Chapter I

THE CONSTITUENT ASSEMBLY OF INDIA

The Demand for a Constituent Assembly - The idea of a Constituent Assembly to frame the constitution was the contribution of 18th century. The Americans were saturated with the ideas of Locke and they summoned the Federal Convention in 1787. The French National Assembly acted as the immediate representative of the sovereign nation and in that capacity drafted a constitution which went at once into effect with the King's consent. The Frankfort Parliament drafted a constitution in 1848 and the Weimar Constitution was framed in 1918.

With the grant of political rights in 1892, 1909 and 1919 Indians were gradually being convinced that no amount of reforms enacted by British Parliament was going to satisfy them. The first voice for preparing a constitutuion for India by Indians was raised by Dr. Annie Besant. She observed: "We all considered it vital that the Indian Constitution should be framed by Indians and in answer to a question from Lord Selborne - the Chairman of the Joint Committee of the Houses of Lords and Commons in 1919, addressed to myself as witness - whether India would ever be satisfied with a constitution drawn up by Englishmen, I replied in the negative, basing the reply on the great age of her civilization and the difference of manners and customs."

However, the first definite reference to a Constituent Assembly (though not under these words or under that particular name) was made by Mahatma Gandhi in 1922. He wrote: "Swaraj will not be a free gift of the British Parliament. It will be a declaration of India's full self-expression, expressed through an Act of Parliament. But it will be merely a courteous ratification of the declared wish of the people of India. The ratification will be a treaty to which Britain will be a party. The British Parliament, when the settlement comes, will ratify the wishes of the people of India as expressed through the freely chosen representatives."\(^1\)

\(^1\) Annie Besant, India Bond or Free, pp. 209 - 210.

\(^2\) Dr. S. N. Sinha, Inaugural Address, C.A.D. Vol. I, p. 5.
In 1924, as the Leader of the Swaraj Party in the Legislative Assembly - the then Parliamentary Wing of the Congress - the late Pandit Motilal Nehru demanded a representative convention for the revision of the Act and for the establishment of a genuine responsible government in India. He argued that a representative convention alone should have the responsibility of framing a constitution, and it was this constitution that would safeguard the rights of the people.¹

Thus the demand made by Mahatma Gandhi for a Constituent Assembly composed of the "freely chosen representatives" of the people of India, was affirmed, from time to time, by various public bodies and political leaders, but it was not till May, 1934, that the Swaraj Party, which was then formed at Ranchi, formulated a scheme in which the following resolution was included: "This conference claims for India the right of self-determination, and the only method of applying that principle is to convene a Constituent Assembly, representative of all sections of the Indian people, to frame an acceptable constitution."²

The policy embodied in this resolution was approved by the All India Congress Committee, which met at Patna a few days later in May, 1934. The above resolution was confirmed at the session of the Congress held at Faizpur in December 1936. The confirming resolution declared that "The Congress stands for a genuine democratic state in India where political power has been transferred to the people, as a whole, and the government is under the effective control. Such a state can only come into existence through a Constituent Assembly having the power to determine finally the constitution of the country." In 1936, Jawaharlal Nehru was elected President of the Congress, and at its annual session at Lucknow he expounded his views with his usual frankness and clarity. He boldly observed: "Independence cannot be given. It could not be got through the Act, a 'new charter of slavery', designed to perpetuate the hold of British imperialism on India. It must come by means of a democratic

¹. N. Gangules, Constituent Assembly for India, p. 222.
In November 1939, the Congress Working Committee adopted a resolution which gave the final ultimatum in the following words: "Recognition of India’s independence and the right of her people to frame their constitution through a Constituent Assembly is essential."²

In the beginning, however, the Muslim League had nothing to do with the Congress demand of a Constituent Assembly, one more device, as they saw it, for imposing Hindu majority rule.³ But after the adoption of the resolution on Pakistan in March 1940, the League favored the idea of a Constituent Assembly - one for the areas claimed by the League for a separate Muslim State, and the other for the rest of India. Thus the idea of a Constituent Assembly as the only direct means for framing a constitution in this country came to be entertained and accepted by the two major political parties in 1940.

The British Response: This demand for a Constituent Assembly at least led to the invitation of Indians to the Round Table conference in 1929 and thus ended the system of regulative political advance in India by enquiry and dictation from England though the reservation of parliamentary judgment on what was good for India was still implied, especially or points where agreement could not be reached by Indians themselves.¼ However, so long the Congress alone was demanding a Constituent Assembly for framing a constitution of India, the official response was rather negative.

With the united demand of the congress and the League for the Constituent Assembly, a remarkable change in the British attitude was visible. In the 'August Offer' of 1940 it was declared: "But His Majesty’s government authorise me to declare that they will most readily assent to the setting up after the conclusion of the war with the least possible delay of a body representative of the principle elements in India's 1. R. Coupland, The Constitutional Problem In India, Pt II, p. 12.
National life in order to devise the framework of the new constitution, and they will lend every aid in their power to hasten decisions on all relevant matter to the utmost degree.¹ But the Congress method of constitution - making by a directly elected Constituent Assembly was not mentioned.

The future Constituent Assembly of India was further visualised by Sir Stafford Cripps in the famous Draft Declaration of March 1942 and he observed: "(d) The constitution - making body shall be composed as follows, unless the leader of Indian opinion in the principal communities agree upon some other form before the end of hostilities:

- Immediately upon the result being known of the Provincial elections which will be necessary at the end of hostilities, the entire membership of the Lower Houses of Provincial Legislatures shall, as a single electoral college, proceed to the election of the constitution - making body by the system of proportional representation. This new body shall be in number about one-tenth of the number of the electoral college.

- Indian states shall be invited to appoint representatives in the same proportion to their total population as in the case of representatives of British India as a whole, and with the same powers as British Indian members."²

Thus the constitution - making body was to be constituted in such a manner as to include non-representative elements. The democratic element had been shelved so far as the people of the states were concerned. However, on various other grounds as well, the congress rejected the proposal.³

The Cabinet Mission Plan: Then came the Cabinet Mission Proposal of 16th May, 1944 and the inauguration of the Constituent Assembly of India followed accordingly. The Cabinet Mission at the outset recommended the broad - basis of the future constitution

3. Indian Annual Register, 1942, 1, pp 294 - 295.
4. Cmd 6821, 1946,
because they believed that until that had been done there was no hope of getting the two major communities to join in the setting up of the constitution - making machinery. But it was not their object to lay out the details of a constitution but to set in motion machinery whereby a constitution could be settled by Indians for Indians. The Constituent Assembly was to be elected by the Provincial Legislative Assemblies. Adult suffrage was ruled out as it was to involve delay in the making of the new constitution. Seats were allotted to each province in proportion to its population, roughly in the ratio of one to a million. This Provincial allocation of seats was divided between the main communities in each province in proportion to their population. The representatives allotted to each community in a province were to be elected by the members of that community in its Legislative Assembly. For these purposes three main communities were recognized - Muslim, Sikh and the 'general'. The 'general' community included all those who were neither Muslim nor Sikh.

The Provinces were grouped into 'sections' and the number of representatives, total as well as community wise, to be elected by each Provincial Legislative Assembly was fixed in the following scheme:

<table>
<thead>
<tr>
<th>Province</th>
<th>General</th>
<th>Muslim</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Madras</td>
<td>45</td>
<td>4</td>
<td>49</td>
</tr>
<tr>
<td>Bombay</td>
<td>19</td>
<td>2</td>
<td>21</td>
</tr>
<tr>
<td>United Provinces</td>
<td>47</td>
<td>8</td>
<td>55</td>
</tr>
<tr>
<td>Bihar</td>
<td>31</td>
<td>5</td>
<td>36</td>
</tr>
<tr>
<td>Central Provinces</td>
<td>16</td>
<td>1</td>
<td>17</td>
</tr>
<tr>
<td>Orissa</td>
<td>9</td>
<td>0</td>
<td>9</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>167</td>
<td>20</td>
<td>187</td>
</tr>
</tbody>
</table>
Section B

<table>
<thead>
<tr>
<th>Province</th>
<th>General</th>
<th>Muslim</th>
<th>Sikh</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Punjab</td>
<td>8</td>
<td>16</td>
<td>4</td>
<td>28</td>
</tr>
<tr>
<td>North West Frontier Province</td>
<td>0</td>
<td>3</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>Sind</td>
<td>1</td>
<td>2</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>Total</td>
<td>9</td>
<td>22</td>
<td>4</td>
<td>35</td>
</tr>
</tbody>
</table>

Section C

<table>
<thead>
<tr>
<th>Province</th>
<th>General</th>
<th>Muslim</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bengal</td>
<td>27</td>
<td>33</td>
<td>60</td>
</tr>
<tr>
<td>Assam</td>
<td>7</td>
<td>3</td>
<td>10</td>
</tr>
<tr>
<td>Total</td>
<td>34</td>
<td>36</td>
<td>70</td>
</tr>
</tbody>
</table>

In order to represent the Chief Commissioner's Provinces there would be added to Section A the member representing Delhi in the central legislative Assembly, the member representing Ajmera - Marwara in the central legislative Assembly and a representative to be elected by the Coorg legislative council. To Section B was to be added a representative of British Baluchistan.

Thus the total number of representatives for British India was to be 296. The maximum of the Indian states was fixed at 93. Altogether there were to be 389 members in the Constituent Assembly. The method of selecting the representation from the States was to be determined by consultation. But in the preliminary stage the States were to be represented by a negotiating committee.

The Constituent Assembly was to meet at New Delhi. At the preliminary meeting the general order of business was to be decided, a chairman and other officers were to be elected and an Advisory committee on rights of citizens, minorities and tribal and excluded areas set up. Thereafter the provincial representatives were to divide
up into the sections shown under A, B and C in the Table of Representation.

These sections were to proceed to settle provincial constitutions for the provinces included in each section and were to decide whether any group constitution should be set up for those provinces and if so with what provincial subjects the group should deal.

The representatives of the sections and the Indian states were to reassemble for the purpose of settling the Union Constitution.

In the Union Constituent Assembly resolutions varying the provisions of the broad basis of the constitution as enunciated by the cabinet Mission Plan or raising any major communal issue was to require a majority of the representatives present and voting of each of the two major communities. The chairman of the Assembly was to decide which, if any, resolutions raise major communal issues and should, if so requested by a majority of the representatives of either of the major communities, consult the Federal Court before giving his decision.

As soon as the new constitutional arrangements were to come into operation it would be open to any province to elect to come out of any group in which it was placed. Such a decision was to be taken by the legislature of the province after first general election under the new constitution.

The Advisory Committee on the rights of citizens, minorities and tribal and excluded areas were to contain due representation of the interests affected and the function was to report to the Union Constituent Assembly upon the list of Fundamental Rights, clauses for protecting minorities, and a scheme for the administration of tribal and excluded areas, and to advise whether these rights should be incorporated in the provincial, the group or the Union constitutions.

The Congress and the Muslim League both accepted the Plan with reservations. The Muslim League was dissatisfied that their demand for Pakistan was rejected. But they found, in the grouping of the Provinces, a basis of Pakistan. The congress
was dissatisfied with the compulsory grouping of provinces but they found in the Constituent Assembly a potent instrument for the creation of an Indian Union of their dream. Jawaharlal Nehru, the Congress President, at a Press-conference in Bombay on 10th July, firmly observed: "We have agreed to go to the Constituent Assembly and we have agreed to nothing else... what we do there, we are entirely and absolutely free to determine. We have surrendered ourselves to no single matter to anybody."¹ "About the grouping scheme Nehru was brutally candid. It would probably never come to fruition, he declared, because Section A, the Hindu-majority provinces, would be opposed, the Frontier Province would oppose it. In Section B as would Assam in Section C, and provincial jealousies would thwart it."² The Muslim league, therefore, became afraid that once the Constituent Assembly was summoned, there was nothing to prevent the Congress with its majority from making the Assembly take such decisions as the Congress might think proper or suitable. In particular, the league feared, the Constituent Assembly, dominated by the Congress, might wreck the provisions relating to grouping and extend the powers of the Union Center. Therefore the Muslim league withdrew its acceptance of the Cabinet Mission Plan by a resolution passed on 27th July, 1946.³

The Constituent Assembly of India - In spite of the opposition of the Muslim league, the election for the 296 seats of the Constituent Assembly, allotted to British India, were completed by the end of July, 1946. The congress had won 205 seats including all the 'general' seats but nine. The Muslim league won 73 seats out of the 78 allotted to the Muslims. The 4 Sikh seats were also filled after a short while.

Sir B. N. Raos was appointed the constitutional Adviser and due to his efforts

3. Ibid., p 317.
the Constituent Assembly could meet on 9th December 1946. Since Dr. Sachidanand
Sinha was the oldest member, he was therefore made the temporary chairman. The
Constituent Assembly received messages of good will from the governments of America,
China and Australia. The Honourable Dean Acheson, the Acting Secretary of State
of the United States had conveyed the following message: "With the approach of
December 9, I extend to you as Provisional chairman of the Constituent Assembly,
and through you to the Indian People, the sincere good wishes of the United States
government and of the people of the United States for a successful conclusion of
the great task you are about to undertake. India has a great contribution to make
to the peace, stability, and cultural development of mankind, and your deliberations
will be watched with deep interest and hope by freedom-loving people throughout
the entire world." 2

At the second day of the meeting Jawaharlal Nehru moved "that the Assembly
do adopt, with such modifications as the chairman may in his absolute discretion
permit, the Rules and Standing Order of the Central Legislative Assembly, pending
the framing by the Constituent Assembly of its own Rules of Procedure." 3 The
Assembly also passed the Resolution moved by Acharya J. B. Kripalani to form a
Committee on Rules of Procedure. 4

On 11th December, 1946 Dr. Rajendra Prasad was elected chairman of the Constituent
Assembly unanimously. 5

It was essential to have the aims and objects of the Constituent Assembly. So
Jawaharlal Nehru moved the Objectives Resolution on 13th December 1946, declaring
India to be a Sovereign Independent Republic. 6

But M. R. Jayakar pointed out the limitations of the Constituent Assembly in

5. Ibid, p 35.
adoption of the Objectives Resolution. According to the Cabinet Mission Plan of May 16th the Constituent Assembly was to wait till the sections had met and the provincial constitutions were prepared. The Constituent Assembly was sovereign within the limitations of the Paper by which it was created. Those limitations could be removed only by agreement with the Muslim League and the Indian States whose representatives were absent in the Constituent Assembly. But Sir M. Gopalamasami Ayyanar and Sir Alladi Krishnaswami Ayyar rejected the arguments of M. R. Jayakar and on 22nd January, 1947 the Objectives Resolution was adopted unanimously.

The Constituent Assembly appointed a Negotiating Committee to confer with its counterpart set up by the Chamber of Princes and with other representatives of the Indian States.

The Assembly then started considering the Rules of Procedure, as presented by K. M. Munshi, the Chairman of the Committee. Accordingly the Chairman of the Constituent Assembly was to be styled President who was to be "the guardian of the privileges of the Assembly, its spokesman and representative and its highest executive authority." It was also recommended that "the Assembly shall not be dissolved except by a resolution assented to by at least two-thirds of the whole number of members of the Assembly." Thus the sovereignty of the Constituent Assembly was boldly declared.

The Constituent Assembly proceeded forward towards the framing of a constitution for the sovereign Independent Republic of India. In pursuance of paragraph 20 of the Cabinet Mission's statement of May 16, 1946, an Advisory Committee was constituted and it was authorized to appoint sub-committees to prepare schemes for

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1. Ibid, pp 69-78
2. Ibid, pp 120-126
3. Ibid, pp 136-138
4. C.A.D. II, p. 304
5. C.A.D. I, p. 158
6. Ibid, pp. 163 - 247
7. Ibid, p. 170
8. Ibid, p. 201
9. Ibid, p. 164
the Administration of the North-Western Tribal Areas, the North-Eastern Tribal Areas and the Excluded and Partially Excluded Areas. It was also authorized to appoint other sub-committees if necessary. A Committee on Subjects assigned to The Union Center was also appointed. On 28th April 1947, Jawaharlal Nehru, as Chairman of the Committee to negotiate with the States Negotiating Committee and The Union Power Committee, submitted the Reports to the Constituent Assembly. On 29th April 1947, Sardar Vallabhbhai Patel submitted the Interim Report on Fundamental Rights, as Chairman, Advisory Committee on Minorities, Fundamental Rights, etc. Two separate committees were also appointed to report on the main principles of the Union Constitution and of a model provincial constitution. On 15th July 1947, Sardar Vallabhbhai Patel, as Chairman of the Provincial Constitution Committee, submitted its Report. On 21st July 1947, Jawaharlal Nehru, as Chairman of the Union Constitution Committee submitted its Report for the consideration of the Constituent Assembly.

Though the Constituent Assembly was going ahead with determination, the Cabinet Mission Plan, its creator, had received a deathknell at the withdrawal of the Muslim League. The Muslim League not only withdrew its acceptance of the Plan but also called for Direct Action to achieve the goal of Pakistan. To the Council of the League Jinnah announced: 'Today we bid goodbye to constitutional methods.' The 'Direct Action' decision was ominous, for it resulted in a Hindu Muslim war at a stage unprecedented in the history of India. Sir Winston Churchill bitterly criticized the India policy of the labor government. The Labor Ministry was also getting dissatisfied at the Congress interpretation of the Cabinet Mission Statement. To their mind the Cabinet Mission Plan had failed at the boycott of the League. Therefore

5. Ibid, pp 461-462.
a historic announcement was made in the House of Commons on 20 February 1947.¹ Prime Minister Attlee announced the British government's 'definite intention to take the necessary steps to effect the transfer of power into responsible Indian hands by a date not later than June 1948.' However, if a constitution could not be drafted by a 'fully representative Constituent Assembly before that time', he continued, 'His Majesty's government will have to consider to whom the power of the central government of British India should be handed over, on the due date, whether as a whole to some form of central government for British India, or in more areas to the existing Provincial governments, or in such other way as may seem most reasonable and in the best interest of the Indian people.'

It was now clearly stated that power would be transferred by a specific date and that if the League refused to join the Constituent Assembly power would be transferred to the Central government or the provincial governments or in some other suitable way - which obviously meant partition. Frustrated efforts were made to seek the cooperation of the Muslim League. By June 1947 the partition of the country was agreed upon by the Congress and the League. On 15th August 1947, India assumed independence and all restrictions on the Constituent Assembly were done away with.

Independence and After - The fifth session of the Constituent Assembly of India commenced in the Constitution Hall, New Delhi, on 14th August 1947, at eleven p.m. Jawaharlal Nehru reminded the members of the seriousness of the task ahead and exhorted them to take a pledge of dedication to the country in the following words: "Long years ago we made a tryst with destiny, and now the time comes where we shall redeem our pledge, not wholly or in full measure, but very substantially. At the stroke of midnight hour, when the world sleeps, India will awake to life and freedom. A moment comes, which comes but rarely in history, when we step out from the old to the new, when an age ends, and when the soul of a nation, long suppressed, finds utrence. It is fitting that at this solemn moment we take the pledge of dedication

¹Cmd. 7047.
to the service of India and her people and to the still larger cause of humanity.\(^1\)

He therefore moved that it be resolved that: "After the last stroke of midnight, all members of the Constituent Assembly present on this occasion do take the following pledge: 'At this solemn moment when the people of India, through suffering and sacrifice, have secured freedom, I, ........... a member of the Constituent Assembly of India, do dedicate myself in all humility to the service of India and her people to the end that this ancient land attain her rightful place in the world and make her full and willing contribution to the promotion of world peace and the welfare of mankind.\(^2\)."

The motion was adopted. As the clock struck twelve (mid-night), Mr. President and all the Members stood up and took the pledge. It was also unanimously adopted that the President and Jawaharlal Nehru should convey the following message to the Viceroy:

"(1) the Constituent Assembly of India has assumed power for the governance of India, and

(2) the Constituent Assembly of India has endorsed the recommendation that Lord Mountbatten be governor-general of India from the 15th August 1947.\(^3\)

The Constituent Assembly thereafter adopted the Report of the Union Power Committee with amendments.\(^4\) The Assembly also adopted the Report on Minority Rights with necessary amendments.\(^5\)

After independence it was essential to reorganize the Constituent Assembly. It was therefore resolved that-

"(i) The function of the Assembly shall be-

(a) to continue and complete the work of constitution-making which commenced on the 9th December, 1946, and

(b) to function as the Dominion Legislature until a Legislature under the

\(^{1}\) Ibid, p. 4.
\(^{2}\) Ibid, p. 5.
\(^{3}\) Ibid, p. 10.
\(^{4}\) Ibid, Nos. 3-7.
\(^{5}\) Ibid, Nos. 8 and 9.
new constitution comes into being.

"(vi) Ministers of the Dominion government, who are not members of the Constituent Assembly, should have the right to attend and participate in its work, of constitution-making, though until they become members of the Constituent Assembly they should not have any right to vote."¹

The Constituent Assembly further resolved that a committee consisting of

1. Shri Alladi Krishnaswami Ayyar,
2. Shri H. R. Narasimhachari,
3. The Honourable Dr. B. R. Ambedkar,
4. Shri K. R. M. Munshi,
5. S. M. Moulia Sazidulla,
6. Sir B. L. Mitter,
7. Shri D. P. Khera,

be appointed to scrutinise the draft of the text of the Constitution of India prepared by the Constitutional Adviser giving effect to the decisions taken already in the Assembly and including all matters which are ancillary thereto or which to be provided in such a Constitution, and to submit to the Assembly for consideration the text of the draft Constitution as revised by the Committee."²

Then on 30th August 1947 the Constituent Assembly adjourned for indefinite period to enable the Drafting Committee to prepare the Draft Constitution of India.³

Composition of the Constituent Assembly - It is true that the Constituent Assembly of India was dominated by the Congress Party. But still the Congress Party was large-hearted to see that all sections and all thought of people were represented. They were also conscious of the seriousness of the problem of constitution-making and hence wanted that men of real ability should be taken in. Thus Prof. K. T. Sah was elected from Bihar at the suggestion of Dr. Rajendra Prasad.⁴ Sri M. R. Jayakar came on Congress ticket. When Dr. B. R. Ambedkar lost his seat due to the division of Bengal, Dr. Rajendra Prasad was anxious to have him again. So he wrote

¹. Ibid, p. 359.
³. Ibid, p. 408.
⁴. Vide Papers In The President's Secretariat
the following letter to Hon'ble Mr. B. G. Kher, Prime Minister of Bombay: "... Apart from any other consideration we have found Dr. Ambedkar's work both in the Constituent Assembly and the various committees to which he was appointed to be of such an order as to require that we should not be deprived of his services. As you know he was elected from Bengal and after the division of the province he has ceased to be a member of the Constituent Assembly and he cannot be elected from there again to the Constituent Assembly. I am anxious that he should attend the next session of the Constituent Assembly commencing from the 14th July and it is therefore necessary that he should be elected immediately."¹ Jerome D'Souza, a Jesuit Priest from Madras, was also elected on Congress support. One may wonder why the Socialist leader Jayaprakash Narayan was eliminated. As a matter of fact he did not like the idea of joining the Constituent Assembly. He wrote to Jawaharlal Nehru on 3rd July 1947: "I should like my name to be left out. I am saying this not out of modesty, but I do not have the time to attend to fresh tasks nor have I the aptitude for this kind of work."²

In the appointment of the Drafting Committee, the Constituent Assembly elected only one Congress man out of seven members and Dr. B. R. Ambedkar, who had so long been in opposition to the Congress, was appointed the Chairman.³ A representative of the Muslim League was also included.

¹. Ibid.
². Ibid.