

12

**EMINENT PARLIAMENTARIANS
MONOGRAPH SERIES**

DR. B.R. AMBEDKAR

**LOK SABHA SECRETARIAT
NEW DELHI
1991**

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Foreword

The Indian Parliamentary Group decided in the beginning of last year to commemorate the birth centenaries and anniversaries of distinguished leaders who have made their mark as parliamentarians and left a distinct imprint on India's parliamentary system and its polity. In pursuance of this decision, a new series of monographs—"Eminent Parliamentarians Monograph Series"—was started in March 1990 and as many as eleven monographs on Dr. Rammanohar Lohia, Dr. Lanka Sundaram, Dr. Syama Prasad Mookerjee, Pandit Nilakantha Das, Shri P. Govinda Menon, Shri Bhupesh Gupta, Dr. Rajendra Prasad, Sheikh Mohammad Abdullah, Shri C.D. Deshmukh, Shri Jalsukh Lal Hathi and Shri M. Ananthasayanam Ayyangar have been published so far to commemorate their birth anniversaries.

The present monograph—twelfth in the series—is a modest attempt to recall and place on record the yeoman services and the outstanding contributions made by the eminent Parliamentarian, distinguished jurist, and messiah of the down-trodden, Dr. Bhimrao Ramji Ambedkar, who with other stalwarts of the freedom struggle, laid the foundations of modern India and whose legacy—the Constitution of India—we, the people of India, have richly and proudly inherited.

This volume comprises of three parts. Part one contains a bio-profile of Dr. Ambedkar—Babasaheb as he was popularly called, focussing on his eventful life and achievements. Part two contains eight articles—penned by his contemporaries, close associates, admirers, and members of Parliament some of whom had been very close to him and watched his functioning in the Constituent Assembly. Part three contains excerpts from Dr. Ambedkar's scholarly speeches delivered in the Constituent Assembly, while the Constitution of India was being given shape.

(I)

(ii)

On the occasion of the birth centenary of this great son of India, we pay our respectful regards and tributes to the memory of Bharat Ratna, Dr. Babasaheb Ambedkar, who has carved out a permanent niche for himself in the hearts of millions of his countrymen. We hope that this Monograph will be read with interest.

RABI RAI
Speaker, Lok Sabha
and
President
Indian Parliamentary Group

New Delhi;
April, 1991.

Contents

PART ONE

His Life

1

DR. B.R. AMBEDKAR

A Profile

(1)

PART TWO

Articles

2

DR. B.R. AMBEDKAR : AS I SAW HIM

Professor N.G. Ranga

(19)

3

AMBEDKAR AND THE POLITICAL RIGHTS OF THE

SCHEDULED CASTES

Shri Murlidhar C. Bhandare

(24)

4

DR. B.R. AMBEDKAR

Shri S. Nijalingappa

(35)

(III)

(ii)

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Contents

PART ONE

His Life

1

DR. B.R. AMBEDKAR

A Profile

(1)

PART TWO

Articles

2

DR. B.R. AMBEDKAR : AS I SAW HIM

Professor N.G. Ranga

(19)

3

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SCHEDULED CASTES

Shri Murlidhar C. Bhandare

(24)

4

DR. B.R. AMBEDKAR

Shri S. Nijalingappa

(35)

(III)

AMBEDKAR : NATIONAL LEADER, RENOWNED
PARLIAMENTARIAN, PRE-EMINENT CONSTITUTION MAKER

Professor P.G. Mavalankar

(39)

IN QUEST OF SOCIAL JUSTICE

Professor Sidheshwar Prasad

(47)

DR. AMBEDKAR—A SOCIAL REVOLUTIONARY

Smt. Renuka Ray

(55)

DR. B.R. AMBEDKAR AND HIS CONTRIBUTION IN
THE CONSTITUENT ASSEMBLY AND PARLIAMENT

Shri S.L. Shakdher

(60)

BABA SAHEB DR. BHIM RAO AMBEDKAR :

SOME REMINISCENCES

Shri Akshay Kumar Jain

(66)

PART THREE

His Ideas

**EXCERPTS FROM SELECT SPEECHES OF DR. B.R.
AMBEDKAR IN CONSTITUENT ASSEMBLY**

(71)

10

ON A STRONG UNITARY GOVERNMENT

(73)

11

ON DRAFT CONSTITUTION

(83)

12

**ON IDEAL OF ECONOMIC DEMOCRACY Vis-a-vis
DIRECTIVE PRINCIPLES**

(108)

13

ON UNIFORM CIVIL CODE

(111)

14

ON SEPARATION OF JUDICIARY FROM THE EXECUTIVE

(114)

15

ON EQUALITY OF OPPORTUNITY IN PUBLIC EMPLOYMENT

(116)

(vi)

16

ON CONSTITUTIONAL REMEDIES

(121)

17

**ON SEPARATION OF EXECUTIVE FROM THE
LEGISLATURE AND JUDICIARY**

(125)

18

ON EXECUTIVE POWER OF THE UNION

(127)

19

ON CONDITIONS FOR MINISTERSHIP

(133)

20

ON PROVISIONS ON CITIZENSHIP

(141)

21

ON CONSTITUTION AMENDMENT PROCEDURE

(146)

22

CONCLUDING SPEECH IN THE CONSTITUENT ASSEMBLY

(154)

PART ONE

His Life



Dr. B.R. Ambedkar—A Profile

Among the galaxy of stalwarts born in the 19th century, who played a pivotal role in shaping the destiny of free India and left an indelible imprint on our national life and polity, the name of Dr. Bhimrao Ramji Ambedkar shines like a star. An architect of our Constitution, a messiah and champion of the down-trodden, a rebel against all forms of social and economic iniquities and described by Mahatma Gandhi as a "patriot of sterling worth", Dr. Ambedkar attained the pinnacle of glory neither by luck nor by a matter of chance but by sheer force of his personality, struggle, sacrifice, selflessness, erudition, dedication, devotion and commitment.

Dr. Bhimrao Ramji Ambedkar, affectionately called 'Babasaheb' by millions of his admirers and followers, was born on 14 April 1891 to Ramji Maloji Sankpal and Bhimbai at Mhow, Madhya Pradesh. He belonged to the Mahar community, one of the Hindu untouchable castes. Being the youngest of fourteen children, he was obviously the favourite of the family. His father Ramji was a very industrious, religious and generous person and mother Bhimbai, was a self-reliant and a deeply devoted lady. Though economically poor, the family earned respect and regard from neighbours. Ramji, a Subedar-Major in the military service was a *Kabir Panthi* devotee and moved from one military camp to another. After his wife's death, Ramji brought up the children with care and affection and used to recite to them devotional lyrics and epics like the Ramayana and the Mahabharata. This pure and religious atmosphere at home probably had a profound impact on young Bhimrao's mind, resulting in the inculcation in him, in due course, of the noblest

ideas of self-less service, sacrifice, fellow-feeling, persistence and perseverance.

Early Life and Education

After his retirement from military service, Ramji had stayed for some time at Dapoli, Satara and finally settled down in Bombay. Bhimrao, who was sent to a primary school at the age of five, completed his primary education from Satara and pursued higher education. Being a boy belonging to an untouchable community, he had to face all the miseries, humiliations and difficulties. He was not allowed to drink water from the common source. He was forced to study persian as the Sanskrit teacher refused to teach this language to him. He, however, learnt Sanskrit at later stage. His note books were not corrected nor was he asked any questions for fear of causing 'pollution'. Undaunted by all these challenges, he came to Bombay and joined Elphinstone High School. Unfortunately, there also the "touch me not" policies were applied to him.

In 1905, as per the practice then prevailing in the Hindu society, Bhimrao who was just 14 years of age, was married to a 9-year old girl, Ramabai—also from Mahar community. She was blessed with a son but died in 1938. In 1948, Bhimrao married, for the second time, Dr. Sharda Kabir (later named Savita), a Saraswat Brahmin from Bombay.

In 1907, Bhimrao passed his Matriculation examination. Considering this to be a splendid achievement by a 'Mahar boy', the community organised a function and a copy of "The life of Gautama Buddha" was presented to him by one of its members. The book tremendously influenced the life of Bhimrao as is revealed by subsequent events in his life.

Considering Bhimrao's interest in education, and his sincerity and zeal for hard work, the Maharaja of Baroda, Sayyajirao Gaekwad, not only granted a monthly scholarship of Rs. 25 during his graduate studies but also invited him to serve in his State after completing graduation. Though he joined the service, he was not happy as the social challenges, unfortunately for him, remained unchanged. The Maharaja then agreed to

send him to Columbia University as a Gaekwad scholar on the condition that Bhimrao, on return, would serve the State.

At Columbia, Bhimrao was free from the caste stigma and could move about with a status of equality. Prof. Seligman—the famous economist—was his teacher at the University. The academic atmosphere, the free environment and his passion for books enlarged Bhimrao's mental horizon. During this time he came into contact with the staunch nationalist, Lala Lajpatrai, who at that time was living in exile in America. The two used to discuss the freedom struggle in India. Thus, still as a student Bhimrao imbibed the patriotic ideas and ideals and western liberal democratic thought, which made him a strong nationalist and an ardent defender of human rights and dignity.

In 1915, he obtained his MA (Economics) degree for his thesis "Ancient Indian Commerce". In the following year, he read a paper titled "The Castes in India, their Mechanism, Genesis and Development" in the Anthropology Seminar. In this paper he had pointed out that endogamy was the essence of castes. "A caste", he observed, "is an enclosed class and it existed even before Manu." In 1916, he was awarded Ph.D. for his thesis "National Dividend for India: A Historic and Analytical Study."

The same year, Dr. Ambedkar joined the London School of Economics and Political Science. He also got admission to the famous Gray's Inn for Law. However, he could not pursue his studies as the Maharaja called him back and appointed him as his Secretary with the intention of grooming him for the post of the State's Finance Minister. But destiny willed otherwise. To Dr. Ambedkar's dismay and frustration, the social conditions in India remained the same despite his academic excellence and erudition and the high position he occupied in the State. His own subordinates ill-treated him. Though Dr. Ambedkar brought this to the notice of the Maharaja, nothing could be done. However, the latter was kind enough to release Dr. Ambedkar, after a few months of service, from the bond to serve the State after his education abroad.

After a year's struggle, Dr. Ambedkar joined as Professor of

Political Science in a College in Bombay. After teaching for only five months, he left for London, to pursue his studies. He was helped in this objective by the enlightened Maharaja of Kolhapur. He rejoined both the London School of Economics and Political Science and the Gray's Inn to qualify as a barrister. His thesis "Provincial Decentralisation of Imperial Finance in British India" was accepted for the M.Sc. (Economics) degree by the University of London. In 1923, he was conferred the DSc (Economics) for his thesis "The Problem of the Rupee: Its Origin and Solution" by the University of Bonn in Germany. Despite being busy with his academic work, his intense feelings for the conditions of the socially down-trodden people at home, enabled him to find time to discuss with the Secretary of State for India, E.S. Montague, and Vithal Bhai Patel, the plight and problems of the untouchables.

As a Lawyer

After attaining a series of academic achievements from prestigious foreign universities, Dr. Ambedkar returned to India in June 1923 and started legal practice in the High Court of Judicature of Bombay. He took up practice because of his strong feeling that he could carry on his mission of working for the socio-economic betterment of untouchables—through this independent profession. Moreover, this would also ensure his personal livelihood. But in the High Court too, considered to be the temple of justice, Dr. Ambedkar had to suffer humiliation because of the stigma of his caste. The solicitors would not condescend to have any business dealing with him on the ground of untouchability. Even a boy in the High Court canteen would not serve him tea. Thus, being an untouchable he could not, despite his outstanding legal acumen, flourish in the legal profession. He was called the "poor man's barrister."

As a rebel against social Iniquities

Humiliations, insults and flagrant discrimination strengthened the determination in Dr. Ambedkar to free his fellowmen from the yoke of social slavery. With his emergence on the scene,

the flag of rebellion against social injustices and iniquities seemed to have been unfurled. He appealed to his fellowmen to shed from their minds the feelings of being high or low. Dr. Ambedkar was instrumental in awakening the depressed classes. He tried to unite the untouchables by establishing organisations, founding political parties and starting newspapers and weeklies to espouse their cause. In 1920 he started a Marathi fortnightly, the 'Mooknayak' (the Leader of the Dumb). Earlier, in 1918, when the Government appointed the Southborough Reforms (Franchise) Committee for dealing with franchise, Dr. Ambedkar was called upon to give evidence. He strongly pleaded for a separate electorate for the depressed classes, which was, however, not accepted.

To launch his struggle against untouchability, Dr. Ambedkar founded, in 1924, an organisation in Bombay called 'Bahishkrit Hitkarini Sabha' for the moral and material progress of untouchables.

Not content with mere preaching and writing to secure social justice for the untouchables, Dr. Ambedkar also took to the path of agitation. In December 1927 he led a Satyagraha to establish the civic rights of the untouchables to draw water from a public tank, 'Chavador Talen' at Mahad in Kolaba District. Later, addressing the gathering, Dr. Ambedkar said that untouchables can attain self-elevation only by learning self-help, regaining self-respect and gaining self-knowledge. He urged the people to agitate against the Government ban on their entry into the Army, Navy and Police and emphasised the need for entering schools, colleges and Government services. From this time around, the movement for the betterment of conditions of untouchables took an agitational path. Thus in Dr. Ambedkar, the depressed classes had seen a new messiah and a rebel.

In 1927 he started another Marathi fortnightly, the '*Bahishkrit Bharat*' to ventilate the grievances of the depressed classes. The same year, he started an organisation called "Samaj Samata Sangh" to preach social equality among untouchables and caste Hindus. Among others, inter-caste marriage and

inter-caste dinner formed parts of the programme of the said organisation.

When the Simon Commission visited India in 1929, even though the Congress boycotted it, Dr. Ambedkar, as a member of the Legislative Council of the Bombay Presidency, gave evidence before it and emphasised the need for separate electorates for the depressed classes. The Commission recommended convening of a Round Table Conference in London, where leaders of various parties could meet and discuss. Dr. Ambedkar was invited as the representative of the untouchables. The Round Table Conference failed in its aim as there was no consensus among the participants. Dr. Ambedkar's dream of a separate electorate for the depressed classes partially came true with the announcement of the Communal Award by the British Prime Minister.

Shocked by the decision of the British Government, Mahatma Gandhi declared a fast unto death in the Aga Khan Palace at Poona. In order to save the life of the Mahatma, Dr. Ambédkar had to yield and settle down for reserved constituencies instead of a separate electorate. Though Gandhi and Ambedkar had divergent views and perceptions as to the means for the social, economic and political upliftment of the untouchables, they had great regard for each other. If the Mahatma admired Ambedkar's learning, sincerity and sacrifice and described him as a 'patriot of sterling worth', Ambedkar acknowledged Gandhiji's sense of purpose and dedication to the nation.

In 1942, Dr. Ambedkar formed the All India Scheduled Castes Federation as an all India political party to fight for the interests of the Scheduled Castes. The Party, however, did not fare well in the General Elections held in February 1946.

As a parliamentarian

Considering the cause for which Dr. Ambedkar had been working, the Governor of Bombay had nominated him to the Bombay Legislative Council in 1926, the membership of which he held till 1934. In the Assembly, he used to speak at length on the issues of land revenue, prohibition policy of Government,

Budget, education, etc. During that period he also introduced several Bills for the welfare of the peasants, working classes and untouchables, but they were not passed because of the stiff opposition from the orthodox sections. However, in his very first innings in a Legislature, he established himself as an eloquent parliamentarian.

In 1936, Dr. Ambedkar founded the Independent Labour Party of India. In pursuance of the provisions of the Government of India Act 1935, the country went to the polls in 1937 to elect India's first popular legislatures. The Independent Labour Party won 15 of the 17 seats it contested in Bombay. As a Leader of the Opposition, Dr. Ambedkar played a very effective and purposeful role in the Bombay Legislative Assembly and showed his acumen as a seasoned parliamentarian. When the discussion on Ministers Salaries Bill was in progress, Dr. Ambedkar observed that he could not accept any standard salary for the Ministers. He spoke eloquently and put forth his arguments in a logical manner. He elaborated on the four conditions that ought to prevail while fixing the salary of a Minister "(1) consideration of the social standard of the Ministers who were undoubtedly the social leaders of the community; (2) considerations of competency; (3) considerations of democracy; and (4) considerations of integrity and purity of administration". He further observed "personally, I should have thought myself that the Ministers of the country, who are the first citizens of the country, should lead a life which is cultured, which cares for art, which cares for learning and which ought to be a model for the rest." He also emphasised on the competence of the Minister as in his opinion, "It is the executive that must be the brain trust, if we are to solve the various problems with which we are faced and to get the best out of this constitution."¹ (i.e. Government of India Act 1935). With his oratorical skills and erudition, Dr. Ambedkar often posed stiff opposition during the

¹Bombay Legislative Assembly Debates, 23 August 1937, p. 248-9

debates. No wonder therefore, that whenever he rose to speak in the House, members used to hear him with rapt attention.

Dr. Ambedkar was first elected to the Constituent Assembly, in July 1946, from Bengal Legislative Assembly. But following the partition, many members of the Constituent Assembly representing Bengal, including Dr. Ambedkar, lost their membership. Subsequently, he was chosen by the Bombay Legislative Congress Party to fill the vacancy caused by the resignation of Dr. M.R. Jayakar. When the country went to polls, for the first time under the new Constitution, Dr. Ambedkar unsuccessfully contested from a Bombay constituency. However, he was elected to the Rajya Sabha in March 1952 from the Bombay Legislature. He contested a bye-election to the Lok Sabha in 1953, but again in vain. Though he continued to be a member of Rajya Sabha, Dr. Ambedkar devoted the major part of his last few years to the propagation of Buddhism.

As a Minister

In 1946, when the Interim Government was formed Prime Minister Pandit Jawaharlal Nehru's choice for Law Minister fell on Dr. Ambedkar. This came as a unique opportunity for Dr. Ambedkar who having perceived the discrepancies prevailing in the Hindu Society, wanted to bring in some reforms to ameliorate the lot of the Hindu women and untouchables. It was with this in mind that he painstakingly drafted the Hindu Code Bill and introduced it in the Parliament on 4 February 1951. The purpose of the Bill, Dr. Ambedkar explained, was to bring about reforms in and codify certain branches of the Hindu law. Emphasising its importance, he said that it was beneficial from the point of the country's integrity that the same set of laws should govern the Hindu social and religious life. Thus, as the Law Minister of a free and Republican India, he made his maiden attempt to revise the age-old conservative, obscurantist and unjust Hindu Law into a progressive piece of legislation. It was in this sense that Dr. Ambedkar was called "modern Manu". This attempt

however thoughtful and laudable it was, did not succeed as there were protests even from his own colleagues in the Cabinet and ultimately the Bill could not become an Act.

Another landmark legislation introduced in the Provisional Parliament on 9 May, 1951 by Dr. Ambedkar as Law Minister was the Representation of the People Bill, 1950, providing, *inter-alia*, for the conduct of free elections to Parliament and State Assemblies, stipulating qualifications and disqualifications of membership and to deal with corrupt and illegal practices during elections.

On 25 September 1951, Dr. Ambedkar resigned from the Government as he had differences of opinion with Prime Minister Jawaharlal Nehru and other colleagues on various issues. However, notwithstanding those differences, as a Law Minister he was indeed a tower of strength to his colleagues. As a Minister he fought for principles and his idealism ensured to a great extent the abolition of social injustices and the upliftment of the underprivileged.

As the Chief Architect of the Constitution*

Babasaheb's eminence as a national leader, jurist, constitutional expert, and parliamentarian was fully recognised when he was elected to the Constituent Assembly first from Bengal and then from Bombay. He was appointed on the Drafting Committee on 29 August 1947 and was subsequently elected as its Chairman. The membership as well as the Chairmanship of the Drafting Committee came as a pleasant surprise for Dr. Ambedkar. This is evident from the statement he made in the Assembly.

"I came into the Constituent Assembly with no greater aspiration than to safeguard the interests of the Scheduled Castes. I had not the remotest idea that I would be called upon to undertake more responsible functions. I was, therefore, greatly surprised when the Assembly elected me to the Drafting Committee. I was more than surprised when the Drafting Committee elected me to be its Chairman. There were in the Drafting Committee men bigger,

better and more competent than myself....."²

The Drafting Committee under the leadership of Dr. Ambedkar held its first meeting on 30 August 1947. Dr. Ambedkar and his team sat, in all, for 141 days to draw up the provisional Constitution. On most of these occasions, Dr. Ambedkar worked single-handedly. Being an economist, legal luminary and sociologist, Dr. Ambedkar knew very well that the constitution was not merely a legal document but a social and economic parchment encompassing the aspirations, grievances, urges and needs of millions. As an ardent lover of democracy, Babasaheb exerted his influence to evolve a parliamentary form of constitution for Republican India. As to why he alone could be called the Chief architect of the Constitution of India, Shri T.T. Krishnamachari gave the following explanation:

"The House is perhaps aware that of the 7 Members nominated by you, one had resigned from the House and was replaced. One died and was not replaced. One was away in America and his place was not filled up and another person was engaged in State affairs and there was void to that extent. One or two people were far away from Delhi and perhaps reasons of health did not permit them to attend. So it happened ultimately that the burden of drafting this Constitution fell on Dr. Ambedkar and I have no doubt that we are grateful to him for having achieved this task in a manner which is undoubtedly commendable."³

The Draft Constitution as prepared by the Drafting Committee was introduced in the Constituent Assembly by Dr. Ambedkar on 4 November 1948. The introduction was followed by his lucid and elaborate speech highlighting the salient features of the Draft Constitution. Finally speaking on the vitality and the enduringability of the Constitution during the time of crisis and of peace, he had remarked:

"The Constitution as settled by the Drafting Committee is workable, it is flexible and it is strong enough to hold the country both

²C.A. Deb., 25 November, 1949, Vol. XI, pp. 973-974.

³C.A. Deb., 5 November, 1948, Vol. VII, p. 231.

in peace time and war time. Indeed, if I may say so, if things go wrong under the new Constitution, the reason will not be that we had a bad Constitution. What we will have to say is, that man was vile".⁴

Member after member placed on record their appreciation of the hard work put in by the Chairman and members of the Drafting Committee and admired Dr. Ambedkar for his eloquent introductory speech. During the year-long deliberations Babasaheb took active part almost at every stage, where amendments were moved and discussed, and gave convincing logical arguments in defence of the Draft Constitution. It goes fully and rightly to the credit of Babasaheb that the Constitution as drafted by the Drafting Committee under his Chairmanship, was adopted without any major change by the Constituent Assembly.

On the day before the adoption of the Constitution by the Constituent Assembly, Members placed on record their appreciation and paid rich and glowing tributes to Dr. Ambedkar for his outstanding contribution towards the making of the Constitution.

The President of the Constituent Assembly, Dr. Rajendra Prasad said this about the Father of the Constitution:

"... Sitting in the Chair and watching the proceedings from day to day, I have realised, as nobody else could have, with what zeal and devotion the members of the Drafting Committee, and especially its Chairman, Dr. Ambedkar in spite of his indifferent health, have worked. We could never make a decision which was or could ever be so right as when we put him on the Drafting Committee and made him its Chairman. He has not only justified his selection but has added lustre to the work he has done."⁵

Eulogising the tremendous task performed by Babasaheb in formulating and piloting the Draft Constitution, another Member, Shri Pattabhi Sitaramayya said:

"... What a steam-roller intellect he brought to bear upon this magnificent and tremendous task; irresistible, indomitable, uncon-

⁴Ibid. 4 November, 1948, p. 44.

⁵C.A. Deb., 26 November 1949 Vol. XI p. 994.

querable, levelling down tall palms..., whatever he felt to be right he stood by, regardless of consequences."⁶

As a father of Labour Legislation/ As a Labour Member

In recognition of Dr. Ambedkar's legal acumen, academic excellence, negotiating skills and administrative abilities, the then Viceroy appointed him in 1942 as one of the Members of the Defence Council. Later, he was given the portfolio of Labour which he held till June 1946. This period, though a short one, is considered as a watershed in the history of labour legislation and labour welfare in the country.

As Labour Member, Dr. Ambedkar succeeded in reserving 5 to 6 per cent posts for untouchables in the Central Government. He also helped the 'untouchable' students keen to take technical education in foreign countries. It was during his tenure as Labour Member that Employment Exchanges were set up so that skilled and semi-skilled labourers and technicians who were being trained under different schemes are not thrown out on the streets but are helped in finding new avenues of employment.

As Labour Member, Dr. Ambedkar initiated several measures to promote democracy and harmony in the industrial sphere. He also introduced some social security measures. For the first time, tripartite approach had been introduced to settle the issues between the employers and the employees. Labour Administration was set up to deal with prevention and settlement of industrial disputes, enforcing of labour laws and promotion of labour welfare in industries falling in the Central sphere. The most important labour legislation that was introduced in the Assembly towards the end of his tenure was the Minimum Wages Bill.

These initiatives and legislative innovations of Dr. Ambedkar earned him praise even from his critics who hailed him as an able and benevolent administrator.

⁶/ibid. p. 946.

As an Educationist

It is an axiomatic truth that for centuries the 'untouchables' in India were denied the benefit of basic education. Realising the importance of education in one's life, Dr. Ambedkar persuaded his followers to educate their children. He attached so much significance to education that he made 'Education' the very first step of his trio-slogan of action "Educate, Agitate and Organise".

With a view to encouraging students belonging to 'untouchable' communities, Dr. Ambedkar had set up hostels and provided them with free books and clothing. These hostels helped a lot in promoting primary and high school education among these communities.

In 1945-46, Dr. Ambedkar founded his own educational institution, the People's Education Society. As he was then a Member of the Viceroy's Executive Council, he was able to manage a generous grant of Rupees three lakhs and an equal amount of loan without interest from the Government of India. The first college under this society was set up in Bombay and was named "Siddhartha College of Arts and Science."

Dr. Ambedkar also took a keen interest in teaching. He taught at the Sydenham College of Commerce in Bombay and also at Government Law College in Bombay of which he later became Principal. His lectures were heard with rapt attention and class-rooms used to be full as students from other colleges too made it a point not to miss his scholarly lectures.

As a writer

Dr. Ambedkar was not only a voracious reader but a prolific writer too. His writings span over a variety of subjects of human interest, such as administration, anthropology, economics, finance, politics, religion and so on. Within a period of four decades, he wrote over 20 books, pamphlets and articles in English. Dr. Ambedkar started his first weekly "Mooknayak" (Leader of the Dumb) in 1920 to espouse the cause of the depressed classes in India. However, the Weekly could not last

long. The paper he read out as a student at the Anthropology Seminar in Columbia "The Castes in India, Their Mechanism, Genesis and Development" was the first published work of Dr. Ambedkar. His Ph.D. thesis, published in 1924 under the title "The Evolution of Provincial Finance In British India", was dedicated to the Maharaja of Baroda as a token of his gratitude. This book proved to be a useful source of information for the Members of Indian Legislatures during the discussion on Budget. His other books included "What Congress and Gandhiji have done to the untouchables?", "Who were the Shudras and how they, came to be the fourth Varna in the Indo-Aryan society?", "Thoughts on Linguistic States", "Thoughts on Pakistan", "Ranade, Gandhi and Jinnah" and "Annihilation of Castes in India".

Being a true devotee of the Buddha and his teachings, he compiled a Buddhist prayer book "Buddha Upasana Patha" in 1952. Another of his books, "The Buddha and his Dharma", published in 1957, has come to be known as "Buddhist Bible" and it encompasses the life and personality of the Buddha and presents an analytical exposition of the Dharma.

Dr. Ambedkar was also a bibliophile. He collected thousands of books and maintained a very big personal library.

As a follower of the Buddha

The Social inequities, his experiences as an untouchable boy, lawyer, and Professor made Dr. Ambedkar a relentless critic of Hindu Society and its orthodoxy. Prior to embracing Buddhism, Dr. Ambedkar announced, in October 1935, that the untouchables would leave the Hindu fold and accept some other religion. Accordingly, he first turned to Sikhism during 1938-40. However, his efforts did not bear fruits. Finally he embraced Buddhism in 1956.

Dr. Ambedkar's belief in Buddhism grew as he felt that the religion of the Buddha was morality and Buddhism was for equality and unlike other founders of religions, who claimed themselves to be 'Mokshadatas' (Saviours), the Buddha was satisfied with the role of 'Margadata' (Guide).

Dr. Ambedkar's interest in Buddhism is illustrated by his active participation in various conferences held abroad. He addressed the World Buddhist Conference in Khatmandu in 1949, and attended the World Buddhist Congresses in Sri Lanka in 1950, Burma in 1954 and again in Nepal in 1956. To further spread and propagate the teachings of the Buddha in India, he founded the *Bhartiya Buddha Mahasabha* in 1955. Finally on 14 October, 1956 at a massive congregation in Nagpur, he embraced Buddhism and advised his followers to accept the new faith. He himself gave "Deeksha" to lakhs of his followers.

Just less than two months after embracing Buddhism, this illustrious son of India, attained *Mahanirvana* on 6 December, 1956. In recognition of the distinguished services rendered by Dr. Ambedkar, Government of India has rightly honoured him by conferring on him the nation's highest award, Bharat Ratna, posthumously, and commemorating the centenary year as the year of Social Justice.

Tributes and Homage

The entire nation, the Parliament, the State legislatures, the Press, leaders from all walks of life, millions of his followers and admirers and dignitaries from abroad mourned the sad and sudden demise of this magnificent personality who helped lay the foundations of modern India.

Paying rich tributes to Dr. Ambedkar, the then Speaker of Lok Sabha, Shri M. Ananthasayanam Ayyangar had said:

Dr. Ambedkar was a great and dynamic personality. He rose from humble beginnings and became a leader of the Scheduled Castes. He was a great scholar and writer, and more than all, he was a powerful speaker. He piloted our Constitution. In the field of social reform, he initiated many wholesome measures. In his death, India has lost one of her great sons⁷.

Recalling the prominent part played by Babasaheb in the

⁷LS Deb., 6 December, 1956, cc. 2066.

making of our Constitution, the then Prime Minister, Pandit Jawaharlal Nehru said:

....we in Parliament remember him for many other things and more particularly for the very prominent part he played in the making of our Constitution and perhaps that fact will be remembered even longer than his other activities⁸.

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⁸R.S. Deb., 6 December, 1956, c. 1769.

PART TWO

Articles

Dr. B.R. Ambedkar — As I saw him

—Professor N.G. Ranga*

Dr. B.R. Ambedkar was that combination of a scholar, revolutionary and statesman that we rarely come across in democratic societies. His political career found its early triumph when he came into contact with Mahatma Gandhi and when there was a historic necessity of India to adopt humane and progressive social standards to justify her claim for Swaraj. His fortuitous position as Law Minister and acknowledged scholarship in law and his championship of the cause of the suppressed classes, all made for his being chosen as the chief architect and pilot of the Constitution Bill of the free India in the Constituent Assembly. Thus Ambedkar became the instrument of Indian history to set its seal upon the Indian Constitution.

Dr. Ambedkar emerged as the new Manu of modern age in vengeance against the wrong charters of rights enjoyed by the upper classes and the inhuman denial of rights to a section of the society, sanctified by the ancient Manu Smriti. Ambedkar, like so many of us had firm faith in adult franchise which he inscribed in the Constitution. Ironically he was defeated in the very first election by the people who got their right to vote from that charter of right secured to them on the principle of equality.

I came to appreciate the profound scholarship and originality of Ambedkar as an economist when I read his book 'The Problem of the Rupee' and his writings on the problems of

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"Federation and State rights". His speeches in the First Round Table Conference brought him prominently into the arena of national politics. We then realised how great a statesman he was. The British Government chose him as a delegate to the Round Table Conference assuming that he would oppose the national demand for Swaraj like other non-Brahmin leaders. But unlike other leaders of the Harijans and non-Brahmins, he did not oppose the demand for national freedom lest it should perpetrate the centuries-long supremacy of richer classes and upper castes. He complained against the 1857 proclamation of Queen Victoria and the consequent British Policy of non-interference in our social and religious matters which he held responsible for the continued suppression of lower castes and prevailing depression in their minds and status.

The historic speech of Ambedkar in the Round Table Conference brought us together. We met frequently in London in 1930 and found how much we had in common regarding our thoughts, readings of history and political understanding. We felt that the socialist approach would be the best for India which will ensure Fundamental Rights and equality of social and political privileges to all without any discrimination. He had the feeling that Gandhiji might stand between the underprivileged people and their all-around emancipation and social progress because of his belief in Sanathan Dharma. I argued that irrespective of many of his sayings which merely echoed our traditional and social beliefs, Gandhiji was essentially a social revolutionary and he would not hesitate to oppose many of the puranic edicts and faiths, if he found them to be obstacles to the social liberation of the masses. Ambedkar would not agree with me. Yet, we continued to meet, and gained each other's confidence.

Ambedkar's criticism of Gandhiji's campaign against untouchability and Harijan upliftment were hot-headed and uncharitable. His attack on Gandhiji's insistence upon keeping Harijans (then known as Panchama or Adi-Dravids) within the fold of Hindus, i.e. within the joint electorates, was intemperate, unkind and unjust. His insistence upon his pound of flesh,

during Gandhiji's Poona Fast against Ramsay McDonald's award in favour of separate electorates for Scheduled Castes did hurt the feelings of all nationalists; although it forced the orthodox leaders of Hindus to yield to his demands for protection of Scheduled Castes through reservation of seats within joint electorate, I had quite a painful time in defending his basic stand to co-fellows in Vellore jail. Later, he won the generous approval of Gandhiji and political admiration of Rajaji to whom he presented the pen with which he signed the famous Poona Pact.

Ambedkar forced the British Government, during the war, to invite him to join the Viceroy's Council by openly and boldly demanding such recognition not only on behalf of the Scheduled Castes but also by virtue of the political standing he had achieved.

When freedom came, I had the good fortune to plead successfully with our national leaders to invite Dr. Ambedkar to join the Cabinet. I lent my support also when later the decision was taken by the national leaders to invite him to take charge of the work in the Constituent Assembly, and also to play his noble role in that historic period of Constitution-making.

He did much research in Indian mythology and epics like his fellow Barrister Ramaswamy of Andhra. He was convinced that Brahmanical Hinduism was imposed upon Buddhist masses in the same way as Aryans imposed themselves upon Dravidian masses through conquest and powerful ideological and religious propaganda. He never liked the way in which the self-respecting and brave Dravidians and more ancient tribal peoples were politically suppressed by the conquering Aryans and their allies and later reduced to the status of slaves. He was furious at the evil turn of history which made those defeated and suppressed masses to accept their degraded social status, loss of political power and unprivileged economic and social existence based on the principle of Karma. He was hell-bent as were Barrister Ramaswamy of Andhra, E.V.R. and Anna of Tamilnadu, to do his best to arouse the masses in revolt against the prevailing social order. These

social revolutionaries felt so dissatisfied even with the constructive and revolutionary work of Gandhiji and of so many of us that they made the so-called Sanatanists to review their social faiths and religious edicts and accept the political cult of humanism, in which there could be no untouchability, no slavery, no karma-sanctioned belief in social, economic or political superiority or privileges for some and disabilities for others.

It stands to the eternal credit of Dr. Ambedkar that neither the Viceroy's Executive Councillorship nor the Cabinet ministership could induce him to abandon his studies and writings in the cause of social awakening, religious revolt and reconstruction of mass ideology, especially of the Harijans and depressed classes. His masterly thesis on 'Shudras' was a challenge to the traditional historians and *puranic* Shastris and it was prepared and placed before the people when he was in the highest position of Government.

He realised that the centuries-old sense of inferiority which had dwarfed the mind and social status of depressed classes could not be banished through mere cultural and intellectual enlightenment and counter brain-washings. So he concluded that both economic and political rights would have to be conferred upon them. Hence his enthusiastic support for the proposals of the Congress for fundamental rights and directive principles. To liberate the Indian masses from the all-pervading and ideologically overwhelming puranic atmosphere of Hinduism, he decided to lead them out of the Hindu fold and help them to accept Buddhism as their best alternative religion. He himself became a Buddhist and persuaded a large number of Harijans, principally among Maharashtrians, to embrace Buddhism.

Though in his revolutionary tactic there was much common ground between him and the Communists he was totally opposed to their extra-territorial loyalties and their barrel of the gun approaches. So his labour union refused to toe the line of the Communist-dominated All India Trade Union.

Dr. Ambedkar realised that for a very long time to come,

most of the Harijans and depressed classes were bound to be wage earners and in the lower and middle classes. Their interests could be protected through measures which would improve the general conditions of labouring classes. Hence his convinced and passionate championship of labour unions and legislations.

When I formed a Group on behalf of Krishikar Lok Party, he persuaded three of his followers, including an ex-Minister, to join the K.L.P. He then told me how glad he was that we could develop an independent parliamentary platform. Though he continued to be an independent member in Parliament, he offered his support through his speeches, whenever I needed it, for the cause of peasants and workers and treated me as his comrade.

It is true that the Constitution of India was the work of many wise democrats who genuinely wished for the rapid progress of the masses. Its legal framework and phraseology was the handiwork of many distinguished jurists like Alladi and Munshi. But Dr. Ambedkar's scholarly speeches in the Constituent Assembly show how erudite, independent and far-sighted his contributions were to the shaping of our Constitution. He was a true democrat. He lived as a humane pointer to the future social-democracy of Indian Swaraj.

Ambedkar and the Political Rights of the Scheduled Castes

—Murlidhar C. Bhandare*

Dr. Ambedkar symbolises a great success story. His life shows that the humblest of the humble can rise to the highest of high positions in India. Born in a poor Mahar family as a Hindu untouchable, in his early days and even later, he suffered ignominies and disgraces which were the curse for the untouchables. Manu Smriti imposed a rigid caste system, which Ambedkar rightly described as in the ascending scale of reverence and descending scale of contempt. Untouchability deprived a harijan of social, religious and political rights. In pre-independence days they had no prospect of getting out of such slavery. Untouchability in India was the worst form of apartheid; the discrimination was not on the basis of colour but caste. While poverty denies, untouchability destroys the basic human rights and fundamental freedoms.

Tilak said, "If God were to tolerate untouchability, I would not recognise him as God. Untouchability is like a disease and must be removed. Hindu society was just like a tower with several stories without ladder or entrance. One was to die in the story in which one was born". For Tilak, who gave the slogan 'Swaraj is my birth-right', also said: 'Swaraj, wherein there were no fundamental rights guaranteed for the depressed classes, would not be a Swaraj to them. It would be a new slavery to them'.

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Ambedkar rose from the ashes of poverty and untouchability. He was a giant on the political scene of India representing a mass of depressed classes, the *dalits* who were starved, deprived and enslaved. To him the *dalits*, called the scheduled castes under our Constitution, had to be freed from the bondage of untouchability and their level raised by removing social, educational and economic backwardness. To achieve this objective, he worked ceaselessly, working at the grass-root level, going round the country and even abroad, organising and uniting the *dalits* under his leadership. He spoke and wrote tirelessly and ceaselessly for this cause. Thus in a conference of Mahars held in Bombay in May 1936 he delivered his presidential address which was spread over fifty pages of manuscript. He produced exhaustive and cogent papers, memoranda, drafts, declarations and schemes in support of their rights. His evidence before the Simon Commission, his drafts and speeches before the two sessions of the India Round Table Conference in London and, above all, his papers and speeches before the Constituent Assembly bear out his vision, oceanic Constitutional knowledge and Bhagirathan efforts. These are a part of the Constitutional history of India. He struggled and sacrificed all through his life to usher in his motherland liberty, equality and fraternity.

Ambedkar was clear in his objective. The first step to achieve equality for scheduled castes was to give political power in their hands. The political power could come to them only when they had a voice in the Government. The issue of temple entry was relevant. But according to him the problem of political rights was more important than the problem of temple entry. For their social elevation, economic advancement and eradication of — educational backwardness — all could be achieved if the scheduled castes gained political power.

Divide and rule was always the official British policy for India. It was perpetuated through a theory that the two communities could not be expected to vote together for their common good. In October, 1908 Minto, the then Viceroy of India recommended

to the Secretary of State that the Muslims should be granted separate electorates. He wrote "The Indian Muhammadans are much more than a religious body. They form in fact an absolutely separate community, distinct by marriage, food and custom, and claiming in many cases to belong to a race different from the Hindus."

This represents the starting point of a series of developments which eventually led in 1947 to the bloody partition of India, into two separate countries. The evil effects of this policy were recognized by Indian leaders right from the beginning. Gopal Krishna Gokhale said: "The principle of recognizing races and creeds stands in no need of encouragement from Government, as the division of interests caused by it has already been the bane of this country."

Step by step the recognition of communal claims and communal interests became part of the basic policy of the British in India. The Act of 1919 recognised for the first time in Indian history the existence of the depressed classes. Among the 14 non-official members nominated by the Governor General to the Central Legislative Assembly, one was the representative of depressed classes. In the Provincial legislatures, the depressed classes were represented by 4 nominations in the central provinces.

The political scene was in great turmoil. The British realised that the aspirations of millions of Indians for Swaraj could not be suppressed for long. Simon Commission came to India in 1928. The visit of the Simon Commission came as an early opportunity for Dr. Ambedkar to make his demand for effective power for the scheduled castes. In his representation submitted to the Simon Commission he demanded joint electorates and reserved seats for the Scheduled Castes. He went further. He opposed the demand of the Muslims for separate electorates.

It was later when Gandhi opposed the demand for reserved seats for the depressed classes, that Ambedkar changed his

stand completely. He rejected joint electorates and started the demand for separate electorates. This caused a bitter cleavage between Gandhi and Ambedkar leading to the epic fast undertaken by Gandhi in Yeravada jail and the final settlement between Gandhi and Ambedkar embodied in the famous Poona Pact.

The Simon Commission report came out in May, 1930. The Simon Commission had realised that separate representation to Muslims was an obstacle in the growth of a sense of common citizenship. Even then, as expected, it recommended the continuation of separate electorates in Indian elections for want of any agreed pact among the Indian political parties. It rejected the Nehru Report and the ethos of Indian nationalism. For the depressed classes the Simon Commission proposed joint electorates with reservation of seats, but no candidate of the depressed classes was allowed to stand for election unless his fitness was certified by the Governor of a Province. This was despite the Commission's consciousness that the depressed classes will make no headway by nomination, for nomination provides no opportunities whatsoever for training them in politics.

Ambedkar naturally rejected the provision that authorised the Governor to certify the fitness of a candidate and to select even a member from a non-depressed class to represent depressed classes. To him it was not an election but a nomination, pure and simple.

Ambedkar persisted in his demand for separate electorates. Ambedkar's thesis was simple. 'No country,' he observed, 'was good enough to rule another and it was equally true that no class was good enough to rule over another.' He insisted on the right to elect a representative of one's choice untrammelled by any limitation or condition whatsoever. The transfer of power he felt must result by such distribution of power that the result would be a real social change in the relative strength of the forces operating in the society. He knew that it was only in a Swaraj Constitution that the real political power would come in

the hands of the people. This was the ultimate goal for the scheduled castes.

After the Simon Commission the scene of operation shifted to the two sessions of Indian Round Table Conference held in London. The first session held between 12.11.1930 and 1.12.1931 was boycotted by the Congress. The second session in which the Congress participated led by Gandhi was held from 7.9.1931 to 1.12.1931.

At the First Round Table Conference, Ambedkar was at once a patriot and a champion of the depressed classes. As a patriot he declared that all the untouchables in India were there for "replacing the present bureaucratic Government by the Government of the people, for the people and by the people". He demanded a constitution providing for a responsible and representative Government acceptable to the people. He said: "I am afraid that it is not sufficiently realised that no constitution will work which is not acceptable to the majority of the people. The time when you were to choose and India was to accept is gone, never to return. Let the consent of the people and not the accident of logic be the touchstone of your new constitution, if you desire that it should be worked."

As the leader of the depressed classes he insisted on political powers for them in the following words. "We are often reminded that the problem of the depressed classes is a social problem and that its solution lies elsewhere than in politics. We take strong exception to this view. We hold that the problem of depressed classes will never be solved unless they get political powers in their own hands."

"We feel that nobody can remove our grievances as well as we can, and we cannot remove them unless we get political powers in our own hands. I am afraid the depressed classes have waited too long for time to work miracles."

Ambedkar met Gandhi before the Second Round Table Conference. Mahadeo Desai records that even after the meeting till Gandhi went to London for the Second Round Table Conference, Gandhi did not know that Ambedkar was a Harijan.

He thought that he was some Brahmin who took deep interest in Harijans and, therefore, talked intemperately. Dhananjay Keer, Ambedkar's biographer records the meeting vividly, it is worthwhile to quote at length:

AMBEDKAR: Gandhiji, I have no homeland.

GANDHI (taken aback and cutting him short): You have got a homeland, and from the reports that have reached me of your work at the Round Table Conference. I know you are a patriot of sterling worth.

AMBEDKAR: You say I have got a homeland, but still I repeat that I am without it. How can I call this land my own homeland and this religion my own wherein we are treated worse than cats and dogs, wherein we cannot get water to drink? No self-respecting Untouchable worth the name will be proud of this land. The injustice and sufferings inflicted upon us by this land are so enormous that if knowingly or unknowingly we fall a prey to disloyalty to this country, the responsibility for that act would be solely hers. I do not feel sorry for being branded as a traitor; for the responsibilities of our action lie with the land that dubs me a traitor. If at all I have rendered any national service as you say, helpful or beneficial, to the patriotic cause of this country, it is due to my unsullied conscience and not due to any patriotic feelings in me. If in my endeavour to secure human rights for my people, who have been trampled upon in this country for ages, I do any disservice to this country, it would not be a sin; and if any harm does not come to this country through my action, it may be due to my conscience. Owing to the promptings of my conscience I have been striving to win human rights for my people without meaning or doing any harm to this country.

Everybody knows that the Muslims and the Sikhs are socially, politically and economically more advanced than the Untouchables. The first session of the Round Table Conference has given political recognition to

the Muslim demands and has recommended political safeguards for them. The Congress has agreed to their demands. The first session has also given recognition to the political rights of the Depressed Classes and has recommended for them political safeguards and adequate representation. According to us that is beneficial to the Depressed Classes. What is your opinion?

GANDHI JI: I am against the political separation of the Untouchables from the Hindus. That would be absolutely suicidal.

The meeting ended but the fight was taken to the Second Round Table Conference. Ambedkar made it clear and declared that no Constitution would be acceptable to the depressed classes which did not include in it the system of separate electorates for the depressed classes. Dr. Ambedkar asserted that in the system of joint electorates with reserved seats, the candidates of the depressed classes would be at the mercy of the majority of the electorates and in order to win their votes, they would have to pander to their prejudices or there would be every possibility of the seats being occupied by the stooges of the majority community.

According to Gandhi, separate electorates would create a division in Hinduism which he was not prepared to accept. "The cause of the Untouchables is dear to me as life itself", he declared, "I will not bargain this life for the kingdom of the whole world. Therefore, I want to say with all the emphasis I can command that if I were to be the only person to resist it, I will resist it with my life". As subsequent events showed the threat was not hollow.

After the Second Round Table Conference, the British Prime Minister Ramsay MacDonald gave his award, now known as the Communal Award, which was officially announced on 17th August 1932. According to the Award the depressed classes were granted separate reserved constituencies. In addition the award gave them the additional right of double vote under which they were able to elect their own representatives and to

vote also in the general constituencies. The reservation of seats and special electorates were automatically to lapse after twenty years. It also gave separate electorates to the Muslims, Sikhs, Europeans and Christians. The Award completely balkanised India. When the Communal award was declared, Gandhi declared his fast unto death if the separate electorates for the depressed classes were not abolished. The fast started on 20 September, 1932 and ended on 27 September, 1932. During the fast Gandhi declared "the agony of my soul is not going to end until every trace of untouchability is gone". Two things were clear. Gandhi's life had to be saved and the blot of untouchability removed as early as possible.

The conference of Hindu leaders was held in Bombay on 19 September, 1932, presided over by Pandit Madan Mohan Malviya in which Ambedkar participated. It was carried over for the next two days. The whole country held its breath and was looking on one man, Ambedkar, as to whether he would save Mahatma's life. There was hard bargaining on both sides.

On 21 September, Tej Bahadur Sapru evolved a scheme of primary and secondary elections for a limited number of seats, according to which the depressed classes were themselves to select for every seat a panel of not less than 3 candidates and then out of 3 chosen candidates one was to be selected by the joint electorate of the caste Hindus and the depressed classes. Ambedkar accepted the proposal but insisted that instead of 71 seats given by the Prime Minister's decision, he would have 197 seats. The Hindu leaders saw Gandhi who expressed his doubt about the division of reserved seats and felt that there should be primary and secondary election system to all seats alike and not only to some.

Ambedkar saw Gandhi in Jail. He must have had supreme will power to resist not only Gandhi but the adverse public opinion. Ambedkar did most of the talking, Gandhi listened as he was already weak and exhausted. Gandhi finally replied: "You have my fullest sympathy. I am with you, Doctor, in most of the things you say. But you say you are interested in my life". "Yes, Mahatmaji, in the hope that if you would devote

solely to the cause of my people, you would become our hero too", said Ambedkar in reply. "Well, then, if it is so, then you know what you have got to do to save it. Do it and save my life. I know you do not want to forego what your people have been granted by the Award. I accept your panel system, but you should remove one anomaly from it. You should apply the panel system to all the seats. You are untouchable by birth and I am by adoption. We must be one and indivisible. I am prepared to give my life to avert the disruption of the Hindu community."

Ambedkar accepted Gandhi's suggestion of primary elections to all the seats. The negotiations continued on the remaining points mainly about the number of seats and the question of fixing time limit at the end of which the special provisions, viz. primary elections and reservation of seats were to expire. Ambedkar's scheme provided that the system of primary elections should automatically expire at the end of ten years but the questions of reserved seats was to be decided by a referendum of the depressed classes at the end of a further period of ten years. The referendum became a thorny issue. Ambedkar refused to entertain the belief that untouchability would be eliminated in the next twenty years or so. Gandhi wanted the referendum at the end of five years. The meeting ended without any agreement. Ambedkar again saw Gandhi at noon the next day. Gandhi said in a tone of finality, "There you are, Five years of my life". They parted, at the suggestion of C. Rajagopalachari it was agreed that the whole question of referendum was to be decided by mutual agreement in future. The agreement was signed at 5 in the evening of Saturday, 24th on the fifth day of the fast, by all present, though Gandhi did not sign it. Ambedkar signed it on behalf of the depressed classes. Gandhi's fast resulted in an acute consciousness in the whole country against untouchability, though it also caused a lot of animosity and even hatred against Ambedkar personally. Ambedkar was recognised as the true leader of the depressed classes. The fast was broken after the British Government endorsed the Poona Pact on 26 September, 1932.

Under the Poona Pact the depressed classes got 148 seats, more than double of what was given by the British Prime Minister but separate electorates were abolished and the members of the depressed classes were to enrol themselves in the general electoral rolls. They had to form an electoral college which would, in the first instance, elect 4 candidates for each seat in a primary election. These four would be the candidates for the general election and the poll for the general election would be extended in the constituency both for depressed classes and others.

To take the demand of separate electorates to its logical conclusion, Ambedkar repeated it in his Memorandum and draft articles on the Rights of States and minorities submitted on 24 March, 1947. In this draft he demanded the abolition of the system of separate electorates. Fifteen years had gone by since the Poona Pact but the lot of the scheduled castes had not changed much. The Memorandum was submitted before the dawn of independence and the blood bath which the country witnessed in the wake of partition. The system of separate electorates in the past sharpened communal differences to a dangerous extent and proved one of the main stumbling blocks to the development of a healthy national life. The system of separate electorates was abolished in the new Constitution.

However, the reserved seats for the scheduled castes and scheduled tribes had to be continued. He had a jibe at those members who had passionately pleaded that these reservations for scheduled castes and scheduled tribes should end by ten years. He said, "All I want to say to them in the words of Edmund Burke is large empires and small minds go ill together."

Ambedkar was so right that article 334 was repeatedly amended to extend the period of reservation. The latest Constitution (Sixty-second Amendment) Act enacted on 25th January, 1990 provides for the reservation of seats to continue for fifty years from the commencement of the Constitution.

The presence of the representatives of the scheduled castes in the political institutions of the country has had little impact on the socio-economic advancement of members of the Scheduled Castes. Even special provisions made for them under articles 15(4), 16(4), 46, 330, 332 and 335 of the Constitution have failed to solve the problems of the scheduled castes. Socially, economically and educationally they continue to be at the bottom of the society. Equality of opportunity and of status remains a far cry for them. The atrocities on them continue unabated. Justice-social, economic and political-remains only a distant dream for them. Liberty, equality and fraternity sounds to them a hollow slogan.

Ambedkar died a frustrated man. His attempt to burn Manusmriti on the altar of the Constitution and Hindu Code failed. What would he have felt today when the communal and caste divide are deeper than at any time before? As early as in 1929 Ambedkar wrote "I am of the opinion that the most vital need of the day is to create among the mass of the people the sense of a common nationality, the feeling not that they are Indians first and Hindus, Mohammedans or Sindhis and Kararese afterwards, but that they are Indians first and Indians last." These words are more relevant today in Independent India.

India today needs another Ambedkar to strengthen Liberty, Equality and Fraternity and to forge her into a united, great nation.

Dr. B.R. Ambedkar

— S. Nijalingappa*

Dr. Ambedkar was a rare and unusual leader in the public life of India during the period before and after Independence of India. Though born in a Harijan family and subjected to social discrimination he was highly educated, holding highest qualifications of Universities Indian and foreign was endowed with a rare sensitivity, undaunted courage, rational outlook, mental brilliance, and independent approach to public and political problems. His concern for the oppressed arose out of the way in which the caste Hindus treated the outcasts, who were not allowed to live in the villages and had to be outside in huts, in squalor, in rags, in poverty and in the worst human conditions and, though called by different names in different languages, were "Untouchables", whom Gandhiji, out of his great concern for them gave the name "Harijans" which became popular during the last four or five decades. Being a harijan himself and having keenly studied, known and felt the degraded conditions to which they have been subjected to during thousands of years by the Hindu society on the basis of Dharmashastras which were held sacrosanct and quoted in favour of this diabolical, inhuman and degrading practice, he was naturally upset and critical. Together with this experience of his people discriminated against, his being a rationalist was responsible for his looking at Hindu scriptures and even Ramayana and Mahabharatha with a harsh approach. What he

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wrote about these two great epics, which are unrivalled as such in the whole of world literature, though looks to be prejudiced and unacceptable, requires considerations and sympathy.

Also his differences with Gandhiji on the question of Harijans being included in Hindu society or not, which led to Gandhiji's "fast unto death"; but fortunately culminated in the Jai-Pru (M.R. Jayakar and Tej Bhadur Sapru) settlement are also matters for understanding and sympathy though not for agreement. He was not satisfied with the way this was implemented. He was rather too sensitive.

All those together made him to decide that the only way in which he could find peace would be to be converted as a Buddhist. He accepted that philosophy which does away with inequalities and disparities and quite a few of his followers became buddhists. That psychology still seems to be operating among some Harijans, though there is no necessity for it after the adoption of the Indian Constitution together with what is happening during all these 43 years after Independence, though the Indian Government has failed to implement many vital items of the Directive Principles of State Policy.

One thing is clear. He was intensely against discrimination and inequality in every field—religious, social, economic, cultural or any other. For this reason he was a great admirer of Sree Basaveswar who was Chief Minister of Bijjala, a kalachurya king in Karnataka in the 12th century and who probably was the greatest revolutionary of all times. Eight centuries ago he worked for a society in which there was no plurality of gods and goddesses, no disparity between castes and castes depending on the irrational Sanatana Dharma which also looked down upon women, who had no manner of rights except to be slaves of men from birth to death, dividing castes according to their professions, placing exploiting priesthood on the top and the cobblers and the tanners at the lowest rung of society and making them untouchable. He was disgusted and disillusioned with all this and built up a society in which there was no exploitation of any kind either religious, economic, or social

political; where every one should live by the sweat of his brow by employing himself in some trade and profession (Kayaka) and keep something out of his earning for social purposes; where there is one god to be worshipped not in temples with priests but on our person and equally important where woman was equal in all respects to man. What is equally important, men and women belonging to all castes carrying on any profession were enabled to meet in a conference on equal terms every evening and express their opinions on all subjects—religion, philosophy etc. The result was that they expressed in what may be called poetic prose (Vochanas) highest philosophy in simple colloquial language of the region that could be easily understood. This valuable literature, unique in world languages, is available today. Only the language is Kannada. Basaveshvara was too much in advance of his times and when in his enthusiasm to implement his philosophy of social justice he got a Brahmin girl and a Harijan boy married, there was unrest and revolution. Dr. Ambedkar was in complete agreement with these views and no wonder had admiration for this reformer and told me that after his death, the million he had converted lapsed to become another caste. Dr. Ambedkar said these Veerasaivas or Lingayats kept Basaveshwar in their pockets and did not allow his philosophy to expand and grow.

But the greatest contribution of Dr. Ambedkar to his country and to his people is as one mainly responsible for making the constitution of India which is the basis of the existence, growth and the development of the Nation. Sardar Vallabhbhai Patel said that while ages ago we had a Brahmin manu to be author of Dharma Shastra, in this age of India's Independence we have a Harijan for the purpose. In fact Dr. Ambedkar was practically the father of the Indian Constitution. Though he had the best brains to help him in framing it, most of the burden fell on him and he did this onerous duty to the satisfaction of the entire nation. One watched with unstinted appreciation and admiration the way he piloted the Constitution—every article of it. It convinced the members of the Constituent Assembly that we had the best man to do this sacred duty. I am sure few could

have done it better. Dr. Ambedkar, as the main architect of the Indian Constitution, has rendered the greatest service to India. His country will remember him for ages and ages to follow with gratitude.

Ambedkar: National Leader, Renowned Parliamentarian, Pre-eminent Constitution-maker

—Professor P.G. Mavalankar¹

Undaunted in spirit, indomitable in will and uncompromising in action, B.R. Ambedkar carved out for himself a special place in the annals of the constitutional, parliamentary and political history of our times. In stature, as well as in strength, he was tall and talented. Few politicians of dependent and independent India would stand comparison with Ambedkar's life of struggles and successes. He laboured long, hit hard, struck decisively. He had a clear conception of his mission, well backed up by the courage of his convictions. To achieve his goal, he spared neither himself nor others.

Bhimrao Ramji Ambedkar was a born rebel. He did not glibly accept the prevailing social order; rather he chose to bravely fight against its obvious injustice and immorality. Indeed, Ambedkar converted the harrowing home background into a very hopeful opportunity of creating a just and egalitarian-Indian society. He had every reason to be bitter, but he refused to be bogged down by the backwardness imposed on the 'Mahar' community to which, by sheer accident of birth, he belonged. Babasaheb Ambedkar easily rose above his family conditions. By dint of sustained education and sensible cultivation, Dr. B.R. Ambedkar proved more than a match to many of his

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comrades and contemporaries in modern India. He was by all means a 'Dalit', but by no means a 'Dalit Leader' as such. Ambedkar was truly and verily a national leader and an outstanding Indian. To describe him as a captain of the scheduled castes is to do him, and us all, enormous injustice. Ambedkar has a deservedly assured and honourable reputation as a stalwart of the entire nation. He championed the cause of all the depressed and the oppressed people of India; his crusades for the upliftment of the socially and economically outcaste and underdeveloped communities of this vast sub-continent were directed towards making India a genuinely free and democratic nation.

Babasaheb Ambedkar laid great and continued stress on education; nay, he pinned an abiding faith in good and proper instruction and equipment of the citizenry. Ignorance as well as illiteracy are veritable curses; they keep the people in bondage and blindness of all kinds and sorts. Ambedkar realised the immeasurable value of sound education, for it alone could liberate the bodies and the souls of men and women. He himself obtained the best and most of educational skills and scholarships available at home and abroad, made full use of them in achieving excellence in academic, professional and public pursuits all along his eventful and illustrious life, and shone out as a learned politician-cum-scholar-statesman, of whom the whole of India is proud.

Dr. B.R. Ambedkar was an 'Individualist' (both by instinct and training), par excellence. He never tolerated fools gladly. He would not suffer half-hearted or half-baked leaders of any shades of opinion easily. Ambedkar had almost a dislike, if not a disgust, for the bigotted and the belaboured lot. And, yet, in his overall doings and dealings with various persons, particularly with colleague in the allotted spheres of public activity, Ambedkar was both courteous and charitable to the utmost possible extent. Although he led movements and formed associations, Ambedkar was not, perhaps, an 'organisation man'. He led his own folks ably and admirably, yet in many ways he remained a lone sentinel.

Ambedkar's parliamentary innings began with a bang by his membership of the Bombay Legislative Assembly to which he was elected in 1937. He was sworn in on 19 July 1937 as an M.L.A. Earlier, he had served as a nominated Member of the Bombay Legislative Council, wherein he was sworn in on 18 February 1927. His speeches on the Budget every year were marked for their brevity and brilliance. He made many a succinct point and comment. He spoke at considerable length on the February 1939 Budget, and made several candid and critical observations. Ambedkar's erudition and eloquence naturally and rightly attracted the attention of the whole House. Among the various subject covered in his parliamentary utterances and wits were university and primary education, industrial disputes, prohibition, linguistic states, Ministers' salaries, India's participation in the Second World War, etc. He lamented on the extremely slow progress of education, especially of the female population ("It will take 300 years for girls of school-going age to be brought under education")! He also deplored the fact that the depressed classes were growing up in an evil set of surroundings. Ambedkar crossed swords, many a time, with the Congress Treasury Benches (Prime Minister B.G. Kher, Home Minister K.M. Munshi and others) and the Speaker (Hon. G.V. Mavalankar) had to occasionally chide them all. On 23 August 1937, Dr. B.R. Ambedkar rose "to make a statement", not move an amendment, on the Ministers' Salaries Bill "proposed by my honourable friend the Prime Minister" (B.G. Kher). Ambedkar had no wish to carry the matter to a division. His contention was that the said Bill "ought to have been an agreed measure", and "it need not have been carried through by a purely party vote." So, he was lodging a protest against the principle of the Bill. He could not accept the standard salary for Ministers. He put forth his reasons and arguments ably, give detailed and comparative facts and figures neatly. Ambedkar elaborated on the four considerations that ought to prevail, according to his thinking, in the fixing of the salary of a Minister: "(1) consideration of the social standard of the Ministers, who were undoubtedly the social leaders of the

community; (2) considerations of competency; (3) considerations of democracy and (4) considerations of integrity and purity of administration". He went on: "personally, I should have thought myself that the Ministers of the country, who are the first citizens of the country, should lead a life which is cultured, which cares for art, which cares for learning, and which ought to be a model for the rest". He explained as to why the last three considerations "could never be overlooked in fixing the salaries of Ministers". He emphasised the need for competency in the Ministry. "The executive must be the brain trust," he added. As was to be expected, the Government Bill was carried, in the end, but not without the stiff opposition earlier put up by the able 'Bombay city, Byculla and Parel MLA'. Bhimrao R. Ambedkar, who "would not mince matters" and speak out his mind and considered views in a forthright manner.

At the dawn of independence, the whole political ethos was radically changed for a while. Ambedkar had already emerged as an eminent national leader, and he found himself occupying high posts of national duty in the post-independence Nehru age. He was nominated by the Congress Party to the Constituent Assembly, and the Assembly in turn, eventually bestowed upon him the onerous and historic task of the Chairmanship of the Drafting Committee to frame and pilot the Constitution for the new sovereign nation. Ambedkar was also drafted into the Cabinet, by Pandit Nehru, as free India's first Law Minister. In that capacity, Ambedkar drafted and got passed the momentous Hindu Code Bill. There was stiff and considerable opposition to this Bill from many orthodox and other quarters, but Ambedkar, firmly supported by Nehru, saw through the successful passage of the controversial yet creative measure. This significant achievement earned for Dr. Babasaheb Ambedkar the well deserved and romantic title of "Modern MANU".

I had often watched, from the Speaker's Gallery above, the masterly performance of the distinguished Law Minister of India in the House of the People (Lok Sabha). Those were the

formative years of our free and new democracy 1947 to September 1951 (when Ambedkar resigned due to his failing health). I recall, faintly, seeing Ambedkar, in the Bombay Legislative Assembly, occasionally during the period 1937-39. I was then too young to understand, much less appreciate, his parliamentary acumen and debating skills. But, in Delhi, I distinctly remember Ambedkar's pivotal and often crucial role in the Lower House of our Parliament. Dr. B.R. Ambedkar was always meticulously and well dressed, and was ever methodical and fully-equipped with his brief while speaking or answering on the floor of the House. His voice was loud and effective, his diction clear and penchant, his style confident and awe inspiring. He was never unsure of himself or his viewpoint. He spoke convincingly and critically, with an air of authority and superiority. He did not let go any opportunity to demolish the opponent's stand and to make his own presentation attractive and acceptable. Ambedkar particularly excelled during the Question Hour. His answers were articulate and pointed. He did not waste words, he replied relevantly and briskly. He never gave away any information other than what was strictly called for. His answers were so outright, and seemed so authentic, that not many supplementaries flowed. And when a member strayed away from the subject matter of the original question, Ambedkar would simply sit quiet and unmoved, or stand up and just say (rather shout back!) "Notice"! (Meaning, of course, that he would require a proper and prior written notice of a new question to enable him giving the necessary information). One felt that the Law Minister was not lenient, and was not disposed kindly, to members from all sides. Occasionally, the Minister sounded rude, perhaps, but the powerful personality and the overall charisma of the giant figure that Bhimrao Ambedkar was, helped melt away all irritation or anger.

The challenge of drafting a democratic constitution for the reborn Indian Republic was so mighty that it required merit from all quarters and in immeasurable and unmistakable terms. Fortunately, and happily, such talent and training were found in abundance at the time, and the new India's equally novel

Constitution was soon on the anvil, thanks largely, if not mainly, to the extraordinary and imaginative leadership provided by the Drafting Committee personnel of the Constituent Assembly of India. They were all men of vast experience and rich foresight, single-minded and deeply devoted to their unique assignment, highly skilled and singularly unselfish in their opinions and attitudes. Every member of the Committee was a gem, and the group was chaired and adorned by the jewel that B.R. Ambedkar was. He "had not the remotest idea that I would be called upon to undertake more responsible functions." He was "greatly surprised" at the Assembly's electing him to the Drafting Committee, and "was more than surprised when the Committee elected me as the Chairman". The Consembly could not have taken a more wise and fruitful decision. Ambedkar's and the Drafting Committee's vital task was more than complemented and supplemented by the four-leader aristocracy comprising Pandit Jawaharlal Nehru, Sardar Vallabh Bhai Patel, Babu Rajendra Prasad and Maulana Abul Kalam Azad. The large and varied membership of the Assembly was no less handy and helpful. The obvious reward came in the form of a 395-Article Constitution with 9 Schedules in the record time-span of just under three years (9 December 1946 to 26 November 1949).

The manifold qualities of head and heart, so well gathered in and around Dr. B.R. Ambedkar's towering personality, blossomed at their best when Babasaheb diligently and ably led his team and the Assembly towards constructing the constitutional edifice of our "Sovereign, Democratic Republic". He acted superbly as an "Assembly Man". He led, as well as was led, in this project; he initiated as also accepted different proposals; he strove for as widely based consensus as possible; and, in the end struck a significant reconciliation and an harmonious balancing of several and sometimes widely opposing points and priorities which were freely and critically expressed on the floor of the Consembly. Joyfully and enthusiastically, "We, the people of India, having solemnly resolved to constitute India into a SOVEREIGN DEMOCRATIC

REPUBLIC," "ADOPTED, ENACTED AND GAVE TO OURSELVES THIS CONSTITUTION". But, it is Dr. B.R. Ambedkar, to whom the glory of this epoch-making contribution, must rightly and largely be credited by all Indians, in a spirit of gratitude and satisfaction.

On a motion "that the Constitution as settled by the Assembly be passed," moved by Dr. Ambedkar, on the third reading, on 17 November, 1949 having been carefully considered and amply debated by the cross sections of all members, the learned member and the seasoned Chairman of the Drafting Committee (Ambedkar) rose to reply on 25 November, 1949. His response was naturally detailed and factual and analytical, full of lofty sentiments and warm thanks-giving. But Ambedkar also seized this final opportunity to utter valuable words of caution, coupled with the sprinkling of wise advice and timely warning. In this soft-quoted speech, Ambedkar said, among other things: "However good a Constitution may be, it is sure to turn out bad because those who are called to work it, happen to be a bad lot. However bad a constitution may be, it may turn out to be good, if those who are called to work it, happen to be a good lot. The working of a Constitution does not depend wholly upon the nature of the Constitution". He exclaimed further: "Will Indians place the country above their creed, or will they place creed above country? I do not know"! Ambedkar almost prophetically expressed this rhetoric as well: "this democratic system (of the 'Buddhist Bhikshu Sanghas') India lost. Will she lose it a second time? I do not know"! He quickly added, a little later: "It is quiet possible for this new born democracy to retain its form but give place to dictatorship in fact. "If there is a landslide, the danger of the second possibility becoming actuality is much greater". He was quite clear and emphatic in believing that, "We must make our political democracy a social democracy as well. Political democracy cannot last unless there lies at the base of it social democracy. What does social democracy mean? It means a way of life which recognises liberty, equality and fraternity as the principles of life. On the 26th January, 1950, we are going to enter into a life of

contradictions. In politics, we will have equality and in social and economic life we will have inequality. In politics we will be recognising the principle of one man one vote, and one vote one value. In other social and economic life, we shall, by reason of our social and economic structure, continue to deny the principle of one man one value. How long shall we continue to live this life of contradictions? If we continue to deny it for long, we will do so only by putting our political democracy in peril. We must remove this contradiction at the earliest possible moment, or else those who suffer from inequality will blow up the structure of political democracy which this Assembly has so laboriously built up." Dr. B.R. Ambedkar concluded, and warned, aptly: "People are getting tired of Government by the people. They are prepared to have Government for the people, and are indifferent whether it is Government of the people and by the people. If we wish to preserve the Constitution in which we have sought to enshrine the principle of Government of the people, for the people and by the people, let us resolve not to be tardy in the recognition of the evils that lie across our path and which induce people to prefer Government for the people to Government by the people, nor to be weak in our initiative to remove them. That is the only way to serve the country. I know of no better"!

Shall we—the post-independence present generations—pay heed to the sane and sensitive and sincere words and throbs and hopes?

And, will we do so, before all precious time is lost and the flame of freedom and the torch of democracy get dimmed and eventually extinguished?

GOD help us, and save our dear and democratic Republic!

In quest of Social Justice

— Prof. Sidheshwar Prasad*

Remembering Dr. Bhim Rao Ambedkar, the then Prime Minister of Burma, Mr. U Nu, had observed that he was a pioneer among those who played a historical role in accelerating the process of social change. This observation is not only a befitting tribute to Dr. Ambedkar but is also a real evaluation of his personality and the work done by him. His life (1891-1956) is a saga of struggle and quest for social justice against social injustice and only a few people can claim the success he achieved in this struggle. He was the President of the Drafting Committee of the Constituent Assembly and also the Law Minister of India. He was one of the few fortunate persons in the history of the world whose dream became a reality. Dr. Ambedkar was of the view that political democracy is incomplete without social and economic democracy. On 29 April, 1947, the Constituent Assembly, by adopting a proposal moved by Sardar Vallabh Bhai Patel, not only abolished untouchability but also made it a penal offence. This was an issue on which not only Mahatma Gandhi and Dr. Ambedkar but the whole country held the same view. This step was lauded by the world as a glorious chapter in the history of India. *New York Times* compared the abolition of untouchability with the abolition of slavery in America.

The speech delivered by him on 25 November, 1949 in the Constituent Assembly is more relevant today than it was on that day because all the apprehensions expressed by him on that day have, unfortunately, proved to be true during the last four

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decades. The chain of events that followed his speech not only compelled him to resign from the Cabinet but his political influence also waned. But it did not deter him in his quest for social justice. History is witness to the fact that the persons who seek justice earn the wrath of perpetrators of injustice. Abraham Lincoln and Mahatma Gandhi were even assassinated for the same reason.

Dr. Ambedkar, in his historic oration had said,

"We should not feel satisfied with mere political democracy; we should strive to convert political democracy into social democracy. Political democracy can survive, only if it is based on social democracy. What is social democracy? Social democracy stands for a system which accepts the principles of freedom, equality and fraternity and these three principles cannot be separated. Freedom cannot be separated from equality, equality from freedom and vice versa. Freedom without equality would result in dominance by a few over many. Equality without freedom would dry the fountain of inspiration. In the absence of fraternity, equality and freedom cannot thrive in a natural way. It will have to be enforced with the help of the stick. We will have to acknowledge at the outset that two things are totally missing in the Indian society. The first is equality. The Indian society is divided into varnas which are not equal in status, some are high classes and others are low. So far as economic status is concerned, some people in our society have enormous wealth whereas others are living in extreme poverty. From 26 January, 1950, we entered into a paradoxical state where there was political equality but social and economic disparity. In politics, we have accepted the principle of one person one vote but in our social and economic life, due to our established social and economic set up, the principle of egalitarian society continues to be ignored. For how long shall we live this type of paradoxical life? For how long shall we ignore the principle of social and economic equality? The denial of social and economic equality over

a long period would jeopardise political democracy. We shall have to end this paradoxical situation at the earliest, otherwise the victims of this disparity would destroy the very foundation of political democracy which has been established by this Constituent Assembly after much efforts."

This quotation contains the gist of Dr. Ambedkar's philosophy of life and ideology. This philosophy of life was based on equality, freedom and brotherhood but he never gave undue importance to one at the cost of another. One word 'Trimurti' he used for expressing these three concepts indicates that they are inter-dependent and complementary to each other. If one organ of a body is ignored, the other organs get automatically weakened. Similarly, the body of democracy starts decaying, if any concept is ignored.

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If the principle of different parts of the body being inter-dependent and complementary is neglected, it disturbs the system as a whole. Not only the history of independent India but also the history of modern western countries go to prove that if any one of these three aspects—freedom, equality and brotherhood—is over-emphasized, it creates imbalance in the whole system and the persons dissatisfied with the system try to destroy the very system. The situation further worsens when the persons at the helm of affairs give more importance to political democracy *vis-a-vis* social democracy and economic democracy and thus block natural growth thereof. History is a small part of time and any attempt to block its flow results in death and destruction. This philosophy applies not only to the rise and fall of an individual but also of a society. If the meaning of metaphorical language is not taken in the right sense, it distorts the very system. The glaring example of it is that *Richa* of Vedic verse (*Richa*), which is supposed to be the very basis of 'Varna Vyavastha' (Caste system). The sloka is like this—

*"Brahmano Asya Mukhmaseed Bahoo Rajanya Kritah
Uroo Tadasya Bhadvaishyah Padbhayam Shoodro Ajayat"*

It means that “*Brahmins, Kshatriyas, Vaishyas and Shudras* represent the mouth, hands, thighs and feet respectively of this vast society.” Satwalekarji has said about this sloka that “it gives the description of Karmas (functions) of all varnas (castes) in a metaphorical language. *Shudra* has been given very high status in this mantra. The whole body rests on the feet, just as the whole society is dependent on shudras.” The Indian society has become sick due to the apathy it has shown to its own feet i.e. *shudras*.

The origin of ‘Varna’ (caste-system) has been described in the above quoted sloka on the basis of mutual relationship the different parts of human body have. The intention is not to show the superiority of one organ over others but to emphasise that all parts of body are inter-dependent and complementary to each other. But unfortunately, this very sloka is quoted time and again to show *inter-se* superiority of one varna over the other.

The ‘Varna Vyavastha’ did not remain limited to ‘four varnas’ only but went further and a fifth varna of ‘Atishudra’ or ‘untouchable’ was created. Not only this, but thousands of castes and sub-castes developed out of these five varnas. In his book “*Shudra Kaun*”, Dr. Ambedkar has made a detailed sociological and historical analysis with reference to social justice and concluded that ‘shudras’ were in fact, ‘*Surya vansi Kshatriyas*’ who were not allowed to observe thread ceremony by ‘Brahmins’ out of jealousy and were thus compelled to become ‘Shudras’. Dr. Ambedkar once expressed his view that the people who are fighting for the freedom of India, should first try to eradicate the existing ‘Varna Vyavastha’ which is really inhuman. Only then independence will have some meaning in India and it will lay the foundation for a healthy democracy.

Perhaps the most ancient and authentic philosophical / sociological basis of ‘Varna Vyavastha’ is found in the following sloka of Geeta—

“*Chaturvarna Maya Shrestam Gunakarma Vibhashayah
Tasya Kartaramapi Mam Vidhya Kartara manyayam*”

It means, “The fourfold caste was created by me, by the

differentiation of Guna and Karma. Though I am the author thereof, know me to be the non-doer and changeless."

It is evident from this sloka that four categories of people in a society were formed on the basis of division and nature of work of individuals and not on the basis of their birth. Needless to say that people take it for granted in traditional way that birth is the basis of 'Varna-vyavastha' and the caste system. Today everybody accepts that the Indian society has lost its dynamism due to the belief in the birth-based 'Varna-vyavastha'. Dr. Ambedkar was of the firm opinion that we will have to eradicate the existing social system of higher and lower castes based on birth if we wanted overall development of democracy. Only in such an atmosphere people will get the inspiration to develop their inherent qualities. Though untouchability has been abolished by making suitable provisions in Indian Constitution the "Varna-vyavastha" and caste system is still in vogue and is vehemently advocated.

Though Mahatma Gandhi considered untouchability a slur on Hindu religion and opposed the birth-based caste-system he was a supporter of 'Varnashram' system. In his opinion, 'Varna' should be based on the nature of the deeds of human beings. Gandhiji was of the opinion that "Varnashram System as described in 'Shastras' was not in vogue and the existing caste system was quite different and it must be abolished at the earliest". Gandhiji was of the opinion that the "four Varnas were not only natural and essential but were the very foundation of the society". According to Pt. Gopinath Kaviraj, Varna Vyavastha and Ashram Vyavastha are social institutions to guide the individual to attain 'Moksha'. In the present era many of the people do not comprehend its significance, but historically and logically the 'Varna' system and 'Ashram' system appears to be rational. Dr. Bhagwan Das has made a detailed study of the subject and he has interpreted 'Manusmriti' in the present day context.

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So, is the quest for social justice by Dr. Ambedkar and criticism of 'Varna' and caste system irrelevant? Gandhiji has rightly said that Varnashram system, as described in the 'Shastras' is not in practice in any society today and the present caste-system is quite different from the Varnashram system and must, therefore, be abolished. Gandhiji launched the movement only to abolish untouchability and not for the eradication of caste-system. Like Jyotiba Phule, Dr. Ambedkar considered the 'Varna-system' and caste-system as inhuman and unjust and always struggled for a new social set-up based on equality, freedom and fraternity.

When the religious pundits interpreted the Rigveda Richa, the basis of Varna Vyavastha, and Guna-Karma theory of Gita and linked duties and rebirth with them and transformed the social set-up into a religious one, the God-fearing people of the country could not oppose it. The *Sanatanis*, the followers of Vedic and mythological traditions supported this set-up as a part of religion. Although Mahavir and Gautama Buddha opposed this system, yet they could not suggest any alternative and better system. Therefore, Jainism and Buddhism could not dominate the *Sanatan Dharma*. Later on, the authors of 'Apastamb' and 'Bodhayan', Manu and Yaksawalya, and economists like Chanakya supported this Varnashram, in which Sudras were deprived of their rights. Manu treated Sudras and animals alike. Penance of murdering a 'Sudra' by a Brahmin was the same as that of a dog or a cat.

It is a matter of surprise that neither any movement was launched against that discriminatory system nor anyone opposed it. Even the system of conversion led by Gautama Buddha could not abolish 'Varna' and caste-system. The *Bhakti* movement slightly reduced its effect but could not abolish it completely.

What is the reason behind it? The reason lies in the fact that the philosophical-sociological basis of the 'Varna' system remained untouched. Serious attention was not paid to the fact

that 'Swa-Dharma' and 'Gun a Karma' of Gita could not form the basis of the caste-system, as the philosophy of Gita propounds 'Abheda' and 'Adwaita' (Vasudeva Sarvamiti—7-19) and Varna system is discriminatory and contrary to 'Adwaita'. In the 'Richa' contained in 'Rigved', (10-19-12) quoted in support of Varna-vyavastha, it is mentioned at the outset that in the world 'truth is one and the scholars call it by different names.' (Rigveda—1-164-46). No research has so far been made to find as to how and in what circumstances Varna-vyavastha was evolved in 'advaita' philosophy for attaining Moksha. It is surprising how Adi Shankaracharya, who believed in Adwaita, supported the Varna Vyavastha.

The Tark Tirth Lakshman Shastri Joshi wrote that there is no evidence in the history of human-race to prove that the Brahmins, the Kshatriyas, the Vaishyas and the Sudras were created on the basis of birth. It is a historical fact that even in the same human race there is evolution of culture with the new replacing the old values. 'Gunas' and 'Karmas' do not counter each other. It is proved by the fact that there are thousands of human beings who possess all these qualities of knowledge, restraint, bravery, trading and manual labour. These are the qualities supposed to be found in Brahmins, Kshatriyas and Vaishyas and Sudras. The Bhakti Movement, did succeed to some extent in making a dent in the caste-system but it failed to eradicate it totally. It is in this context that we will have to understand the agony suffered by Dr. Ambedkar in his quest for social justice. He had to suffer a lot because he was born in an untouchable family and it agitated his mind. As a result, he worked for social justice and made an immense contribution. It is a matter of great honour for Dr. Ambedkar that he is being regarded as second Manu.

In the Preamble to the Constitution, Dr. Ambedkar gave precedence to justice *vis-a-vis* freedom, equality and brotherhood. Even though the ideals of freedom, equality and brotherhood got recognition in the whole of Europe after the French Revolution, the concept of justice is solely the gift of Indian tradition. However, this concept of justice was later on vitiated

because of its association with religion which was influenced by caste considerations.

The Indian tradition of justice became imbalanced and partisan and this cost it its dignity. According to the philosophy enunciated in the Vedas, the Upanishads, the Gita, Ramayana, Mahabharata, Puranas etc. there is no place for Varna Vyavastha based on birth and discrimination.

Some people may doubt whether it is possible to establish social, economic, political, cultural and religious system on the basis of Adwaita Darshan? I feel that this is not only possible but is also essential and inevitable. If the Adwaita Darshan is not given due recognition, no religion, society, system or human value can survive in the world.

In the prevailing circumstances a new world of possibilities is awaiting India because of its tradition of Adwaitawad which has been in vogue since the Vedic age. From Vedic times, this perception has been in vogue that the co-existence of Vidya (the spiritual knowledge) and Avidya (the material knowledge), may lead to completeness of human life and as such for all-round social progress. But in ancient India, it was not possible to provide equal opportunities and resources for all, because at that time India was not scientifically advanced. With scientific advancement it is possible to establish a system not based on Varna Vyavastha or caste-system but based on justice, freedom, equality and brotherhood as enunciated in the Constitution. In such a system it will also be possible to provide equal opportunities to all in our democratic republic.

India did not pay heed to the teachings of the First Manu or the advice of the second Manu i.e. Dr. Ambedkar, to introduce compulsory and free universal education for children upto the age of 14 years and the consequences are before us.

Will the society have to wait for the third Manu to establish a social set-up based on Adwaita Darshan? The work of second Manu (Dr. Ambedkar) in this sphere will provide guidance in this direction.

Dr. Ambedkar—a social revolutionary

—Smt. Renuka Ray*

When freedom came at the expense of Partition of India the Constituent Assembly was set up at the instance of Gandhiji, Pandit Nehru and others and the majority of members were elected by the Assemblies. Gandhiji, Pandit Nehru and others felt that not only those who were in the Assemblies but different eminent men and women from different walks of life should also be given their due place in the Constituent Assembly so that it would be indeed a representative of the country as a whole and not only of those who were in the forefront of freedom movement. This meant the inclusion of a large number of persons who held position of eminence in different walks of life outside the sphere of politics. Amongst them perhaps the most notable was Dr. Ambedkar, a man of great personality, whose contribution as Chairman of the Drafting Committee was singular.

Dr. Ambedkar was a man of iron-will and could not be easily deflected from what he considered to be right and just.

Belonging to the scheduled caste community, Dr. Ambedkar, in spite of his rank and position, was imbued with bitterness of unjust treatment due to the caste system. While he fully agreed with Gandhiji that there should be no caste distinction and all citizens be treated alike, he felt that the Gandhian approach would not be successful as through the centuries the caste system prevailing in India had become rigid and narrow. He

*Smt. Renuka Ray was a member of the Constituent Assembly.

believed that the only way of bringing equality for the so-called lower castes would be to discard the orthodox Hindu religion and go back to Buddhism which was rational and treated all human beings on equal level. I personally think that the conception was absolutely correct and that had the rational thinking of Gautam Buddha been accepted in its pristine form in India, our subsequent history might have been different. It is one of the tragedies of the country that his contribution, which is the most rational approach was not given due regard in his own land, the land of his birth. Buddhism travelled to some neighbouring countries where it received respect but its inherent values were somewhat changed according to local customs. Even at that late stage had the brilliant idea of Dr. Ambedkar been accepted not only by those who were downtrodden and were treated as outcaste but by the country as a whole, a great deal of undesirable happenings that are now taking place in increasing numbers in respect of treatment of women in particular, the general unrest and the lowering of values might have been avoided.

At the outset I have mentioned this because I think that Dr. Ambedkar was not only the leader of the scheduled castes or honoured because of his contribution as Chairman of the Drafting Committee of the Constitution but because he was one of those leaders whose national outlook would have been of considerable help in to-day's predicament.

I first met him after he had expounded his theory on Buddhism for those who were oppressed due to casteism in the society. But it was much later when the Constituent Assembly was formed that I came to know him closely and had a great respect for his versatility and a deep understanding of his approach towards the drafting of the Constitution. Although he was a man of strong determination he also played a significant role as to how to bring some amount of compromise amongst all the dissenting opinions. And in this sense he was helpful to Pandit Jawaharlal Nehru who was mainly responsible in bringing about compromises even in some of the most difficult situations. After all we must remember that the elements that

composed the Constituent Assembly were persons belonging to different shades of opinion.

The Preamble to the Constitution of India contained objectives according to which various chapters in the Constitution were drawn up. Due to dissensions between different elements, some of the most important items were provided for in the Directive Principles of State Policy and even the most important among them have not yet been enacted into laws in over 40 years. Dr. Ambedkar and many other lawyers were of the opinion that unlike the Criminal Code which was already established, the Civil Code would need some time to prepare before it could be operative. This would mean that the enactment of the Constitution would be delayed to that extent. But as most members were impatient for the Constitution to be ready as quickly as possible they were not in a mood to let more time elapse. Here I should like to mention that the Constitution was actually enacted in October 1949 but only because the Hindi version was not through due to the wrangle between two sections of Hindi experts that it was finally adopted on 26 November, 1949.

In a magnificent speech given by Dr. Ambedkar, he pointed out that *gram panchayat* as Gandhiji and other leaders visualised, had through the years deteriorated so much that today it was an embodiment of the worst type of conservatism where certain persons, mostly Brahmins and the so-called upper classes, held sway. He pointed out that some of the decisions taken by the Panchayats were unjust not only to the under-privileged castes but to the women in particular. We went into the subject in detail and all women members of the Constituent Assembly and even Jawaharlal Nehru and other progressives felt that Dr. Ambedkar had made a very pertinent point. The question of *gram panchayat* was left aside for the time being. I remember a discussion of the matter with Gandhiji and his suggestion was that we should be able to build the Panchayat Raj into a proper representative of all the people who should be able to take serious decisions for the welfare of the society as a whole and not arbitrarily imposed to prevent

the progress either of the scheduled castes or of women. But as this could not be done all at once, the Constituent Assembly decided not to proceed into action immediately. After a great deal of discussion it was eventually placed as article 40 in the Directive Principles of State Policy as follows: "The State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government". Of course at that time members of the Constituent Assembly never realised that the Directive Principles of State Policy would not even be considered for bringing in major items. However, recently during the Congress regime and Rajiv Gandhi's time and later, the idea of introducing the village panchayat has been brought up and after some changes it is most likely coming into existence. It will be absolutely essential to make the backward and underprivileged classes to fend for themselves if Panchayat Raj is to work successfully. It has become very important for women to be able to shoulder responsibility as conditions in the country have deteriorated a great deal. The work that was taken up by the pioneers since the renaissance and in the interim period 20 years ago seems to be sliding back and women are not only unsafe but even the laws which give them equal opportunities in recent years are not actually effective.

Dr. Ambedkar took a leading part in introducing the Hindu Code which included equality in marriage rights and property rights for women. During those years when India fought under his direction and with full authority of Prime Minister Jawaharlal Nehru, we were not able to get this done by the Provisional Parliament. Dr. Ambedkar, however, was a pillar who did his best with the help of women members and other progressives to get the Hindu Code enacted but due to the "filibustering" by some important members with no objection from the Speaker and the Deputy Speaker, it became apparent that the time would be up for the Provisional Parliament before Dr. Ambedkar and other determined persons who supported to get the bill through. At this time Durgabai and I had a talk with Pandit Nehru and after giving some thought to the matter he said, "Do

you agree that I want equal rights for women?" So we said, "Yes, of course". He then said "it would be easier for us to make it a part of our election manifesto and if we win then nobody will be able to stop the introduction of women's equal rights of marriage and property for the Hindu women". Dr. Ambedkar and most of us did not like the postponement but there was no alternative. In any case Hindu Code was divided into two separate bills on marriage and property and both were enacted in the first Parliament. However, women of India were in tremendous debt to Dr. Ambedkar not only for the manner in which he drew up the bills and tried to put through the Hindu Code but also for bringing to our notice the fact that Panchayat Raj at that moment would have been disastrous. Dr. Ambedkar had so many other qualities and as Chairman of the Drafting Committee, no one can deny that the draft of the Constitution of India prepared within two years without being too voluminous is one of the best and is a model for others.

As I have mentioned at the outset, I had been impressed with Dr. Ambedkar's personality long before I had the good fortune to work with him in the Constituent Assembly. He was indeed a remarkable man with a determined approach to all problems and it must be remembered that as a scheduled caste he too had to suffer indignity but the quality of this man was such that no action and no amount of indignity could ever be an obstacle towards the strength and power that he possessed. I am indeed glad that his dominant personality is being given its due recognition. He played as important a part as was played by some of the leaders to whom we honour because they were in the vanguard of country's battle for freedom. The fight that this remarkable man put up against the torturous system of caste domination and injustice to individuals is one which must find its rightful place in the history of India.

Dr. B.R. Ambedkar and his Contribution in the Constituent Assembly and Parliament

—S.L. Shakdher*

The Constituent Assembly met on 9 December 1946, for the first time. On 13 December 1946, Pandit Jawaharlal Nehru moved his Objectives Resolution. It was adopted unanimously by the Constituent Assembly on 22 January, 1947. It appointed a Drafting Committee on 29 August, 1947 to scrutinise the draft of the text of the Constitution prepared by the Constitutional Adviser and to submit to the Assembly for consideration the draft Constitution as revised by the Committee.

Dr. B.R. Ambedkar was elected to the Constituent Assembly by the members of the West Bengal Legislative Assembly. He was elected on the Drafting Committee and later appointed its Chairman. His thorough knowledge of the constitutions of the major countries as well as of the working of the Government of India Act, 1935 stood him in good stead in his role of piloting the Draft Constitution. His enunciation of the principles underlying specific provisions in the draft could conveniently and convincingly counter criticism from any quarter in the Assembly. M.V. Pylee, the well-known Constitutional Historian and author, has this to say about Ambedkar's contribution in the framing of our Constitution:

In the Constituent Assembly none else was so forceful and

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persuasive in arguments, clear and lucid in expression, quick and arresting in debate. And yet, he had always the generosity to concede the credit to a critic who made a valid point and to frankly acknowledge it. Ambedkar's contribution to the Constitution is undoubtedly of the highest order. Indeed, he was a modern Manu and deserves to be called the Father or the chief architect of the Constitution of India.

The motive force for Ambedkar's entering the Constituent Assembly was his anxiety to safeguard the interests of Scheduled Castes. There cannot be a better assessment of his contribution in this regard than these words in Prime Minister Pandit Jawaharlal's tribute in the Lok Sabha on 6 December 1956 on Dr. Ambedkar's sudden demise:

....the way he will be remembered most will be as a symbol of the revolt against all the oppressive features of Hindu Society..... he rebelled against something against which all ought to rebel and we have, in fact, rebelled in various degrees. This Parliament itself represents in the legislation which it has framed, its repudiation of those customs or legacies from the past which kept down a large section of our people from enjoying their normal rights.

Communalism is a canker which we have not been able to wipe out even after over four decades of our Independence. There was some criticism of the Constitution for the special safeguards that were provided for minorities and the socially and educationally weaker sections in the society. But Ambedkar could see years ahead the wisdom behind the provisions. He said in the Constituent Assembly:

Speaking for myself, I have no doubt that the Constituent Assembly has done wisely in providing such safeguards for minorities as it has done. In this country both the minorities and the majorities have followed a wrong path. It is wrong for the majority to deny the existence of minorities. It is equally wrong for the minorities to perpetuate themselves. A solution must be found which will serve a double purpose. It must recognise the

existence of minorities to start with. It must also be such that it will enable majorities and minorities to merge some day into one. The solution proposed by the Constituent Assembly is to be welcomed because it is a solution which serves this twofold purpose. To diehards who have developed a kind of fanaticism against minority protection I would like to say two things. One is that minorities are an explosive force, which, if it erupts, can blow the whole fabric of the state... The other is that minorities in India have agreed to place their existence in the hands of the majority... It is for the majority to realise its duty not to discriminate against minorities... The moment the majority loses the habit of discriminating against the minority, the minorities can have no grouse to exist. They will vanish.

Freedom of the Press is a topic heard recently everywhere. Our Constitution does not specifically provide for it. There was criticism about this omission at the time of adoption of the Constitution, as in fact heard even recently in connection with the Defamation Bill. Countering the belief that it was a lapse on the part of the Drafting Committee, Dr. Ambedkar stated on behalf of the Committee:

The Press has no special rights which are not to be given or which are not to be exercised by the citizen in his individual capacity. The editor of a press or the manager of the press are all citizens and, therefore, when they choose to write in newspapers they are merely exercising their right of expression and in my judgment, therefore, no special mention is necessary of the freedom of the Press at all.

That should set at rest the doubt whether or not the words "freedom of speech and expression" are enough to cover freedom of the Press and for that matter, freedom of expression through such other media as the radio, television, cinema, etc.

Dr. Ambedkar and his colleagues on the Drafting Committee were highly complimented for their work regarding the drafting of the Constitution. The President of the Constituent Assembly Dr. Rajendra Prasad said:

Sitting in the Chair and watching the proceedings from day to day,

I have realised as nobody else could have, with what zeal and devotion the members of the drafting committee and especially its Chairman, Dr. Ambedkar, in spite of his indifferent health, have worked. We could never make a decision which was or could be ever so right as when we put him on the Drafting Committee and made him its Chairman. He has not only justified his selection but has added lustre to the work which he has done....

With the intellectual honesty that he had in abundant measure, Ambedkar passed on the credit for the Draft Constitution to the Constitutional Adviser, to his colleagues on the Drafting Committee, to Shri S.N. Mukherjee whom he called 'the Chief Draftsman of the Constitution' and the members of his staff. He also complimented the Congress Party and said:

It is because of the discipline of the Congress Party that the Drafting Committee was able to pilot the Constitution in the Assembly with the sure knowledge as to the fate of each article and each amendment. The Congress Party is, therefore, entitled to all the credit for the smooth sailing of the Draft Constitution in the Assembly.

Looking to the future working of the Constitution, Ambedkar expressed his honest opinion that the working of the Constitution did not depend wholly upon the nature of the Constitution. He went on to add:

The Constitution can provide only the organs of State such as the Legislature, the Executive and the Judiciary. The factors on which the working of these organs of the State depend are the people and the political parties they will set up as their instruments to carry out their wishes and their policies.....

Dr. Ambedkar was Minister of Law in the Nehru Cabinet till he resigned in September 1951. He was elected to the Council of States in March 1952. He passed away suddenly on 5 December, 1956. In the words of Prime Minister Jawaharlal Nehru, Dr. Ambedkar "played a very important part in the making of the Constitution of India, subsequently in the Legislative Part of the Constituent Assembly and later in the Provisional Parliament."

Dr. Ambedkar will also be remembered for his efforts in the

Parliament in regard to the Hindu Law reform. The Hindu Code Bill was introduced by him in the Parliament on 5 February 1951. He desired to pilot the Bill through Parliament before the first General Elections in 1952. The Bill was, therefore, passed only in parts during his life time. There were some among his contemporaries who felt that the principles he had embodied in his original draft were better in many respects.

Here I pay my special tribute to this great genius. I came in personal contact with him right from the time he began his work in the Drafting Committee of Constituent Assembly, through the offices of Shri M.N. Kaul, the then Secretary of the Central Legislative Assembly and successively Secretary of the Constituent Assembly (Legislative), Provisional Parliament and Lok Sabha. Dr. Ambedkar would consult him frequently on provisions relating to Parliament and together we would visit him and talk to him frequently on the various draft articles. With the approval of Speaker Shri G.V. Mavlankar, we were able to advise on the provision in the Constitution relating to President's Address to Parliament, Joint sittings of the two Houses of Parliament, Privileges of Parliament, Financial Procedures, Appropriation Bill, Secretariat of Parliament and many other allied matters. We would collect a lot of material relating to such matters in various Parliaments of the world and discuss it with him. He was a man of genial temperament, tolerant of arguments, a good listener, a learned critic and synthesis of different ideas. He was clear in his thinking and speech and master of legal and technical terms, precise and concise in drafting. I remember many evenings spent in his company when all these matters were discussed and thrashed threadbare.

Later, as Secretary of Department of Parliamentary Affairs I came again in touch with him, when he functioned as Chairman of Cabinet Committee on Legal and Parliamentary Affairs. In that capacity I had to arrange lists of business in both Houses of Parliament and I recall how correct he was in piloting in the House his Bill on Hindu Code, which was dear to him. He had a great passion for it and was literally thinking of it every minute.

He was a great reader of vast literature on any subject which came under his consideration, be it Constitution or Hindu Code or any other Bill. He was always surrounded by books and it was a great pleasure to see him imbibing old and invoking new ideas.

The Parliament of India has appropriately honoured this constitutionalist and parliamentarian by installing his statue at a prominent place in the Parliament House Estate. Ambedkar Jayanti is also being celebrated every year at this site for many years now.

Baba Saheb Dr. Bhim Rao Ambedkar: Some Reminiscences

—Akshay Kumar Jain*

The 19th century can truly be the birth century of great personalities of our country. Many of the stalwarts like Mahatma Gandhi, Jawahar Lal Nehru, Sardar Patel, Malviyaji and Maulana Azad who played an outstanding role in creating political awareness in the country were born during this century. In fact, it was in this very century that social revolution too was ushered in the country. One of these stalwarts, Dr. Bhim Rao Ambedkarji, was born on 14 April, 1891 in an average 'Mahar' family, which was considered untouchable.

When the society was divided into four Varnas, i.e., Brahmins, Kshatriyas, Vaishyas and Sudras, it was perhaps done because the division of labour in the society was the demand of the time. But in course of time, distortions crept into the system and in place of four varnas, some sub groups such as upper caste-lower caste, touchable-untouchable, forward class-backward class, etc. came into existence. It was in such a social milieu that Dr. Ambedkar, a brilliant boy, had to face humiliation at every step. When he was a Minister in Government of India in Delhi, I had many opportunities to see him. He had narrated many heart-touching incidents of his childhood. These incidents reveal how he became disenchanted with the conservative leaders of the so-called liberal Hindu

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society and as a last resort adopted Buddhism. When he was seven years old, he was once going with his cousin to some other village in a bullock cart and on the way he met a Pandit of his own village. The Pandit chided the bullock-cart driver for ferrying the untouchable boys in his cart along with the people belonging to upper castes. Thereupon the bullock-cart driver instead of asking the boys to alight from the cart, threw both of them out of it.

There is another incident about his interaction with a barber. At that time he, was a child of less than ten years. The barber was cutting the hair of a buffalo when Bhim Rao, requested him to cut his hair also. But the barber rebuked him and told him that he cuts the hair of the people of upper castes only and not the people of lower castes. Dr. Saheb told me that this incident had left an impression on him that their position was worse than that of animals.

During his school days, he was much ahead of his classmates. He used to be the first to arrive in the class room. Once when he sat quite near his teacher who was an orthodox Brahmin, he not only made him to leave that seat because he was an untouchable, but also abused him and instructed him not to sit by the side of the children of upper castes and to take his seat in the last row. Dr. Ambedkar could not forget this incident even in his old age.

In 1916, Bhim Rao did M.A. and Ph.D. from Columbia University of America and after returning home, joined Sydenham College of Bombay as Professor of Economics. He narrated another incident, which he could not forget. One day, he drank water from a 'Surahi' kept in the professors' room and the result was that the Surahi itself was thrown out. His colleagues were not ready to share the same 'Surahi' with him. Saddened by the attitude of his colleagues, he went to Britain for taking a degree in law. Thereafter, he started his practice in the Bombay High Court. He earned a lot of respect and fame. Although he was held in high esteem by the judges and his advocate colleagues, yet the waterman was not ready to serve him water. He narrated one more such incident, on account of

which he lost his patience. The incident was as follows: A new temple had been constructed in the Thakurdwara of Bombay. Its secretary invited Dr. Ambedkar to see the temple which was shortly to be inaugurated. He went inside the temple in a spirit of reverence. At that moment a crowd of upper caste people gathered outside the temple. They abused Dr. Ambedkar and after insulting him threw him out of the temple. Dr. Saheb told me that after this insult, he decided to organise the youth of his caste to show to the custodians of the Hindu society that there was no difference between man and man.

He started publishing a fortnightly called "Mook Nayak" in 1920 in order to bring about an awakening amongst the people. After a period of four years, he published a paper 'Bahishkrit Hitkari' to organise the downtrodden. And after three years, in 1927, his movement to uplift the downtrodden gained so much momentum that he published another fortnightly called "Bahishkrit Bharat".

During the same year, another incident occurred. Dr. Ambedkar alongwith a group of youth went to a public well in Bombay for drawing water. Caste Hindus were awaiting them there with lathis and spears and violence was apprehended there. Dr. Ambedkar was persuaded by the police to leave the place. He complied with the request but he went to the court for the rights of the downtrodden and after ten years of litigation he won the case in 1937 in the Bombay High Court.

He attended all the three Round Table Conferences (1930-33) held in London as a representative of the Harijans. In 1931 he demanded separate election for Harijans. Mahatma Gandhi opposed it but the then Government of India accepted the demand under the Communal Award. Consequently, Gandhiji undertook a fast unto death in Pune. Thereafter the Poona-Pact was signed to save the life of Mahatma Gandhi for which credit goes to Dr. Ambedkar.

Dr. Saheb had told me that in 1935 he had announced his decision to the effect that Harijans could discard the Hindu religion and adopt some other religion. The Sikhs also lent their

support to this decision. But the followers of Dr. Ambedkar did not approve of it and the matter was not pursued.

The Interim Government was formed in 1946. The Constituent Assembly commenced its sittings in New Delhi. There was an interesting incident which occurred during those days. One day Pandit Nehru and Smt. Sarojini Naidu called on Gandhiji. Panditji appeared to be in low spirits and Gandhiji asked him the reason. Panditji replied that a constitutional expert was needed for framing the new Constitution of India. A suggestion was made to call Mr. Ivor Jennings who had framed constitutions for some Asian countries. Gandhiji asked him how was it that the name of the great constitutional expert of our own country, Dr. Bhim Rao Ambedkar did not occur to him. Consequently, the Congress Party nominated Dr. Ambedkar in the Constituent Assembly in his capacity as member of the party. Today, it is fairly well-known that the valuable contribution made by Dr. Ambedkar in giving shape to the Constitution of our country is held in high esteem.

In 1950-51 the Hindu Code Bill was brought to ameliorate the lot of the Hindu women. This bill was also drafted in consultation with Dr. Saheb. Later on, however, some differences cropped up in regard to the Bill and in September, 1951, Dr. Saheb resigned from Government of India.

Next year, he contested the Lok Sabha elections but could not win. His health was deteriorating day by day. He wanted to fulfil the resolution made in 1935 showing his intention to embrace Buddhism. Therefore, he alongwith thousands of his followers adopted Buddhist religion in Nagpur on 14 October, 1956. After this conversion, Buddhism became popular once again and more and more people were attracted to it.

Thereafter, Dr. Ambedkar could not live for long and breathed his last on 6 December, 1956 in Delhi.

Dr. Bhim Rao Ambedkar, popularly known as Baba Saheb, earned his fame as a social reformer, as framer of the Constitution of India and as a modern Manu. We offer our humble tributes on the occasion of his birth centenary.

PART THREE

His Ideas

**(Excerpts from some select Speeches of
Dr. B.R. Ambedkar in Constituent Assembly)**

On A Strong Unitary Government

Mr. Chairman, I am indeed very grateful to you for having called me to speak on the Resolution." I must however confess that your invitation has come to me as a surprise. I thought that as there were some 20 or 22 people ahead of me, my turn if it did come at all, would come tomorrow. I would have preferred that as today I have come without any preparation whatsoever. I would have liked to prepare myself as I had intended to make a full statement on an occasion of this sort. Besides you have fixed a time limit of 10 minutes. Placed under these limitations, I don't know how I could do justice to the Resolution before us. I shall however do my best to condense in as few words as possible what I think about the matter.

¹C.A. Deb; Vol. I, 17 December, 1946.

"Resolution moved by Pt. Jawahar Lal Nehru on 13 December, 1946 in Constituent Assembly:

- (1) This Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and to draw up for her future governance a Constitution; and
- (2) WHEREIN the territories that now comprise British India, the territories that now form the Indian States, and such other parts of India as are outside British India and the States as well as such other territories as are willing to be constituted into the Independent Sovereign India shall be a Union of them all; and
- (3) WHEREIN the said territories, whether with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter according to the Law of the Constitution, shall possess and retain the status of autonomous Units, together with residuary powers, and exercise all powers and functions of government and administration, save and except such powers and functions as are vested in or assigned to the Union, or as are inherent or implied in the Union or resulting therefrom; and

Mr. Chairman, the Resolution in the light of the discussion that has gone on since yesterday, obviously divides itself into two parts, one part which is controversial and another part which is non-controversial. The part which is non-controversial is the part which comprises paragraphs (5) to (7) of this Resolution. These paragraphs set out the objectives of the future constitution of this country. I must confess that, coming as the Resolution does from Pandit Jawaharlal Nehru who is reputed to be a Socialist, this Resolution, although non-controversial, is to my mind very disappointing. I should have expected him to go much further than he has done in that part of the Resolution. As a student of history, I should have preferred this part of the Resolution not being embodied in it at all. When one reads that part of the Resolution, it reminds one of the Declaration of the Rights of Man which was pronounced by the French Constituent Assembly. I think I am right in suggesting that, after the lapse of practically 150 years, the Declaration of the Rights of Man and the principles which are embodied in it has become part and parcel of our mental make-up. I say they have become not only the part and parcel of the

- (4) WHEREIN all power and authority of the Sovereign Independent India, its constituent parts and organs of government, are derived from the people; and
- (5) WHEREIN shall be guaranteed and secured to all the people¹ of India justice, social, economic and political; equality of status, of opportunity, and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality; and
- (6) WHEREIN adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes; and
- (7) WHEREBY shall be maintained the integrity of the territory of the Republic and its sovereign rights on land, sea, and air according to justice and the law of civilised nations; and
- (8) this ancient land attains its rightful and honoured place in the world and make its full and willing contribution to the promotion of world peace and the welfare of mankind."

mental make-up of modern man in every civilised part of the world, but also in our own country which is so orthodox, so archaic in its thought and its social structure, hardly anyone can be found to deny its validity. To repeat it now as the Resolution does is, to say the least, pure pedantry. These principles have become the silent immaculate premise of our outlook. It is therefore unnecessary to proclaim as forming a part of our creed. The Resolution suffers from certain other lacuna. I find that this part of the Resolution, although it enunciates certain rights, does not speak of remedies. All of us are aware of the fact that rights are nothing unless remedies are provided whereby people can seek to obtain redress when rights are invaded. I find a complete absence of remedies. Even the usual formula that no man's life, liberty and property shall be taken without the due process of law, finds no place in the Resolution. These fundamental rights set out are made subject to law and morality. Obviously what is law, what is morality will be determined by the Executive of the day and when the Executive may take one view another Executive may take another view and we do not know what exactly would be the position with regard to fundamental rights, if this matter is left to the Executive of the day.

Sir, there are here certain provisions which speak of justice, economical, social and political. If this Resolution has a reality behind it and a sincerity, of which I have not the least doubt, coming as it does from the Mover of the Resolution, I should have expected some provision whereby it would have been possible for the State to make economic, social and political justice a reality and I should have from that point of view expected the Resolution to state in most explicit terms that in order that there may be social and economic justice in the country, that there would be nationalisation of industry and nationalisation of land, I do not understand how it could be possible for any future Government which believes in doing justice socially, economically and politically, unless its economy is a socialistic economy. Therefore, personally, although I have no objection to the enunciation of these propositions, the

Resolution is, to my mind, somewhat disappointing. I am however prepared to leave this subject where it is with the observations I have made.

Now I come to the first part of the Resolution, which includes the first four paragraphs. As I said from the debate that has gone on in the House, this has become a matter of controversy. The controversy seems to be centred on the use of that word 'Republic'. It is centred on the sentence occurring in paragraph 4 "the sovereignty is derived from the people". Thereby it arises from the point made by my friend Dr. Jayakar yesterday that in the absence of the Muslim League it would not be proper for this Assembly to proceed to deal with this Resolution. Now, Sir, I have got not the slightest doubt in my mind as to the future evolution and the ultimate shape of the social, political and economic structure of this great country. I know to-day we are divided politically, socially and economically. We are a group of warring camps and I may go even to the extent of confessing that I am probably one of the leaders of such a camp. But, Sir, with all this, I am quite convinced that given time and circumstances nothing in the world will prevent this country from becoming one. With all our castes and creeds, I have not the slightest hesitation that we shall in some form be a united people. I have no hesitation in saying that notwithstanding the agitation of the Muslim League for the partition of India some day enough light would dawn upon the Muslims themselves and they too will begin to think that a United India is better even for them.

So far as the ultimate goal is concerned, I think none of us need have any apprehensions. None of us need have any doubt. Our difficulty is not about the ultimate future. Our difficulty is how to make the heterogeneous mass that we have to-day take a decision in common and march on the way which leads us to unity. Our difficulty is not with regard to the ultimate, our difficulty is with regard to the beginning. Mr. Chairman, therefore, I should have thought that in order to make us willing friends, in order to induce every party, every section in this

country to take on to the road it would be an act of greatest statesmanship for the majority party even to make a concession to the prejudices of people who are not prepared to march together and it is for that, that I propose to make this appeal. Let us leave aside slogans, let us leave aside words which frighten people. Let us even make a concession to the prejudices of our opponents, bring them in, so that they may willingly join with us on marching upon that road, which as I said, if we walk long enough, must necessarily lead us to unity. If I, therefore, from this place support Dr. Jayakar's amendment, it is because I want all of us to realise that whether we are right or wrong, whether the position that we take is in consonance with our legal rights, whether that agrees with the Statement of May the 16th or December 6th leave all that aside. This is too big a question to be treated as a matter of legal rights. It is not a legal question at all. We should leave aside all legal considerations and make some attempt, whereby those who are not prepared to come, will come. Let us make it possible for them to come, that is my appeal.

In the course of the debate that took place, there were two questions which were raised, which struck me so well that I took the trouble of taking them down on a piece of paper. The one question was, I think, by my friend, the Prime Minister of Bihar who spoke yesterday in this Assembly. He said, how can this Resolution prevent the League from coming into the Constituent Assembly? Today my friend, Dr. Syama Prasad Mookherjee, asked another question. Is this Resolution consistent with the Cabinet Mission's Proposal? Sir, I think they are very important questions and they ought to be answered and answered categorically. I do maintain that this Resolution whether it is intended to bring about the result or not, whether it is a result of cold calculation or whether it is a mere matter of accident is bound to have the result of keeping the Muslim League out. In this connection I should like to invite your attention to paragraph 3 of the Resolution, which I think is very significant and very important. Paragraph 3 envisages the future Constitution of India. I do not know what is the intention of the

mover of the Resolution. But I take it that after this Resolution is passed, it will act as a sort of a directive to the Constituent Assembly to frame a constitution in terms of para 3 of the Resolution. What does para 3 say? Para 3 says that in this country there shall be two different sets of polity, one at the bottom, autonomous Provinces or the States or such other areas as care to join a United India. These autonomous units will have full power. They will have also residuary powers. At the top, over the Provincial units, there will be a Union Government, having certain subjects for legislation, for execution and for administration. As I read this part of the Resolution, I do not find any reference to the idea of grouping, an intermediate structure between the Union on the one hand and the provinces on the other. Reading this para in the light of the Cabinet Mission's Statement or reading it even in the light of the Resolution passed by the Congress at its Wardha session, I must confess that I am a great deal surprised at the absence of any reference to the idea of grouping of the provinces. So far as I am personally concerned, I do not like the idea of grouping. I like a strong united Centre, much stronger than the Centre we had created under the Government of India Act of 1935. But, Sir, these opinions, these wishes have no bearing on the situation at all. We have travelled a long road. The Congress Party, for reasons best known to itself consented, if I may use that expression, to the dismantling of a strong Centre which had been created in this country as a result of 150 years of administration, and which, I must say, was to me a matter of great admiration and respect and refuge. But having given up that position having said that we do not want a strong centre, and having accepted that there must be or should be an intermediate polity, a sub-federation between the Union Government and the Provinces I would like to know why there is no reference in para 3 to the idea of grouping. I quite understand that the Congress Party, the Muslim League and His Majesty's Government are not *ad idem* on the interpretation of the clause relating to grouping. But I always thought that,—I am prepared to stand corrected if it is shown that I am wrong,—at least it was agreed by the Congress Party

that if the provinces which are placed within different groups consent to form a Union or Sub-federation, the Congress would have no objection to that proposal. I believe I am correct in interpreting the mind of the Congress Party. The question I ask is this. Why did not the Mover of this Resolution make reference to the idea of a Union of Provinces or grouping of Provinces on the terms on which he and his party was prepared to accept it; Why is the idea of Union completely effaced from this Resolution? I find no answer. None whatever. I therefore say in answer to the two questions which have been posed here in this Assembly by the Prime Minister of Bihar and Dr. Syama Prasad Mookherjee as to how this Resolution is inconsistent with the Statement of 16 May or how this Resolution is going to prevent the Muslim League from entering this Constituent Assembly, that here is para 3 which the Muslim League is bound to take advantage of and justify its continued abstention. Sir, my friend Dr. Jayakar, yesterday, in arguing his case for postponing a decision on this issue put his case. If I may say so, without offence to him, somewhat in a legalistic manner. The basic of his argument was, have you the right to do so? He read out certain portions from the Statement of the Cabinet Mission which related to the procedural part of the Constituent Assembly and his contention was that the procedure that this Constituent Assembly was adopting in deciding upon this Resolution straightaway was inconsistent with the procedure that was laid down in that Paper. Sir, I like to put the matter in a somewhat different way. The way I like to put it is this. I am not asking you to consider whether you have the right to pass this Resolution straightaway or not. It may be that you have the right to do so. The question I am asking is this. Is it prudent for you to do so? Is it wise for you to do so? Power is one thing; wisdom is quite a different thing and I want this House to consider this matter from the point of view not of what, authority is vested in this Constituent Assembly, I want this House to consider the matter from another point of view, namely, whether it would be wise, whether it would be statesmanlike, whether it would be prudent to do so at this stage. The answer that I give is that it would not be prudent, it

would not be wise. I suggest that another attempt may be made to bring about a solution of the dispute between the Congress and the Muslim League. This subject is so vital, so important that I am sure it could never be decided on the mere basis of dignity of one party or the dignity of another party. When deciding the destinies of nations, dignities of people, dignities of leaders and dignities of parties ought to count for nothing. The destiny of the country ought to count for everything. It is because I feel that it would be in the interest not only of this Constituent Assembly so that it may function as one whole so that it may have the reaction of the Muslim League before it proceeds to a decision that I support Dr. Jayakar's amendment—we must also consider what is going to happen with regard to the future, if we act precipitately. I do not know what plans the Congress Party, which holds this House in its possession, has in its mind? I have no power of divination to know what they are thinking about. What are their tactics, what is their strategy, I do not know. But applying my mind as an outsider to the issue that has arisen, it seems to me there are only three ways by which the future will be decided. Either there shall have to be surrender by the one party to the wishes of the other—that is one way. The other way would be what I call a negotiated peace and the third way would be open war. Sir, I have been hearing from certain members of the Constituent Assembly that they are prepared to go to war. I must confess that I am appalled at the idea that anybody in this country should think of solving the political problems of this country by the method of war. I do not know how many people in this country support that idea. A good many perhaps do and the reason why I think they do, is because most of them, at any rate a great many of them, believe that the war that they are thinking of would be a war on the British. Well, Sir, if the war that is contemplated, that is in the minds of people, can be localised, circumscribed, so that it will not be more than a war on the British, I probably may not have much objection to that sort of strategy. But will it be a war on the British only? I have no hesitation and I do want to place before this House in the clearest terms possible that if war comes in this country and if

that war has any relation to the issue with which we are confronted to-day, it will not be a war on the British. It will be a war on the Muslims or which is probably worse, it will be a war on a combination of the British and the Muslims. I cannot see how this contemplated war be of the sort different from what I fear it will be. Sir, I like to read to the House a passage from Burke's great speech on Conciliation with America. I believe this may have some effect upon the temper of this House. The British people as you know were trying to conquer the rebellious colonies of the United States, and bring them under their subjection contrary to their wishes. In repelling this idea of conquering the colonies this is what Burke said:—

"First. Sir, permit me to observe that the use of force alone is but temporary. It may subdue for a moment; but it does not remove the necessity of subduing again; and a nation is not governed, which is perpetually to be conquered."

"My next objection is its uncertainty. Terror is not always the effect of force and an armament is not a victory. If you do not succeed, you are without resource; for, conciliation failing, force remains; but, force failing, no further hope of reconciliation is left. Power and authority are sometimes bought by kindness; but they can never be begged as alms by an impoverished and defeated violence."

"A further objection to force is, that you impair the object by your very endeavours to preserve it. The thing you fought for is not the thing which you recover; but depreciated, sunk, wasted and consumed in the contest."

These are weighty words which it would be perilous to ignore. If there is anybody who has in his mind the project of solving the Hindu-Muslim problem by force, which is another name of solving it by war, in order that the Muslims may be subjugated and made to surrender to the Constitution that might be prepared without their consent, this country would be involved in perpetually conquering them. The conquest would not be once and for ever. I do not wish to take more time than I have taken and I will conclude by again referring to Burke. Burke has

said somewhere that it is easy to give power, it is difficult to give wisdom. Let us prove by our conduct that if this Assembly has arrogated to itself sovereign powers it is prepared to exercise them with wisdom. That is the only way by which we can carry with us all sections of the country. There is no other way that can lead us to unity. Let us not have any doubt on that point.

On Draft Constitution

Mr. President, Sir, I introduce the Draft Constitution as settled by the Drafting Committee and move that it be taken into consideration.

The Drafting Committee was appointed by a Resolution passed by the Constituent Assembly on August 29, 1947.

The Drafting Committee was in effect charged with the duty of preparing a Constitution in accordance with the decisions of the Constituent Assembly on the reports made by the various Committees appointed by it such as the Union Powers Committee, the Union Constitution Committee, the Provincial Constitution Committee and the Advisory Committee on Fundamental Rights, Minorities, Tribal Areas, etc. The Constituent Assembly had also directed that in certain matters the provisions contained in the Government of India Act, 1935, should be followed. Except on points which are referred to in my letter of the 21st February 1948 in which I have referred to the departures made and alternatives suggested by the Drafting Committee, I hope the Drafting Committee will be found to have faithfully carried out the directions given to it.

The Draft Constitution as it has emerged from the Drafting Committee is a formidable document. It contains 315 Articles and 8 Schedules. It must be admitted that the Constitution of no country could be found to be so bulky as the Draft Constitution. It would be difficult for those who have not been through it to realize its salient and special features.

*C. A. Deb., Vol. VII, 4 November, 1948; pp 31-44.

The Draft Constitution has been before the public for eight months. During this long time friends, critics and adversaries have had more than sufficient time to express their reactions to the provisions contained in it. I dare say that some of them are based on misunderstanding and inadequate understanding of the Articles. But there the criticisms are and they have to be answered.

For both these reasons it is necessary that on a motion for consideration I should draw your attention to the special features of the Constitution and also meet the criticism that has been levelled against it.

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A student of Constitutional Law, if a copy of a Constitution is placed in his hands, is sure to ask two questions. Firstly what is the form of Government that is envisaged in the Constitution and secondly what is the form of the Constitution? For these are the two crucial matters which every Constitution has to deal with. I will begin with the first of the two questions.

In the Draft Constitution there is placed at the head of the Indian Union a functionary who is called the President of the Union. The title of this functionary reminds one of the President of the United States. But beyond identity of names there is nothing in common between the form of Government prevalent in America and the form of Government proposed under the Draft Constitution. The American form of Government is called the Presidential system of Government. What the Draft Constitution proposes is the Parliamentary system. The two are fundamentally different.

Under the Presidential system of America, the President is the Chief head of the Executive. The administration is vested in him. Under the Draft Constitution the President occupies the same position as the King under the English Constitution. He is the head of the State but not of the Executive. He represents the Nation but does not rule the Nation. He is the symbol of the nation. His place in the administration is that of a ceremonial device on a seal by which the nation's decisions are made

known. Under the American Constitution the President has under the Secretaries in charge of different Departments. In like manner the President of the Indian Union will have under him Ministers in charge of different Departments of administration. Here again there is a fundamental difference between the two. The President of the United States is not bound to accept any advice tendered to him by any of his Secretaries. The President of the Indian Union will be generally bound by the advice of his Ministers. He can do nothing contrary to their advice nor can he do anything without their advice. The President of the United States can dismiss any Secretary at any time. The President of the Indian Union has no power to do so so long as his Ministers command a majority in Parliament.

The Presidential system of America is based upon the separation of the Executive and the Legislature. So that the President and his Secretaries cannot be members of the Congress. The Draft Constitution does not recognise this doctrine. The Ministers under the Indian Union are members of Parliament. Only members of Parliament can become Ministers. Ministers have the same rights as other members of Parliament, namely, that they can sit in Parliament, take part in debates and vote in its proceedings. Both systems of Government are of course democratic and the choice between the two is not very easy. A democratic executive must satisfy two conditions—(1) It must be a stable executive and (2) it must be a responsible executive. Unfortunately it has not been possible so far to devise a system which can ensure both in equal degree. You can have a system which can give you more stability but less responsibility or you can have a system which gives you more responsibility but less stability. The American and the Swiss systems give more stability but less responsibility. The British system on the other hand gives you more responsibility but less stability. The reason for this is obvious. The American Executive is a non-Parliamentary Executive which means that it is not dependent for its existence upon a majority in the Congress, while the British system is a Parliamentary Executive which means that it is dependent upon

a majority in Parliament. Being a non-Parliamentary Executive, the Congress of the United States cannot dismiss the Executive. A Parliamentary Government must resign the moment it loses the confidence of a majority of the members of Parliament. Looking at it from the point of view of responsibility, a non-Parliamentary Executive being independent of Parliament tends to be less responsible to the Legislature, while a Parliamentary Executive being more dependent upon a majority in Parliament become more responsible. The Parliamentary system differs from a non-Parliamentary system in as much as the former is more responsible than the latter but they also differ as to the time and agency for assessment of their responsibility. Under the non-Parliamentary system, such as the one that exists in the U.S.A., the assessment of the responsibility of the Executive is periodic. It takes place once in two years. It is done by the Electorate. In England, where the Parliamentary system prevails the assessment of responsibility of the Executive is both daily and periodic. The daily assessment is done by members of Parliament, through Questions, Resolutions, No-confidence motions, Adjournment motions and Debates on Addresses. Periodic assessment is done by the Electorate at the time of the election which may take place every five years or earlier. The daily assessment of responsibility which is not available under the American system is it is felt far more effective than the periodic assessment and far more necessary in a country like India. The Draft Constitution in recommending the Parliamentary system of Executive has preferred more responsibility to more stability.

So far I have explained the form of Government under the Draft Constitution, I will now turn to the other question namely, the form of the Constitution.

Two principal forms of the Constitution are known to history—one is called Unitary and the other Federal. The two essential characteristics of a Unitary Constitution are: (1) the supremacy of the Central Polity and (2) the absence of subsidiary Sovereign polities. Contrarywise, a Federal Constitution is marked: (1) by the existence of a Central polity

and subsidiary polities side by side, and (2) by each being sovereign in the field assigned to it. In other words, Federation means the establishment of a Dual Polity. The Draft Constitution is, Federal Constitution inasmuch as it establishes what may be called a Dual Polity. This Dual Polity under the proposed Constitution will consist of the Union at the Centre and the States at the periphery each endowed with sovereign powers to be exercised in the field assigned to them respectively by the Constitution. This dual polity resembles the American Constitution. The American polity is also a dual polity, one of it is known as the Federal Government and the other States which correspond respectively to the Union Government and the States Government of the Draft Constitution. Under the American Constitution the Federal Government is not a mere league of the States nor are the States administrative units or agencies of the Federal Government. In the same way the Indian Constitution proposed in the Draft Constitution is not a league of States nor are the States administrative units or agencies of the Union Government. Here, however, the similarities between the Indian and the American Constitution come to an end. The differences that distinguish them are more fundamental and glaring than the similarities between the two.

The points of difference between the American federation and the Indian Federation are mainly two. In the U.S.A. this dual polity is followed by a dual citizenship. In the U.S.A. there is a citizenship of the U.S.A. But there is also a citizenship of the State. No doubt the rigours of this double citizenship are much assuaged by the fourteenth amendment to the Constitution of the United States which prohibits the States from taking away the rights, privileges and immunities of the citizen of the United States. At the same time, as pointed out by Mr. William Anderson, in certain political matters, including the right to vote and to hold public office, States may and do discriminate in favour of their own citizens. This favouritism goes even farther in many cases. Thus to obtain employment in the service of a State or local Government one is in most places required to be a local resident or citizen. Similarly in the licensing of persons

for the practice of such public professions as law and medicine, residence or citizenship in the State is frequently required; and in business where the public regulation must necessarily be strict, as in the sale of liquor, and of stocks and bonds, similar requirements have been upheld.

Each State has also certain rights in its own domain that it holds for the special advantage of its own citizens. Thus wild game and fish in a sense belong to the State. It is customary for the States to charge higher hunting and fishing licence fees to non-residents than to its own citizens. The States also charge non-residents higher tuition fees in State Colleges and Universities, and permit only residents to be admitted to their hospitals and asylums except in emergencies.

In short, there are a number of rights that a State can grant to its own citizens or residents that it may and does legally deny to non-residents, or grant to non-residents only on more difficult terms than those imposed on residents. These advantages, given to the citizen in his own State, constitute the special rights of State citizenship. Taken all together, they amount to a considerable difference in rights between citizens and non-citizens of the State. The transient and the temporary sojourner is everywhere under some special handicaps.

The proposed Indian Constitution is a dual polity with a single citizenship. There is only one citizenship for the whole of India. It is Indian citizenship. There is no State citizenship. Every Indian has the same rights of citizenship, no matter in what State he resides.

The dual polity of the proposed Indian Constitution differs from the dual polity of the U.S.A. in another respect. In the U.S.A. the Constitutions of the Federal and the States Governments are loosely connected. In describing the relationship between the Federal and State Governments in the U.S.A., Bryce has said:

"The Central or National Government and the State Governments may be compared to a large building and a set of smaller buildings standing on the same ground, yet distinct from each other."

Distinct they are, but how distinct are the State Governments in the U.S.A from the Federal Government? Some idea of this distinctness may be obtained from the following facts:

1. Subject to the maintenance of the republican form of Government, each State in America is free to make its own Constitution.

2. The people of a State retain for ever in their hands, altogether independent of the National Government, the power of altering their Constitution.

To put it again in the words of Bryce:

"A State (in America) exists as a commonwealth by virtue of its own Constitution, and all State Authorities, legislative, executive and judicial are the creatures of, and subject to the Constitution."

This is not true of the proposed Indian Constitution. No States (at any rate those in Part I) have a right to frame its own Constitution. The Constitution of the Union and of the States is a single frame from which neither can get out and within which they must work.

So far I have drawn attention to the differences between the American Federation and the proposed Indian Federation. But there are some other special features of the proposed Indian Federation which mark it off not only from the American Federation but from all other Federations. All federal systems including the American are placed in a tight mould of federalism. No matter what the circumstances, it cannot change its form and shape. It can never be unitary. On the other hand the Draft Constitution can be both unitary as well as federal according to the requirements of time and circumstances. In normal times, it is framed to work as a federal system. But in times of war it is so designed as to make it work as though it was a unitary system. Once the President issues a Proclamation which he is authorised to do under the Provisions of Article 275*, the whole scene can become transformed and the State becomes a unitary state. The Union under the Proclamation can claim, if it wants (1) the power to legislate upon any subject even though it may be in the State list, (2) the

* Article. 352

power to give directions to the States as to how they should exercise their executive authority in matters which are within their charge, (3) the power to vest authority for any purpose in any officer, and (4) the power to suspend the financial provisions of the Constitution. Such a power of converting itself into a unitary State no federation possesses. This one point of difference between the Federation proposed in the Draft Constitution, and all other Federations we know of.

This is not the only difference between the proposed Indian Federation and other federations. Federalism is described as a weak if not an effete form of Government. There are two weaknesses from which Federation is alleged to suffer. One is rigidity and the other is legalism. That these faults are inherent in Federalism, there can be no dispute. A Federal Constitution cannot but be a written Constitution and a written Constitution must necessarily be a rigid Constitution. A Federal Constitution means division of Sovereignty by no less a sanction than that of the law of the Constitution between the Federal Government and the States, with two necessary consequences (1) that any invasion by the Federal Government in the field assigned to the States and vice versa is a breach of the Constitution and (2) such breach is a justiciable matter to be determined by the Judiciary only. This being the nature of federalism, a federal Constitution cannot escape the charge of legalism. These faults of a Federal Constitution have been found in a pronounced form in the Constitution of the United States of America.

Countries which have adopted Federalism at a later date have attempted to reduce the disadvantages following from the rigidity and legalism which are inherent therein. The example of Australia may well be referred to in this matter. The Australian Constitution has adopted the following means to make its federation less rigid:

- (1) By conferring upon the Parliament of the Commonwealth large powers of concurrent Legislation and few powers of exclusive Legislation.

- (2) By making some of the Articles of the Constitution of a temporary duration to remain in force only "until Parliament otherwise provides."

It is obvious that under the Australian Constitution, the Australian Parliament can do many things, which are not within the competence of the American Congress and for doing which the American Government will have to resort to the Supreme Court and depend upon its ability, ingenuity and willingness to invent a doctrine to justify it the exercise of authority.

In assuaging the rigour of rigidity and legalism the Draft Constitution follows the Australian plan on a far more extensive scale than has been done in Australia. Like the Australian Constitution, it has a long list of subjects for concurrent powers of legislation. Under the Australian Constitution, concurrent subjects are 39. Under the Draft Constitution they are 37. Following the Australian Constitution there are as many as six Articles in the Draft Constitution, where the provisions are of a temporary duration and which could be replaced by Parliament at any time by provisions suitable for the occasion. The biggest advance made by the Draft Constitution over the Australian Constitution is in the matter of exclusive powers of legislation vested in Parliament. While the exclusive authority of the Australian Parliament to legislate extends only to about 3 matters, the authority of the Indian Parliament as proposed in the Draft Constitution will extend to 91 matters. In this way the Draft Constitution has secured the greatest possible elasticity in its federalism which is supposed to be rigid by nature.

It is not enough to say that the Draft Constitution follows the Australian Constitution or follows it on a more extensive scale. What is to be noted is that it has added new ways of overcoming the rigidity and legalism inherent in federalism which are special to it and which are not to be found elsewhere.

First is the power given to Parliament to legislate on exclusively provincial subjects in normal times. I refer to Articles

226^{*}, 227^{**} and 229^{***}. Under Article 226 Parliament can legislate when a subject becomes a matter of national concern as distinguished from purely provincial concern, though the subject is in the State list, provided a resolution is passed by the Upper Chamber by two-third majority in favour of such exercise of the power by the Centre. Article 227 gives the similar power to Parliament in a national emergency. Under Article 229 Parliament can exercise the same power if Provinces consent to such exercise. Though the last provision also exists in the Australian Constitution the first two are a special feature of the Draft Constitution.

The second means adopted to avoid rigidity and legalism is the provision for facility with which the Constitution could be amended. The provisions of the Constitution relating to the amendment of the Constitution divide the Articles of the Constitution into two groups. In the one group are placed Articles relating to (a) the distribution of legislative powers between the Centre and the States, (b) the representation of the States in Parliament, and (c) the powers of the Courts. All other Articles are placed in another group. Articles placed in the second group cover a very large part of the Constitution and can be amended by Parliament by a double majority, namely, a majority of not less than two thirds of the members of each House present and voting and by a majority of the total membership of each House. The amendment of these Articles does not require ratification by the States. It is only in those Articles which are placed in group one that an additional safeguard of ratification by the States is introduced.

One can therefore safely say that the Indian Federation will not suffer from the faults of rigidity or legalism. Its distinguishing feature is that it is a flexible federation.

There is another special feature of the proposed Indian Federation which distinguishes it from other federations. A Federation being a dual polity based on divided authority with

^{*} Art. 249

^{**} Art. 250

^{***} Art. 252

separate legislative, executive and judicial powers for each of the two polities is bound to produce diversity in laws, in administration and in judicial protection. Upto a certain point this diversity does not matter. It may be welcomed as being an attempt to accommodate the powers of Government to local needs and local circumstances. But this very diversity when it goes beyond a certain point is capable of producing chaos and has produced chaos in many federal States. One has only to imagine twenty different laws—if we have twenty States in the Union—of marriage, of divorce, of inheritance of property, family relations, contracts, torts, crimes, weights and measures, of bills and cheques, banking and commerce, of procedures for obtaining justice and in the standards and methods of administration. Such a state of affairs not only weakens the State but becomes intolerant to the citizen who moves from State to State only to find that what is lawful in one State is not lawful in another. The Draft Constitution has sought to forge means and methods whereby India will have Federation and at the same time will have uniformity in all basic matters which are essential to maintain the unity of the country. The means adopted by the Draft Constitution are three

- (1) a single judiciary,
- (2) uniformity in fundamental laws, civil and criminal, and
- (3) a common All-India Civil Service to man important posts.

A dual judiciary, a duality of legal codes and a duality of civil services, as I said, are the logical consequences of a dual polity which is inherent in a federation. In the U.S.A. the Federal Judiciary and the State Judiciary are separate and independent of each other. The Indian Federation though a Dual Polity has no Dual Judiciary at all. The High Courts and the Supreme Court form one single integrated judiciary having jurisdiction and providing remedies in all cases arising under the constitutional law, the civil law or the criminal law. This is done to eliminate all diversity in all remedial procedure. Canada is the only country which furnishes a close parallel. The Australian system is only an approximation.

Care is taken to eliminate all diversity from laws which are at the basis of civic and corporate life. The great Codes of Civil & Criminal Laws, such as the Civil Procedure Code, Penal Code, the Criminal Procedure Code, the Evidence Act, Transfer of Property Act, Laws of Marriage, Divorce, and Inheritance, are either placed in the Concurrent List so that the necessary uniformity can always be preserved without impairing the federal system.

The dual polity which is inherent in a federal system as I said is followed in all federations by a dual service. In all Federations there is a Federal Civil Service and a State Civil Service. The Indian Federation though a Dual Polity will have a Dual Service but with one exception. It is recognized that in every country there are certain posts in its administrative set up which might be called strategic from the point of view of maintaining the standard of administration. It may not be easy to spot such posts in a large and complicated machinery of administration. But there can be no doubt that the standard of administration depends upon the calibre of the Civil Servants who are appointed to these strategic posts. Fortunately for us we have inherited from the past system of administration which is common to the whole of the country and we know what are these strategic posts. The Constitution provides that without depriving the States of their right to form their own Civil Services there shall be an All India Service recruited on an All India basis with common qualifications with uniform scale of pay and the members of which alone could be appointed to these strategic posts throughout the Union.

Such are the special features of the proposed Federation. I will now turn to what the critics have had to say about it.

It is said that there is nothing new in the Draft Constitution, that about half of it has been copied from the Government of India Act of 1935 and that the rest of it has been borrowed from the Constitutions of other countries. Very little of it can claim originality.

One likes to ask whether there can be anything new in a Constitution framed at this hour in the history of the world. More

than hundred years have rolled over when the first written Constitution was drafted. It has been followed by many countries reducing their Constitutions to writing. What the scope of a Constitution should be has long been settled. Similarly what are the fundamentals of a Constitution are recognized all over the world. Given these facts, all Constitutions in their main provisions must look similar. The only new things, if there can be any, in a Constitution framed so late in the day are the variations made to remove the faults and to accommodate it to the needs of the country. The charge of producing a blind copy of the Constitutions of other countries is based, I am sure on an inadequate study, of the Constitution. I have shown what is new in the Draft Constitution and I am sure that those who have studied other Constitutions and who are prepared to consider the matter dispassionately will agree that the Drafting Committee in performing its duty has not been guilty of such blind and slavish imitation as it is represented to be.

As to the accusation that the Draft Constitution has produced a good part of the provisions of the Government of India Act, 1935, I make no apologies. There is nothing to be ashamed of in borrowing. It involves no plagiarism. Nobody holds any patent rights in the fundamental ideas of a Constitution. What I am sorry about is that the provisions taken from the Government of India Act, 1935, relate mostly to the details of administration. I agree that administrative details should have no place in the Constitution. I wish very much that the Drafting Committee could see its way to avoid their inclusion in the Constitution. But this is to be said on the necessity which justifies their inclusion. Grote, the historian of Greece, has said that:

"The diffusion of constitutional morality, not merely among the majority of any community but throughout the whole, is the indispensable condition of a government at once free and peaceable; since even any powerful and obstinate minority may render the working of a free institution impracticable, without being strong enough to conquer ascendancy for themselves."

By constitutional morality Grote meant "a paramount reverence for the forms of the Constitution, enforcing obedience to authority acting under and within these forms yet combined

with the habit of open speech, of action subject only to definite legal control, and unrestrained censure of those very authorities as to all their public acts combined too with a perfect confidence in the bosom of every citizen amidst the bitterness of party contest that the forms of the Constitution will not be less sacred in the eyes of his opponents than in his own."

While everybody recognizes the necessity of the diffusion of Constitutional morality for the peaceful working of a democratic Constitution, there are two things interconnected with it which are not, unfortunately, generally recognized. One is that the form of administration has a close connection with the form of the Constitution. The form of the administration must be appropriate to and in the same sense as the form of the Constitution. The other is that it is perfectly possible to pervert the Constitution, without changing its form by merely changing the form of the administration and to make it inconsistent and opposed to the spirit of the Constitution. It follows that it is only where people are saturated with Constitutional morality such as the one described by Grote the historian that one can take the risk of omitting from the Constitution details of administration and leaving it for the Legislature to prescribe them. The question is, can we presume such a diffusion of Constitutional morality? Constitutional morality is not a natural sentiment. It has to be cultivated. We must realize that our people have yet to learn it. Democracy in India is only a top-dressing on an Indian soil, which is essentially undemocratic.

In these circumstances it is wiser not to trust the Legislature to prescribe forms of administration. This is the justification for incorporating them in the Constitution.

Another criticism against the Draft Constitution is that the part of it represents the ancient polity of India. It is said that the new Constitution should have been drafted on the ancient Hindu model of a State and that instead of incorporating Western theories the new Constitution should have been raised and built upon village panchayats and District Panchayats. There are others who have taken a more extreme view. They do not want any Central or Provincial Governments. They just want India to

contain so many village Governments. The love of the intellectual Indians for the village community is of course infinite if not pathetic. It is largely due to the fulsome praise bestowed upon it by Metcalfe who described them as little republics having nearly everything that they want within themselves, and almost independent of any foreign relations. The existence of these village communities each one forming a separate little State in itself has according to Metcalfe contributed more than any other cause to the preservation of the people of India, through all the revolutions and changes which they have suffered, and is in a high degree conducive to their happiness and to the enjoyment of a great portion of the freedom and independence. No doubt the village communities have lasted where nothing else lasts. But those who take pride in the village communities do not care to consider what little part they have played in the affairs and the destiny of the country; and why? Their part in the destiny of the country has been well described by Metcalfe himself who says:

"Dynasty after dynasty tumbles down. Revolution succeeds to revolution. Hindoo, Pathan, Mogul, Maharatha, Sikh, English, are all masters in turn but the village communities remain the same. In times of trouble they arm and fortify themselves. A hostile army passes through the country. The village communities collect their little cattle within their walls, and let the enemy pass unprovoked."

Such is the part the village communities have played in the history of their country. Knowing this, what pride can one feel in them? That they have survived through all vicissitudes may be a fact. But mere survival has no value. The question is on what plane they have survived. Surely on a low, on a selfish level. I hold that these village republics have been the ruination of India. I am therefore surprised that those who condemn Provincialism and communalism should come forward as champions of the village. What is the village but a sink of localism, a den of ignorance, narrow-mindedness and communalism? I am glad that the Draft Constitution has discarded the village and adopted the individual as its unit.

The Draft Constitution is also criticised because of the safeguards it provides for minorities. In this, the Drafting

Committee has no responsibility. It follows the decisions of the Constituent Assembly. Speaking for myself, I have no doubt that the Constituent Assembly has done wisely in providing such safeguards for minorities as it has done. In this country both the minorities and the majorities have followed a wrong path. It is wrong for the majority to deny the existence of minorities. It is equally wrong for the minorities to perpetuate themselves. A solution must be found which will serve a double purpose. It must recognize the existence of the minorities to start with. It must also be such that it will enable majorities and minorities to merge someday into one. The solution proposed by the Constituent Assembly is to be welcomed because it is a solution which serves this twofold purpose. To diehards who have developed a kind of fanaticism against minority protection. I would like to say two things. One is that minorities are an explosive force which, if it erupts, can blow up the whole fabric of the State. The history of Europe bears ample and appalling testimony to this fact. The other is that the minorities in India have agreed to place their existence in the hands of the majority. In the history of negotiations for preventing the partition of Ireland, Redmond said to Carson "ask for any safeguard you like for the Protestant minority but let us have a United Ireland." Carson's reply was "Damn your safeguards, we don't want to be ruled by you." No minority in India has taken this stand. They have loyally accepted the rule of the majority which is basically a communal majority and not a political majority. It is for the majority to realize its duty not to discriminate against minorities. Whether the minorities will continue or will vanish must depend upon this habit of the majority. The moment the majority loses the habit of discriminating against the minority, the minorities can have no ground to exist. They will vanish.

The most criticized part of the Draft Constitution is that which relates to Fundamental Rights. It is said that Article 13* which defines fundamental rights is riddled with so many exceptions that the exceptions have eaten up the rights altogether. It is condemned as a kind of deception in the opinion of the critics

*Article 19

fundamental rights are not fundamental rights unless they are also absolute rights. The critics rely on the Constitution of the United States and to the Bill of Rights embodied in the first ten Amendments to that Constitution in support of their contention. It is said that the fundamental rights in the American Bill of Rights are real because they are not subjected to limitations or exceptions.

I am sorry to say that the whole of the criticism about fundamental rights is based upon a misconception. In the first place, the criticism in so far as it seeks to distinguish fundamental rights from non-fundamental rights is not sound. It is incorrect to say that fundamental rights are absolute while non-fundamental rights are not absolute. The real distinction between the two is that non-fundamental rights are created by agreement between parties while fundamental rights are the gift of the laws. Because fundamental rights are the gift of the State it does not follow that the State cannot qualify them.

In the second place, it is wrong to say that fundamental rights in America are absolute. The difference between the position under the American Constitution and the Draft Constitution is one of form and not of substance. That the fundamental rights in America are not absolute rights is beyond dispute. In support of every exception to the fundamental rights set out in the Draft Constitution one can refer to at least one judgment of the United States Supreme Court. It would be sufficient to quote one such judgement of the Supreme Court in justification of the limitation on the right of free speech contained in Article 13^{*} of the Draft Constitution. In *Gitlow vs New York* in which the issue was the constitutionality of a New York "criminal anarchy" law which purported to punish utterances calculated to bring about violent change, the Supreme Court said:

"It is a fundamental principle, long established, that the freedom of speech and of the press, which is secured by the Constitution, does not confer an absolute right to speak or publish, without responsibility, whatever one may choose, or an unrestricted and unbridled licence that gives immunity for every possible use of language and prevents the punishment of those who abuse this freedom."

* Article 19

It is therefore wrong to say that the fundamental rights in America are absolute, while those in the Draft Constitution are not.

It is argued that if any fundamental rights require qualification, it is for the Constitution itself to qualify them as is done in the Constitution of the United States and where it does not do so it should be left to be determined by the judiciary upon a consideration of all the relevant considerations. All this, I am sorry to say, is a complete misrepresentation if not a misunderstanding of the American Constitution. The American Constitution does nothing of the kind. Except in one matter, namely, the right of assembly, the American Constitution does not itself impose any limitations upon the fundamental rights guaranteed to the American citizens. Nor is it correct to say that the American Constitution leaves it to the judiciary to impose limitations on fundamental rights. The right to impose limitations belongs to the Congress. The real position is different from what is assumed by the critics. In America, the fundamental rights as enacted by the Constitution were no doubt absolute. Congress, however, soon found that it was absolutely essential to qualify these fundamental rights by limitations. When the question arose as to the constitutionality of these limitations before the Supreme Court, it was contended that the Constitution gave no power to the United States Congress to impose such limitation, the Supreme Court invented the doctrine of police power and refuted the advocates of absolute fundamental rights by the argument that every State has inherent in it police power which is not required to be conferred on it expressly by the Constitution. To use the language of the Supreme Court in the case I have already referred to, it said:

"That a State in the exercise of its police power may punish those who abuse this freedom by utterances inimical to the public welfare, tending to corrupt public morals, incite to crime or disturb the public peace, is not open to question.....".

What the Draft Constitution has done is that instead of formulating fundamental rights in absolute terms and depending upon our Supreme Court to come to the rescue of Parliament

by inventing the doctrine of police power, it permits the State directly to impose limitations upon the fundamental rights. There is really no difference in the result. What one does directly the other does indirectly. In both cases, the fundamental rights are not absolute.

In the Draft Constitution the Fundamental Rights are followed by what are called "Directive principles". It is a novel feature in a Constitution framed for Parliamentary Democracy. The only other constitution framed for Parliamentary Democracy which embodies such principles is that of the Irish Free State. These Directive Principles have also come up for criticism. It is said that they are only pious declarations. They have no binding force. This criticism is of course superfluous. The Constitution itself says so in so many words.

If it is said that the Directive Principles have no legal force behind them, I am prepared to admit it. But I am not prepared to admit that they have no sort of binding force at all. Nor am I prepared to concede that they are useless because they have no binding force in law.

The Directive Principles are like the Instrument of Instructions which were issued to the Governor-General and to the Governors of the Colonies and to those of India by the British Government under the 1935 Act. Under the Draft Constitution it is proposed to issue such instruments to the President and to the Governors. The texts of these Instruments of Instructions will be found in Schedule IV of the Constitution. What are called Directive Principles is merely another name for Instrument of Instructions. The only difference is that they are instructions, to the Legislature and the Executive. Such a thing is to my mind to be welcomed. Wherever there is a grant of power in general terms for peace, order and good government, it is necessary that it should be accompanied by instructions regulating its exercise.

The inclusion of such instructions in a Constitution such as is proposed in the Draft becomes justifiable for another reason. The Draft Constitution as framed only provides a machinery for

the government of the country. It is not a contrivance to install any particular party in power as has been done in some countries. Who should be in power is left to be determined by the people, as it must be, if the system is to satisfy the tested Democracy. But whoever captures power will not be free to do what he likes with it. In the exercise of it he will have to respect these instruments of instructions which are called Directive Principles. He cannot ignore them. He may not have to answer for their breach in a Court of Law. But he will certainly have to answer for them before the electorate at election time. What great value these directive principles possess will be realised better when the forces of right contrive to capture power.

That it has no binding force is no argument against their inclusion in the Constitution. There may be a difference of opinion as to the exact place they should be given in the Constitution. I agree that it is somewhat odd that provisions which do not carry positive obligations should be placed in the midst of provisions which do carry positive obligations. In my judgment their proper place is in Schedules III A & IV which contain Instrument of Instructions to the President and the Governors. For, as I have said, they are really Instruments of Instructions to the Executive and the Legislatures as to how they should exercise their powers. But that is only a matter of arrangement.

Some critics have said that the Centre is too strong. Others have said that it must be made stronger. The Draft Constitution has struck a balance. However much you may deny powers to the Centre, it is difficult to prevent the Centre from becoming strong. Conditions in modern world are such that centralization of powers is inevitable. One has only to consider the growth of the Federal Government in the U.S.A. which, notwithstanding the very limited powers given to it by the Constitution, has outgrown its former self and has overshadowed and eclipsed the State Governments. This is due to modern conditions. The same conditions are sure to operate on the Government of India and nothing that one can do will help to prevent it from being strong. On the other hand, we must resist the tendency to

make it stronger. it cannot chew more than it can digest. Its strength must be commensurate with its weight. It would be a folly to make it so strong that it may fall by its own weight.

The Draft Constitution is criticized for having one sort of constitutional relations between the Centre and the Provinces and another sort of constitutional relations between the Centre and the Indian States. The Indian States are not bound to accept the whole list of subjects included in the Union List but only those which come under Defence, Foreign Affairs and Communications. They are not bound to accept subjects included in the Concurrent list. They are not bound to accept the State List contained in the Draft Constitution. They are free to create their own Constituent Assemblies and to frame their own constitutions. All this, of course, is very unfortunate and, I submit quite indefensible. This disparity may even prove dangerous to the efficiency of the State. So long as the disparity exists, the Centre's authority over all-India matters may lose its efficacy. For, power is no power if it cannot be exercised in all cases and in all places. In a situation such as may be created by war, such limitations on the exercise of vital powers in some areas may bring the whole life of the State in complete jeopardy. What is worse is that the Indian States under the Draft Constitution are permitted to maintain their own armies. I regard this as a most retrograde and harmful provision which may lead to the break-up of the unity of India and the overthrow of the Central Government. The Drafting Committee, if I am not misrepresenting its mind, was not at all happy over this matter. They wished very much that there was uniformity between the provinces and the Indian States in their constitutional relationship with the Centre. Unfortunately, they could do nothing to improve matters. They were bound by the decisions of the Constituent Assembly, and the Constituent Assembly in its turn was bound by the agreement arrived at between the two negotiating Committees.

But we may take courage from what happened in Germany. The German Empire as founded by Bismark in 1870 was a composite State, consisting of 25 units. Of these 25 units 22

were monarchical States and 3 were republican city States. This distinction, as we all know, disappeared in the course of time and Germany became one land with one people living under one Constitution. The process of the amalgamation of the Indian States is going to be much quicker than it has been in Germany. On the 15th August 1947 we had 600 Indian States in existence. Today by the integration of the Indian States with Indian Provinces or merger among themselves or by the Centre having taken them as Centrally Administered Areas there have remained some 20/30 States as viable States. This is a very rapid process and progress. I appeal to those States that remain to fall in line with the Indian Provinces and to become full units of the Indian Union on the same terms as the Indian Provinces. They will thereby give the Indian Union the strength it needs. They will save themselves the bother of starting their own Constituent Assemblies and drafting their own separate Constitution and they will lose nothing that is of value to them. I feel hopeful that my appeal will not go in vain and that before the Constitution is passed, we will be able to wipe off the differences between the Provinces and the Indian States.

Some critics have taken objection to the description of India in Article 1 of the Draft Constitution as a Union of States. It is said that the correct phraseology should be a Federation of States. It is true that South Africa which is a unitary State is described as a Union. But Canada which is a Federation is also called a Union. Thus the description of India as a Union, though its constitution is Federal, does no violence to usage. But what is important is that the use of the word Union is deliberate. I do not know why the word 'Union' was used in the Canadian Constitution. But I can tell you why the Drafting Committee has used it. The Drafting Committee wanted to make it clear that though India was to be a federation, the Federation was not the result of an agreement by the States to join in a Federation and that the Federation, not being the result of an agreement no State has the right to secede from it. The Federation is a Union because it is indestructible. Though the country and the people may be divided into different States for convenience of

administration the country is one integral whole, its people a single people living under a single *imperium* derived from a single source. The Americans had to wage a civil war to establish that the States have no right of secession and that their Federation was indestructible. The Drafting Committee thought that it was better to make it clear at the outset rather than to leave it to speculation or to dispute.

The provisions relating to amendment of the Constitution have come in for a virulent attack at the hands of the critics of the Draft Constitution. It is said that the provisions contained in the Draft make amendment difficult. It is proposed that the Constitution should be amendable by a simple majority at least for some years. The argument is subtle and ingenious. It is said that this Constituent Assembly is not elected on adult suffrage while the future Parliament will be elected on adult suffrage and yet the former has been given the right to pass the Constitution by a simple majority while the latter has been denied the same right. It is paraded as one of the absurdities of the Draft Constitution. I must repudiate the charge because it is without foundation. To know how simple are the provisions of the Draft Constitution in respect of amending the Constitution one has only to study the provisions for amendment contained in the American and Australian Constitutions. Compared to them those contained in the Draft Constitution will be found to be the simplest. The Draft Constitution has eliminated the elaborate and difficult procedures such as a decision by a convention or a referendum. The Powers of amendment are left with the Legislatures Central and Provincial. It is only for amendments of specific matters—and they are only few—that the ratification of the State legislatures is required. All other Articles of the Constitution are left to be amended by Parliament. The only limitation is that it shall be done by a majority of not less than two-thirds of the members of each House present and voting and a majority of the total membership of each House. It is difficult to conceive a simpler method of amending the Constitution.

What is said to be the absurdity of the amending provisions is founded upon a misconception of the position of the Constituent

Assembly and of the future Parliament elected under the Constitution. The Constituent Assembly in making a constitution has no partisan motive. Beyond securing a good and workable constitution it has no axe to grind. In considering the Articles of the Constitution it has no eye on getting through a particular measure. The future Parliament if it met as a Constituent Assembly, its members will be acting as partisans seeking to carry amendments to the Constitution to facilitate the passing of party measures which they have failed to get through Parliament by reason of some Article of the Constitution which has acted as an obstacle in their way. Parliament will have an axe to grind while the Constituent Assembly has none. That is the difference between the Constituent Assembly and the future Parliament. That explains why the Constituent Assembly though elected on limited franchise can be trusted to pass the Constitution by simple majority and why the Parliament though elected on adult suffrage cannot be trusted with the same power to amend it.

I believe I have dealt with all the adverse criticisms that have been levelled against the Draft Constitution as settled by the Drafting Committee. I don't think that I have left out any important comment or criticism that has been made during the last eight months during which the Constitution has been before the public. It is for the Constituent Assembly to decide whether they will accept the constitution as settled by the Drafting Committee or whether they shall alter it before passing it.

But this I would like to say. The Constitution has been discussed in some of the Provincial Assemblies of India. It was discussed in Bombay, C.P. West Bengal, Bihar, Madras and East Punjab. It is true that in some Provincial Assemblies serious objections were taken to the financial provisions of the Constitution and in Madras to Article 226*. But excepting this, in no Provincial Assembly was any serious objection taken to the Articles of the Constitution. No Constitution is perfect and the

* Article 249

Drafting Committee itself is suggesting certain amendments to improve the Draft Constitution. But the debates in the Provincial Assemblies give me courage to say that the Constitution as settled by the Drafting Committee is good enough to make in this country a start with. I feel that it is workable, it is flexible and it is strong enough to hold the country together both in peace time and in war time. Indeed, if I may say so if things go wrong under the new Constitution, the reason will not be that we had a bad Constitution. What we will have to say is, that man was vile.

On Ideal of Economic Democracy *vis-a-vis* Directive Principles*

Mr. Vice-President, I see that there is a great deal of misunderstanding as to the real provisions in the Constitution in the minds of those members of the House who are interested in this kind of directive principles. It is quite possible that the misunderstanding or rather inadequate understanding is due to the fact that I myself in any opening speech in support of the motion that I made, did not refer to this aspect of the question. That was because, not that I did not wish to place this matter before the House in a clear-cut fashion, but my speech had already become so large that I did not venture to make it more tiresome than I had already done; but I think it is desirable that I should take a few minutes of the House in order to explain what I regard as the fundamental position taken in the Constitution. As I stated, our Constitution as a piece of mechanism lays down what is called parliamentary democracy. By Parliamentary democracy we mean 'one man, one vote'. We also mean that every Government shall be on the anvil, both in its daily affairs and also at the end of a certain period when the voters and the electorate will be given an opportunity to assess the work done by the Government. The reason why we have established in this Constitution a political democracy is that we do not want to instal by any means whatsoever a perpetual dictatorship of any particular body of people. While we have established political democracy, it is also the desire that we should lay down as our ideal economic democracy. We do not

*C.A. Deb. Vol. VII, 19 November, 1948 pp 494-495

want merely to lay down a mechanism to enable people to come and capture power. The Constitution also wishes to lay down an ideal before those who would be forming the Government. That idea is economic democracy, whereby, so far as I am concerned, I understand to mean, 'one man', 'one vote'. The question is: Have we got any fixed idea as to how we should bring about economic democracy? These are various ways in which people believe that economic democracy can be brought about; there are those who believe in individualism as the best form of economic democracy; there are those who believe in having a socialistic state as the best form of economic democracy; there are those who believe in the communistic idea as the most perfect form of economic democracy.

Now, having regard to the fact that there are various ways by which economic democracy may be brought about, we have deliberately introduced in the language that we have used, in the directive principles, something which is not fixed or rigid. We have left enough room for people of different ways of thinking, with regard to the reaching of the ideal of economic democracy, to strive in their own way, to persuade the electorate that it is the best way of reaching economic democracy, the fullest opportunity to act in the way in which they want to act.

Sir, that is the reason why the language of the articles in Part IV is left in the manner in which this Drafting Committee thought it best to leave it. It is no use giving a fixed, rigid form to something which is not rigid, which is fundamentally changing and must, having regard to the circumstances and the times, keep on changing. It is, therefore, no use saying that the directive principles have no value. In my judgment, the directive principles have great value, for they lay down that our ideal is economic democracy. Because we did not want merely a parliamentary form of Government to be instituted through the various mechanisms provided in the Constitution, without any direction as to what our economic ideal, as to what our social order ought to be, we deliberately included the Directive

Principles in our Constitution. I think, if the friends who are agitated over this question bear in mind what I have said just now that our object in framing this Constitution is really two fold: (i) to lay down the form of political democracy, and (ii) to lay down that our ideal is economic democracy and also to prescribe that every Government what ever it is in power, shall strive to bring about economic democracy, much of the misunderstanding under which most members are labouring will disappear.

My friend Mr. Tyagi made an appeal to me to remove the word 'strive' and phrases like that. I think he has misunderstood why we have used the word 'strive'. The word 'strive' which occurs in the Draft Constitution, in my judgment, is very important. We have used it because our intention is that even when there are circumstances which prevent the Government, or which stand in the way of the Government giving effect to these Directive Principles, they shall, even under hard and unpropitious circumstances, always strive in the fulfilment of these Directives. That is why we have used the word 'strive'. Otherwise, it would be open for any Government to say that the circumstances are so bad, that the finances are so inadequate that we cannot even make an effort in the direction in which the Constitution asks us to go. I think my friend Mr. Tyagi will see that the word 'strive' in this context is of great importance and it would be very wrong to delete it.

On Uniform Civil Code*

My friend Mr. Hussain Imam, in rising to support the amendments to article 35* asked whether it was possible and desirable to have a uniform Code of laws for a country so vast as this is. Now I must confess that I was very much surprised at that statement for the simple reason that we have in this country a uniform code of laws covering almost every aspect of human relationship. We have a uniform and complete Criminal Code operating throughout the country, which is contained in the Penal Code and the Criminal Procedure Code. We have the Law of Transfer of Property, which deals with property relations and which is operative throughout the country. Then there are the Negotiable Instruments Acts: and I can cite innumerable enactments which would prove that this country has practically a Civil Code, uniform in its content and applicable to the whole of the country. The only province the Civil Law has not been able to invade so far is Marriage and Succession. It is this little corner which we have not been able to invade so far and it is the intention of those who desire to have article 35 as part of the Constitution to bring about that change. Therefore, the argument whether we should attempt such a thing seems to me somewhat misplaced for the simple reason that we have, as a matter of fact, covered the whole lot of the field which is covered by a uniform Civil Code in this country. It is therefore too late now to ask the question whether we could do it. As I say, we have already done it.

Coming to the amendments, there are only two observations

*C.A. Deb., Vol. VII, 23 November 1948 pp. 550—552.

Article 44

which I would like to make. My first observation would be to state that members who put forth these amendments say that the Muslim personal law, so far as this country was concerned, was immutable and uniform through the whole of India. Now I wish to challenge that statement. I think most of my friends who have spoken on this amendment have quite forgotten that up to 1935 the North-West Frontier Province was not subject to the Shariat Law. It followed the Hindu Law in the matter of succession and in other matters, so much so that it was in 1939 that the Central Legislature had to come into the field and to abrogate the application of the Hindu Law to the Muslims of the North-West Frontier Province and to apply the Shariat Law to them. That is not all.

My honourable friends have forgotten, that apart from the North-West Frontier Province, up till 1937 in the rest of India, in various parts, such as the United Provinces, the Central Provinces and Bombay, the Muslims to a large extent were governed by the Hindu Law in the matter of succession. In order to bring them on the plane of uniformity with regard to the other Muslims who observed the Shariat Law, the Legislature had to intervene in 1937 and to pass an enactment applying the Shariat Law to the rest of India.

I am also informed by my friend, Shri Karunakara Menon, that in North Malabar the Marumakkathayam Law applied to all—not only to Hindus but also to Muslims. It is to be remembered that the Marumakkathayam Law is a Matriarchal form of law and not a Patriarchal form of law.

The Mussulmans, therefore, in North Malabar were up to now following the Marumakkathayam law. It is therefore no use making a categorical statement that the Muslim law has been an immutable law which they have been following from ancient times. That law as such was not applicable in certain parts and it has been made applicable ten years ago. Therefore if it was found necessary that for the purpose of evolving a single civil code applicable to all citizens irrespective of their religion, certain portions of the Hindu law, not because they were contained in Hindu law but because they were found to be the

most suitable, were incorporated into the new civil code projected by article 35, I am quite certain that it would not be open to any Muslim to say that the framers of the civil code had done great violence to the sentiments of the Muslim community.

My second observation is to give them an assurance. I quite realise their feelings in the matter, but I think they have read rather too much into article 35, which merely proposes that the State shall endeavour to secure a civil code for the citizens of the country. It does not say that after the Code is framed the State shall enforce it upon all citizens merely because they are citizens. It is perfectly possible that the future parliament may make a provision by way of making a beginning that the Code shall apply only to those who make a declaration that they are prepared to be bound by it, so that in the initial stage the application of the Code may be purely voluntary. Parliament may feel the ground by some such method. This is not a novel method. It was adopted in the Shariat Act of 1937 when it was applied to territories other than the North-West Frontier Province. The law said that here is a Shariat law which should be applied to Mussulmans provided a Mussalman who wanted that he should be bound by the Shariat Act should go to an officer of the state, make a declaration that he is willing to be bound by it, and after he has made that declaration the law will bind him and his successors. It would be perfectly possible for parliament to introduce a provision of that sort; so that the fear which my friends have expressed here will be altogether nullified.

On Separation of Judiciary From the Executive

"That after article 39", the following new article be inserted:—

'39-A''' That State shall take steps to secure that, within a period of three years from the commencement of this Constitution, there is separation of the judiciary from the executive in the public services of the State.'"

I do not think it is necessary for me to make any very lengthy statement in support of the amendment which I have moved. It has been the desire of this country from long past that there should be separation of the judiciary from the executive and the demand has been continued right from the time when the Congress was founded. Unfortunately, the British Government did not give effect to the resolutions of the Congress demanding this particular principle being introduced into the administration of the country. We think that the time has come when this reform should be carried out. It is, of course, realised that there may be certain difficulties in the carrying out of this reform; consequently this amendment has taken into consideration two particular matters which may be found to be matters of difficulty. One is this: that we deliberately did not make it a matter of fundamental principle, because if we had

^{*}C. A Deb., Vol. VII, 24 November, 1948, p. 582.

^{**}Article 49

^{***}Article 50

made it a matter of fundamental principle it would have become absolutely obligatory instantaneously on the passing of the constitution to bring about the separation of the judiciary and the executive. We have therefore deliberately put this matter in the chapter dealing with directive principles and there too we have provided that this reform shall be carried out within three years, so that there is no room left for what might be called procrastination in a matter of this kind.

On Equality of Opportunity in Public Employment

It is the feeling of many persons in this House that, since we have established a common citizenship throughout India, irrespective of the local jurisdiction of the provinces and the Indian States, it is only a concomitant thing that residence should not be required for holding a particular post in a particular State because, in so far as you make residence a qualification, you are really subtracting from the value of a common citizenship which we have established by this Constitution or which we propose to establish by this Constitution. Therefore in my judgement, the argument that residence should not be a qualification to hold appointments under the State is a perfectly valid and a perfectly sound argument. At the same time, it must be realised that you cannot allow people who are flying from one province to another, from one State to another, as mere birds of passage without any roots, without any connection with that particular province just to come, apply for posts and, so to say, take the plums and walk away. Therefore, some limitation is necessary. It was found, when this matter was investigated, that already today in very many provinces rules have been framed by the provincial governments prescribing a certain period of residence as a qualification for a post in that particular province. Therefore the proposal in the amendment that, although as a general rule residence should not be a qualification, yet some exception

*C. A. Deb., Vol VII, 30 November, 1948, pp. 700-702.

might be made, is not quite out of the ordinary. We are merely following the practice which has been already established in the various provinces. However, what we found was that while different provinces were laying down a certain period as a qualifying period for posts, the periods varied considerably. Some provinces said that person must be actually domiciled. What that means, one does not know. Others have fixed ten years, some seven years and so on. It was therefore felt that, while it might be desirable to fix a period as a qualifying test, that qualifying test should be uniform throughout India. Consequently, if that object is to be achieved, viz., that the qualifying residential period should be uniform, that object can be achieved only by giving the power to Parliament and not giving it to the local units, whether provinces or States. That is the underlying purpose of this amendment putting down residence as a qualification.

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Now, Sir, to come to the other question which has been agitating the members of this House, viz., the use of the word "backward" in clause (3) of article 10*, I should like to begin by making some general observations so that members might be in a position to understand the exact import, the significance and the necessity for using the word "backward" in this particular clause. If members were to try and exchange their views on this subject, they will find that there are three points of view which it is necessary for us to reconcile if we are to produce a workable proposition which will be accepted by all. Of the three points of view, the first is that there shall be equality of opportunity for all citizens. It is the desire of many Members of this House that every individual who is qualified for a particular post should be free to apply for that post, to sit for examinations and to have his qualifications tested so as to determine whether he is fit for the post or not and that there ought to be no limitations, there ought to be no hindrance in the operation of this principle of equality of opportunity. Another view mostly shared by a section of the House is that, if this

*Article 16

principle is to be operative—and it ought to be operative in their judgement to its fullest extent—there ought to be no reservations of any sort for any class or community at all, that all citizens, if they are qualified, should be placed on the same footing of equality so far as the public services are concerned. That is the second point of view we have. Then we have quite a massive opinion which insists that, although theoretically it is good to have the principle that there shall be equality of opportunity, there must at the same time be a provision made for the entry of certain communities which have so far been outside the administration. As I said, the Drafting Committee had to produce a formula which would reconcile these three points of view, firstly, that there shall be equality of opportunity, secondly that there shall be reservations in favour of certain communities which have not so far had a 'proper look-in' so to say into the administration. If honourable Members will bear these facts in mind—the three principles, we had to reconcile,—they will see that no better formula could be produced than the one that is embodied in sub-clause (3) of article 10^{*} of the Constitution; they will find that the view of those who believe and hold that there shall be equality of opportunity, has been embodied in sub-clause (1) of Article 10. It is a generic principle. At the same time, as I said, we had to reconcile this formula with the demand made by certain communities that the administration which has now—for historical reasons—been controlled by one community or a few communities, that situation should disappear and that the others also must have an opportunity of getting into the public services. Supposing, for instance, we were to concede in full the demand of those communities who have not been so far employed in the public services to the fullest extent, what would really happen is, we shall be completely destroying the first proposition upon which we are all agreed, namely that there shall be an equality of opportunity. Let me give an illustration. Supposing, for instance, reservations were made for a community or a collection of communities, the total of which

*Article 16.

came to something like 70 per cent of the total posts under the State and only 30 per cent are retained as the unreserved. Could anybody say that the reservation of 30 per cent as open to general competition would be satisfactory from the point of view of giving effect to the first principle, namely, that there shall be equality of opportunity? It cannot be in my judgement. Therefore the seats to be reserved, if the reservation is to be consistent with sub-clause (1) of article 10, must be confined to a minority of seats. It is then only that the first principle could find its place in the Constitution and effective in operation. If honourable members understand this position that we have to safeguard two things namely, the principle of equality of opportunity and at the same time satisfy the demand of communities which have not had so far representation in the State. Then, I am sure they will agree that unless you use some such qualifying phrase as "backward" the exception made in favour of reservation will ultimately eat up the rule altogether. Nothing of the rule will remain. That I think, if I may say so, is the justification why the Drafting Committee undertook on its own shoulders the responsibility of introducing the word, 'backward' which, I admit, did not originally find a place in the fundamental right in the way in which it was passed by this Assembly. But I think honourable members will realise that the Drafting Committee which has been ridiculed on more than one ground for producing sometimes a loose draft, sometimes something which is not appropriate and so on, might have opened itself to further attack that they produced a Draft Constitution in which the exception was so large, that it left no room for the rule to operate. I think this is sufficient to justify why the word 'backward' has been used.

With regard to the minorities, there is a special reference to that in article 296*, where it has been laid down that some provision will be made with regard to the minorities. Of course, we did not lay down any proportion. That is quite clear from the section itself, but we have not altogether omitted the minorities from consideration. Somebody asked me: "What is a backward community"? Well, I think any one who reads the language of

*Article 335

the draft itself will find that we have left it to be determined by each local Government. A backward community is a community which is backward in the opinion of the Government. My honourable Friend, Mr. T.T. Krishnamachari asked me whether this rule will be justiciable. It is rather difficult to give a dogmatic answer. Personally I think it would be a justiciable matter. If the local Government included in this category of reservations such a large number of seats, I think one could very well go to the Federal Court and the Supreme Court and say that the reservation is of such a magnitude that the rule regarding equality of opportunity has been destroyed and the court will then come to the conclusion whether the local Government or the State Government has acted in a reasonable and prudent manner. Mr. Krishnamachari asked: "Who is a reasonable man and who is a prudent man? These are matters of litigation". Of course, they are matters of litigation, but my honourable Friend Mr. Krishnamachari will understand that the words "reasonable persons and prudent persons" have been used in very many laws and if he will refer only to the Transfer of Property Act, he will find that in very many cases the words "a reasonable person and a prudent person" have very well been defined and the court will not find any difficulty in defining it.

On Constitutional Remedies*

While the powers of the Supreme Court to issue orders and directions are there, the draft Constitution has thought it desirable to mention particular writs. Now, the necessity for mentioning and making reference to particular writs is quite obvious. These writs have been in existence in Great Britain for a number of years. Their nature and the remedies that they provided are known to every lawyer and consequently we thought that as it is impossible even for a man who has a most fertile imagination to invent something new, it was hardly possible to improve upon the writs which have been in existence for probably thousands of years and which have given complete satisfaction to every Englishman with regard to the protection of his freedom. We therefore thought that a situation such as the one which existed in the English jurisprudence which contained these writs and which, if I may say so, have been found to be knave-proof and fool-proof, ought to be mentioned by their name in the Constitution without prejudice to the right of the Supreme Court to do justice in some other way if it felt it was desirable to do so. I, therefore, say that Mr. Kamath need have no ground of complaint on that account.

My friend Mr. Sarwate said that while exercising the powers given under this article¹, the Court should have the freedom to enter into the facts of the case. I have no doubt about it that Mr. Sarwate has misunderstood the scope and nature of these writs. I therefore think, that I need make no apology for explaining the nature of these writs. Anyone who knows anything about the English law will realise and understand that the writs which are referred to in the article fall into

¹C.A. Deb., Vol. VII, 9 December, 1948, pp. 952-954.

²Article 25, new Art 32

two categories. They are called in one sense "prerogative writs," in the other case they are called "writs in action." A writ of mandamus, a writ of prohibition, a writ of certiorari, can be used or applied for both; it can be used as a prerogative writ or it may be applied for by a litigant in the course of a suit or proceedings. The importance of these writs which are given by this article lies in the fact that they are prerogative writs; they can be sought for by an aggrieved party without bringing any proceedings or suit. Ordinarily you must first file a suit before you can get any kind of order from the Court, whether, the order is of the nature of mandamus, prohibition or certiorari or anything of the kind. But here, so far as this article is concerned without filing any proceedings you can straightforwardly go to the Court and apply for the writ. The object of the writ is really to grant what I may call interim relief. For instance if a man is arrested, without filing a suit or a proceeding against the officer who arrests him he can file a petition to the Court for setting him at liberty. It is not necessary for him to first file a suit or a proceeding against the officer. In a proceeding of this kind where the application is for a prerogative writ, all that the Court can do is to ascertain whether the arrest is in accordance with law. The Court at that stage will not enter into the question whether the law under which a person is arrested is a good law or a bad law, whether it conflicts with any of the provisions of the Constitution or whether it does not conflict. All that the Court can inquire in a habeas corpus proceedings is whether the arrest is lawful and will not enter into the question—at least that is the practice of the Court—of the merits of the law. When a person is actually arrested and his trial has commenced it is in the course of those proceedings that the Court would be entitled to go into the facts and to come to a decision whether a particular law under which a person is arrested is a good law or a bad law. Then the Court will go into the question whether it conflicts with the provisions of the Constitution. Consequently, the amendment moved by my friend, Shri V.S. Sarwate, if I may say so, is quite out of place. It is not here that such a provision could be made. If he refers to article 115*,

*Article 139

he will find that a provision for similar writs has been made there. But those are writs which could be issued in connection with questions of fact and law. They would certainly be investigated by the Courts.

Now Sir, I am very glad that the majority of those who spoke on this article have realised the importance and the significance of this article. If I was asked to name any particular article in this Constitution as the most important—an article without which this Constitution would be a nullity—I could not refer to any other article except this one. It is the very soul of the Constitution and the very heart of it and I am glad that the House has realised its importance.

There is however one thing which I find that the Members who spoke on this have not sufficiently realised. It is to this fact that I would advert before I take my seat. These writs to which reference is made in this article are in a sense not new. *Habeas corpus* exists in our Criminal Procedure Code. The writ of *mandamus* finds a place in our law of Specific Relief and certain other writs which are referred to here are also mentioned in our various laws. But there is this difference between the situation as it exists with regard to these writs and the situation as will now arise after the passing of this Constitution. The writs which exist now in our various laws are at the mercy of the legislature. Our Criminal Procedure Code which contains a provision with regard to *habeas corpus* can be amended by the existing legislature. Our Specific Relief Act also can be amended and the writ of *habeas corpus* and the right of *mandamus* can be taken away without any difficulty whatsoever by a legislature which happens to have a majority and that majority happens to be a single-minded majority. Hereafter it would not be possible for any legislature to take away the writs which are mentioned in this article. It is not that the Supreme Court is left to be invested with the power to issue these writs by a law to be made by the legislature at its sweet will. The Constitution has invested the Supreme Court with these rights and these writs could not be taken away unless and until the Constitution itself is amended by means left open

to the Legislature. This is my judgment is one of the greatest safeguards that can be provided for the safety and security of the individual. We need not therefore have much apprehension that the freedoms which this Constitution has provided will be taken away by any legislature merely because it happens to have a majority.

Sir, there is one other observation which I would like to make. In the course of the debates that have taken place in this House both on the Directive Principle and on the Fundamental Rights. I have listened to speeches made by many members complaining that we have not enunciated a certain right or a certain policy in our Fundamental Rights or in our Directive principles. References have been made to the Constitution of Russia and to the Constitutions of other countries where such declarations as members have sought to introduce by means of amendments, have found a place. Sir, I think I might say without meaning any offence to anybody who has made himself responsible for these amendments that I prefer the British method of dealing with rights. The British method is a peculiar method a very real and a very sound method. British jurisprudence insists that there can be no right unless the Constitution provides a remedy for it. It is the remedy that makes a right real. If there is no remedy there is no right of all and I am therefore not prepared to burden the Constitution with a number of pious declarations which may sound as glittering generalities but for which the Constitution makes no provision by way of a remedy. It is much better to be limited in the scope of our rights and to make them real by enunciating remedies than to have a lot of pious wishes embodied in the Constitution I am very glad that this House has seen that the remedies that we have provided constitute a fundamental part of this constitution.

On Separation of Executive from the Legislature and Judiciary*

It was at my instance that it was sought to incorporate in the Directive Principles an item relating to the separation of the executive and the judiciary. Originally the proposition contained a time limit of three years. Subsequently as a result of discussion and as a result of pointing out all the difficulties of giving effect to that principle the House decided to delete the time limit and to put a sort of positive imposition upon the provincial governments to take steps to separate the executive from the judiciary. On that occasion, all this matter was gone into and I do not think that there is any necessity for me to repeat what I said there. There is no dispute whatsoever that the executive should be separated from the judiciary.

With regard to the separation of the executive from the legislature, it is true that such a separation does exist in the Constitution of the United states; but if any friend, Prof. Shah, had read some of the recent criticisms of that particular provision of the Constitution of the United States, he would have noticed that many Americans themselves were quite dissatisfied with the rigid separation embodied in the American Constitution between the executive and the legislature. One of the proposals which has been made by many students of the American Constitution is to obviate and to do away with the separation between the executive and the legislature completely so as to bring the position in America on the same level with the position as it exists, for instance, in the U.K. In the U.K.

*C. A. Deb., Vol. VII, 10 December, 1948, pp. 967-968.

there is no differentiation or separation between the executive and the legislature. It is advocated that a provision ought to be made in the Constitution of the United States whereby the members of the Executive shall be entitled to sit in the House of Representatives or the Senate, if not all the purposes of the legislature such as taking part in the voting, at least to sit there and to answer questions and to take part in the legal proceedings of debate and discussion of any particular measure that may be before the House. In view of that, it will be realised that the Americans themselves have begun to feel great deal of doubt with regard to the advantage of a complete separation between the Executive and the Legislature. There is not the slightest doubt in my mind and in the minds of many students of political science, that the work of Parliament is so complicated, so vast that unless and until the Members of the Legislature receive direct guidance and initiative from the Members of the Executive, sitting in Parliament, it would be very difficult for Members of Parliament to carry on the work of the Legislature. The functioning of the members of Executive along with Members of Parliament in a debate on legislative measures has undoubtedly this advantage, that the members of the legislature can receive the necessary guidance on complicated matters and I personally therefore, do not think that there is any very great loss that is likely to occur if we do not adopt the American method of separating the Executive from the Legislature.

With regard to the question of separating the Executive from the Judiciary, as I said, there is no difference of opinion and that proposition, in my judgement, does not depend at all on the question whether we have a presidential form of government or a parliamentary form of Government, because even under the parliamentary form of Government, the separation of the judiciary from the Executive is an accepted proposition, to which we ourselves are committed by the article that we have passed, and which is now forming part of the Directive Principles.

On Executive Power of the Union*

Now, Sir, I will deal with the major amendment which wants to go back to a position where the Centre will not even have the power to issue directions, and for that purpose, it is necessary for me to go into the history of this particular matter. It must have been noticed—and I say it merely, as a matter of fact and without any kind of insinuation in it at all,—that a large number of members who have spoken in favour of the first amendment are mostly Muslims... Now, Sir, this peculiar phenomenon of Muslim members being concerned in this particular proviso, as I said, has a history behind it... This matter goes back to the Round Table Conference which was held in 1930. Everyone who is familiar with what happened in the Round Table Conference, which was held in 1930 will remember that the two major parties who were represented in that Conference, namely the Muslim League and the Indian National Congress, found themselves at loggerheads on many points of constitutional importance.

One of the points on which they found themselves at loggerheads was the question of provincial autonomy. Of course, it was realised that there could not be complete provincial autonomy in a Constitution which intended to preserve the unity of India, both in the matter of legislation administration. But the Muslim League took up such an adamant attitude on this point that the Secretary of State had to

*C. A. Deb., Vol. VII, 30 December, 1948, pp 1137—1140.

make certain concessions in order to reconcile the Muslim League to the acceptance of some sort of responsible Government at the Centre. One of the things which the then Secretary of State did was to introduce this clause which is contained in Section 126 of the Government of India Act which stated that the authority of the Central Government so far as legislation in the concurrent field was concerned was to be strictly limited to the issue of direction and it should not extend to the actual administration of the matter itself. The argument was that there would have been no objection on the part of the Muslim League to have the Centre administer a particular law in the concurrent field if the Central Government was not likely to be dominated by the Hindus. That was so expressly stated. I remember, during the debates in the Round Table Conference. It is because the Muslim League Governments which came into existence in the provinces where the Muslims formed a majority, such as for instance in the North-West Frontier Province. The Punjab, Bengal and to some extent Assam, did not want it in the field which they thought exclusively belonged to them by reason of their majority, that the Secretary of State had to make this concession. I have no doubt about it that this was a concession. It was not an acceptance of the principle that the Centre should have no authority to administer a law passed in the concurrent field. My submission therefore is that the position stated in Section 126 of the Government of India Act, 1935, is not to be justified on principle; it is justified because it was a concession made to the Muslims.

Therefore, it is not proper to rely upon Section 126 in drawing any support for the arguments which have been urged in favour of this amendment.

Sir, that the position stated in Section 126 of the Government of India Act was fundamentally wrong was admitted by the Secretary of State in a subsequent legislation which the Parliament enacted just before the war was declared. As honourable Members will remember, section 126 was supplemented by section 126-A by a law made by Parliament just before the war was declared. Why was it that the

Parliament found it necessary to enact Section 126-A? As you will remember—Section 126-A is one of the most drastic clauses in the Government of India Act so far as concurrent legislation is concerned. It permits the Central Government to legislate not only on provincial subjects, but it permits the Central Government to take over the administration both of provincial as well as concurrent subjects. That was done because the Secretary of State felt that at least in the war period, Section 126 might prove itself absolutely fatal to the administration of the country. My submission therefore is that Section 126-A which was enacted for emergency purposes is applicable not only for an emergency, but for ordinary purposes and ordinary times as well. My first submission to the House therefore is this: that no argument that can be based on the principle of Section 126 can be valid in these days for the circumstances which I have mentioned.

****Interruption@****

I was just going to say that although that is a statement of fact which I absolutely accept, my complaint is that the Muslim members have not yet given up the philosophy of the Muslim League which they ought to. They are repeating arguments which were valid when the Muslim League was there and the Muslim Provinces were there. They have no validity now. I cannot understand why the Muslims are repeating them.

I was saying that there is no substance in the argument that we are departing from the provision contained in Section 126 of the Government of India Act. As I said, that section was not based upon any principle at all.

@ B. Pocker Sahib Bahadur: With your permission, Sir, may I just correct my learned Friend? This Constitution is being framed for the present Indian Union in which there is not a single province in which the Muslims are in a majority and therefore there is absolutely no point in saying that it is the Muslim members that are moving this amendment in the interests of the Muslim League. It is a very misleading argument based on a misconception of fact and the Honourable Minister for Law forgets the fact that we in the present Indian Union, Muslims as such, are not in the least to be particularly benefited by this amendment.

In support of the proviso, I would like to say two things. First, there is ample precedent for the proposition enshrined so to say in this provision. My honourable Friend Mr. T.T. Krishnamachari has dealt at some length with the position as it is found in various countries which have a federal Constitution. I shall not therefore labour that point again. But I would just like to make one reference to the Australian Constitution. In the Australian Constitution we have also what is called a concurrent field of legislation. Under the Australian Constitution it is open to the Commonwealth Parliament in making any law in the concurrent field to take upon itself the authority to administer. I shall just quote one short paragraph from a well known book called "Legislative and Executive Powers in Australia" by a great lawyer Mr. Wynes. This is what he says:

Lastly, there are Commonwealth Statutes. Lefroy states that executive power is derived from legislative power unless there be some restraining enactment. This proposition is true, it seems, in Canada, where the double enumeration commits to each Government exclusive legislative powers, but is not applicable in Australia. Where the legislative power of the Commonwealth is exclusive—e.g., in the case of defence—the executive power in relation to the subject of the grant inheres in the Commonwealth, but in respect of concurrent powers, the executive function remains with the States until the Commonwealth legislative power is exercised.

Which means that in the concurrent field, the executive authority remains with the States so long as the Commonwealth has not exercised the power of making laws which it had. The moment it does, the execution of that law is automatically transferred to the Commonwealth. Therefore, comparing the position as set out in the proviso with the position as it is found in Australia, I submit that we are not making any violent departure from any federal principle that one may like to quote. Now, Sir, my second submission is that there is ample justification for a proviso of this sort, which permits the Centre in any particular case to take upon itself the administration of certain laws in the Concurrent List. Let me give one or two illustrations. The Constituent Assembly has passed article 11,

which abolishes untouchability. It also permits Parliament to pass appropriate legislation to make the abolition of untouchability a reality. Supposing the Centre makes a law prescribing a certain penalty, certain prosecution for obstruction caused to the untouchables in the exercising of their civic rights, supposing a law like that was made, and supposing that in any particular province the sentiment in favour of the abolition of untouchability is not as genuine and as intense nor is the Government interested in seeing that the untouchables have all the civic rights which the Constitution guarantees, is it logical, is it fair that the Centre on which so much responsibility has been cast by the Constitution in the matter of untouchability, should merely pass a law and sit with folded hands waiting and watching as to what the Provincial Governments are doing in the matter of executing all those particular laws? As everyone will remember, the execution of such a law might require the establishing of additional police, special machinery for taking down if the offence was made cognizable, for prosecution and for all costs of administrative matters without which the law could not be made good. Should not the Centre which enacts a law of this character have the authority to execute it? I would like to know if there is anybody who can say that on a matter of such vital importance, the Centre should do nothing more than enact a law.

Let me give you another illustration. We have got in this country the practice of child marriage against which there has been so much sentiment and so much outcry. Laws have been passed by the Centre. They are left to be executed by the provinces. We all know what the effect has been as a result of this dichotomy between legislative authority resting in one Government and executive authority resting in the other. I understand that notwithstanding the legislation, child marriages are as rampant as they were. Is it not desirable that the Centre which is so much interested in putting down these evils should have some authority for executing laws of this character? Should it merely allow the provinces the liberty to do what they liked with the legislation made by Parliament with such intensity of feeling and such keen desire of putting it into effect? Take,

for instance, another case—Factory Legislation. I can remember very well when I was the Labour Member of the Government of India, cases after cases in which it was reported that no Provincial Government or at least a good many of them were not prepared to establish Factory Inspectors and to appoint them in order to see that the Factory Laws were properly executed. Is it desirable that the labour legislations of the Central Government should be mere paper legislations with no effect given to them? How can effect be given to them unless the Centre has got some authority to make good the administration of laws which it makes? I therefore submit that having regard to the cases which I have cited—and I have no doubt honourable Members will remember many more cases after their own experience—that a large part of legislation which the Centre makes in the concurrent field remains merely a paper legislation, for the simple reason that the Centre cannot execute its own laws. I think it is a crying situation which ought to be rectified which the proviso seeks to do.

There is one other point which I would like to mention and it is this. Really speaking, the Provincial Governments ought to welcome this proviso because there is a certain sort of financial anomaly in the existing position. For the Centre to make laws and leave to provinces the administration means imposing certain financial burdens on the provinces which is involved in the employment of the machinery for the carrying out of those laws. When the Centre takes upon itself the responsibility of the executing of those laws, to that extent the provinces are relieved of any financial burden and I should have thought from that point of view this proviso should be a welcome additional relief which the provinces seek so badly. I therefore submit, Sir, that for the reasons I have given, the proviso contains a principle which this House would do well to endorse.

On Conditions for Ministership*

These amendments raise three points. The first point relates to the term of a minister, the second relates to the qualifications of a minister and the third relates to condition for membership of a cabinet. I shall take the first point for consideration, *viz.*, the term of a minister. On this point there are two amendments, one by Mr. Pocker and the other by Mr. Karimuddin: Mr. Pocker's amendment is that the minister shall continue in office so long as he continues to enjoy the confidence of the House, irrespective of other considerations. He may be a corrupt minister, he may be a bad minister, he may be quite incompetent, but if he happened to enjoy the confidence of the House then nobody shall be entitled to remove him from office. According to Mr. Karimuddin, the position that he has taken, if I have understood him correctly, is just the opposite. His position seems to be that the minister shall be liable to removal only on impeachment for certain specified offences such as bribery, corruption, treason and so on, irrespective of the question whether, he enjoys the confidence of the House or not. Even if a minister lost the confidence of the House, so long as there was no impeachment of that minister on the grounds that he has specified, it shall not be open either to the Prime Minister or the President to remove him from office. As the Honourable House will see both these amendments are in a certain sense inconsistent, if not contradictory. My submission is that the provision contained in subclause (2) of article 62^{**} is a much better provision and covers both the points. Article 62 (2) states

*C.A. Deb., Vol. VII, 31 December, 1948, pp. 1185-1189.
**Article 75.

that the ministers shall hold office during the pleasure of the President. That means that a minister will be liable to removal on two grounds. One ground on which he would be liable to dismissal under the provisions contained in clause (2) of article 62 would be that he has lost the confidence of the House, and secondly, that his administration is not pure because the word used here is "pleasure". It would be perfectly open under that particular clause of article 62 for the President to call for the removal of a particular minister on the ground that he is guilty of corruption or bribery or maladministration, although that particular minister probably is a person who enjoyed the confidence of the House. I think honourable Members will realise that the tenure of a minister must be subject not merely to one condition but to two conditions and the two conditions are purity of administration and confidence of the House. The article makes provision for both and therefore the amendments moved by my honourable Friends, Messrs Pocker and Karimuddin are quite unnecessary.

With regard to the second point, namely the qualifications of ministers, we have three amendments. The first amendment is by Mr. Mohd. Tahir. His suggestion is that no person should be appointed a minister unless at the time of his appointment he is an elected member of the House. He does not admit the possibility of the cases covered in the proviso namely that although a person is not at the time of his appointment a member of the House, he may nonetheless be appointed as a minister in the Cabinet subject to the condition that within six months he shall get himself elected to the House. The second qualification is by Prof. K.T. Shah. He said that a minister should belong to a majority party and his third qualification is that he must have a certain educational status. Now, with regard to the first point, namely, that no person shall be entitled to be appointed a minister unless he is at the time of his appointment an elected member of the House, I think it forgets to take into consideration certain important matters which cannot be overlooked. First is this,—it is perfectly possible to imagine that a person who is otherwise competent to hold the

post of a Minister has been defeated in constituency for some reason which although it may be perfectly good, might have annoyed the constituency and he might have incurred the displeasure of the particular constituency. It is not a reason why a member so competent as that should be not permitted to be appointed a member of the Cabinet on the assumption that he shall be able to get himself elected either from the same constituency or from another constituency. After all the privilege that is permitted is a privilege that extends only for six months. It does not confer a right to that individual to sit in the House without being elected at all. My second submission is this, that the fact that a nominated Minister is a member of the Cabinet, does not either violate the principle of collective responsibility nor does it violate the principle of confidence, because if he is a member of the Cabinet if he is prepared to accept the policy of the Cabinet, stands part of the Cabinet and resigns with the Cabinet when he ceases to have the confidence of the House, his membership of the Cabinet does not in any way cause any inconvenience or breach of the fundamental principles on which parliamentary government is based. Therefore, this qualification, in my judgement, is quite unnecessary.

With regard to the second qualification, namely, that a member must be a member of the majority party, I think Prof. K. T. Shah has in contemplation or believes and hopes that the electorate will always return in the election a party which will always be in majority and another party which will be in a minority but in opposition. Now, it is not permissible to make any such assumption. It would be perfectly possible and natural, that in an election the Parliament may consist of various number of parties none of which is in a majority. How is this principle to be invoked and put into operation in a situation of this sort where there are three parties none of which has a majority? Therefore, in a contingency of that sort the qualification laid down by Prof. K. T. Shah makes government quite impossible.

Secondly, assuming there is a majority party in the House, but there is an emergency and it is desired both on the part of

the majority party and on the part of the minority party that party quarrels should stop during the period of the emergency, that there shall be no party government, so that government may be able to meet an emergency—in that event, again, no such situation can be met except by a coalition government and if a coalition government takes the place, *ex hypothesis* the members of a minority party must be entitled to become members of the Cabinet. Therefore, I submit that on both those grounds this amendment is not a practicable amendment.

With regard to the educational qualification, notwithstanding what my friend Mr. Mahavir Tyagi has said on the question of literary qualification, when I asked him whether in view of the fact that he expressed himself so vehemently against literary qualification whether he has any conscientious objection to literary education, he was very glad to assure me that he has none. All the same, I wonder whether there would be any Prime Minister or President who would think it desirable to appoint a person who does not know English, assuming that English remains the official language of the business of the Executive or of Parliament. I cannot conceive of such a thing. Supposing the official language was Hindi, Hindustani or Urdu—whatever it is—in that event, I again find it impossible to think that a Prime Minister would be so stupid as to appoint a Minister who did not understand the official language of the country or of the Administration, and while therefore it is no doubt a very desirable thing to bear in mind that persons who would hold a portfolio in the Government should have proper educational qualification, I think it is rather unnecessary to incorporate this principle in the Constitution itself.

Now, I come to the third condition for the membership of a Cabinet and that is that there should be a declaration of the interests, rights and properties belonging to a Minister before he actually assumes office. This amendment moved by Prof. K. T. Shah is to some extent amended by Mr. Kamath. Now this is not the first time that this matter has been debated in the House. It was debated at the time when similar amendments were moved with regard to the article dealing with the

appointment and oath of the President and I have had a great deal to say about it at that particular time and I do not wish to repeat what I said then on this occasion. My Friend Mr. Kamath reminded me of what I said on the occasion when the article dealing with the President was debated in this House and I do remember that I did say that such a provision might be necessary.

****Interruption****

That is what I was saying. What I said was that such a provision might be necessary in the case of Ministers, and my friend Mr. Kamath also read some section from the Factory Act requiring similar qualifications for a factory inspector. Now, Sir, the position that we have to consider is this: no doubt, this is a very laudable object, namely, that the Ministers in charge should maintain the purity of administration. I do not think anybody in this House can have any quarrel over that matter. We all of us are interested in seeing that the administration is maintained at a high level, not only of efficiency but also of purity. The question really is this: what ought to be the sanctions for maintaining that purity? It seems to me there are two sanctions. One is this, namely, that we should require by law and by Constitution,—if this provision is to be effective—not only that the Ministers should make a declaration of their assets and their liabilities at the time when they assume office, but we must also have two supplementary provisions. One is that every Minister on quitting office shall also make a declaration of his assets on the day on which he resigns, so that everybody who is interested in assessing whether the administration was corrupt or not during the tenure of his office should be able to

* Shri H.V. Kamath: May I remind Dr. Ambedkar of what exactly he said? I am reading from the official Type-script of the Assembly Secretariat. These are his very words:

"If any person in the Government of India has any opportunity of aggrandizing himself, it is either the Prime Minister or the Ministers of State and such a provision *ought* to have been imposed upon them for their tenure but not upon the President."

see what increase there is in the assets of the Minister and whether that increase can be accounted for by the savings which he can make out of his salary. The other provision would be that if we find that a Minister's increases in his assets on the day on which he resigns are not explainable by the normal increases due to his savings, then there must be a third provision to charge the Minister for explaining how he managed to increase his assets to an abnormal degree during that period. In my judgement, if you want to make this clause effective, then there must be three provisions as I stated. One is a declaration at the outset; second is a declaration at the end of the quitting of this office; thirdly, responsibility for explaining as to how the assets have come to be so abnormal and fourthly, declaring that to be an offence followed up by a penalty or by a fine. The mere declaration at the initial stage.

* * *

*Interruption**

The whole thing is simply good for nothing, so to say. It might still be possible, notwithstanding this amendment, for the Minister to arrange the transfer of his assets during the period in such a manner that nobody might be able to know what he has done and therefore, although the object is laudable, the machinery provided is very inadequate and I say the remedy might be worse than the disease.

* * *

*Interruption***

I do not resile from my view at all. All I am saying is that the remedy provided is very inadequate and not effective and therefore, I am not in a position to accept it.

* "Mr. Naziruddin Ahmad: How could you trace or check invisible assets or secret assets?"

"Shri H.V. Kamath: "May I, Sir, presume that Dr. Ambedkar at least accepts the amendment in principle and that he has not resiled from the view which he propounded the other day, that he has not recanted?"

* * *

Interruption

I cannot do it now. It was the business of those who move the amendment to make the thing fool-proof and knave-proof, but they did not.

Now, Sir, I was saying that nobody has any objection; nobody quarrels with the aim and object which is behind this amendment. The question is, what sort of sanction we should forget. As I said, the legal sanction is inadequate. Have we no other sanction at all? In my judgement, we have a better sanction for the enforcement of the purity of administration, and that is public opinion as mobilised and focussed in the Legislative Assembly. My honourable friend, Mr. H.V. Kamath cited the illustration of the Factory Act. The reason why those disqualifications had been introduced in the case of the Factory Inspector is that public opinion cannot touch him, but public opinion is every minute glowing, so to say, against the Ministry, and if the House so desires at any time, it can make itself felt on any particular point of maladministration and remove the Ministry; and my submission, therefore, is that there is far greater sanction in the opinion and the authority of the House to enforce purity of administration, so as to nullify the necessity of having an outside legal sanction at all.

Now, Sir, I come to the amendment of my honourable friend, Mr. Naziruddin Ahmed. He wants the deletion of the latter part of the amendment which I moved. His objection was that if the latter part of my amendment remained, it would nullify the earlier part of my amendment, namely, the obligation of the Minister to follow the directions given in the Instrument of Instructions. Yes, theoretically that is so. There again the question that arises is this. How are we going to enforce the injunctions which will be contained in the Instrument of Instructions? There are two ways open. One way is to permit the court to enquire and to adjudicate upon the validity of the thing. The other is to leave the matter to the legislature itself

"Prof. Shibban Lal Saksena: Make it more comprehensive."

and to see whether by a censure motion or a motion of no confidence, it cannot compel the Ministry to give proper advice to the President and impeachment to see that the President follows that advice given by the Ministry. In my judgement, the latter is the better way of effecting our purpose and it would be unfair, inconvenient, if everything done in the House is made subject to the jurisdiction of the court, so that any recalcitrant Member may run to the Supreme Court and by a writ of injunction against the Speaker prevent him from carrying on the business of the House, unless that particular matter is decided either by the Supreme Court or the High Court as the case may be. It seems to me that would be an intolerable interference in the work of the Assembly. Even in England the Parliament is not subject to the authority of the Court in matters of procedure and in the conduct of its own business and I think that is a very sound rule which we ought to follow, especially when it is perfectly possible for the House to see that the Instrument of Instructions is carried out in the terms in which it is intended by the President and by the Ministry. Sir, I oppose this amendment.

On Provisions on Citizenship

Mr. President, Sir, except one other article in the Draft Constitution, I do not think that any other article has given the Drafting Committee such a headache as this particular article. I do not know how many drafts were prepared and how many were destroyed as being inadequate to cover all the cases which it was thought necessary and desirable to cover. I think it is a piece of good fortune for the Drafting Committee to have ultimately agreed upon the draft which I have moved, because I feel that this is the draft which satisfies most people, if not all.

Sir, this article refers to citizenship not in any general sense but to citizenship on the date of the commencement of this Constitution. It is not the object of this particular article to lay down a permanent law of citizenship for this country. The business of laying down a permanent law of citizenship has been left to Parliament, and as Members will see from the wording of article 6^{*} as I have moved, the entire matter regarding citizenship has been left to Parliament to determine by any law that it may deem fit. The article reads—

"Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship."

The effect of article 6 is this, that Parliament may not only take away citizenship from those who are declared to be

* C.A. Deb., Vol. IX, 10 August, 1949, pp. 347-349.
Article 11.

citizens on the date of the commencement of this Constitution by the provisions of article 5* and those that follow, but Parliament may make altogether a new law embodying new principles. That is the first proposition that has to be borne in mind by those who will participate in the debate on these articles. They must not understand that the provisions that we are making for citizenship on the date of the commencement of this Constitution are going to be permanent or unalterable. All that we are doing is to decide *ad hoc* for the time being.

Having said that, I would like to draw the attention of the Members to the fact that in conferring citizenship on the date of the commencement of this Constitution, the Drafting Committee has provided for five different classes of people who can, provided they satisfy the terms and conditions which are laid down in this article, become citizens on the date on which the Constitution commences.

These five categories are:

- (1) Persons domiciled in India and born in India: In other words, who from the bulk of the population of India as defined by this Constitution;
- (2) Persons who are domiciled in India but who are not born in India but who have resided in India. For instance persons who are the subjects of the Portuguese Settlements in India or the French Settlements in India like Chandernagore, Pondicherry, or the Iranians for the matter of that who have come from Persia and although they are not born here, they have resided for a long time and undoubtedly have the intention of becoming the citizens of India.

The three other categories of people whom the Drafting Committee proposes to bring within the ambit of this article are:

- (3) Persons who are residents in India but who have migrated to Pakistan;
- (4) Persons resident in Pakistan and who have migrated to India; and

* Article 5

(5) Persons who or whose parents are born in India but are residing outside India.

These are the five categories of people who are covered by the provisions of this article. Now the first category of people viz., persons who are domiciled in the territory of India and who are born in the territory of India or whose parents were born in the territory of India are dealt within article 5 clauses (a) and (b). They will be citizens under those provisions if they satisfy the conditions laid down there.

The second class of people to whom I referred, viz., persons who have resided in India but who are not born in India are covered by clause (c) of article 5, who have been ordinarily resident in the territory of India for not less than five years immediately preceding the date of such commencement. The condition that it imposes is this that he must be a resident of India for five years. All these classes are subject to a general limitation, viz., that they have not voluntarily acquired the citizenship of any foreign State.

With regard to the last class, viz., persons who are residing abroad but who or whose parents were born in India, they are covered by my article 5-B which refers to persons who or whose parents or whose grand-parents were born in India as defined in the Government of India Act, 1935, who are ordinarily residing in any territory outside India—they are called Indians abroad. The only limitation that has been imposed upon them is that they shall make an application if they want to be citizens of India before the commencement of the Constitution to the Consular Officer or to the Diplomatic Representative of the Government of India in the form which is prescribed for the purpose by the Government of India and they must be registered as citizens. Two conditions are laid down for them—one is an application and secondly, registration of such an applicant by the Consular or the Diplomatic representative of India in the country in which he is staying. These are as I said very simple matters.

We now come to the two categories of persons who were

residents in India who have migrated to Pakistan and those who were resident in Pakistan but have migrated to India. The case of those who have migrated to India from Pakistan is dealt with in my article 5-A.* The provisions of article 5-A are these—

Those persons who have come to India from Pakistan are divided into two categories—

- (a) those who have come before the 19th day of July 1948, and
- (b) those who have come from Pakistan to India after 19th July, 1948.

Those who have come before 19th July 1948, will automatically become the citizens of India.

With regard to those who have come after 19th July 1948, they will also be entitled to citizenship on the date of the commencement of the Constitution, provided a certain procedure is followed, viz., he again will be required to make an application to an Officer appointed by the Government of the Dominion of India and if that person is registered by that Officer on an application so made.

The persons coming from Pakistan to India in the matter of their acquisition of citizenship on the date of commencement of the Constitution are put into two categories—those who have come before 19 July, 1948, and those who have come afterwards. In the case of those who have come before the 19th July, 1948, citizenship is automatic. No conditions, no procedure is laid down with regard to them. With regard to those who have come thereafter certain procedural conditions are laid down and when those conditions are satisfied, they also will become entitled to citizenship under the article we now propose.

Then I come to those who have migrated to Pakistan but who have returned to India after going to Pakistan. There the position is this. I am not as fully versed in this matter as

probably the Ministers dealing with the matter are, but the proposal that we have put forth is this if a person who has migrated to Pakistan and, after having gone there, has returned to India on the basis of a permit which was given to him by the Government of India not merely to enter India but a permit which will entitle him to resettlement or permanent return, it is only such person who will be entitled to become a citizen of India on the commencement of this Constitution. This provision had to be introduced because the Government of India, in dealing with persons who left for Pakistan and who subsequently returned from Pakistan to India, allowed them to come and settle permanently under a system which is called the 'Permit system'. This permit system was introduced from the 19th July, 1948. Therefore, the provision contained in article 5-B deals with the citizenship of persons who after coming from Pakistan went to Pakistan and returned to India. Provision is made that if a person has come on the basis of a permit issued to him for resettling or permanent return, he alone would be entitled to become a citizen on the date of the commencement of the Constitution.

I may say, Sir, that it is not possible to cover every kind of case for a limited purpose, namely, the purpose of conferring citizenship on the date of the commencement of the Constitution. If there is any category of people who are left out by the provisions contained in this amendment, we have given power to Parliament subsequently to make provision for them. I suggest to the House that the amendments which I have proposed are sufficient for the purpose and for the moment and I hope the House will be able to accept these amendments.

On Constitution Amendment Procedure*

Mr President, Sir, of the many amendments that have been made and the speeches made thereon, it is not possible for me to pursue every amendment and to pursue every speaker But I am going to take as a general alternative suggested by the various speakers that our Constitution should be made open for amendment by the future Parliament either by a simple majority or by a method which is much more facile than that embodied in article 304**

Sir, before I proceed to explain the provisions contained in article 304, I should like to remind the House of the provisions which are contained in other constitutions on the question of amending the Constitution I should begin by telling the House that the Canadian Constitution does not contain any provision for the amendment of the Canadian Constitution Although Canada today is a Dominion, is a sovereign State with all the attributes of sovereignty and the power to alter the Constitution, the Canadians have not thought it fit to introduce a clause even now permitting the Canadian Parliament to amend their Constitution It has also to be remembered that the Canadian Constitution was forged as early as 1867 and there is not the slightest doubt about it in the mind of anybody who has read the different books on the Canadian Constitution that there has been a great deal of discontent over the various clauses in the Canadian Constitution and even on the interpretation given by the Privy Council on the provisions of the Canadian Constitution; none the less the Canadian people have not thought it fit to employ powers that have been given to them to

*C.A. Deb., Vol IX, 17 September, 1949, pp. 1659-1663

** Article 368.

introduce a clause relating to the amendment of the Constitution.

I come to the Irish Constitution. In the Irish Constitution there is a provision that both Houses by a simple majority may alter, or repeal any part of the Irish Constitution, provided that the decision of the Houses to amend, repeal or alter the Constitution is submitted to people in a referendum and approved by the people by a majority.

Then let us take the Swiss Constitution. In that constitution too, the legislature may pass an amending Bill, but that amendment does not have any operative force unless two conditions are satisfied: one is that the majority of the cantons accept the amendment, and secondly—there is a referendum also—in the referendum the majority of the people accept the amendment. The mere passing of a Bill by the Legislature in Switzerland has no effect so far as changing the Constitution is concerned.

Let me now take the Australian Constitution. In that Constitution the provision is this: That the amendment must be passed by an absolute majority of the Australian Parliament. Then, after it has been so passed, it must be submitted to the approval of persons who are entitled to elect representatives to the Lower House of the Australian Parliament. Then again it has to be submitted to a referendum of the people or the electors. A further condition is this: that it must be accepted by a majority of the States and also by a majority of the electors.

In the United Constitution the provision is that an amendment must be accepted by two-thirds majority of both Houses subject to the fact that the decision of both Houses by two-thirds majority must be ratified by the decision of two-thirds majority of the States in favour of the amendment. I cite these facts in order to point out that in no country to which I have made reference it is provided that the Constitution should be amended by a simple majority.

Now let me turn to the provision of our Constitution. What is it that we propose to do with regard to amendment of our Constitution? We propose to divide the various articles of the Constitution into three categories. In one category we have placed certain articles which would be open to amendment by Parliament by a simple majority. That fact unfortunately has not been noticed by reason of the fact that mention of this matter has not been made in article 304, but in different other articles of the Constitution. Let me refer to some of them. Take for instance articles 2 and 3 which deal with the States. So far as the creation of new States is concerned or the re-constitution of existing States is concerned, this is a matter which can be done by Parliament by a simple majority. Similarly, take for example article 148-A^{*} which deals with the Upper Chambers in the provinces. Parliament has been given perfect freedom to either abolish the Upper Chambers or to create new Second Chambers in provinces which do not now have them by a simple majority. Now take article 213^{**} which deals with the States in Part II. With regard to the constitution of the States, the draft Constitution also leaves the making of constitution of States in Part II, and their modification to Parliament to be decided by a simple majority.

Again take Schedules V and VI. They are also left to be amended by Parliament by a simple majority. I can cite innumerable articles in the Constitution such as article 255,^{***} which deals with grants and financial provisions, which leave the matter subject to law made by Parliament. The provisions are 'until Parliament otherwise provides'. Therefore in many matters—I have not had time to examine the whole of the draft Constitution and so I am only just illustrating my point—we have left things in our Constitution in a way which is capable of being amended by a simple majority. If my friends who have been persisting in the criticism that Parliament should have more extensive powers of amending or altering the Constitution by a simple majority had suggested to me a concrete case and referred to any definite article that that should also be put in

^{*}Article 169

^{**}Article 240

^{***}Article 275

that category, it would have been open to the Drafting Committee to consider the matter. Instead of that to say that the whole of the Constitution should be left liable to be amended by Parliament by majority is, in my judgment, too extravagant and too tall an order to be accepted by people responsible for drafting the Constitution.

Therefore, the first point which I wanted to emphasise was that it is absolutely a misconception to say that there is no article in the Constitution which could not be amended by Parliament by a simple majority. As I said, we have any number of articles in our Constitution which it would be open for Parliament to amend by a bare majority.

Now, what is it we do? We divide the articles of the Constitution under three categories. The first category is the one which consists of articles which can be amended by Parliament by a bare majority. The second set of articles are articles which require two-thirds majority. If the future Parliament wishes to amend any particular article which is not mentioned in Part III or article 304, all that is necessary for them is to have two-thirds majority. Then they can amend it.

We have no doubt put certain articles in a third category where for the purposes of amendment the mechanism is somewhat different or double. It requires two-thirds majority plus ratification by the States. I shall explain why we think that in the case of certain articles it is desirable to adopt this procedure. If Members of the House who are interested in this matter are to examine the articles that have been put under the proviso, they will find that they refer not merely to the Centre but to the relations between the Centre and the Provinces. We cannot forget the fact that while we have in a large number of cases invaded provincial autonomy, we still intend and have as a matter of fact seen to it that the federal structure of the Constitution remains fundamentally unaltered. We have by our laws given certain rights to provinces, and reserved certain rights to the Centre. We have distributed legislative authority; we have distributed executive authority and we have distributed

administrative authority. Obviously to say that even those articles of the Constitution which pertain to the administrative, legislative, financial and other power, such as the executive powers of the provinces should be made liable to alteration by the Central Parliament by two-thirds majority, without permitting the Provinces or the States to have any voice, is in my judgment altogether nullifying the fundamentals of the Constitution. If my honourable friends were to refer to the articles which are included in the proviso they will see that we have selected very few. Article 43^{*} deals with the election of the President; article 44^{**} deals with the manner of election of the Président. It was the view of the Drafting Committee that the President, while no doubt in charge of the affairs of the Centre, nonetheless was the head of the Union, and as such, the provinces were as much interested in his election and in the manner of his election as the Centre. Consequently we thought that this was a proper matter to be included in that category of articles which would require ratification by the provinces.

Take article 60^{***} and article 142.^{***} Article 60 deals with the extent of the executive authority of the Union and article 142 deals with the extent of the executive authority of the State. We have laid down in our Constitution the fundamental proposition that executive authority shall be co-extensive with legislative authority. Supposing, for instance, the Parliament has the power to make an alteration in article 60 for extending its executive authority beyond the provisions or the limit contained in article 60, it would undoubtedly undermine or limit the executive authority of the States as defined in article 142, and we therefore thought that that also was a fundamental matter and ought to require the ratification of the States.

Chapter IV, Part V, deals with the Supreme Court. There can be no doubt about it that the Supreme Court is a court in which both the Centre and the provinces or the units and every citizen of this country are interested, and it was therefore a matter

^{*}Article 54

^{**}Article 55

^{***}Article 73

which ought not to be left to be decided merely by a two-thirds majority. The same about the High Courts mentioned in Chapter VII of Part-VI.

Chapter I of Part IX which is included in the third category, deals with the distribution of legislative power, and (a) deals with the lists of the Seventh Schedule. Nobody can deny that the provinces have a fundamental interest in this matter and that they should not be altered without their consent. Similarly the representation of the States in the Council of States which is dealt with in article 67.

I think honourable Members will see that the principles adopted by the Drafting Committee are unquestionable, except in the sight of those who think that the Constitution should be liable, should be open to be amended every article of that—by a simple majority. As I said, I am not prepared to accept that position. The Constitution is a fundamental document. It is a document which defines the position and power of the three organs of the State—the executive, the judiciary and the legislature. It also defines the powers of the executive and the powers of the legislature as against the citizens, as we have done in our Chapter dealing with Fundamental Rights. In fact, the purpose of a Constitution is not merely to create the organs of the State but to limit their authority, because if no limitation was imposed upon the authority of the organs, there will be complete tyranny and complete oppression. The legislature may be free to frame any law; the executive may be free to take any decision; and the Supreme Court may be free to give any interpretation of the law. It would result in utter chaos. Sir, I have not been able to understand when it is said that the Constitution must be made open to amendment by a bare majority. I can, applying my mind to this particular feeling, conceive of only three reasons. One is that the Drafting Committee has prepared a draft which from the drafting point of view is very bad. I can quite understand that position.

If it is so, I as Chairman of the Drafting Committee and I think my other colleagues of the Drafting Committee would not at all

object if this Constituent Assembly were to appoint another Drafting Committee or to import a Parliamentary draftsman, submit this draft to him and ask him to suggest and find out what defects there are. That would be an honest procedure and I have no objection to it at all.

If that is not the ground on which the argument rests, then the other ground is that this Constitution proceeds on some wrong principles. Sir, so far as this matter is concerned, it seems to me that a modern Constitution can proceed only on two bases: One base is to have a parliamentary system of government. The other base is to have a totalitarian or dictatorial form of government. If we agree that our Constitution must not be a dictatorship but must be a Constitution in which there is parliamentary democracy where government is all the time on the anvil, so to say, on its trial, responsible to the people, responsible to the judiciary, then I have no hesitation in saying that the principles embodied in this Constitution are as good as, if not better than, the principles embodied in any other parliamentary constitution.

The other argument which perhaps might have been urged—I was not able to hear every Member who spoke—is that this Assembly is not a representative assembly as it has not been elected on adult suffrage that the large mass of the people are not represented in this Constitution. Consequently this Assembly in framing the Constitution has no right to say that this Constitution should have the finality which article 304 proposes to give it. Sir, it may be true that this Assembly is not a representative assembly in the sense that Members of this Assembly have not been elected on the basis of adult suffrage. I am prepared to accept that argument, but the further inference which is being drawn that if the Assembly had been elected on the basis of adult suffrage, it was then bound to possess greater wisdom and greater political knowledge is an inference which I utterly repudiate.

****Interruption****

It might easily have been worse, says my friend Mr.

Mr Naziruddin Ahmad: It would have been worse!

Naziruddin Ahmad, and I agree with him. Power and knowledge do not go together. Oftentimes they are dissociated, and I am quite frank enough to say that this House, such as it is, has probably a greater modicum and quantum of knowledge and information than the future Parliament is likely to have. I therefore submit, Sir, that the article as proposed by the Drafting Committee is the best that could be conceived in the circumstances of the case.

Concluding Speech in the Constituent Assembly*

Sir, looking back on the work of the Constituent Assembly it will now be two years, eleven months and seventeen days since it first met on the 9th of December, 1946. During this period the Constituent Assembly has altogether held eleven sessions. Out of these eleven sessions the first six were spent in passing the Objectives Resolution and the consideration of the Reports of Committees on Fundamental Rights, on Union Constitution, on Union Powers, on Provincial Constitution, on Minorities and on the Scheduled Areas and Scheduled Tribes. The seventh, eighth, ninth, tenth and the eleventh sessions were devoted to the consideration of the Draft Constitution. These eleven sessions of the Constituent Assembly have consumed 165 days. Out of these, the Assembly spent 114 days for the consideration of the Draft Constitution.

Coming to the Drafting Committee, it was elected by the Constituent Assembly on 29th August 1947. It held its first meeting on 30th August. Since August 30th it sat for 141 days during which it was engaged in the preparation of the Draft Constitution. The Draft Constitution, as prepared by the Constitutional Adviser as a text for the Drafting Committee to work upon, consisted of 243 articles and 13 Schedules. The first Draft Constitution as presented by the Drafting Committee to the Constituent Assembly contained 315 articles and 8 Schedules. At the end of the consideration stage, the number of

*C.A. Deb., Vol. XI, 25 Nov. 1949, pp. 972-981.

articles in the Draft Constitution increased to 386. In its final form, the Draft Constitution contains 395 articles and 8 Schedules. The total number of amendments to the Draft Constitution tabled was approximately 7,635 of them, the total number of amendments actually moved in the House were 2,473.

I mention these facts because at one stage it was being said that the Assembly had taken too long a time to finish its work, that it was going on leisurely and wasting public money. It was said to be a case of Nero fiddling while Rome was burning. Is there any justification for this complaint? Let us note the time consumed by Constituent Assemblies in other countries appointed for framing their Constitutions. To take a few illustrations, the American Convention met on May 25th, 1787 and completed its work on September 17, 1787 i.e., within four months. The Constitutional Convention of Canada met on the 10th October 1864 and the Constitution was passed into law in March 1867 involving a period of two years and five months. The Australian Constitutional Convention assembled in March 1891 and the Constitution became law on the 9th July 1900, consuming a period of nine years. The South African Convention met in October 1908 and the Constitution became law on the 20th September 1909 involving one year's labour. It is true that we have taken more time than what the American or South African Conventions did. But we have not taken more time than the Canadian Convention and much less than the Australian Convention. In making comparisons on the basis of time consumed, two things must be remembered. One is that the Constitutions of America, Canada, South Africa and Australia are much smaller than ours. Our Constitution as I said contains 395 articles while the American has just seven articles, the first four of which are divided into sections which total up to 21, the Canadian has 147, Australian 128 and South African 153 sections. The second thing to be remembered is that the makers of the Constitutions of America, Canada, Australia and South Africa did not have to face the problem of amendments. They were passed as moved. On the other hand, this

Constituent Assembly had to deal with as many as 2,473 amendments. Having regard to these facts the charge of dilatoriness seems to me quite unfounded and this Assembly may well congratulate itself for having accomplished so formidable a task in so short a time.

Turning to the quality of the work done by the Drafting Committee, Mr. Naziruddin Ahmad felt it his duty to condemn it outright. In his opinion, the work done by the Drafting Committee is not only noteworthy of commendation, but is positively below par. Everybody has a right to have his opinion about the work done by the Drafting Committee and Mr. Naziruddin is welcome to have his own. Mr. Naziruddin Ahmad thinks he is a man of greater talents than any member of Drafting Committee. The Drafting Committee does not wish to challenge his claim. On the other hand, the Drafting Committee would have welcomed him in their midst if the Assembly had thought him worthy of being appointed to it. If he had no place in the making of the Constitution it is certainly not the fault of the Drafting Committee.

Mr. Naziruddin Ahmad has coined a new name for the Drafting Committee evidently to show his contempt for it. He calls it a Drifting Committee. Mr. Naziruddin must no doubt be pleased with his hit. But he evidently does not know that there is a difference between drift without mastery and drift with mastery. If the Drafting Committee was drifting, it was never without mastery over the situation. It was not merely angling with the off chance of catching a fish. It was searching in know waters to find the fish it was after. To be in search of something better is not the same as drifting. Although Mr. Naziruddin Ahmad did not mean it as a compliment to the Drafting Committee, I take it as a compliment to the Drafting Committee. The Drafting Committee would have been guilty of gross dereliction of duty and of a false sense of dignity if it had not shown the honesty and the courage to withdraw the amendments which it thought faulty and substitute what it thought was better. If it is a mistake, I am glad the Drafting

Committee did not fight shy of admitting such mistakes and coming forward to correct them.

I am glad to find that with the exception of a solitary member, there is a general consensus of appreciation from the members of the Constituent Assembly of the work done by the Drafting Committee. I am sure the Drafting Committee feels happy to find this spontaneous recognition of its labours expressed in such generous terms. As to the compliments that have been showered upon me both by the members of the Assembly as well as by my colleagues of the Drafting Committee, I feel so overwhelmed that I cannot find adequate words to express fully my gratitude to them. I came into the Constituent Assembly with no greater aspiration than to safeguard the interests of the Scheduled Castes. I had not the remotest idea that I would be called upon to undertake more responsible functions. I was therefore greatly surprised when the Assembly elected me to the Drafting Committee. I was more than surprised when the Drafting Committee elected me to be its Chairman. There were in the Drafting Committee men bigger, better and more competent than myself such as my friend Sir Alladi Krishnaswami Ayyar. I am grateful to the Constituent Assembly and the Drafting Committee for reposing in me so much trust and confidence and to have chosen me as their instrument and given me this opportunity of serving the country.

The credit that is given to me does not really belong to me. It belongs partly to Sir B.N. Rau, the Constitutional Adviser to the Constituent Assembly who prepared a rough draft of the Constitution for the consideration of the Drafting Committee. A part of the credit must go to the members of the Drafting Committee who, as I have said, have sat for 141 days and without whose ingenuity to devise new formulae and capacity to tolerate and to accommodate different points of view, the task of framing the Constitution could not have come to so successful a conclusion. Much greater share of the credit must go to Mr. S.N. Mukherjee, the Chief Draftsman of the Constitution. His ability to put the most intricate proposals in the

simplest and clearest legal form can rarely be equalled, nor his capacity for hard work. He has been an acquisition to the Assembly. Without his help, this Assembly would have taken many more years to finalise the Constitution. I must not omit to mention the members of the staff working under Mr. Mukherjee. For, I know how hard they have worked and how long they have toiled sometimes even beyond midnight. I want to thank them all for their effort and their co-operation.

The task of the Drafting Committee would have been a very difficult one if this Constituent Assembly had been merely a motley crowd, a tasseleted pavement without cement, a black stone here and a white stone there in which each member or each group was a law unto itself. There would have been nothing but chaos. This possibility of chaos was reduced to nil by the existence of the Congress Party inside the Assembly which brought into its proceedings a sense of order and discipline. It is because of the discipline of the Congress Party that the Drafting Committee was able to pilot the Constitution in the Assembly with the sure knowledge as to the fate of each article and each amendment. The Congress Party is, therefore, entitled to all the credit for the smooth sailing of the Draft Constitution in the Assembly.

The proceedings of this Constituent Assembly would have been very dull if all members had yielded to the rule of party discipline. Party discipline, in all its rigidity, would have converted this Assembly into a gathering of 'yes' men. Fortunately, there were rebels. They were Mr. Kamath, Dr. P.S. Deshmukh, Mr. Sidhva, Prof. Sexena and Pandit Thakur Das Bhargava. Alongwith them I must mention Prof. K.T. Shah and Pandit Hirday Nath Kunzru. The points they raised were mostly ideological. That I was not prepared to accept their suggestions, does not diminish the value of their suggestions nor lessen the service they have rendered to the Assembly in enlivening its proceedings. I am grateful to them. But for them, I would not have had the opportunity which I got for expounding the principles underlying the Constitution which was more important than the mere mechanical work of passing the Constitution.

Finally, I must thank you Mr. President for the way in which you have conducted the proceedings of this Assembly. The courtesy and the consideration which you have shown to the Members of the Assembly can never be forgotten by those who have taken part in the proceedings of this Assembly: There were occasions when the amendments of the Drafting Committee were sought to be barred on grounds purely technical in their nature. Those were very anxious moments for me. I am, therefore, specially grateful to you for not permitting legalism to defeat the work of Constitution-making.

As much defence as could be offered to the constitution has been offered by my friends Sir Alladi Krishnaswami Ayyar and Mr. T. T. Krishnamachari. I shall not therefore enter into the merits of the Constitution. Because I feel, however good a Constitution may be, it is sure to turn out bad because those who are called to work it, happen to be a bad lot. However bad a Constitution may be, it may turn out to be good if those who are called to work it, happen to be a good lot. The working of a Constitution does not depend wholly upon the nature of the Constitution. The Constitution can provide only the organs of State such as the Legislature, the Executive and the Judiciary. The factors on which the working of those organs of the State depend are the people and the political parties they will set up as their instruments to carry out their wishes and their politics. Who can say how the people of India and their parties will behave? Will they uphold constitutional methods of achieving their purposes or will they prefer revolutionary methods of achieving them? If they adopt the revolutionary methods, however good the Constitution may be, it requires no prophet to say that it will fail. It is, therefore, futile to pass any judgment upon the Constitution without reference to the part which the people and their parties are likely to play.

The condemnation of the Constitution largely comes from two quarters, the Communist Party and the Socialist Party. Why do they condemn the Constitution? Is it because it is really a bad Constitution? I venture to say 'no'. The Communist Party wants

a Constitution based upon the principle of the Dictatorship of the Proletariat. They condemn the Constitution because it is based upon parliamentary democracy. The Socialists want two things. The first thing they want is that if they come in power, the Constitution must give them the freedom to nationalize or socialize all private property without payment of compensation. The second thing that the Socialists want is that the Fundamental Rights mentioned in the Constitution must be absolute and without any limitations so that if their Party fails to come into power, they would have the unfettered freedom not merely to criticize, but also to overthrow the State.

These are the main grounds on which the Constitution is being condemned. I do not say that the principle of Parliamentary democracy is the only ideal form of political democracy. I do not say that the principle of no acquisition of private property without compensation is so sacrosanct that there can be no departure from it. I do not say that Fundamental Rights can never be absolute and the limitations set upon them can never be lifted. What I do say is that the principles embodied in the Constitution are the views of the present generation or if you think this to be an over-statement, I say they are the views of the members of the Constituent Assembly. Why blame the Drafting Committee for embodying them in the Constitution? I say why blame even the Members of the Constituent Assembly? Jefferson, the great American statesman who played so great a part in the making of the American Constitution, has expressed some very weighty views which makers of Constitution, can never afford to ignore in one place, he has said:—

We may consider each generation as a distinct nation, with a right, by the will of the majority, to bind themselves, but none to bind the succeeding generation, more than the inhabitants of another country.

In another place, he has said:

"The idea that institutions established for the use of the nation cannot be touched or modified, even to make them

answer their end, because of rights gratuitously supposed in those employed to manage them in the trust for the public, may perhaps be a salutary provision against the abuses of a monarch, but is most absurd against the nation itself. Yet our lawyers and priests generally inculcate this doctrine, and suppose that preceding generations held the earth more freely than we do; had a right to impose laws on us, unalterable by ourselves, and that we, in the like manner, can make laws and impose burdens on future generations, which they will have no right to alter; in fine, that the earth belongs to the dead and not the living."

I admit that what Jefferson has said is not merely true, but is absolutely true. There can be no question about it. Had the Constituent Assembly departed from this principle laid down by Jefferson it would certainly be liable to blame, even to condemnation. But I ask, has it? Quite the contrary. One has only to examine the provision relating to the amendment of the Constitution. The Assembly has not only refrained from putting a seal of finality and infallibility upon this Constitution by denying to the people the right to amend the Constitution as in Canada or by making the amendment of the Constitution subject to the fulfilment of extraordinary terms and conditions as in America or Australia, but has provided a most facile procedure for amending the Constitution. I challenge any of the critics of the Constitution to prove that any Constituent Assembly anywhere in the world has, in the circumstances in which this country finds itself, provided such a facile procedure for the amendment of the Constitution. If those who are dissatisfied with the Constitution have only to obtain a 2/3 majority and if they cannot obtain even a two-thirds majority in the parliament elected on adult franchise in their favour, the dissatisfaction with the Constitution cannot be deemed to be shared by the general public.

There is only one point of constitutional import to which I propose to make a reference. A serious complaint is made on the ground that there is too much of centralization and that the

States have been reduced to Municipalities. It is clear that this view is not only an exaggeration, but is also founded on a misunderstanding of what exactly the Constitution contrives to do. As to the relation between the Centre and the States, it is necessary to bear in mind the fundamental principle on which it rests. The basic principle of Federalism is that the Legislative and Executive authority is partitioned between the Centre and the States not by any law to be made by the Centre but by the Constitution itself. This is what Constitution does. The States under our Constitution are in no way dependent upon the Centre for their legislative or executive authority. The Centre and the States are co-equal in this matter. It is difficult to see how such a Constitution can be called centralism. It may be that the Constitution assigns to the Centre too large a field for the operation of its legislative and executive authority than is to be found in any other federal Constitution. It may be that the residuary powers are given to the Centre and not to the States. But these features do not form the essence of federalism. The chief mark of federalism as I said lies in the partition of the legislative and executive authority between the Centre and the Units by the Constitution. This is the principle embodied in our Constitution. There can be no mistake about it. It is, therefore, wrong to say that the States have been placed under the Centre. Centre cannot by its own will alter the boundary of that partition. Nor can the Judiciary. For as has been well said:

Courts may modify, they cannot replace. They can revise earlier interpretations as new arguments, new points of view are presented, they can shift the dividing line in marginal cases, but there are barriers they cannot pass, definite assignments of power they cannot reallocate. They can give a broadening construction of existing powers, but they cannot assign to one authority powers explicitly granted to another.

The first charge of centralisation defeating federalism must therefore fall.

The second charge is that the Centre has been given the power to override the States. This charge must be admitted.

But before condemning the Constitution for containing such overriding powers, certain considerations must be borne in mind. The first is that these overriding powers do not form the normal feature of the Constitution. Their use and operation are expressly confined to emergencies only. The second consideration is: Could we avoid giving overriding powers to the Centre when an emergency has arisen? Those who do not admit the justification for such overriding powers to the Centre even in an emergency, do not seem to have a clear idea of the problem which lies at the root of the matter. The problem is so clearly set out by a writer in that well-known magazine "The Round Table" in its issue of December 1935 that I offer no apology for quoting the following extract from it. Says the writer:

Political systems are a complex of rights and duties resting ultimately on the question, to whom, or to what authority, does the citizen owe allegiance. In normal affairs the question is not present, for the law works smoothly, and a man, goes about his business obeying one authority in this set of matters and another authority in that. But in a moment of crisis, a conflict of claims may arise, and it is then apparent that ultimate allegiance cannot be divided. The issue of allegiance cannot be determined in the last resort by a juristic interpretation of statutes. The law must conform to the facts or so much the worse for the law. When all formalism is stripped away, the bare question is, what authority commands the residual loyalty of the citizen. Is it the Centre or the Constituent State?

The solution of this problem depends upon one's answer to this question which is the crux of the problem. There can be no doubt that in the opinion of the vast majority of the people, the residual loyalty of the citizen in an emergency must be to the Centre and not to the Constituent States. For it is only the Centre which can work for a common end and for the general interests of the country as a whole. Herein lies the justification for giving to the Centre certain overriding powers to be used in

an emergency. And after all what is the obligation imposed upon the Constituent States by these emergency powers? No more than this—that in an emergency, they should take into consideration alongside their own local interests, the opinions and interests of the nation as a whole. Only those who have not understood the problem, can complain against it.

Here I could have ended. But my mind is so full of the future of our country that I fell I ought to take this occasion to give expression to some of my reflections thereon. On 26th January 1950, India will be an independent country. What would happen to her independence? Will she maintain her independence or will she lose it again? This is the first thought that comes to my mind. It is not that India was never an independent country. The point is that she once lost the independence she had. Will she lose it a second time? It is this thought which makes me most anxious for the future. What perturbs me greatly is the fact that not only India has once before lost her independence, but she lost it by the infidelity and treachery of some of her own people. In the invasion of Sind by Mahammed-Bin-Kasim, the military commanders of King Dahar accepted bribes from the agents of Mahammed-Bin-Kasim and refused to fight on the side of their King. It was Jaichand who invited Mahammed Gohri to invade India and fight against Prithvi Raj and promised him the help of himself and the Solanki kings. When Shivaji was fighting for the liberation of Hindus, the other Maratha noblemen and the Rajput kings were fighting the battle on the side of Moghul Emperors. When the British were trying to destroy the Sikh Rulers, Gulab Singh, their principal commander sat silent and did not help to save the Sikh kingdom. In 1857, when a large part of India had declared a war of independence against the British, the Sikhs stood and watched the event as silent spectators.

Will history repeat itself? It is this thought which fills me with anxiety. This anxiety is deepened by the realization of the fact that in addition to our old enemies in the form of castes and creeds we are going to have many political parties with diverse and opposing political creeds. Will Indians place the country

above their creed or will they place creed above country? I do not know. But this much is certain that if the parties place creed above country, our independence will be put in jeopardy a second time and probably be lost for ever. This eventuality we must all resolutely guard against. We must be determined to defend our independence with the last drop of our blood.

On the 26th of January 1950, India would be a democratic country in the sense that India from that day would have a government of the people, by the people and for the people. The same thought comes to my mind. What would happen to her democratic Constitution? Will she be able to maintain it or will she lose it again. This is the second thought that comes to my mind and makes me as anxious as the first.

It is not that India did not know what is Democracy. There was a time when India was studded with republics, and even where there were monarchies, they were either elected or limited. They were never absolute. It is not that India did not know Parliaments or Parliamentary Procedure. A study of the Buddhist Bhikshu Sanghas discloses that not only there were Parliaments—for the Sanghas were nothing but Parliaments—but the Sanghas knew and observed all the rules of Parliamentary Procedure known to modern times. They had rules regarding seating arrangements, rules regarding Motions, Resolutions, Quorum, Whip, Counting of Votes, Voting by Ballot, Censure Motion, Regularization, Res Judicata, etc. Although these rules of Parliamentary Procedure were applied by the Buddha to the meetings of the Sanghas, he must have borrowed them from the rules of the Political Assemblies functioning in the country in his time.

This democratic system India lost. Will she lose it a second time? I do not know. But it is quite possible in a country like India—where democracy from its long disuse must be regarded as something quite new—there is danger of democracy giving place to dictatorship. It is quite possible for this new born democracy to retain its form but give place to dictatorship in fact. If there is a landslide, the danger of the second possibility becoming actuality is much greater.

If we wish to maintain democracy not merely in form, but also in fact, what must we do? The first thing in my judgment we must do is to hold fast to constitutional methods of achieving our social and economic objectives. It means we must abandon the bloody methods of revolution. It means that we must abandon the method of civil disobedience, non-cooperation and satyagraha. When there was no way left for constitutional methods for achieving economic and social objectives, there was a great deal of justification for unconstitutional methods. But where constitutional methods are open, there can be no justification for these unconstitutional methods. These methods are nothing but the Grammar of Anarchy and the sooner they are abandoned, the better for us.

The second thing we must do is to observe the caution which John Stuart Mill has given to all who are interested in the maintenance of democracy, namely, not "to lay their liberties at the feet of even a great man, or to trust him with powers which enable him to subvert their institutions". There is nothing wrong in being grateful to great men who have rendered life-long services to the country. But there are limits to gratefulness. As has been well said by the Irish Patriot Daniel O'Connel, no man can be grateful at the cost of his honour, no woman can be grateful at the cost of her chastity and no nation can be grateful at the cost of its liberty. This caution is far more necessary in the case of India than in the case of any other country. For in India, Bhakti or what may be called the path of devotion or hero-worship, plays a part in its politics unequalled in magnitude by the part it plays in the politics of any other country in the world. Bhakti in religion may be a road to the salvation of the soul. But in politics, Bhakti or hero-worship is a sure road to degradation and to eventual dictatorship.

The third thing we must do is not to be content with mere political democracy. We must make our political democracy a social democracy as well. Political democracy cannot last unless there lies at the base of it social democracy. What does social democracy mean? It means a way of life which recognizes liberty, equality and fraternity as the principles of

life. These principles of liberty, equality and fraternity are not to be treated as separate items in a trinity. They form a union of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy. Liberty cannot be divorced from equality, equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity. Without equality, liberty would produce the supremacy of the few over the many. Equality without liberty would kill individual initiative. Without fraternity, liberty and equality could not become a natural course of things. It would require a constable to enforce them. We must begin by acknowledging the fact that there is complete absence of two things in Indian Society. One of these is equality. On the social plane, we have in India a society based on the principle of graded inequality which means elevation for some and degradation for others. On the economic plane, we have a society in which there are some who have immense wealth as against many who live in abject poverty. On the 26th of January 1950, we are going to enter into a life of contradictions. In politics we will have equality and in social and economic life we will have inequality. In politics we will be recognizing the principle of one man one vote and one vote one value. In our social and economic life, we shall, by reason of our social and economic structure, continue to deny the principle of one man one value. How long shall we continue to live this life of contradictions? How long shall we continue to deny equality in our social and economic life? If we continue to deny it for long, we will do so only by putting our political democracy in peril. We must remove this contradiction at the earliest possible moment or else those who suffer from inequality will blow up the structure of political democracy which this Assembly has so laboriously built up.

The second thing we are wanting in is recognition of the principle of fraternity. What does fraternity mean? Fraternity means a sense of common brotherhood of all Indians—if Indians being one people. It is the principle which gives unity and solidarity to social life. It is a difficult thing to achieve. How difficult it is, can be realized from the story related by James

Bryce in his volume on American Commonwealth about the United States of America. The story is—I propose to recount it in the words of Bryce himself—that—

Some years ago the American Protestant Episcopal Church was occupied at its triennial Convention in revising its liturgy. It was thought desirable to introduce among the short sentence prayers a prayer for the whole people, and an eminent New England divine proposed the words 'O Lord, bless our nation'. Accepted one afternoon, on the spur of the moment, the sentence was brought up next day for reconsideration, when so many objections were raised by the laity to the word 'nation' as importing too definite a recognition of national unity, that it was dropped, and instead there were adopted the words 'O Lord, bless these United States'.

There was so little solidarity in the U.S.A. at the time when this incident occurred that the people of America did not think that they were a nation. If the people of the United States could not feel that they were a nation, how difficult it is for Indians to think that they are a nation. I remember the days when politically-minded Indians resented the expression "the people of India". They preferred the expression "the Indian nation". I am of opinion that in believing that we are a nation, we are cherishing a great delusion. How can people divided into several thousands of castes be a nation? The sooner we realize that we are not as yet a nation in the social and psychological sense of the world, the better for us. For then only we shall realize the necessity of becoming a nation and seriously think of ways and means of realizing the goal. The realization of this goal is going to be very difficult—far more difficult than it has been in the United States. The United States has no caste problem. In India there are castes. The castes are anti-national. In the first place because they bring about separation in social life. They are anti-national also because they generate jealousy and antipathy between caste and caste. But we must overcome all these difficulties if we wish to

become a nation in reality. For fraternity can be a fact only when there is a nation. Without fraternity equality and liberty will be no deeper than coats of paint.

These are my reflections about the tasks that lie ahead of us. They may not be very pleasant to some. But there can be no gainsaying that political power in this country has too long been the monopoly of a few and the many are not only beasts of burden, but also beasts of prey. This monopoly has not merely deprived them of their chance of betterment, it has sapped them of what may be called the significance of life. These down-trodden classes are tired of being governed. They are impatient to govern themselves. This urge for self-realization in the down-trodden classes must not be allowed to devolve into a class struggle or class war. It would lead to a division of the House. That would indeed be a day of disaster. For, as has been well said by Abraham Lincoln, a House divided against itself cannot stand very long. Therefore the sooner room is made for the realization of their aspiration, the better for the few, the better for the country, the better for the maintenance for its independence and the better for the continuance of its democratic structure. This can only be done by the establishment of equality and fraternity in all spheres of life. That is why I have laid so much stress on them.

I do not wish to weary the House any further. Independence is no doubt a matter of joy. But let us not forget that this independence has thrown on us great responsibilities. By independence, we have lost the excuse of blaming the British for anything going wrong. If hereafter things go wrong, we will have nobody to blame except ourselves. There is great danger of things going wrong. Times are fast changing. People including our own are being moved by new ideologies. They are getting tired of Government by the people. They are prepared to have Government for the people and are indifferent whether it is Government of the people and by the people. If we wish to preserve the Constitution in which we have sought to enshrine the principle of Government of the people, for the people and by the people, let us resolve not to be tardy in the recognition

of the evils that lie across our path and which induce people to prefer Government for the people to Government by the people, nor to be weak in our initiative to remove them. That is the only way to serve the country. I know of no better.

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Corrigenda

Page	Line	For	Read
9	6 from bottom	that	than
97	12 from bottom	viscisitudes	vicissitudes
108	6	in any opening	in my opening
119	13 from bottom	then	than
121	last foot note	new	now
131	13-14	Weiting and Wathing	waiting and watching
142	19	from	form
150	para 1 line 1 and in footnote	article 142*** add	article 142**** ****Article 162
156	9	noteworthy	not worthy