

Lecture 1 Notes: Historical background of the Making of the Indian Constitution

1858 GOI Act, 1861 Indian Councils Act, 1892 Indian Councils Act, Morley-Minto Reforms and Indian Councils Act 1909, GOI Act 1915, Montagu-Chelmsford REPORT and GOI Act 1919, Simon commission 1930 and dominion status, communal award of Ramsay MacDonald in 1932 with separate representatives for Muslims, Sikhs, Europeans, Indian Christians and Anglo-Indians, GOI Act 1935.

Gandhi expressed the truth first—that Indians must shape their own destiny, that only in the hands of Indians could India become herself—when in 1922 he said that Swaraj would not be the gift of the British Parliament, but must spring from ‘the wishes of the people of India as expressed through their freely chosen representatives’.

The Indian National Congress made the demand for a constituent assembly part of its official policy in 1934. Thereafter, in many provincial legislative assemblies and in the central legislative assembly in 1937, at the Congresses at Faizpur, Haripura, and Tripuri, and at the Simla Conference in 1945, the Congress reiterated that India could only accept a constitution drawn from the people and framed ‘without any interference by a foreign authority.’

However, during the late 1920s and 1930s, disagreement had led to considerable communal tension. Muslim dissatisfaction, hitherto unchannelled, found its leader in Mohammed Ali Jinnah, who turned the infant Muslim League into his vehicle for power by championing Muslim rights, both real and fictional, gave a the theory that Muslims were culturally as well as religiously a group apart, that they were neither Hindu nor Indian, and that they must seek their fulfilment in a state of their own.

In the early thirties, few Muslims looked to the League as their means of political expression. In the 1937 elections the League showed little strength, although 424 of 482 Muslim seats were won by non-Congress Muslims. By 1946, basing its claim on the results of the 1945 elections, however, the League could justly say that it spoke for Indian Muslims.

While the Congress called for a constituent assembly and Indian self-determination, Jinnah’s League derided the idea, preferring British presence in India as a deterrent to Congress power, which they said would be synonymous with Hindu domination. Instead of supporting a constituent assembly, the League in 1940 demanded that before independence Muslims must be assured the sanctuary of autonomous areas. In 1945 Jinnah took this a step further: India must have two constituent assemblies, he said, one for Hindustan and one for Pakistan.

And the British must remain to see that justice (to the Muslims) was done; independence should come when the constitutions had been completed, when the two nations were established.

The Congress viewpoint was the reverse of the League's. The people of India were Indians; no matter what their religion, they were one nation. The British must leave India—only then could independent Indians come together, settle their differences, and begin to shape their future. India should be one nation under one constitution, the Congress believed, and although the rights of all groups would be protected by the constitution and as much autonomy as possible allowed, government must be sufficiently strong to bring about the social revolution that India must achieve if it was to survive.

These were the views that the three members of the Cabinet Mission hoped to reconcile by a compromise plan, known as the Cabinet Mission Plan. According to the Cabinet Mission plan, India was to remain one state, but the power of the Central Government would be confined to only foreign affairs, communications, and defence. The provinces would be grouped geographically into three regions, one of which would be predominantly Muslim, one predominantly Hindu, and in the third the population of the two communities would be nearly equal.

The provincial representatives to the All-India Constituent Assembly, after a preliminary meeting of that body, would meet in three group assemblies to frame constitutions for their component provinces and, if desired, for their group as well. Among these constitutions, in a manner unspecified by the Cabinet Mission Plan, would be distributed the functions of government other than the three reserved for the centre. When all this was done, the representatives would return from the group constituent assemblies to the All-India Assembly to draft the national constitution.

Formally, the Constitution was made by the Constituent Assembly which had been elected for undivided India. It held its first sitting on 9 December 1946 and reassembled as Constituent Assembly for divided India on 14 August 1947. Its members were chosen by indirect election by the members of the Provincial Legislative Assemblies that had been established under the Government of India Act, 1935.

The official demand for Constituent Assembly was raised and the Government of India Act, 1935 was rejected as it imposed the Constitution which was against the will of the Indians. C. Rajagopalachari voiced the demand for a Constituent Assembly on 15 November 1939 based on adult franchise and was accepted by the British in August 1940.

The Constituent Assembly was composed roughly along the lines suggested by the plan proposed by the committee of the British cabinet, known as the Cabinet Mission Plan.

The Cabinet Mission plan was made public on 16 May 1946. By the end of June 1946, after infinitely detailed negotiations, both the League and the Congress had accepted it, but both had publicly and privately recorded their reservations, Jinnah accepted the Cabinet Mission Plan 'because the foundation of Pakistan is inherent in compulsory grouping and because it (the League) hopes it will ultimately result in independent Pakistan.' The Congress accepted the Plan subject to its own interpretations of certain provisions being accepted by the British and the League.

This detente lasted through July, long enough to see the Constituent Assembly elected in August 1946 under the terms of one portion of the Cabinet Mission Plan. Rejecting adult suffrage as too cumbersome and slow, the Plan provided that the provincial legislatures elect the Assembly—a decision with which the Congress agreed, forsaking its long-held demand for a constituent assembly created by adult suffrage.

According to this plan:

± Each Province and each Princely State or group of States were allotted seats proportional to their respective population roughly in the ratio of 1:10,00,000 (10 Lakhs/1 million). As a result the Provinces (that were under direct British rule) were to elect 292 members while the Princely States were allotted a minimum of 93 seats. With 4 members from the chief commissioner provinces, altogether, the number was 389.

± The seats in each Province were distributed among the three main communities, Muslims, Sikhs and general, in proportion to their respective populations.

± Members of each community in the Provincial Legislative Assembly elected their own representatives by the method of proportional representation with single transferable vote.

± The method of selection in the case of representatives of Princely States was to be determined by consultation with the rulers of the princely states.

The Assembly, although elected, was far from being in session. The elections for the 296 seats assigned to the British Indian provinces were completed by August 1946. Congress won 208 seats, and the Muslim League 73. After this election, the Muslim League refused to cooperate with Congress and the political situation deteriorated. Hindu-Muslim riots began, and the Muslim League demanded a separate constituent assembly for Muslims in India. On 3 June 1947 Lord

Mountbatten, the last British Governor-General of India, announced his intention to scrap the Cabinet Mission Plan; this culminated in the Indian Independence Act 1947 and the separate nations of India and Pakistan. The Indian Independence Act was passed on 18 July 1947 and, although it was earlier declared that India would become independent in June 1948, this event led to independence on 15 August 1947. The Constituent Assembly met for the first time on 9 December 1946, reassembling on 14 August 1947 as a sovereign body and successor to the British parliament's authority in India.

Jinnah liked the Mission Plan only a little and the Congress's conditional acceptance of it even less. Finding an excellent pretext in some unguarded and tactless remarks Nehru made about 'grouping' and the Congress's intentions in the Assembly, he withdrew his acceptance and instructed League representatives to boycott the Assembly. The League never lifted this boycott; the only League representatives to enter the Assembly did so because they had remained in India after Partition. The Cabinet Mission had failed. It failed because the Congress and the League had almost certainly become too estranged for reconciliation, which in any case was out of the question so long as the British were a third party to whom each side could appeal against the other.

As a result of the partition, under the Mountbatten plan, a separate Constituent Assembly of Pakistan was established on 3 June 1947. As a consequence of the Partition under the plan, by 3rd June 1947, those members who were elected from territories which fell under Pakistan ceased to be members of the Constituent Assembly. The number of members in the Assembly was reduced to 299 (229 members from the provinces and 70 from princely states).

The Constitution was adopted on 26 November 1949. 284 members were actually present on 24 January 1950 and appended their signature to the Constitution as finally passed. The Constitution came into force on 26 January 1950.

9th December 1946: Formation of the Constituent Assembly (demanding a separate state, the Muslim League boycotted the meeting.)

11th December 1946: President Appointed – Rajendra Prasad, vice-chairman Harendra Coomar Mookerjee and constitutional legal adviser B. N. Rau (initially 389 members in total, which declined to 299 after partition. Out of 389, 292 were from government provinces, 4 from chief commissioner provinces and 93 from princely states)

13th December 1946: An 'Objective Resolution' was presented by Jawaharlal Nehru, laying down the underlying principles of the constitution, which later became the Preamble of the constitution.

22nd January 1947: Objective resolution unanimously adopted.

22nd July 1947: National flag adopted.

15th August 1947: Achieved independence. India split into Dominion of India and Dominion of Pakistan.

29th August 1947: Drafting Committee appointed, with Dr. B. R. Ambedkar as the chairman. Other 6 members of the committee were: K.M.Munshi, Muhammed Saadulah, Alladi Krishnaswamy Iyer, Gopala Swami Ayyangar, N. Madhava Rao (He replaced B.L. Mitter who resigned due to ill-health), T. T. Krishnamachari (He replaced D.P. Khaitan who died in 1948).

16th July 1948: Along with Harendra Coomar Mookerjee, V. T. Krishnamachari was also elected as the second vice-president of the Constituent Assembly.

26th November 1949: 'Constitution of India' passed and adopted by the assembly.

24th January 1950: Last meeting of the Constituent Assembly. 'Constitution of India' (with 395 articles, 8 schedules, 22 parts) was signed and accepted by all.

26th January 1950: The 'Constitution of India' came into force after 2 years, 11 months and 18 Days, at a total expenditure of ₹6.4 million to finish.

The Constitution was framed against the backdrop of the horrendous violence that the Partition unleashed on the subcontinent. But it is a tribute to the fortitude of the framers that they were not only able to draft a constitution under immense pressure, but also learnt the right lessons from the unimaginable violence that accompanied the Partition.

Dominance of the Congress Party in the Assembly

Although, the members of the Assembly were not elected by universal suffrage, there was a serious attempt to make the Assembly a representative body. Members of all religions were given representation under the scheme described above; in addition, the Assembly had 28 from the Scheduled Castes. In terms of political parties, the Congress dominated the Assembly occupying as many as 82% of the seats in the Assembly after the Partition. The Congress itself was such a diverse party that it managed to accommodate almost all shades of opinion within it.

The Congress's overwhelming majority in the Constituent Assembly resulted from the December 1945 provincial legislature elections and from Partition. The election gave the League most of the Muslim seats in all the provinces. Of the

total of 1,585 seats in the provincial assemblies, the Congress won 925 or 58%, but it captured about 85%, of the non-Muslim seats.

Under the scheme of indirect election in the Cabinet Mission Plan, the Constituent Assembly reflected the complexion of the provincial legislatures. Hence in the July 1946 elections to the Assembly, League members won all but seven of the seats from Muslim reserved constituencies. Congress candidates filled 203 of the 212 General places (representing every community except Sikhs and Muslims).

Additionally, the Congress parties in the provincial legislatures elected four Muslims and one Sikh, giving the Congress 208 seats of the total of 296 allotted to the provinces. The remaining sixteen places went to five small groups.

Thus the Congress had a built-in majority of 69%, in the Assembly, and, after Partition, when the number of Muslim League representatives fell to 28, the Congress majority jumped to 82%.

The assembly had several senior Congress members. In the Assembly were six past or present Congress presidents, fourteen Provincial Congress Committee presidents, and, in 1949, fourteen out of eighteen members of the Congress Working Committee were also active in the Assembly. Among these and other notables were the four chiefs of the Party: Jawaharlal Nehru, Vallabhbhai Patel, Maulana Azad, and Rajendra Prasad.

Although the outcome of the Assembly elections in July 1946 had made the Congress master of the Assembly, party policy ensured that Congress members must represent the country. This was a result of the unwritten and unquestioned belief that the Congress should be both socially and ideologically diverse and deliberate policy that expresses the viewpoints of various minority communities in the Assembly.

However, the electoral process itself could not have produced a representative body because it was based on the *restricted franchise* established by the Sixth Schedule of the 1935 Act, which excluded the mass of peasants, the majority of small shopkeepers and traders, and countless others from the rolls through tax, property, and educational qualifications.

Only 28.5% of the adult population of the provinces could vote in the provincial assembly elections of early 1946. But because the Congress and its candidates covered a broad ideological spectrum, those elected to the assemblies did represent the diverse viewpoints of voters and non-voters alike.