

[DR. SACHCHIDANANDA SINHA (PROVISIONAL CHAIRMAN),
DECEMBER 9, 1946]

I wish your labours success, and invoke Divine blessings that your proceedings may be marked not only by good sense, public spirit, and genuine patriotism, but also by wisdom, toleration, justice, and fairness to all; and above all with a vision which may restore India to her pristine glory, and give her a place of honour and equality amongst the great nations of the world.

I am deeply beholden to you for your having agreed to accept me as the first President of your Constituent Assembly, which will enable me to assist you in transacting the preliminary business before the House—such as the election of a permanent President, the framing of the Rules of Business, the appointment of various Committees, and settling the question of giving publicity to, or keeping confidential, your proceedings—which will ultimately lead you to crown your labours by formulating a suitable and stable constitution for an Independent India. In expressing my sense of appreciation of your great kindness, I cannot conceal from myself that I feel—comparing small things with great—that I am, on the present occasion in the position in which Lord Palmerston found himself when Queen Victoria offered him the highest Order of Chivalry, namely, the Knighthood of the Garter. In accepting the Queen's offer, Lord Palmerston wrote to a friend as follows:

I have gratefully accepted Her Majesty's gracious offer as, thank God, there is no question of any damned merit about the honour conferred on me.

I say I find myself more or less in the same position, for you have agreed to accept me as your President on the sole ground that I am, in age, the senior-most member of this Assembly. Whatever the ground, however, on which you have chosen to have me as your first President, I am nonetheless profoundly grateful to you. I have had, in my fairly long life, several honours conferred on me in recognition of my services as a humble worker in public interest, but I assure you that I regard your mark of favour as a signal honour, which I shall cherish throughout the rest of my life.

On this historic and memorable occasion, you will not grudge, I am sure,

if I venture to address to you some observations on certain aspects of what is called a Constituent Assembly. This political method of devising a constitution for a country has not been known to our fellow-subjects in Britain, for the simple reason, that under the British Constitution, there is no such thing as a constituent law, it being a cherished privilege of the British Parliament, as the sole sovereign authority, to make and unmake all laws, including the constitutional law of the country. As such, we have to look to countries other than Britain to be able to form a correct estimate of the position of a Constituent Assembly. In Europe, the oldest Republic, that of Switzerland, has not had a Constituent Law, in the ordinary sense of that term, for it came into existence, on a much smaller scale than it now exists, due to historic causes and accidents, several centuries back. Nevertheless, the present constitutional system of Switzerland has several notable and instructive features, which have strongly been recommended by qualified authorities to Indian constitution-makers, and I have no doubt that this great Assembly will study carefully the Swiss Constitution, and try to utilise it to the best advantage in the interest of preparing a suitable constitution for a free and independent India.

The only other State in Europe, to the constitution of which we could turn with some advantage, is that of France, the first Constituent Assembly of which (called "The French National Assembly") was convoked in 1789, after the French Revolution had succeeded in over-throwing the French monarchy. But the French Republican system of Government had been changed since then, from time to time, and is even now, more or less, in the melting pot. Though, therefore, you may not be able to derive as much advantage from a study of the French system of constituent law as that of the Swiss, that is no reason why you should not seek to derive what advantage you can in the preparation of the task before you, by a study of it.

As a matter of fact, the French constitution-makers who met in 1789 at the first Constituent Assembly of their country, were themselves largely influenced by the work done but a couple of years earlier in 1787, by the historic Constitutional Convention held at Philadelphia by the American constitution-makers, for their country. Having thrown off their allegiance to the British King in Parliament, they met and drew up what had been regarded, and justly so, as the soundest, and most practical and workable republican constitution in existence. It is this great constitution, which had been naturally taken as the model for all subsequent constitutions not only of France, but also of the self-governing Dominions of the British Commonwealth, like Canada, Australia, and South Africa; and I have no doubt that you will also, in the nature of things, pay in the course of your work, greater attention to the provisions of the American Constitution than to those of any other.

I have referred above to the self-governing constitutions of the great Dominions of the British Commonwealth being based on, to a large extent, if not actually derived from, the American constitutional system. The first to

benefit by the American system was Canada, the historic Convention of which country, for drawing up a self-governing constitution, met in 1864, at Quebec. This Convention drew up the Canadian Constitution, which was subsequently embodied in what is still on the Statute Book as the British North American Act, passed by the British Parliament in 1867. You may be interested to hear that the Quebec Convention consisted of only 33 delegates from all the provinces of Canada, and that Convention of 33 representatives issued as many as 74 resolutions, which were afterwards duly incorporated *in toto* in the British North American Act, under the provisions of which the first self-governing Dominion of the British Commonwealth of Canada, came into existence, in 1867. The British Parliament accepted the Canadian Convention's scheme in its entirety, except for making only one drafting amendment. I hope and pray, Hon'ble Members, that your labours may be crowned with a similar success.

The American constitutional system was more or less adopted in the schemes prepared for framing the Constitutions of Australia and South Africa, which shows that the results achieved by the American Convention, held at Philadelphia in 1787, had been accepted by the world as a model for framing independent federal constitutions for various countries. It is for these reasons that I have felt justified in inviting your attention to the American system of constituent and constitutional law as one which should be carefully studied by you—not necessarily for wholesale adoption, but for the judicious adaptation of its provisions to the necessities and requirements of your own country, with such modifications as may be necessary or essential owing to the peculiar conditions of our social, economic and political life. I have done so as according to Munro—a standard authority on the subject—the American Constitution is based on “a series of agreements as well as a series of compromises”. I may venture to add, as a result of my long experience of public life for now nearly half a century, that reasonable agreements and judicious compromises are nowhere more called for than in framing a constitution for a country like India.

In commending to you for your careful consideration and acceptance, with reasonable agreements and judicious compromises, the fundamental principles of the American system, I cannot do better than quote the striking observations on the subject of the greatest British authority, namely Viscount Bryce, who in his monumental work, called “The American Commonwealth”, writes as follows, putting in a very few lines the substance of the fundamental principles of the American Constitution:

Its central or national is not a mere league, for it does not wholly depend on the component communities which we call the States. It is itself a Commonwealth, as well as a union of Commonwealths, because it claims directly the obedience of every citizen, and acts immediately upon him through its courts and executive officers. Still less are the minor communities, the States, mere sub-divisions of the Union. mere creatures of the National Government, like the counties of England, or the Departments of France. They have over their citizens an authority which is their own, and not delegated by the Central Government.

It may possibly be that in some such scheme, skilfully adapted to our own requirements, a satisfactory solution may be found for a constitution for an Independent India, which may satisfy the reasonable expectations and legitimate aspirations of almost all the leading political parties in the country. Having quoted the greatest British authority on the great, inherent, merits of the American Constitution, you will, I hope, bear with me a fairly long quotation from the greatest American Jurist, Joseph Story. In concluding his celebrated book, called "Commentaries on the Constitution of the United States", he made certain striking and inspiring observations which I present to you as worthy of your attention. Said Story:

Let the American youth never forget, that they possess (in their Constitution) a noble inheritance, bought by the tolls, and sufferings, and blood of their ancestors; and capable, if wisely improved, and faithfully guarded, of transmitting to their latest posterity all the substantial blessings of life, the peaceful enjoyment of liberty, property, religion, and independence. The structure has been erected by architects of consummate skill and fidelity; its foundations are solid; its compartments are beautiful, as well as useful; its arrangements are full of wisdom and order; and its defences are impregnable from without. It has been reared for immortality, if the work of man may justly aspire to such title. It may, nevertheless, perish in an hour by the folly, or corruption, or negligence of its only keepers, THE PEOPLE. Republics are created—*these are the words which I commend to you for your consideration*—by the virtue, public spirit, and intelligence of the citizens. They fall, when the wise are banished from the public councils, because they dare to be honest, and the profligate are rewarded, because they flatter the people, in order to betray them.

To quote yet one more leading authority on the almost ideal Constitution of America, James (at one time Solicitor-General of the United States) says in his highly instructive book, called, "The Constitution of the United States—Yesterday, Today, and Tomorrow":

Constitutions, as a governmental panacea, have come and gone; but it can be said of the American Constitution, paraphrasing the noble tribute of Dr. Johnson to the immortal fame of Shakespeare, that the stream of time which has washed away the dissoluble fabric of many other paper constitutions, has left almost untouched its adamant strength. Excepting the first ten amendments, which were virtually a part of the original charter, only nine others have been adopted in more than one hundred and thirty years. What other form of government has better stood the test of time?

Hon'ble Members, my prayer is that the Constitution that you are going to plan may similarly be reared for 'immortality', if the work of man may justly aspire to such a title, and it may be a structure of 'adamantine strength', which will outlast and overcome all present and future destructive forces.

Having invited your attention to some aspects of the question of constitu-

tion-making in Europe and America, I may now profitably turn to some aspects of the question in our own country. The first definite reference to a Constituent Assembly (though not under those words or under that particular name) I have found in a statement of Mahatma Gandhi, made so far back as 1922. Mahatmaji wrote:

Swaraj will not be a free gift of the British Parliament. It will be a declaration of India's full self-expression, expressed through an Act of Parliament. But it will be merely a courteous ratification of the declared wish of the people of India. The ratification will be a treaty to which Britain will be a party. The British Parliament, when the settlement comes, will ratify the wishes of the people of India as expressed through the freely chosen representatives.

The demand made by Mahatma Gandhi for a Constituent Assembly, composed of the "freely chosen representatives" of the people of India, was affirmed, from time to time, by various public bodies and political leaders, but it was not till May, 1934, that the Swaraj Party, which was then formed at Ranchi (in Bihar), formulated a scheme in which the following resolution was included:

This Conference claims for India the right of self-determination, and the only method of applying that principle is to convene a Constituent Assembly, representative of all sections of the Indian people, to frame an acceptable constitution.

The policy embodied in this resolution was approved by the All-India Congress Committee, which met at Patna—the capital of Bihar—a few days later, in May, 1934; and it was thus that the scheme of a Constituent Assembly for framing the Indian Constitution was officially adopted by the Indian National Congress.

The above resolution was confirmed at the session of the Congress held at Faizpur in December 1936. The confirming resolution declared that:

The Congress stands for a genuine democratic State in India where political power has been transferred to the people, as a whole, and the Government is under their effective control. Such a State can only come into existence through a Constituent Assembly having the power to determine finally the constitution of the country.

In November, 1939, the Congress Working Committee adopted a resolution which declared that "Recognition of India's independence and the right of her people to frame their constitution through a Constituent Assembly is essential."

I may add that in the resolutions from which I have quoted above (those adopted at the Congress Working Committee of November 1939, and at the Faizpur session of the Congress of 1936) it was declared that the Constituent Assembly should be elected on the basis of adult suffrage. Since the Congress

gave a lead on the subject in 1934, the idea of the Constituent Assembly had come to prevail largely as an article of faith in almost all the politically-minded classes in the country.

But until the adoption of the resolution on Pakistan, in March 1940, by the Muslim League that political organization had not favoured the idea of a Constituent Assembly as a proper and suitable method for framing a constitution for this country. After the adoption of that resolution, however, the attitude of the Muslim League seems to have undergone a change in favour of the idea of a Constituent Assembly—one for the areas claimed by the League for a separate Muslim State, and the other for the rest of India. Thus it may be stated that the idea of a Constituent Assembly, as the only direct means for the framing of a constitution in this country, came to be entertained and accepted by the two major political parties in 1940, with this difference that while the Congress desired one Constituent Assembly for India, as a whole, the Muslim League wanted two Constituent Assemblies, in accordance with its demand for two separate States in the country. Anyway, whether, one or two, the idea of a Constituent Assembly being the proper method for the framing of a constitution had clearly dawned by that time on public consciousness in the country, and it was with reference to that great mental upheaval that Pandit Jawaharlal Nehru declared that “it means a nation on the move, fashioning for itself a new Government of its own making, through their elected representatives.”

It remains to add that the conception of a Constituent Assembly as the most appropriate method for framing the constitution of India had also found favour with the members of the Sapru Committee in the report of which issued last year (1945), is formulated a definite scheme for the composition, of a Constituent Assembly. We are meeting, however, in this Assembly today, under the scheme propounded by the British Cabinet Mission, which though differing from the suggestions made on the subject by the Congress, the League, and other political organisations, had devised a scheme which, though not by all, had been accepted by many political parties, and also by large sections of the politically-minded classes in the country, but also by those not belonging to any political party, as one well worth giving a trial with a view to end the political deadlock, which had obtained for now many years past, and frustrated our aims and aspirations. I have no desire to go further into the merits of the British Cabinet Mission's scheme as that might lead me to trespass on controversial ground, which I have no desire to traverse on the present occasion. I am aware that some parts of the scheme, propounded by the British Cabinet Mission, have been the subject of acute controversies between some of the political parties amongst us, and I do not want, therefore, to rush in where even political angels might well fear to tread.

Hon'ble Members, I fear I have trespassed long on your patience, and should now bring my remarks to a close. My only justification for having

detained you so long in the uniqueness of this great and memorable occasion in the history of India, the enthusiasm with which this Constituent Assembly had been welcomed by large classes of people in this country, the keen interest which matters relating to it had evoked amongst various Communities, and the prospect which it holds out for the final settlement of the problem of all problems, and the issue of all issues, namely, the political independence of India, and her economic freedom. I wish your labours success, and invoke Divine blessings that your proceedings may be marked not only by good sense, public spirit, and genuine patriotism, but also by wisdom, toleration, justice, and fairness to all; and above all with a vision which may restore India to her pristine glory, and give her a place of honour and equality amongst the great nations of the world. Let us not forget, to justify the pride of the great Indian poet, Iqbal and his faith in the immortality of the destiny of our great, historic, and ancient country, when he summed up in these beautiful lines:

*Yunan-o-Misr-o-Roma sab mit gaye jahan se,
Baqi abhi talak hai nam-o-nishan hamara.
Kuch bat hai ke hasti mit-ti nahin hamari,
Sadion raha hai dushman daur-e-zaman hamara.*

It means: "Greece, Egypt, and Rome, have all disappeared from the surface of the Earth; but the name and fame of India, our country, has survived the ravages of Time and the cataclysms of ages. Surely, surely, there is an eternal element in us which had frustrated all attempts at our obliteration, in spite of the fact that the heavens themselves had rolled and revolved for centuries, and centuries, in a spirit of hostility and enmity towards us." I particularly ask of you to bring to your task a broad and catholic vision, for as the Bible justly teaches us: "Where there is no vision the people perish."