



Proposed POA 2

HUMBLE REVIEW OF THE REFERENCE PAPERS MENTIONED:

With all due respect to the researchers, thy author hereby submits that most of the research papers, read over by me either related secularism to the constitution or quoted texts and excerpts from the assembly debates without drawing conclusions and with almost no field research. The dimensions of study of the constituent assembly are vast so is the requirement of opting and amalgamating different research designs.

DRAWING HUMBLE CONCLUSIONS:

The ideologies of the framers of constituent assembly , their agreements/ disagreements and predicaments can be easily deduced from the provisions they introduced and the work done by committees under their leadership and aegis. It would be unfair to not firstly applaud the efforts of the constituent assembly which created a set of rules, which have set precedents and are now landmarks of our success over the decades.

The need of the hour is to understand the holistic view of the aim, motto, target and reasons behind those enactments and correlating them with changing times and moulding their flow to suit our societal needs through suitable amendments. With positive hope of being able to collect more data hopefully in my next research paper), thy author hereby concludes the paper

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