



## The Constituent Assembly of India: Nature and Limitations

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**Abstract:** *The Constitution is the supreme law of a state. In a democracy the people frame the constitution but in reality they have no direct role in drafting the constitution. An organization composed of their elected representatives framed the constitution. Thus, the Constituent Assembly is a body made up of elected representatives of the people who frame the constitution of the country. The Constituent Assembly framed the constitution of India. It was a representative body of the people of India. The Constitution of India was finally adopted by the Constituent Assembly on 26 November 1949 with 395 articles and 8 schedules. It took a total of 2 years 11 months and 17 days to make the Constitution of India. This article highlights the nature and limitations of the Constituent Assembly of India.*

**Key Words:** *Constitution, Democracy, People, Constituent Assembly, India, Limitations.*

### 1. INTRODUCTION:

The framing of a constitution by the Constituent Assembly is undoubtedly a significant event in the constitutional history of India. The Constitution of India was framed by a Constituent Assembly, a representative body of the people of India, working for about three years since December 9, 1946, and adopted by it on November 26, 1949. The idea of a constituent assembly was first proposed in 1934 by M.N. Roy. Indian National Congress demanded it in 1935 to frame the Indian constitution. However, the actual constituent assembly was formed in 1946 on the basis of the cabinet mission plan.

### 2. COMPOSITION:

The composition of the Constituent Assembly, according to the Cabinet Mission Plan, were to be as under : i) The eleven Provinces would be represented in the Constituent Assembly on the basis of population, roughly in the ratio of one Member to a million. The number of Members of the Princely States would also be fixed on the same principle. As a result, the Provinces, the Princely States and the Chief Commissioners' Provinces would have 292, 93 and 4 representatives respectively. ii) Seats allocated to the Provinces were divided among the principal communities- Muslims, Sikhs and General (all except Muslims and Sikhs)-on the basis of their numerical strength. iii) Members of each community in the Provincial Legislative Assemblies were to elect their own representatives by the method of proportional representation with single transferable vote. iv) The method of selection of representatives of the Princely States was to be settled later by consultation. Thus the total number of members of the Constituent Assembly was 389. Out of 296 seats in British India, Congress won 208 seats, Muslim League 73 seats and others 15 seats. However, as a result of the partition under the Mountbatten Plan of 3 June, 1947, the membership of the Constituent Assembly was reduced to 299. The first session of Indian Constituent Assembly was held on 9th December, 1946. Dr. Sachidananda Sinha was the first chairman of the assembly. On 11th December, it elected Dr. Rajendra Prasad as its permanent president. Some prominent members of the Constituent Assembly of India was Dr. Rajendra Prasad, Pandit Jawaharlal Nehru, Syama Prasad Mookerjee, Sardar Vallabhbhai Patel, Sarojini Naidu, Vijayalakshmi Pandit, Hansa Mehta, Rajkumari Amrit Kaur, Durgabai Deshmukh, Benegal Narsing Rau, Ganesh Mavlankar, Dr. John Mathai, Bhimrao Ramji Ambedkar, S Radhakrishnan, C. Rajagopalachari, K. M. Munshi, N. G Ayyangar, Alladi Krishnaswamy Iyer.



### **3. NATURE:**

It is necessary to discuss some facts about the nature of the Constituent Assembly which was formed in 1946. (A) This Constituent Assembly cannot be called sovereign by law. Its powers were limited by the British Parliament as a whole and by the Cabinet Mission in particular. The body was formed by British law on the basis of a compromise with British power. Therefore, it cannot be called a revolutionary or sovereign organization. (B) Members of the Constituent Assembly are elected by the members of the Provincial Legislative Assemblies. Members of the provincial legislature were elected on the basis of limited suffrage. At that time only 14 percent of the people had the right to vote. The Constituent Assembly was not formed on the basis of universal suffrage. (C) The Constituent Assembly has not become a representative body of all classes of Indian. Because the demand for a separate Pakistan was not accepted, the members of the Muslim League did not participate in the Constituent Assembly. The British government declared that the constitution could not be imposed on any community reluctant to participate in the Constituent Assembly. As a result of this provocative announcement, the members of the Muslim League set out to formulate a separate constitution for Pakistan.

India became independent on 15th August 1947. As a result, the Constituent Assembly of India became a sovereign body in legal matters. Immediately members of the Muslim League joined Pakistan. The Muslim League had 73 members. After the partition of India this number decreased to 29. As a result, the Congress party in the Constituent Assembly of Independent India stood at 82 per cent. Then the Constituent Assembly became a de facto Congress council. As a result of this dominance of the Congress, communalism could not create any problem in the constitution writing process.

Members of Congress believed in secularism and liberalism. So the minorities were at ease. Moreover, despite the predominance of Hindus, representatives of Sikh, Muslim and other communities were present in the Constituent Assembly. All classes and opinions have been represented in the Constituent Assembly as non-Congress eminent persons like Ambedkar are present in the Constituent Assembly. Dr. H. C. Mukherjee has represented Indian Christians. The Anglo-Indians were represented by Frank Anthony and the Persis were represented by H. P. Modi.

Even after the formation of the Constituent Assembly, no compromise was reached between the National Congress and the Muslim League. There was no possibility of the Congress and the League working together. On November 20, 1946, Viceroy Lord Wavell announced that the first session of the Constituent Assembly would be held on December 9 at 11 am at the Constitution Hall in Delhi. An official proclamation from London on 6 December 1946 stated that the constitution drafted by this Constituent Assembly would not be imposed on any community reluctant to participate in the Constituent Assembly. In November 1946, the Constituent Assembly began work on the draft constitution. The work of drafting the constitution was completed in February 1948. The draft was published in all the first class newspapers of the country for public opinion polls. This draft constitution had 315 articles and 13 schedules. The people are also given an opportunity to discuss and submit amendments. Eight months were given for this. A total of 7365 amendments were introduced in the draft constitution. Of these, 2473 amendments have been discussed in the Constituent Assembly. Many proposals, comments, criticisms and recommendations for amendment were accepted.

Each article of the draft constitution was thoroughly discussed in the Constituent Assembly from 15th November to 17th December 1948. The Constitution of India was finally adopted by the Constituent Assembly on 26 November 1949 with 395 articles and 8 schedules. Rajendra Prasad signed the constitution as the president of the Constituent Assembly. It took a total of 2 years 11 months and 17 days to make the Constitution of India. There were a total of 11 sessions of the Constituent Assembly. The last session of the Constituent Assembly was held on January 24, 1950. On that day the members signed the constitution. By the way, besides the constitution writing, the Constituent Assembly also performs some other important functions. Examples include the adoption of the national flag and the national anthem, the adoption of decisions on membership of the Commonwealth, the adoption of a number of important statutes etc. The Constitution of Independent India as a whole came into force on 26 January 1950.

### **4. LIMITATIONS:**

i) The Constituent Assembly of India cannot be called the House of Representatives of the people. Because this Constituent Assembly was not formed on the basis of universal suffrage. The Constituent Assembly was formed on the basis of limited suffrage. Members of the Constituent Assembly are elected by members of the provincial legislature. Members of the provincial legislature were elected by only 14 percent of the total population of contemporary India. Because then only 14 percent of the total population had the right to vote.



ii) The princely states had the power to nominate 93 members of the Constituent Assembly. This measure is against the democratic norms to protect the interests of the royal families. In fact, in the structure of the Indian Constituent Assembly, the interests of the royal families have been protected by a fancy compromise of feudalism with democracy.

iii) According to many, this Constituent Assembly was formed only with the representatives of the aristocracy of the society. A handful of industrialists, businessmen, zamindars, lawyers and politicians educated abroad had a clear influence in drafting the constitution. As a result, the hopes, aspirations and thoughts of the common people did not get dignity here. The idea of elite domination is said to have worked in the formation of the Indian Constituent Assembly.

iv) Public opinion on the constitution drafted by this Constituent Assembly has not been verified. The constitution was not put to a referendum. Therefore, this constitution cannot be called the constitution of the people. K.V. Rao said that one of the biggest drawbacks, it is often said by critics, is the lack of sanction from the people. As it is, the term 'We, the people of India' in the Preamble is high-sounding but empty; the people were neither directly nor indirectly connected with the framing of the Constitution either at the beginning or at the end.

v) The predominance of jurists in the Constituent Assembly was well established. In fact, 21 members led the drafting of the constitution, 11 of them were lawyers. The jurists have given priority to the legal aspects of the constitution. Attempts have been made to find solutions to socio-economic problems only from a legal point of view. As a result, they have practically failed to show the way to the solution of India's socio-economic problems. So K. T. Shah remarked that the goal of the constitution drafted by the Constituent Assembly was almost entirely political and not at all social or economic. Ivor Jennings therefore describes the Constituent Assembly as a lawyers' paradise.

vi) The Constituent Assembly did not reflect the social, political and economic aspirations of the people. Lawyers and politicians were predominant among the members of the Assembly. So this constitution has been written only from the point of view of law. There was no political scientist or sociologist in the Constituent Assembly. K. T. Shah said that the Constitution's aim, as explained by Dr. Ambedkar, or as can be derived from the wording of the Constitution itself, is almost entirely political and not at all social or economic.

vii) The procedure followed by the Constituent Assembly is also considered flawed for various reasons. The drafting committee considered itself to be a select committee and an expert committee. In this context, K.V. Rao said that in a tutorial class, students are given the freedom to think and express their views, but the teacher has the final say, members of the Constituent Assembly can discuss various aspects of the constitution, but the decision of the drafting committee is final.

viii) The members of the drafting committee were particularly disturbed by the informal discussions on various articles of the constitution. In many cases, decisions about any part of the constitution have changed frequently, even during the second or third reading. Naziruddin Ahmed, one of the members of the Constituent Assembly, ridiculed the drafting committee and called it a "drifting committee".

ix) Although the Constituent Assembly and its drafting committee were theoretically responsible for drafting the Indian Constitution, in fact the Congress Working Committee was its main creator. The drafting committee only worked on the decisions of the constitution made by the congress working committee or elsewhere by the top leaders of the Congress. In this context, the statement of Mahabir Tyagi is especially significant. He said that members of the drafting committee had their hands tied elsewhere. Dr. Ambedkar also admitted that the members of the drafting committee had to go outside the Constituent Assembly to take decisions. Thus the directives of the Congress leaders were the main controlling factor in making the constitution.

x) Nehru, Patel, Rajendra Prasad and Abul Kalam Azad have wielded real power in the Constituent Assembly. The drafting committee has implemented their decision. They had absolute power in the Congress party. So they have been able to control the work of the Constituent Assembly. Granville Austin said that It was by virtue of their enormous prestige and their power, both in the Congress and in the Government, that these four men controlled the affairs of the Assembly, a control that they effected through their grip on the Assembly Party and Assembly's Committee system.



xi) Ambedkar's bossy attitude as the chairman of the drafting committee angered many members of the Constituent Assembly. Sometimes, if a member proposed an amendment, he would choose silence as the best way. Again, many times in such cases he would say without giving any reason that he has no statement. He rejected the amendment proposal. Moreover, he would get angry if members of the Constituent Assembly wanted to know about the legal aspects of a particular article of the constitution. Once enraged, he once said to Mahabir Tyagi that he will not discuss any issue of law in the meeting. This meeting is not a law class and he will not indulge any such discussion. Thus the bossy attitude of Ambedkar, the chairman of the drafting committee, has at times annoyed the members of the Constituent Assembly.

## 5. CONCLUSION:

The above limitations cannot be justified in the light of contemporary conditions and needs. Unnecessary time would have been wasted and huge sums of money would have been wasted to form a Constituent Assembly on the basis of universal suffrage. The people who played a key role in the Constituent Assembly were the undisputed leaders of contemporary India. They would have been elected to the Constituent Assembly if all adult voting had been arranged. Subhash C. Kashyap said that Our founding fathers were some of the most distinguished and wisest of men and women—great jurists, patriots and freedom fighters. It is difficult to imagine any better or more representative results at that time even if the Constituent Assembly was directly elected by the people on the basis of universal adult franchise. Due to the absolute dominance of the Congress party in the Constituent Assembly, the communal and separatist forces could not create any obstacle in the way of drafting the constitution. After the enactment of the Constitution, the Parliament formed on the basis of universal adult suffrage in 1952, when parliament adopted the Constitution unchanged, all doubts about the Constituent Assembly of India were dispelled.

## REFERENCES:

1. Patil, H S. 2016. The Constitution, Government, and Politics in India. Vikas Publishing House Pvt Ltd.
2. Bhattacharyya, C. D. 2014. Indian Government and Politics. Vijaya Publishing House.
3. Mahapatra, Kumar Anadi. 2005. Indian Government and Politics. Surid Publication.

## Web References:

- [https://www.constitutionofindia.net/constitution\\_making\\_process/constituent\\_assembly](https://www.constitutionofindia.net/constitution_making_process/constituent_assembly)
- <https://byjus.com/free-ias-prep/constituent-assembly-of-india/>
- <https://www.preservearticles.com/essay-for-students/essay-on-the-constituent-assembly-of-india/10861>
- <https://www.insightsonindia.com/polity/indian-constitution/historical-underpinnings-and-evolution/constituent-assembly/>
- <https://m.jagranjosh.com/general-knowledge/the-constituent-assembly-of-india-1434780545-1>
- <https://www.indiaessays.com/essays/india/constitution/essay-on-the-constitution-of-india/1449>