

A VERY ROUGH PROGRAMME.

A Note by Sir Gopalakrishna Jayyanger

The business of the Constituent Assembly is that of framing a constitution for all India. The machinery - executive, judicial and legislative - and the methods of its organisation and proper functioning in relation to the exercise of the totality of sovereign powers comprised in governance have to be provided for in the constitution. Under a federal system, which is what is contemplated, these sovereign powers have to be divided between the Union Centre and the State Units. Under the scheme of the Cabinet Mission, however, it is possible that a third tier might be added to the usual federal structure in the shape of groups - an intermediate authority between the Centre and the Units - and if this third tier is set up the sovereign powers in respect of the subjects which would otherwise have been entirely allocated to the Units would have to be divided between the Units and the Groups.

The Cabinet Mission's scheme leaves it to the Constituent Assembly to determine the order in which the various stages of this business of constitution-making may be completed. It is desirable that as early as possible in the first session of the Assembly the organisation of its work and the order in which it should take up and dispose of the business entrusted to it should be settled.

It will probably be necessary to contemplate three sessions of the Assembly separated by suitable intervals, and the sessions being completed, if possible, about the end of 1947.

The nature of the business and the order in which it might be transacted are indicated below as a basis for discussions:-

SESSION I (December 46 to January 47)
FULL ASSEMBLY.

First sitting.

- (1) Temporary Chairman - oldest member of the Assembly - to be elected unanimously, on a previously agreed understanding,



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by motion moved by the Leader of the Interim Government.

- (2) Presentation of credentials by members and their signing the Assembly Register.
- (3) Resolution, for the election of the permanent Chairman, adopting, with necessary verbal modifications, the procedure for the election of the President of the Indian Legislative Assembly. (A draft of the rules as modified attached.)

Second sitting.

- (1) Election of the Chairman. On the declaration by the temporary Chairman of his election, the permanent Chairman will be inducted into the Chair.
- (2) Speeches felicitating the Chairman and his reply.
- (3) Election of the Secretary-General of the Assembly.

Note. It is important that the Secretary-General should be chosen at this early sitting. He is to be the head of the secretariat of the Assembly and its Chairman and must function from the very beginning in order that business might go through under responsible guidance. Other members of the secretariat may be finally fixed up after proposals are received from the staff and finance committee to be appointed, pending which the existing secretariat drawn from the permanent services of the Government of India might continue.

Business for subsequent sittings.

- (1) Motions for the setting up of the following committees fixing their constitution and functions and determining the procedure for the election of their members:-
 - (a) Steering Committee.
 - (b) Staff and Finance Committee.
 - (c) House Committee.
 - (d) A committee for framing rules of procedure for the Assembly.

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- (2) General speeches as to the work before the Constituent Assembly.
- (3) Motion for the appointment of a committee to negotiate with the States Negotiating Committee. (Vide suggestions in my note on the subject.)
- (4) Consideration of the draft of the Rules of Procedure framed by the Procedure Committee.
- (5) Resolution setting up a committee for determining the content of the subjects to be assigned to the Centre - this committee to include two or three representatives of States Governments and States people.
- (6) Other resolutions, such as those indicated in my notes on 'Making and amendment of the new constitution' and 'Double Majority hurdle' and others.
- (7) Motion for committee on fundamental rights, minorities and tribal areas. (to include a few representatives of States)
- (8) Consideration of report of committee on Union subjects.

SECTIONAL MEETINGS.

Each section to formulate its views as to

- (a) whether a group constitution is necessary and if so with what provincial subjects the group should deal, and
- (b) main features of the constitution for each province in the section.

These views to be communicated to the Speaker of each Provincial Assembly with a request that the latter's opinion thereon may be communicated before the commencement of the second session.

SESSION II (April to June 1947).

The election of the 93 representatives of the Indian States should be completed before the commencement of the second session, where they should take their seats.

Business - Full Assembly.

- (1) Consideration of report of Committee on fundamental rights, minorities and tribal areas.
- (2) Settling main features of the Union Constitution.

Note. The resolution on this item to be communicated to provinces and States and their views invited well before the commencement of the third session.

- (3) Appointment of a committee to draft the Union constitution.

Thereafter meetings of Sections.

- (4) Each provincial section and the States section to make arrangements to draft the texts of the constitutions ^{of} for provinces and States and also of groups, if any. These texts to be sent to the Chairman of the Constituent Assembly before the second session closes.

SESSION III (October to December 1947)

Business - Full Assembly.

Settling the Union constitution.

Sections.

Settling the provincial and State constitutions and the group ^{it} constitutions, if any.

Full Assembly.

Indo-British Treaty (if necessary at all).

Implementation of taking over of full power and transitory arrangements.

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APPENDIX (2).

Rules for the election of Chairman.

(1) The temporary Chairman shall fix a date for the holding of the election of the permanent Chairman and notify such date ~~with~~ to every member who has presented his credentials and signed the Register of the Assembly.

(2) At any time before noon on the day preceding the date so fixed any member may nominate another member for election by delivering to the temporary Chairman a nomination paper signed by himself as proposer and by a third member as seconder and stating

(a) the name of the member nominated, and

(b) that the proposer has ascertained that such member is willing to serve as Chairman, if elected.

At any time after 3 p.m.

(3) On the date fixed for election the temporary Chairman shall read out to the Assembly the names of the members who have been duly nominated together with those of their proposers and seconders and if only one member has been so nominated shall declare that member to be elected. If more than one member has been so nominated the Assembly shall proceed to elect the Chairman by ballot.

(4) For the purposes of rule (3) a member shall not be deemed to have been duly nominated or be entitled to vote if he and his proposer and seconder have not before the reading of the names by the temporary Chairman presented his credentials and signed the Assembly Register as members of the Assembly.

(5) Where more than two candidates have been nominated and at the first ballot no candidate obtains more votes than the aggregate votes obtained by the other candidates, the candidate who has obtained the smallest number of votes

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shall be excluded from the election, and balloting shall proceed, the candidate obtaining the smallest number of votes at each ballot being excluded from the election, until one candidate obtains more votes than the remaining candidate or than the aggregate votes of the remaining candidates, as the case may be.

(6) Where at any ballot any of three or more candidates obtain an equal number of votes and one of them has to be excluded from the election under subparagraph (5) the determination as between the candidates whose votes are equal of the candidate who is to be excluded shall be by drawing of lots.

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A NOTE ON CONSTITUENT ASSEMBLIES

- (1) Experiments in constitution-making in modern times roughly fall into three categories.
- (a) States which secured independence after overthrowing a foreign imperial yoke, e.g. the 13 American Colonies, Ireland, Czechoslovakia, Yugoslavia, Finland, Poland, Estonia, Latvia, Lithuania, etc.
- (b) States which were independent but had to replace a despotic form of government by a democratic one, e.g. France, Germany, Austria, and the U.S.S.R.
- (c) States which were formed by the federation or union of political units which were previously more or less independent of one another, e.g. the U.S.A., Switzerland, Canada, Australia and South Africa.
- (2) States in the first two categories had to pass through a period of war and violent revolution before or at the time of framing their constitutions. States in the third category were able to achieve their object through peaceful negotiation.

A Historical Survey

The United States of America.

The earliest example of constitution-making in modern times, in the proper sense of the term. In 1774, the 13 American colonies rebelled and set up emergency or provisional governments, known as Congress or Conventions. In many states it was these bodies that framed constitutions for their states in the intervals between their ordinary duties of legislation and administration. They were both constituent and legislative assemblies. In the case of Massachusetts, however, a special

convention elected by all adult freemen was called. It drafted a constitution and submitted it to the town-meetings for debate, revision, approval or rejection. It met again, considered the objections raised, revised the constitution in their light and put it into effect. Massachusetts thus set the pattern for later constitution making in the United States.

The 13 colonies were at first loosely joined together in a Confederation, which was too loose and weak to be effective.

In 1787 therefore a Federal Convention met at Philadelphia to amend the articles of Confederation. All the states except one - Rhode Island - sent delegates - 74 in number of which only 55 attended. The delegates were not elected by voters but chosen by the legislatures of their states. The delegates instead of revising the articles of Confederation as they had been asked to do by their terms of reference, drew up a whole new constitution. The draft was then submitted to each of the States for ratification. In each state a convention specially elected for the purpose met to consider it and by the end of 1788 eleven states had ratified it. Rhode Island which had refused to participate in the Convention also ratified it and joined the Federation.

France

From 1791 to this day France has devised 13 Constitutions. They were all framed by Constituent Assemblies elected in very wide suffrage. They were all large in size - the



first National Convention consisted of 1200 members. Of these constitutions, that of 1875 alone survived for about 70 years.

Switzerland

Until 1848 Switzerland was only a loose Confederation of sovereign Cantons - without a central executive. Some of the Catholic Cantons were opposed to a federal union and formed themselves into a separate league - the Sonderbund - and were prepared to secede from the confederacy, with the help of foreign states. The Confederate Diet and the Protestant Cantons declared war before foreign intervention could become possible and crushed the Secessionists. The Confederate Diet appointed a committee of Revision which drafted a constitution, somewhat modelled on that of the U.S.A. The Draft was sent to the Cantons who returned it to the Diet with their suggestions. After the Diet had reconsidered and adopted the Draft it was submitted to the Cantons for acceptance and rejection.

Ireland

The Irish case was somewhat similar to the Indian. The Irish had to pass through a period of considerable unrest and bloodshed before their right to frame their own constitution through a Constituent Assembly was recognised. The Irish unlike the Americans, but like us, could not completely overthrow the yoke of the British. Before that final stage the British came to terms with the rebels and entered into a treaty with them. A Constituent Assembly was then called which framed the Irish constitution. But though the British yielded much, they succeeded in dividing

1. Acharya J. N. Sastri Ireland. It is worth while recalling what
2. Motilal Nehru the Irish leaders have said about it:
3. Pandit Jawaharlal Nehru "the crime of conquest can be repaired by
4. Sardar Vallabhbhai evacuation, but the crime of having divided
5. Pandit Govind Ballal the conquered house against itself is not
6. Khan Abdul Ghaffar Khan so easily repaired." 57
7. Shri Sarojini Naidu
8. Shri C. Rajagopalachari
9. Shri Shanker Rao Desai
10. Shri Sarat Chandra Bose
11. Shri Faiz Ahmed Faiz
12. Sardar Pratap Singh
13. Acharya Jugalkishore
14. Shri Jayaprakash Narayan
15. Mr. V. T. S. Venkateswara
16. Dr. M. K. Gandhi
17. Mr. K. Gopalarayalu
18. Dr. B. Raman Prasad Mukherjee
19. Shri Jagjivan Ram
20. Shri V. P. Menon
21. Shri Satyendra Singh
22. Dr. Govindbhai Thorat
23. Shri Mohini Desai Choudhury
24. Dr. Bidesh Nath Senapati
25. Shri Kanshi Ram
26. Shri K. M. Munshi
27. Shri K. N. Hazari
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30. Sardar Biju Lal Singh
31. Mr. Prof. G. G. Ghose



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11. Shri Rafi Ahmed Kidwai
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