

Review Paper**The Steps of Constitutional Development in India: A Review****Tirthankar Chakraborty***Ph. D Research Scholar, Department of Political Science, University of Gour Banga, Malda, West Bengal.***Article history**

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This article traces the pathways of Constitutional development in India. Accepting the historical and analytical perspective, the article demonstrates how is the Constitution of India framed? The paper also focuses on the approaches taken by the British to protect their interests and mostly on the historical developmental process to frame Constitution in India through the body of Constituent Assembly.

Key Words: *Constitution, Constituent Assembly, Indian Constitution, Indian National Congress.***Introduction:**

It is rightly observed by Aditya Nigam that “*all constitutions can be said to be texts without authors – or at any rate, texts with many authors, such that no singular authorial voice can be attributed to them. Constitutions are normally written, or one may say, they write themselves, in the course of major upheavals and transformations in the lives of societies*”.¹ Apart from other conditions the experience of our part is very much same in this respect. Responding on the question of national self-determination in the course of anti-colonial struggle, the process of construction of the Constitution presents in equal sense of a crystallisation and codification of the given objectives which are influenced through this anti-colonial struggle.

Thus, the design of a constitution making process can play an important role in the developing countries and its capacity transition. Constitution making after conflict is an opportunity to create a common vision of the future of a state and a road map on how to get there. The constitution can be partly a peace agreement and partly a framework setting up the rules by which the new democracy will operate.² Yet, an ideal constitution - making process can accomplish several things, for example, it can drive the transformative process from conflict to peace, seek to transform the society from one that resorts to violence to one that resorts to political means to resolve conflict, and/or shape the governance framework that actually will regulate access to power and resources - all key reasons for conflict and more than else, it must also put in place mechanisms and institutions through which future conflict in the society can be managed without a return to violence. Thus, in spite of occasional challenges, the constitution of India has been able to keep itself working with a surprising degree of adaptability to changing circumstances. The pronounced circumstance actually arose from the long struggle between the alien power and the native subjects, or more sophisticatedly saying, between the alien powers allies and the toiling masses supported and sustained by a large body of intellectuals and political leaders. Thus, through Constituent Assembly the draftsmen eventually work out in compromise and reconciliations between the different segments of conflicting interests and drawing up the constitution.

Nonetheless, the Indian Constitution came in force on 26th January 1950, but before 1950, India constitution began her journey many years ago and has continued unabated since. As above said, it's commencing lie deeply rooted in the struggle for Independence from colonial bondage and in the movements for responsible and constitutional government in the princely states. It is needless to say that ‘more than passing resolution on the need for, or framing proposals for constitutional reform the heart of the national movements contribution lay its concrete political practice’.³ In this juncture, Gandhi categorically said that imperial administration did not lead into any constitutional reforms on their own enterprises except always in delayed and unenthusiastic response to sustained native nationalist strain, therefore, ‘Indians must shape their own destiny, that only in the hands of Indians could India become herself’.⁴

Making of Indian Constitution: Historical Retrospect:

The ‘*climate*’ of making Indian Constitution is basically an evaluative and historical developmental procedure which investigates two significant issues. First, the constitutional experiments made during the imperial policy that changed from one pattern to another under the force of prevailing circumstances. And secondly, several ‘*reasonable statutory reforms*’ that were made to protect imperialist interest, on the one hand, and the growing demands of Indian nationalism, on the other.⁵ Not surprisingly, with the growth of political consciousness among all sections of the people in India and widening of the base of the national movement, Indians began to assert their right to frame a constitution for themselves. The earliest attempt in this direction was the Congress-League Scheme of 1916, formulated jointly by the Indian National Congress and the All India Muslim League.⁶ A further assertion

in the same direction was the Commonwealth of India Bill, sponsored by Mrs. Annie Besant and Sir Tej Bahadur Sapru, which was introduced in the House of Commons in 1926.⁷ With the Indian National Congress coming under the leadership of Mahatma Gandhi and national movement acquiring a mass base, this self-assertion on the part of India acquired a new dimension.⁷

However, the then Secretary of State for India, Lord Birkenhead challenged the Indians in the late twenties “to produce a constitution, which carries behind it a fair measure of general agreement”;⁸ which bestirred Indians to make a serious attempt at making a constitution, acceptable to various shades of opinion in this country. Piqued by opposition to all-white Simon Commission (1927), he, asks Indians “to put forward their own suggestions for a constitution”.⁹ The challenge was accepted by the Congress, which took the initiative in convening an All Parties' Conference in 1927, which resulted in the Nehru Report of 1928. From now on, the ‘conference method’ became the most acceptable mode of framing a constitution for India.¹⁰

In practical terms, it meant that leaders of various organisations either nominated by their own organizations or by the British Government, and some notable individuals, would meet in a Conference to hammer out a constitution, which could be acceptable to all sections of the people and also the British Government. The most important conference, called in this manner, was the Round Table Conference, convened by the British Government in London during 1930-33, whose deliberations led to the passing of the Government of India Act, 1935.¹¹ The Conference method, however, was prone to deadlocks. The All Parties' Conference had not been able to produce an agreed solution of the communal problem. Mahatma Gandhi, the sole representative of the Congress in the Second Round Table Conference, had returned from there a disappointed man.¹² The feeling, therefore, grew in Congress circles that so long as the British Government and its minions remained a party to the constitution making process, India's national aspirations could not be fulfilled. This inevitably led to the emergence of the idea of the Constituent Assembly - a body elected by the people and drawing its strength and inspiration from them - to solve India's constitutional problem.¹³

The idea of an Indian Constituent Assembly was first put forward by M. N. Roy in 1927. At that time, it was a premature demand and Roy was criticized by the orthodox communists for sponsoring it.¹⁴ However, it was adopted by the Congress in the famous resolution of the Congress Working Committee on the White Paper of the British Government, passed at Bombay in June, 1934. The resolution said inter-alia: “The only satisfactory alternative to the White Paper is a Constitution, drawn up by a Constituent Assembly, elected on the basis of adult suffrage or as near it as possible, with the power, if necessary, to the important minorities to have their representatives, elected exclusively by the electors, belonging to such minorities”.¹⁵

The stand of the Congress on the Constituent Assembly had become so insistent that the British Government was forced to concede the demand in their famous declaration of August 8, 1940, known as the ‘August Offer’. The Cripps' Proposals, 1942, gave precision to this declaration by specifying the manner in which the Constitution making body would be set up. It was, however, under the Cabinet Mission Plan of 1946 that the Constituent Assembly was actually set up.¹⁶ The Cabinet Mission Plan had envisaged the convening of Constituent Assembly, elected by the newly elected the Provincial Legislative Assemblies, on the basis of proportional representation, voting through three separate electorates - Sikh, Muslim and General. The method of selection of the then existing Princely States' representatives was to be settled by the Constituent Assembly by negotiation with the States.¹⁷

Both the Congress and the League had accepted the Mission Plan with interpretations of their own and participated in the elections for the Constituent Assembly. But, sharp differences appears, which could not be bridged and led ultimately to Partition of the country under the Plan of 3rd June, 1947.¹⁸ As a result of this, members of the Constituent Assembly, representing Bengal, Punjab, North-Western Frontier Province, British Baluchistan and Sind, lost their seats and members of the Legislative Assemblies of the new Provinces of West Bengal and East Punjab elected their representatives afresh.¹⁹

As the Congress was in an overwhelming majority in the Legislative Assemblies of the Provinces, which remained in India, it inevitably dominated the deliberations of the Constituent Assembly. Naturally, it was stated that, the Congress held “the House in its possession”.²⁰ But, true to its national character, the Congress had approached the task of constitution making in no narrow, partisan or sectarian spirit. It sent its best men to the Assembly and also saw to it that all communities and interests got fair representation. Congress leaders further tried that all those, who because of their special knowledge, experience and ability could be particularly useful, were elected to the Constituent Assembly.²¹

Conclusion

The forgoing discussion conclusively proves that Indian experience in the making of her supreme legal document through the Constituent Assembly basically followed an evaluative and historical developmental process which investigates two particular subjects. Firstly, the constitutional experiments made during the imperial policy that changed from one pattern to another under the force of prevailing circumstances. And secondly, several ‘reasonable statutory reforms’ that were made to protect imperialist interest, on the one hand, and the growing demands of Indian nationalism, on the other.

Indeed, “. . . the whole history of the anti-colonial struggle can be read as an intricate process of the writing of the Constitution”²² and in the process of political development in India, as showing by Weiner of two political culture such as elite and mass culture as well as Morris Jones idea of ‘idioms’, language style etc as falling mainly three categories of Modern, Traditional and Saintly.²³ Which is more or less evolved for the dialectical process of struggle against for different statutory initiatives taken by colonial regimes commencing with Morley-Minto Reforms, the Montague-Chelmsford Report, the

Government of India Act 1919, to the proceedings of the Simon Commission and the Round Table Conferences, the Nehru Report, the Cripps Mission, the Wavell Plan and Simla Conference, Government India Act 1935 and the Cabinet Mission Plan and as such ‘. . . are the episodes in the writings of the text that emerged, with significant embellishments, of course, from the Constituent Assembly’.²⁴ In such an atmosphere the Constitution was framed as a symbol of rational aspirations and modernising instruments. As Austin²⁵ observed in this respect, the constitution was more evolutionary than reflects its revolutionary character. Although, throughout the episodes in the writings of the text, all the contexts for the text are symbolised a highly political engagements of diplomatic negotiations by the different players both with “in” and “out” circles of Indian National Congress, Muslim League and the British Government or any of between them or collectively take on themselves each with other in their own interests. In fact, the given narratives shows that the whole affairs was exactly not a Habermasian terrain of rational- Critical discourse, and all the parties acted within a tremendous pressure and many times compel to produce some kind of ‘codes’ for ‘communications’ which is actually in the different situations assumes different ‘meanings’, different ‘codes’ and different ‘functions’ throughout the making process of Indian Constitution.

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