

(SHRI ALLADI KRISHNASWAMI AYYAR, NOVEMBER 8, 1948)

A brief survey of the Draft Constitution must convince the Members that it is based upon sound principles of democratic government and contains within itself elements necessary for growth and expansion and is in line with the most advanced democratic Constitution of the World. It is well to remember that a Constitution is after all what we make of it.

Sir, before making a few remarks on the Draft Constitution, I should like to join in the tribute of praise to the Honourable Dr. Ambedkar for the lucid and able manner in which he has explained the principles of the Draft Constitution, though I owe it to myself to say that I do not share the views of my honourable friend in his general condemnation of village communities in India. I must also express my emphatic dissent from his observation that Democracy in India is only a top-dressing on Indian soil. The democratic principle was recognised in the various indigenous institutions of the country going back to the earliest period in her history. Democracy in its modern form is comparatively recent even in European history, as its main developments are only subsequent to the French Revolution and to the American War of Independence. The essential elements of democracy as understood and practised at the present day are even of much later date and have gained currency and universal support during the last war and after its termination.

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In dealing with the Draft Constitution, it is as well to remember that the main features of the Constitution in regard to several particulars were settled by the Assembly after due consideration of the reports of various committees; this Assembly is not starting afresh after two years of work. I doubt if even some of the Members who animadverted upon certain features of this Constitution settled by this House could disclaim responsibility for the decisions already reached. The federal framework of the Constitution with an overriding power in the Centre, the need for a concurrent list and the items therein, the composition of the Houses, the relative powers of the two Houses of Parliament and in the provincial legislatures, the mode of election of the President and of the Governors, the relationship between the legislature and the executive, the constitution and powers of the Supreme Court and of the High

Courts, the fundamental rights to be guaranteed to the citizen and a number of other matters relating to the constitutional framework, were settled by this House or considered by the Committees appointed by this House. In so far as the Drafting Committee has embodied in the articles as framed the considered decisions of this Assembly, the Drafting Committee can in no way be responsible for the decisions already reached, while it may be quite open to the House to revise those decisions on special grounds. In regard to such of the provisions of the draft as have not been considered by this House, it is open to this House to come to any conclusion, consistently with the resolutions already reached and with the general framework of the Constitution.

The main criticisms on the Draft Constitution range under the following heads:—

*Criticism 1.*—It draws largely upon foreign Constitutions and there is nothing indigenous about it. There is not much force in this criticism. When it is remembered that federalism in its modern form is of recent growth, since the American Revolution and America has furnished the example to all the later federations. It cannot be denied that there is strong family resemblance between the several federations and that each later Constitution has drawn upon and profited by the experience and working of the earlier federal Constitutions of the world. In this connection, it is as well to remember that even the Soviet Constitution has not departed from certain accepted principles of federal government.

*Criticism 2.*—The Centre is made too strong at the expense of the units. In view of the complexity of industrial, trade and financial conditions in the modern world and the need for large scale defence programmes, there is an inevitable tendency in every federation in the direction of strengthening the federal government. The Draft Constitution in several of its provisions has taken note of these tendencies instead of leaving it to the Supreme Court to strengthen the Centre by a process of judicial interpretation. I might point out in this connection that the U.S. Supreme Court, by the wide interpretation which it has put upon the General Welfare clause as well as on the trade and commerce clause in the Constitution, has practically entered into every sphere of state activity, so that it may be in a position to regulate the economic activities, the relationship between capital and labour, the hours of labour and so on, taking advantage of these two clauses.

*Criticism 3.*—The existence of a large list of concurrent subjects might lead to the Centre encroaching upon the provincial sphere and giving a unitary bias or character to the Constitution. A study of the several items in the Concurrent List shows that they mainly relate to matters of common concern all over India. Whatever criticisms might be levelled against the British administration in India, the enactment of the great codes which has secured uniformity of law and legal administration has been its special merit. It is

common knowledge that even the Indian States have adopted the great Indian Codes. Instead of not having a Concurrent List or curtailing the list of concurrent subjects, I would advocate the Concurrent List being extended and applied to the States in Part III. The existence of a Concurrent List in no way detracts from the federal character of the constitution, there being an independent provincial list of subjects.

*Criticism 4.*—The Constitution does not give sufficient importance to village communities which are an essential feature of India's social and political life. With the large powers vested in the provincial or state legislatures in regard to local self-government and other matters, there is nothing to prevent the provincial legislatures, from constituting the villages as administrative units for the discharge of various functions vested in the State governments.

*Criticism 5.*—The criticism regarding the fundamental rights was that they are hedged in by so many restrictions that no value can be attached to the rights guaranteed under the Constitution. The great problem in providing for and guaranteeing fundamental rights in any Constitution is where to draw the line between personal liberty and social control. True liberty can flourish only in a well ordered state and when the foundations of the state are not imperilled. The Supreme Court of the U.S.A. in the course of its long history has read a number of restrictions and limitations based upon the above principle into the rights expressed in wide and general terms. The Draft Constitution, instead of leaving it to the courts to read the necessary limitations and exceptions, seeks to express in a compendious form the limitations and exceptions recognised in any well ordered state. It cannot be denied that there is a danger in leaving the courts, by judicial legislation so to speak, to read the necessary limitations, according to idiosyncracies and prejudices it may be of individual judges.

The problem of minorities has been solved by common agreement in a manner satisfactory to the various parties concerned, and the draft Constitution merely seeks to give effect to the agreement reached. As has been pointed out in the spirited address of our Prime Minister this morning, while regimented unity will not do, nothing should be done which will tend to perpetuate the division of the nation into minorities and to prevent the consolidation of the nation.

The next criticism is that the common man is ignored and there is no socialistic flavour about the Constitution. Sir, the Constitution, while it does not commit the country to any particular form of economic structure or social adjustment, gives ample scope for future legislatures and the future Parliament to evolve any economic order and to undertake any legislation they choose in public interests. In this connection, the various Articles which are directive principles of social policy are not without significance and importance. While from the very nature they cannot be justiciable or enforceable legal rights in a court of law, they are none the less, in the language of Article

29, fundamental in the governance of the country and it is the duty of the State to apply the principles in making laws. It is idle to suggest that any responsible government or any legislature elected on the basis of universal suffrage can or will ignore these principles.

The financial provisions in the draft Constitution have also come in for strong comment from my honourable friend Shri T. T. Krishnamachari. While an independent source or sources of revenue are certainly necessary for the proper functioning of a federal government, there is a distinct tendency, however, in the several federations, for the Central Government to act as the taxing agency, taking care to make adequate provision for the units sharing in the proceeds as also for the central or national Government granting subsidies. After all, it cannot be forgotten that the tax payer is the individual citizen or a corporation—whichever the taxing agency might be—and the multiplication of taxing agencies is not a matter of convenience to the citizens. I doubt whether in the present uncertain state of the country it is possible to overhaul the whole financial structure and attempt a re-distribution on entirely new lines. That is why a provision has been made for a Financial Commission at the end of ten years. Possibly the draft is defective in that special provision has not been made for the re-arranging of the lists in regard to financial matters in light of the recommendations of the Financial Commission without having recourse to the procedure as to Constitutional Amendments.

In regard to the subject of taxation, Professor Wheare makes the following observations in his recent Treatise on Federalism:—

There can be no final solution to the allocation of financial resources in a Federal system. There can only be an adjustment and reallocation in the light of changing circumstances.

We then had the criticism that the Constitution is far too detailed and elaborate and contained more number of articles than any other known Constitution. This criticism does not take note of the fact that we are not starting a Constitution anew after a Revolution. The existing administrative structure which has been worked so long cannot altogether be ignored in the new framework. The second point that the critics have failed to take note of is that unlike other Constitutions, the draft Constitution contains detailed provision as to the constitution and power of the Supreme Court and the High Courts and also Articles relating to the constitution of the units themselves. If we could eliminate all those Articles, our Constitution also could be rendered simpler and shorter.

In regard to the Judiciary, the draft Constitution also recognises the importance of an independent judiciary for the proper working of democracy, and especially of a Federal Constitution. The Supreme Court, under the draft Constitution, has wider powers than any other court under any Federal system in the world.

More than any other provision in the Constitution, I should think the boldest step taken by this Assembly is in the matter of universal adult suffrage with a belief in the common man and in his power to shape the future of the country. For this institution to work properly too great a care cannot be taken in the matter of the preparation of proper electoral rolls and a uniform principle being adopted in the different parts of India. I would commend for the consideration of the House the suggestions made by my friend, the Honourable Shri Santhanam, in the course of his speech yesterday.

There are other matters which require very close and critical examination by this Assembly before the Constitution is finally adopted, such as citizenship, the formation of new States, and the position of the Indian States which have been grouped together under the able leadership and guidance of our Sardar. The position of the States which are not represented in the Constituent Assembly will also have to be considered and dealt with before the Constitution is completed as otherwise complicated legal questions might arise in regard to the relationship of these States *vis-a-vis* the Union of India.

There are two other points also which have been touched upon in the course of the debate. These relate to the emergency powers vested in the Government and to the ordinance-making power. One point that has to be remembered in this connection is that any power exercised by the President is not to be exercised on his own responsibility. The word 'President' used in the Constitution merely stands for the fabric responsible to the Legislature. Whether it is Ordinance or whether it is the use of the emergency power, the Cabinet is responsible to the popularly elected House. It should be remembered too that during the last debate the representatives from the Provinces were more anxious, including the Ministers, than anybody else, to have emergency powers. It is they, having regard to the actual working of the administration, who wanted these emergency powers given to them. How exactly the emergency power is to be provided for, whether any changes are necessary, all that is another matter. So far as the Ordinance making power is concerned, the Ordinances will be passed normally when the Assembly is not in session. If the Assembly is in session, I do not think that the representatives elected under universal suffrage are likely to be less insistent upon their rights than the Members of this House elected on a comparatively narrow ticket.

A brief survey of the draft Constitution must convince the Members that it is based upon sound principles of democratic government and contains within itself elements necessary for growth and expansion and is in line with the most advanced democratic Constitution of the world. It is well to remember that a Constitution is after all what we make of it. The best illustration of this is found in the Constitution of the United States which was received with the least enthusiasm when it was finally adopted by the different States but has stood the test of time and is regarded as a model Constitution by the rest of the democratic world.