

# CONSTITUTION

## Need For Clarity Of Approach

Nearly a fortnight has elapsed since the Constituent Assembly took up consideration of the draft constitution clause by clause. Two parts, namely, "The Union and its territory and jurisdiction" and "Directive principles of state policy", containing between them seventeen articles, have been adopted with amendments and additions. Two intervening parts, those relating to citizenship and fundamental rights, have been held over for future consideration. Progress should not of course be judged in terms of the number of articles disposed of; it is possible and even desirable that considerable time should be devoted to a discussion of articles involving principles while others dealing with procedure and methods might be handled with expedition. What is essential is a correct understanding of what is important and what is not. The proceedings of the past fortnight have not been such as to prove that our constitution makers have grasped fundamentals. There has been much avoidable discussion on relative non-essentials. In spite of the lucid exposition by Pandit Nehru and Dr. Ambedkar of what a constitution should be, much wasteful effort has been expended on aspects which do not pertain to the constitution but really belong to the realms of legislation or administration. In short, clarity of approach has been lacking.

### MIRAGE

Much valuable time has been lost on the pursuit of a mirage or in tilting at a windmill. It cannot honestly be claimed that all those who have taken part in the discussion so far had a correct preception of the characteristics or requirements of a constitution. Without a proper appreciation of the task on hand it may be quite a long time, judging from the present pace, before the document is finalised. It is already two years since the constitution making body assembled. True, extraneous circumstances handicapped its work. Even so, there is justification for the feeling that progress has been slow. This feeling has expressed itself in attempts to fix a target date and to devise measures to expedite disposal, including powers to the presiding authority to handle formal, unnecessary or redundant amendments. Reasonable speed there must be, but not at the expense of scrutiny where issues demand thoughtful examination. Deliberation on essentials and despatch in respect of details that are obvious should be the guiding policy of discussion; "hasten slowly" should be the motto. There is nothing sacrosanct about this date or that. It must be constantly borne in mind that the task on which the Assembly is now engaged will

affect the future well-being of millions.

Lack of understanding and imaginary fears were responsible for the time that was devoted to the article regulating changes in the boundaries of component units. The draft provides that before the President authorises attempts to alter the boundaries he should "consult" provinces and secure the "consent" of States. This distinction between the two sets of units provoked a needless controversy which was perhaps accentuated by Dr. Ambedkar's technically correct but somewhat tactless reference to the sovereignty of the States as against the provinces. Those who opposed the distinction allowed their idealism to outrun realism. In the first place, they ignored the fact that the sovereignty, such as it was, attached to "States" not to their rulers; in the second, they forgot that the spirit of the times and the trend of events in the past few months adequately ensure that the distinction cannot last long and is only nominal since it is dictated by certain historical developments. Neither the aspirations of the States' peoples nor the haste of radicals can overcome the limitations imposed by the present constitutional position and the terms on which the States have come into the Union.

### SOVEREIGNTY

Enormous changes have taken place since the agreement between the negotiating committees of "British" and "Indian" Indias: more are indicated. Many States have merged their identity with India; some have voluntarily ceded power to the Centre; the trend is definitely in the direction of the States and States Unions coming on a level with the provinces. Premature pressure on the pace can only hinder the process. The constitution must not run far ahead of facts. Before long the States' sovereignty will reside in the States' peoples, and then the distinction between the provinces and the States will disappear. Why quarrel over a shadow? Constitutional provisions will automatically adjust themselves and assume the shape of factual developments. All that the constitution can do is to provide the mechanism; it cannot make history. The constitution has no authority—nor is it necessary for it—to forestall the history of the next few months in regard to liquidation of the distinction between Provinces and States. Here was a flagrant example of misconstruction by the constitution makers of the scope of their authority.

### SUPERFLUITY

The debate also reveals a considerable misapprehension about what is mandatory and what is permissive or enabling in character. As it is, the framers have introduced a novel and confusing element by incorporating "directive principles." In a constitution what is not obligatory and justiciable is a childish superfluity. Policies of legislation or administration are best left to the processes of democracy, future electorates determining them and ensuring their execution through day-to-day or periodical checks. Dr. Ambedkar's citation of the attributes of a constitution was unexceptionable:

"The constitution is only a mechanism for the purpose of regulating the powers of the various organs of the state and not a mechanism whereby particular principles or parties are installed in office. What must be the policy of the state, how society should be organised in social and economic life etc., are all matters which must be decided by the people themselves according to circumstances and time. These cannot be embedded in the constitution. If we do so we would be taking away from the people the right to determine what social organisation they wish to have. It is quite possible that a majority of the people might want a socialist organisation of society; but it is equally possible for thinking people to devise some form of organisation which might be better than the socialist organisation."

In the same breath, however, he justified that portion of the draft which had given some "socialist directives". Though the directives militate against constitutional rectitude, it may be granted that they were dictated by current political exigencies. They represent a compromise between wish and command. In this sense critics who sought so to modify the directives as to make them mandates or to expand their scope were guilty of overdoing what was already a "muchness".

To tighten up an obvious compromise or violently to upset the balance of its conception is bad enough; to augment it with policies and programmes which conceivably might not meet with the approval of a given electorate is to hamstring the future and threaten extra-constitutional opposition. In one particular the Assembly made an improvement on the draft by incorporating a provision that the state should take steps to secure the separation of the judiciary from the executive. Equally popular was the article asking the state to organise village panchayats as self-governing units.