

(SHRI ALLADI KRISHNASWAMI AYYAR, NOVEMBER 23, 1949)

In spite of the ignorance and illiteracy of the large mass of the Indian people, the Assembly has adopted the principle of adult franchise with an abundant faith in the common man and the ultimate success of democratic rule and in the full belief that the introduction of democratic government on the basis of adult suffrage will bring enlightenment and promote the well-being, the standard of life, the comfort and the decent living of the common man.

Sir, in supporting the motion of the Honourable Dr. Ambedkar for the adoption of the Constitution, I crave the indulgence of the House for a short while. This Constitution has been settled by the Constituent Assembly in the light of the recommendations of the various committees appointed by this House and the draft as originally submitted by the Drafting Committee and as revised later. In the course of my remarks, I should like to draw the attention of the House to what I consider to be the salient features of the Constitution bearing in mind the criticisms directed against the Constitution by some of the members. The Constitution as it has finally emerged, I submit, truly reflects the spirit of the Objectives Resolution with which this Assembly started its work and the Preamble of the Constitution which is mainly founded on the Objectives Resolution.

Firstly, in spite of the ignorance and illiteracy of the large mass of the Indian people, the Assembly has adopted the principle of adult franchise with an abundant faith in the common man and the ultimate success of democratic rule and in the full belief that the introduction of democratic government on the basis of adult suffrage will bring enlightenment and promote the well-being, the standard of life, the comfort and the decent living of the common man. The principle of adult suffrage was adopted in no lighthearted mood but with the full realisation of its implications. If democracy is to be broad based and the system of government that is to function is to have the ultimate sanction of the people as a whole, in a country where the large mass of the people are illiterate and the people owning property are so few, the introduction of any property or educational qualifications for the exercise of the franchise would be a negation of the principles of democracy. If any such qualifications were introduced, that would have disfranchised a large number of the labouring classes and a large

number of women-folk. It cannot after all be assumed that a person with a poor elementary education and with a knowledge of the three Rs is in a better position to exercise the franchise than a labourer, a cultivator or a tenant who may be expected to know what his interests are and to choose his representatives. Possibly a large-scale universal suffrage may also have the effect of rooting out corruption what may turn out incidental to democratic election. This Assembly deserves to be congratulated on adopting the principle of adult suffrage and it may be stated that never before in the history of the world has such an experiment been so boldly undertaken. The only alternative to adult suffrage was some kind of indirect election based upon village community or local bodies and by constituting them into electoral colleges, the electoral colleges being elected on the basis of adult suffrage. That was not found feasible.

Realising in full that the communal electorate and democracy cannot co-exist and that communal electorate was a device adopted by the British Imperialists to prevent the free growth of democracy on a healthy and sound basis, this Assembly under the able leadership of our Prime Minister and Sardar Patel, has done away with communal electorates while making some special provisions to Scheduled Castes and Scheduled Tribes on the basis of joint electorates for a temporary period. As Sardarji has rightly pointed out in his memorable speech on the occasion, we have to demonstrate to the world, to the class of people who have flourished and who have been nurtured on communal claims, our genuine faith in the fundamental principles of democracy and in the establishment of a secular state without distinction of caste, creed or class.

Closely allied with the principles underlying the articles of the Constitution dispensing with communal electorates are the provisions in the Chapter on fundamental rights that every citizen shall have equality of opportunity in matters relating to employment or appointment to any office under the State, that no citizen shall on grounds of religion, race, caste, sex, descent, place or birth etc. be ineligible for or discriminated against in respect of any employment or office under the State. I am leaving them out of account the special provision in favour of backward classes of citizens. In this connection it may be interesting to note that there is no such declaration in similar terms even in the Constitution of the U.S.A.. The Fourteenth Amendment in the United States Constitution which was intended to remove the disability of the Negroes, has not as experience has shown, served the purpose in the United States and the Fifteenth Amendment deals only with the right to vote. Therefore, we may well claim that our Constitution is much more democratic, much more rooted in the principles and democracy than even the advanced constitution of America. The abolition of untouchability is another notable step taken by this Assembly.

The liquidation of a large number of Indian States scattered like islands over the length and breadth of this land, their merger with the neighbouring

provinces, has been effected under the able leadership of Sardar Patel. In the result the States have been considerably reduced in number and either as individual States or as comprising groups of States they have been brought into the orbit of the Indian Union. Their Constitutions have been brought into line with the Constitutions of States in Part I and they have become units of the Indian Union on the same terms as the States in Part I so that we are in a position to say that all the units of the Union occupy the same position in regard to it excepting for certain specific transitional provisions. The Constitution does not permit the States which have acceded to the Union to secede from it. Their association with the Union is inseparable and they have become an integral part of the Indian Union. There is no going back. The magnitude of this achievement cannot be overestimated when we remember that the existence of a large number of such States has been put forward always as an excuse by the British Imperialists for the withholding of freedom from India. The Act of 1935 far from abolishing this distinction served to perpetuate the distinction.

After weighing the pros and cons of the Presidential system as obtaining in America and the Cabinet system of Government obtaining in England and the Dominions, taking into account also the working of responsible Government in the Indian Provinces for some years and the difficulty of providing for a purely presidential type of Government in the States in Part II, (now part IB) this Assembly has deliberately adopted the principle of responsible Government both in the States and in the Centre. At the same time the Assembly was quite alive to the fact that a good number of States in Part IB were unaccustomed to any democratic or responsible Government and with a view to ensure its success and efficient working in the early stages the Union Government is entrusted with the power of intervention while there is a failure or deadlock in the working of democratic machinery.

My honourable Friend Prof. K. T. Shah in expatiating upon the merits of the constitutional system based upon the principle of separation, did not fully realize the inevitable conflict and deadlock which such a system might result in in a country circumstanced as India is. The breakdown provisions in the Constitution are, not intended in any way to hamper the free working of democratic institutions or responsible Government in the different units, but only to ensure the smooth working of the Government when actual difficulties arise in the working of the Constitution. There is no analogy between the authority exercised by the Governor or the Governor-General under the authority of the British Parliament in the Constitution of 1935 and the power vested in the Central Government under the new Constitution. The Central Government in India in future will be responsible to the Indian Parliament in which are represented the people of the different units elected on adult franchise and are responsible to Parliament for any act of theirs. In one sense the breakdown provision is merely the assumption of responsibility by the Parliament at Delhi when there is an impasse or breakdown in the administration in the units.

In regard to citizenship, the Constitution deliberately adopts the principle of single citizenship for the whole of India and departs from a dual citizenship, a common feature of many Federations. In this respect the Indian Constitution is in advance of some of the Federal Constitutions. It is hoped that that will lead to the consolidation of the Indian Union. The Constitution does not purport to enact a detailed law as to citizenship, but leaves it for the future Parliament of India to frame such a law.

The Constitution has accorded the proper place to the Judiciary as it should in a written and especially in a Federal Constitution. In the language of the Federalist, in America the complete independence of the court of Justice is particularly essential to the proper working of a Federal Constitution. The limitation on the different organs of State can be preserved in no other way than through the medium of courts and according to President Wilson, the courts are the balance-wheel of the Constitution. The Supreme Court in India under the Indian Constitution, as this House is aware, has wider powers than the highest courts in any other known Federation including that of the U.S.A. where the Supreme Court is not a general court of appeal. The Supreme Court is a court of appeal in all civil cases from every High Court including the High Courts in the States in part IB. It is the ultimate arbiter in all matters involving the interpretation of the Constitution. It has a very wide revisory jurisdiction over all tribunals even if they be not courts in the strict sense of the term. Unlike the United States Supreme Court, it has an advisory jurisdiction similar to that exercised by the Supreme Court of Canada under the Canadian Supreme Court Act. It has original jurisdiction to issue prerogative writs throughout the length and breadth of India. It is an interstitial court competent to decide questions *inter se* as between States. Even in regard to criminal matters, the Supreme Court is in a position to grant special leave and can also exercise criminal appellate jurisdiction in certain specific classes of cases. The criticism, if at all, can only be, not that the powers of the Supreme Court are not wide enough, but that they are too wide.

The provisions relating to the High Courts are in the main modelled on the existing provisions except for the fact that certain inhibitions on the jurisdiction have been removed. They have henceforward jurisdiction to issue prerogative writs throughout the areas subject to their appellate jurisdiction. The anomaly of the High Courts not having any jurisdiction in matters relating to revenue has also been removed, and the powers of superintendence over subordinate courts and tribunals have been restored. Care has been taken to see that in the matter of selection to the highest court, the President has the benefit of the advice of those most competent to advise him on the subject. With a view to keep the High Courts outside the range of provincial politics, the High Courts have in important respects been brought under the jurisdiction of the National Government. While there can be no two opinions on the need for the maintenance of judicial independence, both for safeguarding of individual liberty and the proper working of the Constitution, it is also necessary to keep

in view one important principle. The doctrine of independence is not to be raised to the level of a dogma so as to enable the judiciary to function as a kind of super-legislature or super-executive. The judiciary is there to interpret the Constitution or adjudicate upon the rights between the parties concerned. As has been pointed out recently in a leading decision of the Supreme Court, the Judiciary as much as the Congress and the Executive, are depending for its efficient and proper functioning, upon the co-operation of the other two.

The criticism in regard to Fundamental Rights has been that the exceptions strike at the very foundation of the rights. This criticism is entirely without foundation. The exceptions and qualifications introduced into the articles reproduce in statutory form the well-recognised exceptions and limitations on the Fundamental Rights dealt with in the article. Similar restrictions have been read by the Supreme Court into the United States Constitution which in general terms provides for these rights. Our 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 exception. It is common knowledge that freedom of speech and of the Press has been interpreted by the Supreme Court of the United States as not to prevent legislation prohibiting intimidation by speech or writing or preventing the publication of indecent matter, or prevent the enactment of laws in the exercise of the police power of the State if the State can find a sufficient social interest for so doing. Similarly, religious liberty has been held not to protect the citizen against unsocial acts. The privilege of Assembly and public meeting does not stand in the way of the United States or the individual States exercising social control of assemblage of people in the interests of the common good. In the final form in which the article has emerged, this Assembly kept in view the need for drawing a line between personal liberty and the need for social control. While not departing from the principle that a person is not to be deprived of his property without compensation, the Constitution has invested the Parliament with the power to formulate the principles in regard to compensation with due regard to the nature, history and incidents of the property concerned. Being fully alive to the need for urgent agrarian reform affecting large a large mass of tenantry, this Assembly, after due deliberation, has inserted certain special provisions to prevent the legality of the measures undertaken being questioned from court to court while at the same time providing the necessary safeguards for protecting the interests of the parties affected.

In the Chapter on Fundamental Rights, there is one other matter which requires more than a passing notice. Clause (4) of article 22 has been advertised upon as if it were a Charter to the Executive to detain a person for three months. There is no such thing. The whole of article 22 is designed to secure against any abuse of the provisions of article 21 which says in general terms that "No person shall be deprived of his life or personal liberty except according to procedure established by law." If article 21 stood by itself, it may authorise an indefinite detention if only it conforms to the procedure estab-

lished by law. Article 22 has been put in to prevent any such indefinite detention. The Constituent Assembly which was quite alive to the dangers confronting the new State could not rule out detention altogether.

The Directive principles of State policy. I should think, are also an important feature of the Constitution. Having regard to the wide nature of the subjects dealt with in these articles and the obvious difficulty in making the subjects dealt with by these articles justiciable, they have been classed as directive principles of State policy. The principles of Social policy have their basis in the preamble to the Constitution and the Objectives Resolution. Article 87 in express terms lays down that the principles laid down therein are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. No ministry responsible to the people can afford lightheartedly to ignore the provisions in Part IV of the Constitution.

In regard to the distribution and allocation of legislative power, this Assembly has taken into account the political and economic conditions obtaining in the country at present and has not proceeded on any *a priori* theories as to the principles of distribution in the constitution of a Federal Government. In regard to distribution, the Centre is invested with residuary power, specific subjects of national and all India importance being expressly mentioned. A large list of subjects has been included in the Concurrent List to enable the Centre to intervene wherever there is necessity to intervene and override State legislation, though normally when the coast is clear, it would be open to the State legislatures to legislate. The existence of a large list of Concurrent subjects is calculated to promote harmony between the Centre and the units, and avoid the necessity of the courts having to resolve the conflict if there is to be only a two-fold division of subjects. In order to meet unforeseen national emergencies and economic situations, special provisions have been inserted providing for Central intervention. In this connection, it has to be remembered that the whole concept of federalism in the modern world is undergoing a transformation. As a result of the impact of social and economic forces rapid means of communication and the necessarily close relation between the different units in matters of trade and industry, federal ideas themselves are undergoing a transformation in the modern world. The Rowell Score Commission in Canada and the Royal Commission appointed to report on the working of the Australian Constitution suggested various remedies to get over the difficulties in the working of a federal Government. The problem is one to be faced by each country according to the peculiar conditions obtaining there, according to the particular exigencies of the particular country, not according to *a priori* or theoretical considerations.

In dealing with a matter like this, we cannot proceed on the footing that federalism must necessarily be of a defined or a standard type. Even in regard to the Constitution of Canada, two such authorities as Lord Haldane and Lord Watson were sharply divided, the former holding that the Constitution is not

federal and the latter expressly laying down the opposite view. The crucial question to consider, shorn of all theories, is, "Are the National and the State Governments related to one another as Principal and Delegate?" So long as they can exercise full authority within the orbit of their established jurisdiction, there is no reason to deny the federal character to the Constitution.

I do not subscribe to the view that the Centre has been made too strong at the expense of the Union. In the legislative sphere there has been not much change in the list of subjects allotted to the units. The units have unrestricted executive power in the provincial field. Even in regard to the Concurrent subjects, the executive power continues to be vested in the units though there is a power of central intervention when the exigencies of the State demand it. The emergency powers vested in the Union cannot by their very nature be of normal or ordinary occurrence.

In regard to the taxing power, while the final allocation is open to further examination as the result of the report of the Statutory Commission to be appointed under the terms of the Constitution, the articles in the Constitution relating to the taxing power take into account the general economic condition and financial position of the different units and the tendency prevailing in most modern Federations of the Central Government acting as the sole taxing agency in the interest of the country while provision is made for the division or the distribution of the proceeds to the different units, as also for the grant of subsidies.

The Constituent Assembly has spent considerable time and attention over the subject of inter-State trade relations. The Assembly while adhering to the principle that freedom of trade between the different units is indispensable to the proper functioning of the Union, has made the inter-State relations much more elastic and flexible in our Constitution than in some of the known Federal Constitutions, to suit the exigencies and economic conditions of a vast continent like India.

The Constituent Assembly being thoroughly alive to the importance of a State language for the whole of India with a view to consolidate and unify the nation and recognizing the importance of regional languages in so vast a country, has evolved a plan for Hindi becoming the State language of India as early as possible. At the same time the Constitution has not lost sight of the need of English for legal purposes for some time and for scientific and international purposes in the world as constituted to-day.

The criticism that the Constitution as it has emerged is far too detailed and elaborate does not merit serious consideration. If as in other Constitutions the constitution and powers of the High Court and of the Supreme Court have been left for normal ordinary parliamentary legislation, if the provisions for electoral machinery are dropped out, if the guarantees provided in the matter

of salaries to judges and civil services were omitted, if the existing administrative machinery which has been working is ignored, if no special provision is to be made for Scheduled Areas and Scheduled Tribes, there would be absolutely no difficulty in cutting down the provisions of the Constitution and reducing the number of articles. But for the smooth and efficient working of a democratic machinery, it was felt that unless these provisions were contained in the Constitution itself, an infant democracy might find itself in difficulties and the smooth and efficient working of the Constitution might be jeopardised. There has been insistence on the part of various interest that sufficient safeguards must be inserted in the Constitution itself and even some of the members of this Assembly who, as a matter of abstract principle, are willing to subscribe to the principle of a few main provisions alone being inserted in the Constitution, not a little contributed to the detailed provisions.

In the course of the discussion during the Third Reading, there has been some reference to the subject of India's position as a member of the Commonwealth. On this subject I have already stated my views when the matter came up for discussion before this Assembly. It is unnecessary to remind the House that there is no article in the Constitution referring to this matter. The membership of the Commonwealth depends on the willing co-operation and consent of the two countries, independent in every respect of each other.

Mr. President, I have omitted one point while I was on the subject of Fundamental Rights and I should like to refer to it. While religious freedom is guaranteed to every individual and every religious persuasion, the State does not identify or ally itself with any particular religion or religious belief. There is no such thing as State Religion in India.

Altogether it may be claimed that the Constitution gives sufficient scope for the achievement by the Indian Republic of all those great objects which are contained in the Preamble to the Constitution. The Constitution contains within itself the necessary elements of growth, flexibility and expansion. While it is not committed to any particular economic reorganisation of society, the people are free to adjust and mould the economic conditions for their betterment in any manner they choose. To a large extent any Constitution depends upon the people who work it. It is the human element that after all is the most important in the working of any Institution. It is common knowledge that when the final Constitution of America was adopted there was very little enthusiasm for it and several communications had to be addressed in the "Federalist" to commend the Constitution to the American people. And yet at the present day the Constitution is looked upon with the same spirit and reverence as the Ark of the Covenant in the Bible. Similar is the experience in Canada and in Australia. The experience of other countries has shown that Constitutions which have been hailed with universal acclamation have proved utter failures. Our Constitution is much more flexible than many written and Federal Constitutions. An easy and flexible method of amendment has been provided for. But that



does not mean that amendment must be undertaken lightheartedly. The people will then have no other work to do but mending and amending the Constitution.

Before I conclude, I would be failing in my duty if I do not express my high appreciation of the skill and ability with which my friend the Honourable Dr. Ambedkar has piloted this Constitution and his untiring work as the Chairman of the Drafting Committee. Latterly I know he was ably assisted by my friend Mr. T.T.Krishnamachari. I would also be failing in my duty if I do not give my tributes to the services of Sir B.N. Rau and to the untiring energy, patience, ability and industry of the Joint Secretary, Mr. Mukherjee and his lieutenants.

In the end, you will pardon me, Sir, if I make some reference to your work in this Assembly as it may savour of flattery. You have given your whole life to the service of this country and this is the crowning act. There is none who is held in greater esteem and in love than yourself and you have showed yourself to be the worthy President of this Assembly. I am particularly grateful to you because on account of my state of health you have been pleased to permit me to address from my seat and I am also thankful to the Members of this House for the indulgence they have extended to me in that respect. It is some consolation to me that I might have been of some little use in the work of the various committees and in the work of this Assembly.