

## FORMATION OF THE CONSTITUENT ASSEMBLY OF INDIA

As the war came to an end, there was a growing recognition that the day for grant of independence to India was not far away. In July 1945, the Labour party came to power in Britain and fresh attempts were initiated to resolve the Indian issue. The Governor General, Lord Wavell convened a conference at Shimla which tried to resolve the differences among the Congress and the League and promised to convene a constitution making body as soon as possible. However, the conference failed and the British cabinet decided to send three of its own members to resolve the Indian problem. On 24 March 1946, the Cabinet Mission arrived in India aiming to discuss two issues “the principles and procedures for the framing of a new constitution for granting independence, and the formation of an interim government based on widest possible agreement among Indian political parties (Bandopadhyay, 2004).” The Cabinet Mission which comprised of Lord Pethick-Lawrence, Sir Stafford Cripps and Lord A.V. Alexander failed in making the two parties concur and reach an agreement, and therefore announced their own proposals on 16 May 1946. The Cabinet Mission had already clarified that its aim was not lay out the future constitution of India but to put in place machinery through which Indians could write a constitution for themselves. The mission realised that though Universal Adult Franchise would be the most appropriate formulation to such an end it would deal to inordinate delay and, therefore, recommended that the newly elected legislative assemblies of the provinces should elect the members of the Constituent Assembly. While one representative would be elected for a million populations, the Sikh and Muslim legislators were to elect their quota on the basis of their population. The Cabinet Mission proposed a

confederation, a three tier structure, where the Union government would be responsible for affairs such as defenses, revenue, and foreign affairs and communications. At each level of the confederation a separate constitution could be adopted, which by implication provided the space for autonomy demanded by the League. The three-tiered Constituent Assembly structure proposed by the Mission comprised of sections of states drawn from British India:

- Section A would consist of Hindu majority states such as Madras, United Province, Orissa, Bombay, Bihar and Central Provinces.
- Section B which would comprise of Muslim majority provinces of the north- west such as, Punjab, Sindh and N.W.F.P
- Section C would include Assam and Bengal.

Overall, from these three sections of British India a maximum of 292 members were to be elected through single transferable vote. Indian States were to be represented through 93 members and Chief Commissioner's Provinces through 4 members. Thus, the number of the proposed structure stood at 389 members.

The Cabinet Mission scheme further proposed that the Constituent Assembly after electing the chairman and other officials, complete the formalities and split into the three groups and work out separate constitutions.

Only after the separate constitutions were formulated the Constituent Assembly was to meet as an entity to deliberate and formulate a constitution for the Union of India.

While both the Congress and the League had problems with the Plan, the Congress decided to move ahead with the Constituent Assembly. Though the League continued its opposition to the Plan, it decided to contest the elections. Since Constituent Assembly was constituted through indirect election, the results and

composition of the state legislative assemblies of 1945 were reflected in the Constituent Assembly as well.

The Congress captured 208 seats, while the Muslim League could garner 73 seats and the remaining 15 seats went to other parties and interest groups like those representing landlord and Commerce, the PanthikAkali Party, the Unionist Party, the KrishokPraja Party, the Scheduled Castes Federation, the Communist Party and the Sahid Jirga.

The League continued to oppose the Constituent Assembly and decided not to participate in the proceedings.

So, when the Constituent Assembly was convened for its first session from 9th December to 21st December 1946 it was marked by the conspicuous absence of the League. The total strength of the House for its first session was 207. The name of Dr. Sachidananda Sinha was proposed for the temporary chairmanship of the assembly. During its first session, the Constituent Assembly had four sittings and discussed matters like presentation of credentials and signing of the register, electing the permanent Chairman, constituting a committee for rules of procedure, moving the Objectives Resolution etc. On 11th December, the Constituent Assembly elected Dr. Rajendra Prasad as its Chairman. The 'Objectives Resolution' was introduced by Jawaharlal Nehru on 13 December 1946 (though it was adopted in the Second Session). According to D.D. Basu, the Objectives Resolution provides the backdrop to the philosophy of the Indian Constitution and it has inspired the shaping of the Constitution through all its subsequent stages. For Nehru, it was "something more than a resolution. It is a declaration, a firm resolve, a pledge, an undertaking and for all of us a dedication." Through the Objectives Resolution, the Constituent Assembly declared "its firm and solemn resolve to proclaim (Basu, 2006).

India as an Independent Sovereign Republic and to draw up for her future governance a Constitution.”

Unequivocally, therefore the Objectives Resolution proclaimed that though the Constituent Assembly may have been drawn as per the Plan of the Cabinet Mission but the sovereignty of the Constitution is not derived from any other source but from the people of India (Basu, 2006). The second session of the Constituent Assembly which was convened from 20 January 1947 elected V.T Krishnamachari and H.C. Mookherjee as Vice-Chairmen of the Constituent Assembly. It adopted the Objectives Resolution on 22 January 1947. The Muslim League still showed no signs of co-operation. Though it did not partake in the session, it objected to the passage of the Objectives Resolution, especially the sections where it mentioned the word “Union”. Moreover, the Second session had carried out routine work like establishment of committees and the League had problems with this as well, especially the appointment of the Union Powers Committee. To add to the troubles of the Congress the League decried that “the continuation of the Constituent Assembly and its proceedings and decisions are ultra vires, invalid and illegal and it should be forthwith dissolved” arguing that the Cabinet Mission Plan’s proposals were conditional its acceptance by both parties and since the two parties did not see eye to eye, the proposal of summoning the Constituent Assembly was itself invalid. Increasingly, the volatile situation indicated that partition was inevitable. All prospects of reconciliation within the framework of the Plan ended with the Vallabhbhai Patel- Liaqat Ali controversy (Chaube, 2000).