

MAKING OF THE CONSTITUTION

A Survey Of Three Years' Labour

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ON March 15, 1946, Mr. Attlee, the British Prime Minister, made an announcement that a Cabinet Mission consisting of Lord Pethick-Lawrence, Sir Stafford Cripps and Mr. Alexander, would be "going to India with the intention of using their utmost endeavours to help her to attain her freedom as speedily and fully as possible. What form of Government is to replace the present regime, is for India to decide; but our desire is to help her set up forthwith the machinery for making that decision."

The Cabinet Mission arrived in India shortly afterwards and together with the Viceroy, Lord Wavell, carried on discussions and negotiations with leaders of political parties in India among whom the chief were the Indian National Congress and the All-India Muslim League. They also interviewed representatives of the Princes of India. Finding that no agreed solution was possible, they issued a statement on May 16, 1946, wherein after referring to certain proposals which had been made, but which they considered impracticable, they made their suggestions which they thought represented the maximum agreement that was possible.

STATES

With regard to the Indian States they said: "It is quite clear that with the attainment of Independence by British India, whether inside or outside the British Commonwealth, the relationship which has hitherto existed between the Rulers of the States and the British Crown will no longer be possible. Paramountcy can neither be retained by the British Crown nor transferred to the new Government". They felt assured, however, that the States were ready and willing to co-operate in the new development of India. The precise form which this co-operation would take was to be a matter for negotiations. They suggested that a constitution-making machinery should be brought into being forthwith to enable a new constitution to be worked out.

For carrying on the administration while constitution-making was proceeding, the Viceroy was to form an Interim Government in which all the portfolios including that of War Member would be held by Indian leaders having the full confidence of the people.

It is not necessary to refer here to the further negotiations which had to be carried on and I shall content myself with stating the course which the Constituent Assembly followed and the action that the British Government took. The Constituent Assembly met for the first time on the 9th of December 1946, but without those Muslim representatives who had been elected on the ticket of the All-India Muslim League. It proceeded to carry on negotiations with the Princes as a result of which the seats allocated to the States were distributed amongst them and the procedure for the selection of the representatives was laid down. The States gradually sent their representatives and by the time the Constituent Assembly finished its labours, all the States within the geographical limits of India with the exception of Hyderabad were represented by their own representatives on the Constituent Assembly.

After formulating its own rules of procedure, the Constituent Assembly settled its own terms of reference in the shape of an objectives resolution which declared its intention to constitute India into a sovereign republic and to draw up a constitution which would constitute what were then the British Provinces and the Indian States as well as other territories willing to join India into a Union, would guarantee, justice, social, economic and political, equality of status, of opportunity, and before the law, freedom of thought, expression, belief,

faith and worship, and would provide adequate safeguards for minorities, backward and tribal areas, depressed and other backward classes.

It appointed a number of committees to consider and report on principles underlying various aspects of the Constitution. These committees proceeded with their work and made recommendations which were adopted by the Constituent Assembly to form the basis for a Draft of the Constitution of India. A Draft was accordingly prepared by the Constitutional Adviser of India, Shri Benegal Narsing Rau, and later on the Constituent Assembly appointed a Drafting Committee with Dr. B. R. Ambedkar, the Law Minister of India, as its Chairman to scrutinise the Draft and place it before the plenary session of the Constituent Assembly.

While all this was going on, the Constituent Assembly did not have the benefit of the presence of the members elected on the Muslim League ticket. This was obviously an unsatisfactory position and the British Government made several efforts, but without avail, to bring about an agreement between the viewpoints of the Muslim League and the other parties of India. On February 20, 1947, the British Prime Minister made a statement in the House of Commons, expressing regret that differences among the Indian parties were preventing the

resolved and on June 3, 1947, another statement was issued by His Majesty's Government, whereby they advanced the date for the transfer of power from June 1948, and promised to introduce legislation for the transfer of powers with- in 1947 on a Dominion Status : to one or two successor authorities according to the decisions taken as a result of that announcement. The announcement laid down the procedure for ascertaining the wishes of the people on the issue whether the constitution was to be framed in the existing Constituent Assembly or in a new separate Assembly consisting of the representatives of those areas which decided not to participate in the existing Constituent Assembly. The result of this would be the division of India into two parts each of which would become a Dominion within the British Commonwealth. A Bill was accordingly introduced and the Indian Independence Act was passed whereby authority was to be transferred on August 15, 1947, to two independent Dominions to be known respectively as India and Pakistan.

The two Dominions were established on August 15, 1947, with the sovereign right to pass what Laws or Constitution they considered necessary for their own respective territories and were declared Sovereign Bodies for that and other purposes. Provisions were laid down for carrying on the government of each of the Dominions during the



Dr. Rajendra Prasad (left), the first President of the Indian Republic, and Mr. Rajagopalachari (right), the last Governor-General of India, exchanging greetings.

Constituent Assembly from functioning as a fully representative body as it was intended that it should. It further said that His Majesty's Government desired to hand over the responsibility to authorities established by a constitution by a date not later than June 1948. But in case such a constitution was not worked out by a fully representative Assembly before that date, His Majesty's Government would have to consider to whom the powers of the Central Government in British India should be handed over on the due date, whether as a whole to some form of Central Government for British India or in some areas to the existing Provincial Governments or in such other way as might seem most reasonable and in the best interests of the Indian people.

The differences between the League and the other parties could not be

interim period and also for the division of the Indian armed forces between the two Dominions.

By the time the transfer of power took place on August 15, 1947 all the Indian States in geographical contiguity with India except Kashmir and Hyderabad had acceded to India on three subjects, namely Foreign Affairs, Defence and Communications, and had also entered into Stand-still Agreements maintaining the *status quo* for a limited period. Kashmir acceded shortly afterwards, but Hyderabad continued to maintain its relations on the basis of the Stand-still Agreement.

While the Constitution was in the process of being drafted, a movement for the integration of the States started. In the first place the smaller States chose to become integrated with the Province of the Indian Provinces contiguous to them and otherwise having affinity with them. The States of Orissa integrated with the Province of Orissa and a number of States contiguous to the Central Provinces integrated with that Province and the Maratha and Gujerat States integrated with the Province of Bombay. The Kathiawar States formed a Union of their own known as 'Saurashtra'. Later on the larger States also formed Unions and by the time the Constitution was passed by the Constituent Assembly on November 26, 1949, all the States had become either merged in the provinces or formed Unions of their own or come to be governed like Chief Commissioner's provinces in this way greatly simplifying the constitutional frame-work and bringing themselves into line with the provinces. The Constitution has therefore, been able to place the Indian States and the Provinces on more or less, the same footing and they are all called States.

COMPLEX ISSUES

The Constituent Assembly has taken nearly three years to complete this work. It has had eleven sessions and sat in all for 165 days and the cost incurred on its account up to November 22, 1949, comes to its 63,96,729. Considering the complexity of problems and the development of events that have taken place during this period, the time taken has not been too great. The Constitution comprises some 395 Articles and 8 Schedules. The bulk is undoubtedly great, but not too great when we consider the variety of subjects with which it has had to deal. It should be remembered that India, even after its division covers a population which is slightly larger than the population of the whole of Europe minus Russia. It has naturally drawn upon the Constitutions and the constitutional experience of other countries of the world and has tried to adapt them to the peculiar conditions of India which is not only big in size and population, but also has many language spoken by its people and possessing valuable literatures and a remarkable capacity for expressing all concepts, people professing different religions, following different customs and divisible into various grades ranging from primitive tribes inhabiting hilly and jungle areas to highly developed and cultured men and women who can compare with the people of any other part of the world in intelligence and capacity.