



EVOLUTION OF CONCEPT OF CONSTITUTION

- Demand for the constitution was put forward by Gandhiji in 1922 .
- Failure of statutory commission & round table conference led to enactment of GOI Act 1935.
- The coalition government in (1940) England recognised the principle that India should themselves frame their new constitution.
- Cripps mission came to India in March 1942 - it offered dominion status.
- Simla conference held under Viceroy Wavell 1945 - failed.
- Idea of constituent assembly 1934- M.N.Roy - leftist movement pioneer- advocated radical democratism.
- 1935 INC first time demanded constituent assembly for making constitution.
- 1938 - J.L.Nehru - declared demand for constitution.
- 1940 August offer accepted demand of constitution. (Linlithgow)
- 1942 Stafford Cripps - cabinet member - constitution after WW2- rejected by ML- It agreed with cabinet mission plan.
- Defeat of Winston Churchill by the Labour party – Clement Attlee the new PM shown optimism towards the making of constitution of India
- Constitution is outcome of four major movements

(1) the series of colonial laws enacted to govern the India notably GOI Act 1935

(2) freedom struggle that generated anti-imperialism & nationalist goals

(3) Partition of India , which was undergoing at that time

(4) Social liberation movements

CONSTITUTIONAL GOVERNMENT

- Two kinds of Constitution in the democratic world:
- 1) The Constitutions that have grown gradually over decades & centuries through customs, conventions, legislative enactments & judicial decisions - as in the United Kingdom & the British Dominions like Canada, Australia & New Zealand.
- 2) The Constitutions that were framed by representative assemblies usually after revolutions. These representative assemblies have been variously named as National Assemblies, Constitutional Conventions & Constituent Assemblies.
- In both these types of constitutions, the Constitution means a body of fundamental laws, that cannot be easily changed and that restricts the arbitrary & random behaviour of Legislature, Executive & judiciary.

- It brings negative obligation of rights on all the govt, so it is called as limited govt.

CONCEPT OF CONSTITUENT ASSEMBLY

- The idea of a Constituent Assembly to frame a Constitution for a country was alien to the British imperial practice.
- It was first demanded by the Indian National Congress in 1934.
- The Muslim League was opposed to it because it suspected that a Constituent Assembly elected by adult franchise would be dominated by the Congress whom the League considered to be a Hindu party.
- In January 1946 there were elections to the provincial legislatures
- In March,1946 a committee of the British Cabinet, known as the Cabinet Mission, led by Sir Pethick-Lawrence, visited India to assess the Indian political situation & frame a scheme for making a constitution for India.
- The Cabinet Mission held a conference at Shimla to bring about a consensus among the major political parties but failed to achieve it. So the Mission issued its own plan.
- The plan recommended for a Constituent assembly consisting of the representatives of all the major groups.
- The Cabinet Mission thought that, though the ideal way to form the constituent assembly would be through election on the basis of adult suffrage, there was no time left for that
- Earlier that year provincial legislatures had been elected on the basis of a limited franchise & separate electorates.
- The Cabinet Mission proposed that the Constituent Assembly be elected by those provincial assemblies.

FEDERAL FORMULA

- According to Cabinet Mission, the Muslims were apprehensive of a unitary, Hindu majority state, the constitutional structure should be federal.
- The provinces should have maximum autonomy and the union govt should have minimum power such as on foreign affairs, defence & communication
- The Union could raise necessary financial resources required for the administration of such subjects.
- The Union would include not only the British Indian provinces but also the princely states.
- All the residual powers would belong to the provinces & states.

- The Union should have an executive & a legislature consisting of representatives of the provinces & the states
- Any decision to be made related to communal issue in the legislature should be decided by majority of the representatives present & voting of each of the two major communities, that is, Hindu and Muslim.
- A Three-Tier Federation - Cabinet Mission proposal include: 'Provinces should be free to form groups with executives & legislatures & each group could determine the provincial subjects to be taken in common.
- This would create a third-tier of govt between the Union and the provinces hitherto unknown to the federal practice.
- The Cabinet Mission itself laid down a procedure for the Constituent Assembly with creation of communal groups.
- The provinces would sit in three sections – Two of such sections would be Muslim-majority & the third section would be Hindu majority.
- The Hindu-majority section - Section A - would be made up of the provinces of Madras, Bombay, United Provinces ( Uttar Pradesh), Bihar, Central Province (Madhya Pradesh) & Orissa.
- Section B would comprise Punjab, Balochistan, the North-West Frontier Province & Sind.
- Section C would be made up of Assam & Bengal. Assam itself was not a Muslim-majority province. But Bengal & Assam together would be a Muslim-majority section
- The third extraordinary phenomenon was a partial application of the communal veto.
- No decision on a major communal issue could be taken in the without a majority of the members of the two major communities
- This principle, however, would not apply to the sections where a simple majority was enough to take any decision.
- The fourth extraordinary phenomenon was the formula that, once a section formed a group constitution, no province would be free to withdraw from the group it was in.
- A province could leave such a group only after the first general election held under the group constitution.
- The sections would first frame the provincial constitutions & their own constitutions before sitting together to frame the Union Constitution.
- The Congress was worried that the groups would frame the election rules in such a way that, after the elections, the provincial legislatures would be so constituted as to make such withdrawal impossible.
- This would satisfy the Muslim League's demand of Pakistan & would be unjust to the provinces like

Assam & the North-West Frontier Province where the Congress was dominant

#### COMPOSITION OF CONSTITUENT ASSEMBLY

- The 292 Constituent Assembly seats were allotted to the governors' provinces according to the strength of their population.
- The Chief Commissioners' provinces were to be represented by 4 members.
- 93 seats were allotted to 566 princely states.
- The Negotiating Committees of the Constituent Assembly & the Princes decided that half the members representing the princely states would be elected & the rest nominated by the Princes.
- The Cabinet Mission proposed that, while the work of Constitution making would proceed, the government should be carried on by the Governor-General with the help of representatives of the major parties.
- There were some difference between the Congress & the Muslim League on the composition of the Interim Government. But they were sorted out.
- A new Executive Council was set up first with mostly Congress members & then including Muslim Leaguers.
- INC 208 , ML 73, Independents 15 & 93 princely states seats remained vacant
- Jinnah was not member of CA.

#### CONSTITUENT ASSEMBLY & PARTITION

- The Congress agreed to sit in the sections but refused to join the groups that the sections might decide upon.
- The Muslim League would not join the Constituent Assembly unless the Congress agreed to the grouping arrangement set by the Cabinet Mission Plan.
- When the Constituent Assembly was convened by the Governor-General, Lord Mountbatten, on 9 December 1946, the Muslim League members were absent.
- They did not join the Assembly until after the decision to partition British India was taken.
- When this happened on 14 July 1947, only 23 Muslim Leaguers arrived at the Constituent Assembly of India. The others went to the Constituent Assembly of Pakistan.
- Partition, reduced the strength of the Constituent Assembly of India by about a third.
- All parties lost their members though the Congress strength was proportionately increased.
- A few more members were later added following arrival of refugees from Pakistan.
- Most of the representatives of the princely states joined the Constituent Assembly of India.

#### DOMINANCE OF CONGRESS

- Congress had an overwhelming majority in the Constituent Assembly.
- But the Congress party had nominated several members from outside the party's fold.

- Many of them were legal experts & leading legislators in the previous British Indian legislatures.
- Several brilliant officials of the British Indian govt, led by Sir B.N. Rau, were drafted for the work of the Constituent Assembly.
- Experts from outside were frequently consulted. Precedents of the foreign Constitutions were carefully studied.

#### LEADERSHIP

- There were two broad types of leadership in the Constituent Assembly: (1) political & (2) technical.
- Because of the predominance of the Congress party the political leadership naturally vested in its leaders.
- The top of this leadership consisted of Pandit Jawaharlal Nehru, Sardar Vallabhbhai Patel, Maulana Abul Kalam Azad & Dr. Rajendra Prasad.
- Granville Austin calls the Nehru-Patel-Azad-Prasad team 'the oligarchy'.
- Below this level there were the former Congress presidents like Pattabhi Sitaramayya, K.M. Munshi, Thakurdas Bhargava, A.V. Thakkar & Sri Prakasa.
- Non-Congress members were the legal luminaries & statesmen like Alladi Krishnaswami Ayyar, N. Gopalaswami Ayyangar, B.R. Ambedkar, K.M. Panikkar, Pandit Hridaynath Kunzru (not a member of the Assembly &, in the early days, B.L. Mitter.
- K.M. Munshi was a Congress member & B.R. Ambedkar from outside combined their technical brilliance & statesmanship.
- Also joined Congressmen like K. Santhanam & T.T. Krishnamachari.
- Krishnamachari, a critic of some aspects of the Draft Constitution, was included in the Drafting Committee in 1948.
- Constituent assembly - first meeting Dec 9, 1946- ML boycotted - Dr. Sachidanand Sinha temporary president- oldest member - french practice.
- Dec 11, 1946 Dr. Rajendra Prasad - President & H.C. Mukherjee - VP, Sir B.N. Rau - Advisor to CA.
- There were no foreign consultants involved in the framing of the constitution
- HVR Iyengar was the secretary general of the Assembly, and SN Mukherji was the Chief Draftsman.
- CA was in session for a total of 166 days.

#### THE OPPOSITION

- The shape of the opposition in the assembly was, unstable.
- The Cabinet Mission had divided the Indians into three communities - the General, the Muslims & the Sikhs.
- The Congress party overwhelmingly dominated the 'General' section & had an agreement with the Sikh Akal Panth.

- It also had nominated a few Muslims like Abul Kalam Azad & Rafi Ahmed Kidwai.
- The strength of the Muslim League had been drastically reduced after partition.
- After Gandhi's assassination, the Muslim League in India dissolved itself & most of its members joined the Congress Party.
- Sir Mohammad Saadullah, among them, was included in the Drafting Committee of the Constituent Assembly.
- Only the Madras provincial unit of the Muslim League decided to retain its identity & acted as a consistent but negligible opposition.
- The only, Communist member of the Constituent Assembly, Somnath Lahiri, lost his membership after the partition of Bengal.
- Dr. B.R. Ambedkar, representing the Scheduled Castes Federation, who had first been elected to the Constituent Assembly from Bengal.
- He was nominated by the Congress from Bombay in the vacancy created by the resignation of the liberal Hindu Mahasabhaite, M.R. Jayakar. He later became Chairman of the Drafting Committee.
- The Congress had nominated two Hindu Mahasabha leaders - M.R. Jayakar & Syama Prasad Mukherjee - & two socialists and two Forward Bloc members.
- In early 1948 in Socialists & the Forward Bloc sliced off their connections with the Congress & directed its members to resign from the Assembly. The members declined & continued in the Constituent Assembly.
- At the end of the Constituent Assembly's work most of the opposition members expressed satisfaction.
- Some Muslim Leaguers & Akali member, Sardar Hukum Singh, remained strong critics of the Constitution for its denial of political status of the minorities of the Muslims & the Sikhs.

#### WORK OF THE CONSTITUENT ASSEMBLY

- The Constituent Assembly set up a large number of committees on procedural & substantive matters.
- Some of the Committees consulted external experts besides discussing issues thoroughly
- The reports of the committees were discussed in the Constituent Assembly, they were forwarded to the drafting Committee for incorporation in the Draft Constitution
- There were three readings of the Draft Constitution in the way all legislations have.
- Some of the draft provisions were discussed again & again. The debate was thorough & intensive.
- After nearly three years of work the Constituent Assembly produced the world's biggest written Constitution
- It was authenticated by the Chairman of the Constituent Assembly, Dr Rajendra Prasad, on 29

November 1949 and came into force on 26 January 1950.

- Meanwhile, 554 princely states merged with a republican India
- The Constituent Assembly had not been set up as a sovereign body.
- Partition was a result of the British refusal to treat the Constituent Assembly as a sovereign body. (Q)
- The Indian Independence Act, 1947, authorised the Governor-General of India to give assent to the Constitution.
- The Constituent Assembly did not do even that and got the Constitution authenticated by its own chairman.
- It was an assertion of the sovereign authority of the Constituent Assembly.
- A Drafting Committee was constituted on August 29, 1947, with Dr. B. R. Ambedkar as Chairman to prepare a Draft Constitution.
- This committee finally finished their work on November 26, 1949. The date is therefore known as Constitution or National Law Day.

#### SIGNIFICANCE OF THE PROCESS

- The process of making of the constitution made the democratic set up to provide more space for associative activism & in benevolent cycle it has shaped a civil society
- The making of constitution has generated a phenomenal debate among the members of CA – which is acting as an opinion based guidelines for the current & future interpretations of Indian law
- CA acted as a legislative body & involved in making of constitution - as constitution making body

chaired by Prasad & as a dominion legislature chaired by G V Mavlankar.

- The first amendment to the Constitution of India was made by this provisional Parliament in the summer of 1951.

#### RESEARCH ON LONGEVITY OF CONSTITUTION

- A work of the University of Chicago titled “The Lifespan of Written Constitutions, by Thomas Ginsburg, Zachary Elkins, and James Melton” on the longevity of constitutions the world over
- The study encompassed the constitutional history of every independent state from 1789 to 2006.
- The study identified a “ 792 new constitutional systems”, of which 518 have been replaced, 192 still in force, 82 have been formally suspended ultimately to be replaced.
- The estimates show that one half of constitutions are likely to be dead by age 18, and by age 50 only 19% will remain.
- A large percentage, approximately 7%, do not even make it to their second birthday.
- The mean lifespan in Latin America & Africa is 12.4 and 10.2 years, respectively.
- 15% of constitutions from these regions perish in their first year of existence.
- The study however found that constitutions in western Europe & Asia, typically endure 32 and 19 years, respectively.
- The Organisation for Economic Co-operation and Development (OECD) countries have constitutions lasting 32 years on an average
- Justice Oliver Wendell Holmes observed: “The life of the law has not been logic. It has been experience.”