

Prof. K. T. Shah (Bihar : General) : Mr. President, Sir, at this stage of the debate on the Constitution. I feel it necessary to point out certain defects of commissions and omissions, on which, at the appropriate stage. I had tried to suggest amendments; but as those amendments, almost every one of them, found no favour in the eyes of the draftsmen, I feel, at this last stage, when we have an opportunity of pointing them out, that I should voice them in appropriate form.

Sir, as the House would recollect, my amendments had not been of the nature of verbal alterations, or suggesting points of mere formal controversies. This is not to say that I do not recognise the beauty of form, or the value of precision in expression. In fact I am bound to say that the labours of Friends, like Mr. Naziruddin Ahmad, who has striven hard to bring out the appropriate, the exact, expression, and proper punctuation; and make in all respects as correct a form as we could present, have not met with the appreciation that they deserved. While saying this I would not like it to be understood that I, on my side, do not appreciate the hard work, the deep learning, and all the careful attention they could possibly give that the Drafting Committee with its Chairman leading and some other members of that Body have rendered in this case. While judged as a piece of art in drafting, I am afraid I cannot regard this draft as a gem of its kind, I am willing to admit that, within the circumstances and under the conditions under which they had to work, the Drafting Committee have shown, and the Chairman particularly of that Committee, an erudition, a knowledge and ability to adapt himself to changing circumstances, and new conditions, and present as good a draft as, under the circumstances they could. For that they deserve every appreciation this House and the Government can show.

Having admitted this, I feel myself at liberty to point out still the defects, both of form and of principle, which, in my opinion, mar this Constitution and do not make it what we had hoped it would be. As already stated, I have tried to make my amendments and suggestions of principle and of root, rather than of mere superficial alterations. Now, confining myself only to those, I would like to point out, for instance, that the promise held out in the Preamble,-- the promise held out in the very first Resolution of this House, has not been fulfilled to the degree and in the manner we had a right to expect. We claim, for instance, to be a sovereign, independent Republic. While, however, we continue to be Members of the British Commonwealth. I am afraid it would be impossible for us to exercise that sovereign

independence which we fancied we were acquiring and enshrining- in this Constitution.

It may be that the Constitution is, in intent and form, democratic. But the ideal of Democracy in the shape of the Government of the *people*, by the *people* and for the *people*, is far from being realised if one scrutinises carefully the various Articles of this Constitution.

Several suggestions had been brought forward at the proper movement regarding, for instance, the right to consult the people by means of a Referendum, or the power of the people to initiate radical legislation to make the Constitution really democratic. But they have been all negatived. The excuse has been given that we are not yet ready for such methods of working democracy in all its fullness. We would need, we were told, greater experience, better education, and more wide-spread consciousness of political power in the masses as well as its responsibilities, to be able to work with success such radical forms of democratic government. I am afraid, Sir, I cannot quite accept and endorse such a view of our people's capacity, or of a working democracy in this country. The ability to work a democracy comes by having the responsibility to do so, and not by paper professions in its name, and practical negation of its forms. Had we agreed to such arguments in the past, had we accepted the suggestion of the British that the people of India were not educated enough and aware enough of their rights and obligations to be able to work a democratic Government of their own, we should never even now have obtained our independence, and the right to self-government which is now our proud possession.

Because you are still unable to trust in full the people; because you are still unable to realise that it is only by working a democracy that democracy will really be established in this country, you have not accepted those suggestions and those amendments of mine which wanted such weapons, such instruments and devices to be introduced in the Constitution, whereby the right action by the will of the people for the benefit of the people and through the representatives of the people could have been asserted.

It is not only that you are lacking in a proper faith in the people as a whole. It is perhaps even more true to say that you are lacking in faith in your own leadership. For, if your leadership is really popular; if your leadership is really the open expression of the subconscious feeling the hopes and aspirations of the people, then you need not doubt at all that the leaders' guidance in crucial moments will be accepted; and the device I have suggested will be fruitful rather than mischievous.

I hold, therefore, that this Constitution is not, in the fullness of the sense, a real, working, effective democracy that the people of India had been led to expect they have achieved.

Take, again, the instance in which those of us who had entertained ideals of freedom have felt themselves disappointed by the actual wording in this Constitution. I mean the Chapters like those dealing with the Fundamental Rights and Civil Liberties, or the Directives of Social Policy, are not what they well might have been. I am afraid the wording of those articles gives much more verbal promise, than holds out any hope for actual performance. Almost in every case, in every article, in every clause, and in every sentence of each clause, the Right is given conferred or declared either restricted, conditioned, or made dependent upon certain contingencies that may or may not happen. There is nothing to show in the entire Constitution that efforts will be made to see that those Rights and Liberties are not merely paper rights, but that they will be made real, actual, living possession and enjoyment of the people.

Take these illustrations, Sir, The Right to free and compulsory education, the Right to full

employment, or the Right to personal freedom, are in almost every instance made subject to restrictions and conditions that I had hoped will not occur in a Constitution we are claiming to be democratic, claiming to be popular, and claiming to be made by the chosen representatives and trusted leaders of the people of India. It is a pity, Sir, it is a great pity, that even such a simple right as the right to personal freedom has been made, under the Emergency provisions, - wholly illusory. Excuses can also be found for seeking to detain a person without trial for three months. It is therefore, not a right to personal freedom, so much as it is a right to remain under detention without trial, without any proper judicial proceedings for a period of three months.

There may be plenty of excuses. But I hold that those excuses are obstacles to overcome, and not reasons to take shelter under and deny or circumvent or restrict the Fundamental Rights as you call them, or the Civil Liberties of the people. There is in my opinion no Chapter more painful to read, no Chapter more disappointing in this Constitution, than that dealing with the Fundamental Rights and the Civil Liberties of the people.

And, corresponding to that naturally there is no suggestion at all about enunciating any set of Obligations or Duties which might make the people also realise that there is in consideration of the rights they enjoy also certain obligations of democratic citizenship that the citizens can learn to appreciate. You are not giving those rights in full because you have fears of democracy becoming mobocracy. You have, therefore, restricted the Chapter on obligations of the citizens.

Take, again, another instance in which in my opinion the working democracy of this country has yet to be realised, and certainly not in this Constitution. I mean the question of the formation and functions of the various organs of the State. Again and again I had tried to put in amendments suggesting, if not a complete separation of the powers and functions and organisation between the principle organs of the State. There must be at least such a measure of mutual independence, at least such a degree of mutual freedom as would ensure the operation of each within its own sphere to the fullness that such power is given to that body under the Constitution without interference from outside or other organs of the State. I am afraid that, if we scrutinise the chapter relating to the legislatures, to the judiciary and to the executive, we cannot but come to the conclusion that the freedom or independence of these institutions, the real sovereignty of these institutions, is hardly likely to operate in actual practice. Constitutional *pandits* are not wanting in this House who declare that the doctrine of the division of powers stands exploded. I am afraid I am not one of those who can share that opinion. Even those who have found it necessary to keep and maintain close links and mutual influences between the various organs of the State, even they could have wished to introduce those safeguards, those provisions which might have enabled each of these bodies to function with a degree of independence, with a degree of sureness about their own work. But those safeguards have not been provided. I am not going, Sir, to go over in great detail--there is not the time for it--each of the provisions that would in my judgment imply this aspect of the Constitution.

I cannot help pointing out that the attempts, made again and again, to ensure a degree of purity, a degree of selflessness in the rulers of the country, did not meet with the success that I had hoped that such transparent devices to make the administration proof against charges of corruption would have met with in this House. Time and again, Sir, I suggested amendments whereby the Head of the State, the great governing authorities of the State, would be free from party politics and influences, by divesting themselves of interests which might conceivably lead them to misinterpret their duties and abuse their powers. But again and again, Sir the excuse was held out that this was too idealistic to be practicable in a working

word of mere mortals. I am afraid this excuse, without claiming to be nothing more than a mere mortal, does not sound good from those who claim to follow in the footsteps of Mahatma Gandhi who cherish the ideals that he held, and who claim to follow the principles advocated by the Father of the Nation.

These are some of the illustrations. Many more I can give you which would show that the actual doctrine of a working democracy is anything but fulfilled in this Constitution that we are now passing. The mutual relation, for instance, of the several bodies, the formation of the several organs and even the scope for local self-Government I mean, are extremely limited. If you scrutinise the schedules relating to the functions of the Centre--the subjects they are called--and of the local units, you will see that the local units are made utterly powerless. They have neither power nor funds to do their duties effectively. A previous speaker actually mentioned that real self-government, real democracy, can only be in the unit. In the Centre you should have only representatives of the representatives of the representatives; you see there only delegated power from the units. Now that alone would be real responsible popular government. It may be that the overwhelming majority of a single party and the position of its leader may help you at the moment to obscure the actual fact that in the Constitution as it stands there is room rather for the development of Fascism, than for the development of a working, real democracy. And that danger is much greater at the Centre than in the units. The Concentration of powers that you have in the Constitution in the head of the State,--who will really be a nominal figure-head but in whose, name the Prime Minister functions,--is such that, if he was so minded, the Prime Minister for the time being may become an actual dictator; and his colleagues in the Cabinet and the Parliament even as a whole may become nothing but the registry office of such a dictator.

I shudder to think of the possibilities that are inherent. I hope that these possibilities will not be accomplished in the manner I fear that they may be. But even so I cannot but utter this word of disappointment that provisions have found their place in this Constitution which may make of the President or, in his name, of the Prime Minister, a possible, potential, a dangerous dictator.

There are other aspects too, Sir, in this Constitution, which make one think that the hope of a working democracy free from any entanglements, free from any dependency or influence from outside, equal to all and accepting no privileged classes as such, is illusory. We had hoped, Sir, that the sovereignty of the people will be so asserted as to secure at least the absolute ownership by the State of all forms and all sources of primary production. To the attempt by me to introduce such an amendment which would secure to the State the ownership of all minerals, flowing waters and, other primary possessions which can be utilised for the betterment of the lot of man, to that attempt the blank answer was it is not practicable.

These and many more instances, Sir, could be given to show that the Constitution we are passing has failed in material respects, in essential particulars, to carry out the ideals which we had hoped we would carry out. Even so, at this stage I am not prepared to say that this Constitution with all its defects, all its shortcomings, all its weakness should be rejected. I am willing to say that with all its defects, with all its shortcomings, let us work it in the spirit at any rate which we hope and which we think ought to be the guiding spirit, the directing influence of this Constitution. If there are shortcomings, if there are defects, if there are omissions or sins of commission, working experience will reveal them to us. And if we work it with the right spirit, if we are intellectually honest, if we have nothing but the good of the people at heart, then I for one feel sure that, notwithstanding defects, notwithstanding shortcomings, this Constitution can be worked in such a manner that real democracy may in a short time be established, and if not in the immediate future, within five years or ten years, the people of this country may become the real rulers of this country.