

constitutional documents. R. C. S. Sarkar of the Law Ministry, Government of India, has also been helpful in unearthing documents. Kindness is a distinguishing characteristic of Indians, and when gathering material for this book the author profited fully from this trait, especially from persons of note who gave generously of their time for interviews.

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Cornerstone of a Nation

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The Constituent Assembly— Microcosm in Action

This cannot be done by the wisest of lawyers sitting together in conclave; it cannot be done by small committees trying to balance interests and calling that constitution-making; it can never be done under the shadow of an external authority. It can only be done effectively when the political and psychological conditions are present, and the urge and sanctions come from the masses.

Jawaharlal Nehru

GANDHI expressed the truth first—that Indians must shape their own destiny, that only in the hands of Indians could India become herself—when in 1922 he said that Swaraj would not be the gift of the British Parliament, but must spring from ‘the wishes of the people of India as expressed through their freely chosen representatives’.¹ Twenty-four years later these words were repeated during the opening session of the Constituent Assembly: they were, some said, the Assembly’s origin; all agreed that they were its justification.

The Indian National Congress made the demand for a constituent assembly part of its official policy in 1934. Refusing to accept the 1933 White Paper,² because it did not express ‘the will of the people of India’, the Congress Working Committee stated:

¹ To Gandhi, Swaraj meant more than independence from the British. It meant both national and personal (for all Indians) self-realization; it meant throwing off foreign ways as well as foreign rule, so that Indians could emerge as masters of their own souls as well as of their political future.

² The *Proposals for Indian Constitutional Reform*, of 1933; Cmd 4268. This was one of the constitutional bases of the 1935 Act.

The only satisfactory alternative to the White Paper is a constitution drawn up by a Constituent Assembly elected on the basis of adult franchise or as near it as possible, with the power, if necessary, to the important minorities to have their representatives elected exclusively by the electors belonging to such minorities.³

Thereafter, in many provincial legislative assemblies and in the central legislative assembly in 1937, at the Congresses at Faizpur, Hari-pura, and Tripuri, and at the Simla Conference in 1945, the Congress reiterated that India could only accept a constitution drawn from the people and framed 'without any interference by a foreign authority'.⁴

During World War II, the mood of the Indian people became increasingly one of self-assertion, of a readiness to take its destiny into its own hands. By the time of independence, an acute observer wrote, Indians had 'a general awareness of nationality and national dignity. The Indian public felt itself a corporate unit and felt itself adult. Independence had been an ideal, a desideratum to be worked for; now it was an axiom of public life'.⁵ In such a mood, even more than previously, Indians would accept only a constitution drafted by themselves.

As a result, in December 1946 a constituent assembly which 'derived from the people . . . all power and authority'⁶ was convened. It prospered and ultimately provided Indians with an 'Indian-made' constitution. And its indigenous nature has been the major reason for the Constitution's success. Indians have been less likely to fault the Constitution and more likely to view it with pride, both because they did themselves create it and because, having written it themselves, it was better suited to their needs.⁷

³ P. Chakrabarty and C. Bhattacharya, *Congress in Evolution*, page 30. For the background role of the Swaraj Party in this declaration, see Tendulkar, *Mahatma*, III, 335 and 338–9 and *CAD* (Constituent Assembly Debates) I, 1, 5.

⁴ From a Resolution of the Tripuri Congress; Chakrabarty and Bhattacharya, op. cit., Part II, p. 35.

⁵ Percival Spear, *India*, p. 407.

⁶ Objectives Resolution passed by the Assembly; *CAD* I, 5, 59.

⁷ This desire for a 'home-made' constitution, instead of one written in the Colonial Office of the imperial power and passed by the British Parliament, is the source of what K. C. Wheare has named the 'principle of constitutional autochthony', or the desire for a constitution sprung from the land itself. See K. C. Wheare, *Constitutional Structure of the Commonwealth*, p. 89.

Before turning to what the Assembly did, it is best to look at the way in which the Assembly came into being and how it worked, and so understand what an unusual body it was. The Constituent Assembly was, in effect, a one-party assembly, in the hands of the mass party, the Indian National Congress. Yet it was representative of India, and its internal decision-making processes were democratic. The leaders of the party, who were also the most important members of the Union Government and of the Assembly, were charismatic in their appeal and thus possessed immense power. In both thought and action, however, they were supported, and sometimes controlled, by the rank and file in the Assembly. This first chapter will be concerned with the origin of the Constituent Assembly itself and the manner in which the members approached the shaping of India's destiny.

The Origins and Creation of the Assembly

By the end of the War, as we have seen, India was ready for a constituent assembly and her leaders were demanding one.⁸ Gandhi had changed his sceptical attitude of 1934 and had proclaimed himself more and more 'enamoured' of an assembly.⁹ Most important, Britain, in the person of Sir Stafford Cripps, had accepted the idea that an elected body of Indians should frame the Indian constitution.¹⁰

The greatly increased demand for self-determination was supported by India's war-augmented power—her industry had expanded, many of her men had been trained and armed, and her people had a new, stronger sense of unity—and coincided with a marked decrease in the force Britain could exert in India, occupied as the British were with

⁸ There were also a number of books published during the war years calling for an assembly. Exceptions to this trend were Dr. B. R. Ambedkar and Mohammed Ali Jinnah. Ambedkar told the Scheduled Castes Federation, of which he was president, that a constituent assembly was not needed, the 1935 Act would do. Speech to S.C.F., 6 May 1945. *Indian Annual Register (IAR)* 1946, 1, pp. 321–4. Jinnah's reasons will be examined below.

⁹ In an article in *Harijan*, 12 November 1939, entitled, 'The Only Way'. To Gandhi, and to other leaders, a constituent assembly seemed the best way to approach the communal problem.

¹⁰ The proposals that Cripps put forward on his mission to India in 1942 were not accepted for a variety of reasons, but Cripps for the first time made it clear that Indians would write their own constitution.

Palestine and other problems abroad and war-weariness at home. It was in this atmosphere that the newly elected Labour Government announced in September 1945 that it was contemplating the creation of a constituent body in India and ordered that national elections be held during the winter so that freshly created provincial legislatures would be ready to act as electoral bodies for a constituent assembly.¹¹ The London government followed this move in January 1946 by sending a Parliamentary Delegation to India, which reported that the tide of independence was running fast, and then by dispatching a Cabinet-level mission the following March.

The Cabinet Mission arrived in New Delhi with the avowed purpose of assisting 'the Viceroy in setting up in India the machinery by which Indians can devise their own constitution', and of mediating between the Congress and the Muslim League in order to find a middle ground upon which the communities of India could be constitutionally united.¹² It was a task that non-Indians should never have attempted; it was almost certainly foredoomed to failure. There had always been conflicts of interest between Muslims and other Indians, particularly the Hindus. During the late nineteen twenties and thirties, disagreement had led to considerable communal tension. Muslim dissatisfaction, hitherto unchannelled, found its leader in Mohammed Ali Jinnah, who turned the infant Muslim League into his vehicle for power by championing Muslim rights, both real and fictional, and by making an *a priori tenet* of Muslim politics the 60-year-old two-nation theory—the theory that Muslims were culturally as well as religiously a group apart, that they were neither Hindu nor Indian, and that they must seek their fulfilment in a state of their own.¹³

¹¹ The policy and the general dates of the forthcoming elections were announced by the then Viceroy, Lord Wavell, on Delhi Radio, 19 September 1945. *IAR* 1945, II, 148. The creation of a constituent assembly by indirect elections with provincial assemblies as electoral bodies was a holdover from the Cripps proposals, which were still alive, at least to the British Government, as a basis for negotiation in India.

¹² Lord Pethick-Lawrence, Secretary of State for India and senior member of the Cabinet Mission, in a broadcast over Delhi Radio, 16 May 1946. *IAR* 1946, 1, 152.

¹³ In the early thirties, few Muslims looked to the League as their means of political expression. In the 1937 elections the League showed little strength, although 424 of 482 Muslim seats were won by non-Congress Muslims. By 1946, basing its claim on the results of the 1945 elections, however, the League could justly

Distrusting Hindus, the Muslim League opposed the organization to which most Hindus (and many Muslims as well as other Indians) belonged: the much larger Indian National Congress. While the Congress called for a constituent assembly and Indian self-determination, Jinnah's League derided the idea, preferring British presence in India as a deterrent to Congress power, which they said would be synonymous with Hindu domination. Instead of supporting a constituent assembly, the League in 1940 demanded that before independence Muslims must be assured the sanctuary of autonomous areas.¹⁴ In 1945 Jinnah took this a step further: India must have two constituent assemblies, he said, one for Hindustan and one for Pakistan. And the British must remain to see that justice (to the Muslims) was done; independence should come when the constitutions had been completed, when the two nations were established.

The Congress viewpoint was the reverse of the League's. The people of India were Indians; no matter what their religion, they were one nation. The British must leave India—only then could independent Indians come together, settle their differences, and begin to shape their future. India should be one nation under one constitution, the Congress believed, and although the rights of all groups would be protected by the constitution and as much autonomy as possible allowed, government must be sufficiently strong to bring about the social revolution that India must achieve if it was to survive.

These were the views that the three members of the Cabinet Mission hoped to reconcile by a compromise plan.¹⁵ India was to remain one state, but the power of the Central Government would be confined to foreign affairs, communications, and defence. The provinces would be grouped geographically into three regions, one of which would be predominantly Muslim, one predominantly Hindu, and in the third the population of the two communities would be nearly equal. The provincial representatives to the All-India Constituent Assembly, after a preliminary meeting of that body, would meet in three group assemblies to frame constitutions for their

say that it spoke for Indian Muslims. This growth of League power did not make the Congress a Hindu organization, which the League claimed was the case.

¹⁴ The famous Lahore Resolution.

¹⁵ For the text of the Cabinet Mission Plan, see M. Gwyer and A. Appadorai, *Speeches and Documents on the Indian Constitution*, pp. 577–84. Only the essence of the Plan is summarized here.

component provinces and, if desired, for their group as well. Among these constitutions, in a manner unspecified by the Cabinet Mission Plan, would be distributed the functions of government other than the three reserved for the centre. When all this was done, the representatives would return from the group constituent assemblies to the All-India Assembly to draft the national constitution.

The Mission made its plan public on 16 May 1946. By the end of June, after infinitely detailed negotiations, both the League and the Congress had accepted it, but both had publicly and privately recorded their reservations. Jinnah accepted the Cabinet Mission Plan 'because the foundation of Pakistan is inherent in compulsory grouping and because it (the League) hopes it will ultimately result in independent Pakistan.'¹⁶ The Congress accepted the Plan subject to its own interpretations of certain provisions being accepted by the British and the League.

This detente lasted through July, long enough to see the Constituent Assembly elected under the terms of one portion of the Cabinet Mission Plan.¹⁷ Rejecting adult suffrage as too cumbersome and slow, the Plan provided that the provincial legislatures elect the Assembly—a decision with which the Congress agreed, forsaking its long-held demand for a constituent assembly created by adult suffrage.¹⁸ The provinces were to be represented in the Assembly in the approximate ratio of one to one million of their population. The members of three communal categories in the legislatures, Muslim, Sikh, and General (Hindus and all other communities), would elect separately, according to their percentage of the province's population, their proportion of the provincial delegation. The Princely States, according to the Mission Plan, were to have ninety-three representatives in the Assembly, but the method of selecting them was left to consultation between the Assembly and the States' rulers.¹⁹

¹⁶ Muslim League Resolution of 6 June 1946, accepting the Mission Plan; *LAR* 1946., I, 183-

¹⁷ Paragraph 18; for the text of this paragraph, see Appendix I and Gwyer and Appadorai, op. cit., pp. 581–3.

¹⁸ The Congress did this because the preparations for general elections would have long delayed the creation of the Assembly.

¹⁹ The negotiations between, the CA States Committee and representatives of the Princes resulted in an agreement that provided for at least 50 per cent, of the States' representatives being elected to the Assembly; the rulers could nominate members up to 50 per cent, but it was hoped that the greater proportion would be

The Assembly, although elected, was far from being in session. Jinnah liked the Mission Plan only a little and the Congress's conditional acceptance of it even less. Finding an excellent pretext in some unguarded and tactless remarks Nehru made about 'grouping' and the Congress's intentions in the Assembly,²⁰ he withdrew his acceptance and instructed League representatives to boycott the Assembly.²¹ The League never lifted this boycott; the only League representatives to enter the Assembly did so because they had remained in India after Partition. The Cabinet Mission had failed. It failed because the Congress and the League had almost certainly become too estranged for reconciliation, which in any case was out of the question so long as the British were a third party to whom each side could appeal against the other. Yet if the three members of the Cabinet Mission could not hold together Muslim and non-Muslim India,²² something that only Indians, if they, could have accomplished, a portion of the Mission's efforts lived on in the Indian Constituent Assembly.

In August 1946 all this was still in the future. India was headed towards independence and the problem was how to bring the Congress and the League together in the Constituent Assembly and obtain their cooperation in forming the Interim Government envisaged in the Cabinet Mission Plan. Throughout the summer and autumn of 1946 the Viceroy, Wavell, had the impossible assignment of reconciling the disparate views and quieting the suspicions that had confronted the Cabinet Mission and that had flared up again in July after the Mission's return to England. Meanwhile, the Congress went ahead with its plans for the Assembly, appointing an Experts Committee to draft fundamental rights and to arrange the early sessions.²³ And the Congress, at the Viceroy's invitation, formed the Interim Government; Nehru was its head, as Vice-President of the

elected. *Report of the Committee Appointed to Negotiate with the States Negotiating Committee*, 28 April 1947; Constituent Assembly, *Reports of Committees, First Series*, p. 9.

²⁰ At a press conference in Bombay on 10 July; *IAR* 1946, II, 145–7.

²¹ 29 July 1947.

²² It is important to remember here that the Indian Muslim community had a population of about 100 millions, of which approximately 65 millions became Pakistanis. The 1951 census figures for both countries show India with 35½ million Muslims and Pakistan with 65 million.

²³ The Experts Committee met in July and August 1946. Nehru was its chairman. For more about this Committee, see below, esp. Chapters II and III.

Viceroy's Executive Council, or *de facto* Prime Minister. The League continued to ignore the Assembly. It refused to join the Interim Government, but later changed its mind and joined with the stated purpose of wrecking it.

Wavell, in the middle, could neither coax nor command from either side the cooperation that would have brought peace and unity to India, and, more particularly, that would have permitted him to convene the Constituent Assembly. It was thought unwise to call the first Assembly session for late September or early October, as the Interim Government at one time wished to do, because it might interfere with a Congress-League *rapprochement*. And it was not until 20 November that Wavell announced that the Assembly would meet on 9 December and that invitations to attend were being sent to those elected.²⁴

The Muslim League's boycott of the Assembly was still in force. The Attlee government's last minute efforts to effect an agreement failed, although Nehru, Jinnah, and Baldev Singh (representing the Sikhs) flew to London in early December for a final attempt at unity. When the Assembly began its three-year task on 9 December, the representatives of nearly 100 million Indian Muslims were absent. All the other communities of India were there.²⁵

The beginnings of a new India rested on a small portion of what was otherwise a moribund dream: the Constituent Assembly was meeting with the permission of the British Government, and a fourth of the nation was not represented at the Assembly's deliberations. Had such a body any power or authority of its own? Could it speak and act for India? Was it sovereign? Gandhi believed not (because 'it is no use declaring somebody else's creation a sovereign body'), although

²⁴ It had been hoped at one time to convene the Constituent Assembly in August 1946. See B. N. Rau letter to G. E. B. Abell, Wavell's private secretary, 15 June 1946, in B. Shiva Rao, *The Framing of India's Constitution: Select Documents*, I. Then Nehru called for convening the Assembly in mid-September, see G. E. B. Abell to B. N. Rau, 17–18 August 1946, *ibid.* Late October was then considered. Finally, to allow for further negotiations with the Muslim League, to permit the communal situation to cool, and to allow time for a meeting of the Central Legislative Assembly, the 9 December date was set. See J. Nehru to B. N. Rau, 16 September 1946, *ibid.*, as well as other letters exchanged by them on 7 and 8 September, *ibid.*

²⁵ Several Sikh members had, at one stage, also boycotted the Assembly, but in August had expressed their faith in the Congress and their intention to join the Assembly.

he thought that all parties should join the Assembly in an effort to make it work.²⁶ Maulana Azad, Nehru, and Rajendra Prasad, who had been elected the President of the Assembly at its second sitting, believed that it was sovereign because the Assembly's authority came from the people of India—although they recognized that the Cabinet Mission Plan placed certain limitations on its activities.

The Assembly gave its own answer to these questions, in its Rules, when it arrogated to itself the authority to control its own being: 'The Assembly shall not be dissolved except by a resolution assented to by at least two-thirds of the whole number of members of the Assembly'.²⁷ The Assembly was the people's. As Nehru said, the British could now dissolve the Assembly only by force. 'We have gone through the valley of the shadow, and we will go through it again for true independence', he said.²⁸

Nehru and other Assembly leaders continued to hope throughout December that the League would instruct its members to join the Assembly, and both inside and outside that body the Congress changed or deferred policies to this end. The hope was small and the efforts unrewarded. By the second session of the Assembly in late January 1947, it was all but certain that the League would never come in. Nevertheless, the Assembly restricted itself to the preliminary work of adopting an Objectives Resolution, of electing committees to begin drafting fundamental rights and a federal system, and of opening negotiations with the Princely States.

Partition was in the air at the end of April when the Assembly met for the third time.²⁹ For this reason it postponed debate on preliminary federal provisions. Throughout May, however, Assembly committees continued to work, as they had during the previous six

²⁶ To Louis Fischer in an interview held about 22 July 1946; see Tendulkar, op. cit., Vol. VII, pp. 189–90.

²⁷ *Constituent Assembly, Rules of Procedure and Standing Orders*, Rule 7, Chapter III. Nehru had suggested in July 1946 that the Assembly should be dissolved only by its own vote. See Minutes of Experts Committee meeting, 20 July 1946; *Prasad papers*, File 35-C/47.

²⁸ Nehru at the AICC meeting, 5 January 1947 in Delhi—A. C. Banerjee, *Constitutional Documents*, p. 284—and in the Assembly; *CAD I*, 6, 70.

²⁹ Nehru had told the All-India States Peoples' Conference at Gwalior on 19 April that 'The Punjab and Bengal will be partitioned.' See *The Hindustan Times*, 20 April 1947.

months, within the framework of the Cabinet Mission Plan.³⁰ The Constituent Assembly was still marking time.

June 3, 1947: the day of decision. Lord Mountbatten, Viceroy since March, announced that on 15 August England would recognize the existence of two independent states on the sub-continent, India and Pakistan.³¹ India and more than half of her Muslims under Jinnah were to go separate ways. The Indian Independence Act passed by the British Parliament came into effect on 15 August 1947, giving legally to the Constituent Assembly the status it had assumed since its inception.³² The Cabinet Mission Plan became outmoded, and the Constituent Assembly settled down to draft free India's constitution.³³

India In Microcosm

I. The Assembly, the Congress, and the Country

The Constituent Assembly was a one-party body in an essentially one-party country. The Assembly was the Congress and the Congress was India.³⁴ There was a third point that completed a tight triangle, the

³⁰ Patel told the Advisory Committee meeting of 21 April 1947 that the Assembly must proceed on the basis of the Cabinet Mission Plan and that the committee must make no decision that 'will prevent them (the Muslim League) from coming in'. Proceedings of the meeting in B. Shiva Rao, *Select Documents*, II.

³¹ The date of British withdrawal from India, so long indeterminate, had been set as June 1948 by Prime Minister Attlee in a speech in London on 20 February 1947. Lord Mountbatten convinced the British Government that British withdrawal should come even earlier.

³² According to the Indian Independence Act the Constituent Assembly became, as the Constituent Assembly (Legislative) the Dominion Parliament. Hence the Assembly sat as a constituent body and as the national legislature, although at different times. The Central Assembly, which had been elected at the same time as the provincial legislatures in 1945, ceased to function as of 15 August. The I.I. Act also provided that the 1935 Act would remain the basis of government in India until the new Constitution was completed. The 1935 Act, among other things, provided for a parliamentary system in India.

³³ The Assembly had met in July and, on the basis of the June 3 Plan, had already begun to frame the Constitution in the light of Partition and the moved-up date of independence.

³⁴ Of the Muslims remaining in India after Partition, some were Congress members or supporters. Those who were former Muslim Leaguers were divided among

government (meaning the apparatus of elected government both provincial and national), for the Congress was the government too. The Assembly, the Congress, and the government were, like the points of a triangle, separate entities, but, linked by over-lapping membership, they assumed a form infinitely meaningful for India.

One might assume, aware of the character of monolithic political systems in other countries, that a mass-party in India would be rigid and narrow in outlook and that its powerful leadership would silence dissent and confine policy and decision-making to the hands of the select few. In India the reverse was the case. The membership of the Congress in the Constituent Assembly and outside held social, economic, and political views ranging from the reactionary to the revolutionary, and it did not hesitate to voice them. The leaders of the Assembly, who played the same role in the Congress and in the Union Government, were national heroes and had almost unlimited power; yet decision-making in the Assembly was democratic. The Indian Constitution expresses the will of the many rather than the needs of the few.

The Congress's overwhelming majority in the Constituent Assembly resulted from the December 1945 provincial legislature elections and from Partition. Both the Congress and the League campaigned furiously in 1945, knowing that seats in a constituent assembly might be at stake and trying to establish the strongest possible claim to popularity for the negotiations that lay ahead. The election gave the League most of the Muslim seats in all the provinces and all the Muslim seats in some provinces. Of the total of 1,585 seats in the provincial assemblies, the Congress won 925 or 58 per cent., but it captured about 85 per cent. of the non-Muslim seats. Under the scheme of indirect election in the Cabinet Mission Plan,³⁵ the Constituent Assembly reflected the complexion of the provincial legislatures. Hence in the July 1946 elections to the Assembly,

themselves and had no political organization worthy of the name, for the League was understandably suspect in India, and, with Pakistan a reality, it had lost its motivating force. And it is fair to say that, except on the issue of Muslim rights, few Leaguers would have quarrelled with Congress policies. And after Partition, many sided with the Congress on this issue, also. Admittedly, however, many Indian Muslims still feared Hindu domination, and they now turned to Nehru, Patel, and the Congress leadership for the protection of their interests.

³⁵ See pp. 8-9 above, and Appendix I.

League members won all but seven of the seats reserved for Muslims. Congress candidates filled 203 of the 212 General places (representing every community except Sikhs and Muslims). Additionally, the Congress parties in the provincial legislatures elected four Muslims and one Sikh, giving the Congress 208 seats of the total of 296 allotted to the provinces under the May 16 Plan. The remaining sixteen places went to five small groups.³⁶ Thus the Congress had a built-in majority of 69 per cent, in the Assembly, and, after Partition, when the number of Muslim League representatives fell to twenty-eight, the Congress majority jumped to 82 per cent.³⁷

To the weight of numbers, the Congress added the prestige of its senior members. In the Assembly were six past or present Congress presidents, fourteen Provincial Congress Committee presidents, and, in 1949, fourteen out of eighteen members of the Congress Working Committee were also active in the Assembly. Among these and other notables were the four chiefs of the party: Jawaharlal Nehru, Vallabhbhai Patel, Maulana Azad, and Rajendra Prasad.

Although the outcome of the Assembly elections in July 1946 had made the Congress master of the Assembly, party policy ensured that Congress members there represented the country. This was a result of the unwritten and unquestioned belief that the Congress should be both socially and ideologically diverse and of a deliberate policy that representatives of various minority communities and viewpoints should be present in the Assembly. The electoral process itself could not have produced a representative body because it was based on the restricted franchise established by the Sixth Schedule of the 1935 Act, which excluded the mass of peasants, the majority of small shopkeepers and traders, and countless others from the rolls through tax, property, and educational qualifications. Only 28.5 per cent, of the adult population of the provinces could vote in the provincial assembly elections of early 1946.³⁸ But because the Congress and

³⁶ These groups were: Akali Sikhs and the Unionists—both Punjab parties, three seats each; the Communists and the Scheduled Castes Federation (Dr. Ambedkar), one each; and eight Independents.

³⁷ The representatives of the former Princely States, when finally seated, added some- what to the Congress majority.

³⁸ Reforms Office telegram 2189G from V. P. Menon to Gilchrist (Secretary of State's office); Reforms Office File 94/4/45-R, *Indian National Archives*

its candidates covered a broad ideological spectrum, those elected to the assemblies did represent the diverse viewpoints of voters and non-voters alike.

Congress leaders had long believed that the party should speak for the country. Nehru wrote in 1939:

The Congress has within its fold many groups, widely differing in their viewpoints and ideologies. This is natural and inevitable if the Congress is to be the mirror of the nation.³⁹

During the war years the base of the Congress became even broader as its character more and more resembled that of a national front: as a national movement the Congress's role was to blend hitherto disparate elements. If this were to continue to be the case in the post-war period, the party must bring forward capable men representing the country's new dynamism.

Congress election committees undertook this task in the autumn of 1945, the responsibility mainly falling to the Provincial Congresses, which selected candidates for the provincial legislatures with very little interference from the Central Elections Committee created by the All-India Congress Committee (AICC).⁴⁰

(INA). 'Adult population' meant persons aged 20 and over. The author's own calculations produced a figure of nearly 28 per cent. This figure is an average; proportions of the electorate to the adult population varied from 43.5 per cent, in Sind to 14.8 per cent, in Bihar; *ibid.* Economically and socially depressed portions of the population were virtually disfranchised by the terms of the 1935 Act. In Madras, for example, according to the author's calculations, approximately 10 per cent, of the Scheduled Caste adult population was entitled to vote, and in the United Provinces only 2.5 per cent, could vote—although the ratio for the U.P. generally was 25 per cent. The rolls for the January to March 1946 provincial assembly elections were based on those of 1941. They were brought up to date during the autumn of 1945. Persons not on the 1941 rolls who believed that in 1945 they qualified as voters could make applications to this effect. For further material, see Reforms Office File 101/45-R- Part I; *INA*.

³⁹ J. Nehru, *Unity of India*, p. 139.

⁴⁰ The Elections Committee of the AICC was concerned with the selection of candidates for the Central Assembly. Its members were Azad, Patel, Prasad, Asaf Ali, Pattabhi Sitaramayya, and Shankarrao Deo. Pandit Pant of the United Provinces, and a Congressman of national stature wrote to Prasad: The 'selections for the provincial seats have to be made essentially by the Provincial Boards';

One of the primary qualifications for a candidate, it is certain, was a record of active work in the Independence Movement, a qualification that produced a group of determined men of above average ability whose viewpoints, for two reasons, were varied: the Congress, as has been said, had always sought variety, and this qualification did not preclude it, and without central direction in the selection of candidates ideological uniformity was impossible.

When the time came for the election of Constituent Assembly members by the provincial legislatures, the Congress high command adopted much the same policy; i.e., let the provincial machinery select its own members. This preserved the diversity already present in the legislatures and added to it in an important way. As the Constituent Assembly would determine the distribution of powers between the Union Government and the provinces, and would consider the rights of the provinces in general, each Provincial Congress Committee made sure that its delegation, or as many individual members of it as possible, would represent the province's interests at the bargaining table—a precaution that broadened the debate and has helped to make the federal provisions of the Constitution durable.

As a matter of policy, however, the national leadership of the Congress made certain exceptions to this general rule, intervening in the affairs of the Provincial Congresses to assure that persons of exceptional ability found places in the Constituent Assembly and that the minority communities were justly represented. The Cabinet Mission Plan guaranteed seats in the Assembly only for Muslims and Sikhs; it contained no specific provisions for other minorities, and it was the initiative of the Congress high command that brought Parsis, Anglo-Indians, Indian Christians, members of the Scheduled Castes and Tribes, and even women, into the Assembly under the 'General' category. The Constituent Assembly elections were scheduled to take place between 11 and 22 July 1946. Early in the month the Congress Working Committee began to send directions to the various Provincial Congress Committees (PCC) concerning the selection of candidates. The principal communication was sent about 6 July and gave explicit recommendations. The United Provinces PCC, for

interference on our part ought to be 'very rare'. Letter dated 15 November 1945;
Prasad papers, File 14-P/45-6.

example, should list on its slate for the vote of the provincial assembly Nehru, Pandit Pant, Acharya Kripalani, Sir Tej Bahadur Sapru, and H. N. Kunzru.⁴¹ The Bihar PCC should, among others, nominate Mrs. Sarojini Naidu, Rajendra Prasad, and Jayaprakash Narayan. The names for Madras were Pattabhi Sitaramayya, Rajgopalachari, A. K. Ayyar, N. G. Ayyangar, K. Santhanam, and B. Shiva Rao.

The Working Committee's recommendation also stated that the Madras PCC should nominate two Christians; Bihar should nominate one, and so on. Bihar, Orissa, and Assam, should be certain to nominate at least one Adibasi (Backward Tribe member) each, and every province should nominate members of the Scheduled Castes in proportion to the membership of this minority in the particular provincial assembly. The names of several women, among them Mrs. Hansa Mehta and Rajkumari Amrit Kaur, were also recommended to the provinces that should return them.⁴² Because the Congress was in the majority in most of the provincial assemblies, it was certain that the legislatures would elect to the Constituent Assembly individuals named by the high command. Except for such names, however, the PCC's had a free hand, and they did not, in most cases, prepare a set slate for the legislature. In Bihar, for example, where Rajendra Prasad, president of the Provincial Congress Committee, headed the selection committee, several candidates named by the committee were not elected by the legislature. In the United Provinces, where Pandit Pant was prime minister, president of the PCC, and head of the selection committee, the PCC nominated 156 persons for election to the Assembly although the province had only 47 General seats.⁴³

Some of the names recommended by the Working Committee—such as Nehru, Pant, and Rajgopalachari—were those of Congress luminaries. More than a dozen, however, were not Congressmen, and the Working Committee saw to it that they were elected so that their talents in administration, law, and constitutional law and their

⁴¹ See *The Hindustan Times*, 7 July 1946. For a good account of the election activity of the month see this newspaper.

⁴² The suggestions regarding specific women candidates was also sent to the provincial prime ministers in an All India Congress Committee circular. See *ibid.* 4 July 1946. This circular also stated that the candidates selected by the PCC's and their election committees, should be 'suitable for the work to be done by the Constituent Assembly'.

⁴³ *Ibid.*

experience in national affairs would be available to the Assembly. Among them were A. K. Ayyar, H. N. Kunzru, N. G. Ayyangar, Dr. Ambedkar,⁴⁴ K. Santhanam, M. R. Jayakar, Sachchidananda Sinha, and K. M. Munshi—an estranged Congressman.⁴⁵ The well-known statesman and Liberal Party member, Sir Tej Bahadur Sapru, who was also named, as we have seen, declined because of illness, but his influence was nevertheless felt in the Assembly.⁴⁶

As a result of Congress policy, the minority communities were fully represented in the Constituent Assembly, usually by members of their own choosing. The Indian Christians had seven representatives in the Assembly, the Anglo-Indians three (chosen by the national leaders of the community), the Parsis three (chosen in the same manner), and so on. After Partition, when the composition of the Assembly, except for the representation of the Princely States, had become settled, the minorities had 88 of the 235 seats allotted to the provinces, or 37 per cent, of the provincial membership.⁴⁷ Additionally, as has been pointed

⁴⁴ Dr. Ambedkar was originally elected to the Assembly as the member for the Scheduled Castes Federation, but he lost his seat with the partition of Bengal. The Bombay Congress re-elected him at the request of the Congress high command. See letter from Prasad to B. G. Kher, prime minister of Bombay, 30 June 1947; *Prasad papers*. Later on in the life of the Assembly, the high command occasionally instructed a PCC to find a seat for a Cabinet minister who was not already a member of the Assembly and needed to be retained his place in the Cabinet.

⁴⁵ A version of what happened has been given by B. Shiva Rao, a member of the CA, a prominent journalist with *The Hindu* of Madras, and a man long involved with public affairs in India. Rao informed the author that in June 1946 he presented Gandhi with a list of fifteen prominent Indians, his own name among them, whom he thought should be elected to the Assembly. Gandhi agreed with the idea and with the names and sent it on to Nehru and Patel, who arranged that the persons be named as candidates.

⁴⁶ See a letter on this subject from M. R. Jayakar to Sapru dated 10 January 1947. Letter No. J199, *Sapru papers*. For further mention of Sapru, see Chapt. III, especially.

⁴⁷ Minority representation was as follows: Nepalis, one (elected from Bengal); Sikhs, five (one more than provided for in the Cabinet Mission Plan); Parsis, three; Christians, seven; Anglo-Indians, three; Backward Tribes, five; Muslims, 31 (three more than provided for in the Mission Plan); and Scheduled Castes, 33. For a summary of the composition of the Assembly during the first session in December 1946, given by Assembly President Prasad in response to the slurs on the Assembly made by Winston Churchill and Viscount Simon in Parliament in London, see *CAD II*, 1, 267. The composition of the Assembly during its entire

out, the ideological spectrum of the Assembly was broadened by the inclusion of non-Congress 'experts' as well as by the diverse nature of the Congress membership itself. In the words of K. Santhanam, 'There was hardly any shade of public opinion not represented in the Assembly.'⁴⁸ Although indirectly elected and therefore not responsible to the mass of Indians, the Constituent Assembly was a highly representative body.⁴⁹

This was true even if three political organizations had no official representation in the Constituent Assembly: the Communist Party, the Socialist Party, and the Hindu Mahasabha. The Communists in Bengal had elected an Assembly member, but, like Ambedkar and others, he had lost his seat with Partition; he was not re-elected and attended only the first three sessions. There were in the Assembly, however, Marxists and supporters of the Forward Bloc, a deviationist Communist group.

The Socialists had been the Congress Socialists from the time of their founding in the mid-thirties until they split from the Congress in early 1948 to become a separate party. In the summer of 1946 this group decided not to join the Assembly on the basis of the Cabinet Mission Plan because its senior members believed that the British were again leading India up the garden path. Their decision kept nearly a half dozen able individuals out of the Assembly. A year later, Jayaprakash Narayan, leader of the group, reconsidered his view of the validity and effectiveness of the Assembly and wrote to Nehru that 'in the changed circumstances' Socialist members could join the Assembly if invited.⁵⁰ He requested that he should not be included, because he was 'too occupied', and suggested that those who might be invited include Narendra Dev, Mrs. Asaf Ali, Ramanohar Lohia, Purushottam Trikamdas, Kamaladevi, Rao Patwardhan, and Ashoke Mehta. Nehru replied to this overture

existence remained much as it was in August 1947, because bye-elections to the Assembly were held on the basis of separate electorates in order to preserve the original balance.

⁴⁸ In an interview with the author. This view was also held by many other persons interviewed.

⁴⁹ One need hardly say that the Assembly did not represent the lack of sophistication in the masses, who had a growing social consciousness, but little political awareness.

⁵⁰ Letter from J. P. Narayan to Nehru, 3 July 1947; *Prasad papers*, Special File.

that 'we shall welcome the persons you have suggested and we shall try to get them in', but he explained that it was difficult to create vacancies because the election of members was largely a matter for the provinces and there was strong competition for seats.⁵¹ The affair ultimately came to naught. The Socialists were divided among themselves about the desirability of joining the Assembly and it proved too difficult for the Congress to create the necessary seats.⁵² By May 1948 the non-cooperationist wing of the, by then, Socialist Party had won the day. Not only did the party refuse to consider sending delegates to the Assembly, but a resolution of the National Executive of the party called for the dissolution of the Assembly and its re-election by adult suffrage.⁵³ The absence of a formal Socialist group meant little, however, for most members of the Assembly thought of themselves as Socialists, and with few exceptions the members believed that the best and perhaps only way to the social and economic goals that India sought was by the road of government initiative and control of industry and commerce.

Equally, the absence of representatives bearing the label of the Hindu Mahasabha, of the Rashtriya Swayamsevak Sangh (RSS), or of other Hindu communal groups, meant little. Their views on the institutional aspects of the constitution differed little from the Congress; their extreme communal views would not have swayed the Assembly. Besides, the Congress had its own Hindu conservatives—like Purushottam Das Tandon. And, indeed, members of the Hindu Mahasabha were present in the Assembly under other sponsorship. In all, three former Mahasabha presidents were members. Two of them became so on Congress tickets: M. R. Jayakar, as we have seen, and Shyama Prasad Mookerjee, actually a vice-president of the Mahasabha when he entered the Assembly after Nehru made him a member of the Cabinet.⁵⁴

⁵¹ Nehru to Narayan, 5 July 1947; *ibid.*

⁵² Ashoke Mehta in an interview with the author.

⁵³ See the Socialist Party pamphlet, *Resolutions of the National Executive at Belgaum, 24–26 May 1948*, p. 5. Set also Narayan letter to Prasad, dated 30 May 1948, expressing the same sentiments; *Prasad papers*, File.13-C/48.

⁵⁴ There is an extensive correspondence in the *Prasad papers* between Prasad and B. C. Roy, prime minister of Bengal, concerning Mookerjee's election.

The third Mahasabha member in the CA was N. B. Khare, one-time Congressman who entered the Assembly as member for the former Princely State

At the apex of the triangle of which the Congress and the Constituent Assembly were the base, stood the government. With the presence in the Assembly of members of the Union and the provincial governments, still working as a legacy of the British period, the system of interlocking memberships was complete. In the July 1946 elections the provincial legislatures had chosen their representatives to the Assembly partly from among their own numbers; the Assembly rules, therefore, sanctioned double membership, and in the Assembly in 1948 there were 106 members of provincial legislatures. Among them were six of the nine provincial prime ministers and nearly a dozen other provincial ministers, who were members of local assemblies by virtue of the parliamentary government of the 1935 Act.⁵⁵

The Constituent Assembly was in its second aspect in fact a part of the government, for, as we have seen, the Constituent Assembly (Legislative) was the Indian Parliament. Moreover, nearly fifty of the more than 300 Assembly members who played this dual role participated even more closely in the processes of government through their assignment to the parliamentary committees charged with overseeing the affairs of Union Government ministries. The ministers of the Union Government had to be members of the Constituent Assembly (Legislative) and thus also participated as constitution-makers. Some members of the Union Government, like Nehru, Patel, and Azad, had been elected to the Assembly before they became ministers; others, like S. P. Mookerjee, had to be seated as a result of their appointment to the Cabinet.⁵⁶ There were in the Assembly fourteen Union Government ministers, three ministers of state, and one deputy

of Alwar. Because of his suspected communalism, he lost his seat in 1948 after Gandhi's assassination.

⁵⁵ The Executive Committee of the Congress Party in Parliament in 1948 moved to bar provincial prime ministers from the CA (Legislative) and to force the resignation of provincial ministers from the CA. See Exec. Comm. Res. of February 1948, sent to Prasad by Exec. Comm. Secretary Mohanlal Saksena; *Prasad papers*, Special File. This decision was not put in force, however, and a year later provincial ministers continued to be active in the Assembly.

⁵⁶ Ministers of the Government of India were allowed to attend and participate in Constituent Assembly meetings, but not vote in them, while awaiting election to the Assembly. See Minutes of Steering Committee meeting, 23 January 1948; CA File, *Law Ministry Archives*.

minister. Only two persons did not play this dual role: Rajendra Prasad, as President of the Constituent Assembly did not take part in the proceedings of the Constituent Assembly (Legislative) and the reverse was true of G. V. Mavalankar, Speaker of the latter.

Although the Assembly had sprung from the rank and file of the Congress, there was little immediate cause and effect relationship between the national party machinery and Congressmen in the Assembly. Through their participation in government, Constituent Assembly members acquired a sense of professional corporate-ness that separated them from the Congress Party as a whole. The Congress Working Committee took part in planning the early sessions of the Assembly, and later certain problems of especially grave import—such as the language and linguistic provinces issues—were taken up by the Working Committee. In general, however, Assembly leaders handled Assembly problems. The exclusion of the lower ranks of the party from participation in Constituent Assembly affairs is very evident. The many bulging files of correspondence between the central Congress organization and the Provincial and District Congress Committees, which the author inspected in the Prasad papers, contained not one letter referring to constitutional matters. At the Jaipur Session of the Congress, held in December 1948, after the Draft Constitution had been before the country for nearly a year, no constitutional issue, other than linguistic provinces, was even alluded to.

There were two major reasons for this. The upper and lower echelons of administration of the Congress were both too preoccupied with their own affairs, primarily with rebuilding the party organization preparatory to general elections, to undertake other responsibilities. Secondly, those Congress leaders who had assumed control of the Union Government had rejected party interference in governmental affairs; the government wing of the Congress had early proclaimed its ascendancy within the party—a condition that would continue until the death of Nehru. The *cause celebre* of this shift in the centre of authority was the resignation of Acharya Kripalani from the presidency of the Congress.⁵⁷ The government wing of the party continued

⁵⁷ The problem of the role of the Working Committee had become embarrassing by the summer of 1947. Nehru prepared a Secret Note for Kripalani and four others—Gandhi, Prasad, Patel, and C. Rajgopalachari—in which he said that the government's need for quick action and sometimes for secrecy precluded

to respond to the currents of opinion in the mass of the party, occasionally to the ideas of the party theoreticians, and to the counsel of the Working Committee, but it was essentially the government wing of the Congress, not the mass party, that wrote the Constitution.

That the same men were responsible for drafting the Constitution and for governing the country, gave the Assembly an immediate awareness of the issues involved in constitution-making. The members' experience with the major problems and day-to-day affairs of government profoundly affected the content of the Constitution and was one of the most unusual aspects of the Assembly. Constitutions in the past had often enough been drafted by representatives of mutually independent territories who desired to create a common, general government; Switzerland, Australia, and the United States were examples. Independent peoples, such as the Russians in 1936, the French in 1873, or the Germans at Weimar, had framed a constitution while sovereignty lay in their own hands. Many colonial territories, such as Nigeria, would produce constitutions while the colonial power controlled the local government. But India was a unique case. India was an emergent, formerly colonial territory, where a sovereign people framed their Constitution in a Constituent Assembly while at the same time working a federal government that pre-existed independence—the federal system of the 1935 Act. Burma and Pakistan, appearances to the contrary, are not the same. In Burma the Constitution was rushed through a Constituent Assembly by a small group with apparently little thought given to its provisions. Nor could Burma, under the 1935 Act, be called a

consultation with the W.C. as a customary procedure. It was a question, Nehru wrote, of the 'freedom of the Government to shape policies and act up to them within the larger ambit of the general policy laid down in the Congress Resolutions . . . It is hardly possible for the Working Committee to consider all of them (government problems, which he had listed) in any detail or give directions in regard to all of them.' Note dated 15 July 1947; *Prasad papers*, File 16-P/45-6-7. Kripalani, on the other hand, wanted the W.C. to have equal or superior status to the Cabinet. He complained that the Cabinet leaders 'do not feel that the Government at the Centre is a Congress Government. After August 15 (1947) they seemed to make a distinction between Congress and the National Government.' From a letter to Prasad, dated 21 December 1947, marked Personal and Confidential; *ibid*. Because this distinction continued to exist, Kripalani resigned as Congress president.

federation.⁵⁸ Pakistan up to 1960 had been notably unsuccessful with its Constituent Assemblies and its Constitutions. And in Pakistan the Constituent Assembly found it impossible to govern the country and at the same time draft a Constitution.⁵⁹

2. Leadership and Decision-making

The form and character of the Constituent Assembly leadership was a product of the inter-relation of government, particularly of the Union Government; with the Assembly, and of both, with the Congress Party. Of supreme significance was that the four leaders of the Assembly were the four heroes of the independence movement—Nehru, Patel, Prasad, and Azad—and that they continued to hold sway in the Congress during the framing period as they had in the days before independence. All were members of the party's highest council, the Working Committee, and Nehru and Patel remained its most influential members. Prasad was Congress president in 1948. At the same time Nehru and Patel held the Prime and Deputy Prime Ministerships in the Union Government.⁶⁰ Azad was a minister, and Prasad too, until he resigned his portfolio because it conflicted with his duties as President of the Assembly.⁶¹ It was by virtue of their enormous prestige and their power, both in the Congress and in the Government, that these four men controlled the affairs of the Assembly, a control that they effected through their grip on the Congress Assembly Party and the Assembly's committee system.

The Constituent Assembly had eight major committees⁶²—Rules, Steering, Advisory, Drafting, Union Subjects, Union Constitution,

⁵⁸ See Maung Maung, *Burma's Constitution*.

⁵⁹ See Keith Callard, *Pakistan*, especially p. 83. Nor has the constitutional experience of Nigeria, Ghana, or Malaya been like that of India, for the constitutions of all three were drafted in conjunction with officials of the British Colonial Office. It must also be remembered that Ghana and Tanganyika, after they became independent, abandoned the constitutions that had been given them by the British.

⁶⁰ Patel was also the Home Minister.

⁶¹ Prasad had been Minister of Food and Agriculture, and Azad was the Minister of Education.

⁶² The Assembly had a total of more than fifteen committees with a membership greater than eighty individuals. Seven of them, such as the House and Staff Committee, had minor functions. For the members of the more important Committees, see Appendix II.

Provincial Constitution, and States—with a total membership of approximately three dozen.⁶³ Either Nehru, Patel, or Prasad chaired each of these committees, and in many cases the other two or Azad were also present. With seven other Assembly members, these leaders constituted an inner circle in the Assembly's committees and demonstrated again the interlocking of the three organizations, for with one exception all were also members either of the Congress or of the Union Government. Those in this inner circle are listed opposite along with the number of committees on which they served, and their position in the Congress and in government.

If we add nine more names to this list we will have included a few lesser committee members, all the members of the Drafting Committee, and some secondary Congress personalities.⁶⁴

Name	No. of Commit- tees	Congress Position	Government Position
Prasad	2	Working Comm.	Pres. of C.A.
Azad	4	Working Comm.	Minister
Patel	4	Working Comm.	Deputy Prime Minister
Nehru	3	Working Comm.	Prime Minister
Pant	3	Working Comm.	Prime Minister, U.P.
Sitaramayya	4	Working Comm.	—
Ayyar	5	—	—
Ayyangar, N. G	5	—	Minister
Munshi	6	Member	—
Ambedkar	3	—	Minister
Sinha, Satyanarayan	2	Member	Minister and Chief Whip ⁶⁵

⁶³ The Advisory Committee had sixty-four members, many of whom served only on this one committee and whose importance was minimal. The committee had two subcommittees, Fundamental Rights and Minorities, whose very important work is described in Chapters 3, 4, and 6.

⁶⁴ The names: M. A. Ayyangar, Jairamdas Daulatram, Shankara Deo, Mrs. Durgabai, Acharya Kripalani, T. T. Krishnamachari, H. C. Mookerjee, N. M. Rau, and Mohammed Saadulla. For more information concerning these persons, see Appendix III.

⁶⁵ Again to emphasize the overlapping memberships of the organizations at the points of the triangle: fourteen of the eighteen Working Committee members

These twenty individuals comprised the most influential members of the Constituent Assembly. They brought diverse backgrounds, personalities, and qualifications to constitution-making. All were university graduates; four had university training, or its equivalent, outside of India—Nehru, Patel, Ambedkar, and Azad. Twelve were lawyers or had taken law degrees; one was a medical doctor; two had been teachers; three had been high-ranking officials in civil government; one was a businessman. Two were Muslims, one Christian, and the remainder Hindus. Of the Hindus, Ambedkar was a Harijan, and there were nine Brahmins; the other seven were not of high caste. Only half the group had been active in the Independence Movement or had strong ties with the Congress. Of these, nine had for some years been of Working Committee rank. Six had been, or were during the period of the Assembly, Congress presidents. Five of the group of twenty had never been members of the Congress; two, Ambedkar, particularly, and Saadulla, had been its opponents—Saadulla as a member of the Muslim League.

Ambedkar's skirmishes with the Congress and with Gandhi—primarily over Harijan causes—dated back more than twenty years. Nehru had, however, personally invited him to become a member of the Cabinet.⁶⁶ Ambedkar, for his part, had joined the Government because he did not believe in opposition for opposition's sake and because '(1) The offer was without any conditions, and (2) one could serve the interests of the Scheduled Castes better from within the government, than from without'.⁶⁷ Through his cooperation, Ambedkar thought the Harijans had got 'some safeguards in the Draft Constitution which we might not otherwise have got'.⁶⁸ The Harijans need not fear that the Assembly would make laws or frame the Constitution in a manner prejudicial to their

Sat in the Assembly, as well as all Cabinet Ministers. Five members of the W.C. were also Cabinet Ministers.

⁶⁶ Nehru in a letter to Ambedkar, dated 29 April 1948; *Prasad papers*, File 14-C/48. Letter marked Secret and Personal; see footnote 67.

⁶⁷ Ambedkar in a letter to Nehru, 28 April 1948; *ibid*. Also marked Secret and Personal. This correspondence was occasioned by a speech that Ambedkar made to the Scheduled Castes Federation in Lucknow on 25 April to which Nehru took exception. Nehru first wrote to Ambedkar on 27 April, and in his reply Ambedkar made the statements quoted here.

⁶⁸ *Ibid.*

interests, Ambedkar believed: 'what they had to fear about was bad administration . . . (which) was due to the absence of men belonging to the Scheduled Castes in the administration'. And, Ambedkar charged, 'the administration was unsympathetic to the Scheduled Castes because it was manned wholly by Caste Hindu officers who were partial to the Caste Hindus' and who 'practiced tyranny and oppression' on the Harijans.⁶⁹ In Ambedkar's view, the best way to remedy this situation was for Harijans to become members of the various governments in India and thereby to ensure that Harijans also became members of the civil services.

One more individual, B. N. Rau, must be placed among those important in the framing of the Constitution. As Constitutional Adviser, Rau's advice was heard in the Assembly's inner councils, although he was not an Assembly member. A legalist, an eminent advocate and judge, a student of constitutional history, and an able draftsman, one of the more Europeanized intellectuals in the Assembly, Rau looked to Euro-American constitutional precedent perhaps even more than other Assembly members for the devices to be used in India's Constitution. Rau had also gone to London in 1933 as an emissary of the Assam Government to present evidence before the Joint Select Committee. His role in the drafting of the 1935 Act was, however, marginal. But he did have an intimate connection with the implementation of the Act as a member of the Reforms Office of the Government of India during the years 1935–36.⁷⁰

Two men of this inner group and several other Assembly members had taken a reasonably active part in the creation of the 1935 Act from the Round Table Conferences through the activities of the Joint Select Committee. The most notable, both in London and in the Assembly, was Ambedkar. N. M. Rau, V. T. Krishnamachari, K. M. Panikkar, and K. T. Shah had also been present in London and were subsequently active in Assembly affairs. All of these twenty-one individuals were well educated. Azad, Ambedkar, and to a lesser

⁶⁹ Ibid.

⁷⁰ For more information on Rau, see Appendix III. Rau's and Ambedkar's assistant, the Drafting Officer of the Assembly, was an energetic Bengali, S. N. Mukerjee, to whom Ambedkar gave much of the credit for the careful wording of the Constitution.

extent Munshi and Prasad, could be called learned. Nehru brought to the Assembly the mind of a humanist and wide reading in political theory. He was the Assembly's idealist; he and Azad possessed its most speculative minds. Nehru frequently approached problems from a theoretical starting point, but the theories had to meet the test of facts; he was rarely, if ever, doctrinaire.⁷¹ Ayyar had unusual ability as a lawyer and N. G. Ayyangar as an administrator. Patel was an iron-fisted statesman, as his successful negotiations with the Princely States testify, but he could also be, as his dealings with minorities show, conciliatory and considerate. Followed by Pant and Munshi, a man who preferred the middle path, Patel was the most pragmatic among the leaders.

Yet all these men approached the drafting of the Constitution in a practical rather than a theoretical way. They knew that the Constitution must help to bring about the reform, the renascence of Indian society, that it must embody the national goals and subserve their achievement, but they were politicians in the sense that they practiced the art of the possible. They were dedicated to the cause, but they did not allow their dedication to blind them to reality; like the American founding fathers, they had put their minds to use in the national cause.

Experience of national issues, whether in the Congress or in government, and an 'Indian' rather than a parochial—a Madrassi or a Bihari—consciousness, also characterized this select group. Its members were not provincial politicians suddenly summoned to New Delhi; many had been national leaders in pre-independence days and now had responsibilities in the new government. To a Constituent Assembly representing an extremely diverse country they brought a spirit of unity, a national awareness. They also had, and this applies particularly to the four leaders, Nehru, Patel, Prasad, and Azad, the practical experience, the personal popularity, the intellectual ability, and the political power to impress upon the Assembly their concept of the type of constitution best able to bring about the new India—a task made much easier by the Assembly's susceptibility to their ideas.

⁷¹ This attitude of testing theories of government by their working became increasingly a part of Nehru's behaviour, as one can detect in his speeches and writings. See also Chapter II.

Nehru, Patel, Prasad, and Azad, in fact, constituted an oligarchy within the Assembly.⁷² Their honour was unquestioned, their wisdom hardly less so. In their god-like status they may have been feared; certainly they were loved. An Assembly member was not greatly exaggerating the esteem in which his colleagues held these men when he said that the government rested 'in the hands of those who (were) utterly incapable of doing any wrong to the people'.⁷³ The oligarchy's influence was nearly irresistible, yet the Assembly decided issues democratically after genuine debate, for it was made up of strong-minded men and the leaders themselves were peculiarly responsive.

The Congress Assembly Party was the unofficial, private forum that debated every provision of the Constitution, and in most cases decided its fate before it reached the floor of the House. Everyone elected to the Assembly on the Congress ticket could attend the meetings whether or not he was a member of the party or even close to it. This included the 'experts' brought into the Assembly by the Congress like A. K. Ayyar, N. G. Ayyangar, and Dr. Ambedkar as well as cabinet ministers like John Matthai, who had never been a Congressman, and S. P. Mookerjee, who was still a member of the Hindu Mahasabha. Assembly members representing the Princely States could also participate in Assembly Party meetings if they were members of the All-India States Peoples Conference (the Congress's organization in the States) or if they had been elected, not nominated, from a State to the Assembly. All in all, therefore, no more than 80 of the Assembly's membership of over 300 were not eligible to attend the party meeting.

The Congress Assembly Party functioned differently from the Congress Parliamentary Party, which was the party group in the Constituent Assembly (Legislative), although the two parties shared

⁷² They may also have been an oligarchy in relation to all India and to its governmental machinery, but this complicated subject can only be touched upon here when it applies directly to the affairs of the Assembly. Also, the decision-making process in the Assembly differed from that in the Cabinet, for example, and it would be dangerous to extend the description of decision-making contained in the following pages beyond the walls of the Assembly. This danger increases with the passage of time, with the deaths of Patel and Azad, and with other changes.

⁷³ CAD VII, 18, 760–61; Brajeshwar Prasad.

the same membership.⁷⁴ The Parliamentary Party operated in the manner one would expect of such a group.⁷⁵ It had an Executive Committee consisting of the party leaders, and its meetings were customarily presided over by the Prime Minister or the Deputy Prime Minister. The Assembly Party, on the other hand, had no Executive Committee, its meetings were presided over by the president of the Congress Party, and in its meetings the leaders of the Government had no *official* status beyond their ordinary membership. The purpose of the Assembly Party was not to assure the passage of a political party's legislative programme, but to serve as the confidential forum and decision-making body. Here the sense of national unity and purpose could express itself in a constitution that would meet the needs and desires of the entire nation.

The shadow of the Oligarchy covered the Assembly Party, yet did not dominate it. The discussions held most afternoons in Constitution House on Curzon Road when the Assembly was in session were full and frank, at times heated and acrimonious. On issues such as the public services, due process in relation to property and personal liberty, the federal provisions and language, the diversity of views within the Congress itself was apparent. The non-Congressmen like Ayyar and N. G. Ayyangar spoke their minds freely; Ambedkar's advice—on legal matters and drafting rather than on policy—was frequently sought. At first the long-time Congressmen showed some impatience with these outsiders, but 'if you were tough and kept at it,' said Pandit Kunzru, 'they got used to it; they became tamer'.⁷⁶ The matter under discussion might be a clause from the Draft Constitution, an amendment to it, or the report of an Assembly committee. The Cabinet might

⁷⁴ There was one exception: the representatives of the Princely States had 'the right' to participate in C.A. (Legislative) proceedings when business was being discussed 'in respect of which the States had acceded to the Dominion', and they were not 'banned' from participating in other business; they rarely did so, however. See *Report of the Committee on the Functions of the Constituent Assembly*, Para 6, C.A., *Reports of Committees, Second Series*, p. 43. Hence States representatives rarely took part in Parliamentary Party meetings.

⁷⁵ For the best discussion of the functioning of the Congress Parliamentary Party and its antecedents in the Central Legislative Assembly before independence, see W. H. Morris-Jones, *Parliament in India*.

⁷⁶ In an interview with the author.

have originated the provision or commented upon it. Various other committees would have made recommendations. The technical and policy advice of ministries, both solicited and unsolicited, would be available, as well as that of particularly qualified Assembly members—such as the provincial prime ministers and finance ministers on federal questions. Outside organizations like the Calcutta Bar Association might have made recommendations. And, of course, the views of the Oligarchy would be clear, either their unanimity or their disparate views. But no matter how vital the import or delicate the wording of the provision in question, the Assembly Party had to consider it and make the decision. 'Every amendment and every provision suggested . . . was put before the Congress Party and then it was finally debated upon and passed with or without amendment by the Assembly, which alone had the final say in the matter.'⁷⁷ The Assembly Party 'alone' could 'give the imprimatur of adoption in this House'.⁷⁸

The Oligarchy was responsive to the multifold currents of opinion in the Assembly, to the intra-party 'Opposition', for a variety of reasons. The members had not only spent much of their lives working for a free, democratic India; they were practising democrats.⁷⁹ Patel, for example, had the reputation for being a stern if not an unbending man. His handling of the minorities problem in the Advisory Committee, however, was remarkable for its patient consideration of minority fears. Moreover, the Oligarchy itself could not always present a united front, because of its own internal frictions. On issues where Nehru and Patel, for example, were divided—as on compensation for expropriated property—each

⁷⁷ S. N. Mukerjee in a letter to V. P. Menon, dated 19 December 1949; *Law Ministry Archives*.

⁷⁸ CAD XI, 7, 733, Mohd. Saadulla. Saadulla was a member of the Drafting Committee. A member of the Muslim League, he had entered the CA after Partition. Contrary to non-Congressmen or foes of the Congress who had entered the Assembly on the Congress ticket, he was not a member of the Assembly Party and was bitter about its control of the Assembly. See also Brecher *Nehru: A Political Biography*, p. 423 for Ambedkar's views of Assembly Party control of the Assembly.

⁷⁹ Assembly member Mahavir Tyagi disagreed with this. The attitude of the Government, he believed, approached arrogance: 'Any opposition here even in this House is not seen, is not considered or treated with that much of generosity (sic) as in foreign countries opposition parties are treated.' CAD IX, 5, 195.

sought support in the ranks of the Assembly Party, and arbitrary decisions were impossible.⁸⁰

The responsiveness of the Oligarchy can be seen either as cold-blooded practicality or as showing high moral sense. It believed that a Constitution adopted with the maximum of agreement would work better and provide a more stable foundation for the new India; approval should therefore be as nearly unanimous as possible.⁸¹ Nehru enjoined the Assembly to try to reach unanimous decisions. Prasad on occasion postponed debate on the Assembly floor so that the solution to a problem could be worked out privately; a vote, he said once, might well result in 'something not wanted by anybody'.⁸² Pandit Pant moved that a particular article be passed over because the Assembly 'had not been able to reach unanimity'.⁸³

The Oligarchy certainly used its almost irresistible influence to promote consensus. By replying to questions about, and opposition to, various provisions with full explanations, and by relying on persuasion rather than force, the members of the Oligarchy reinforced the effect of their power and prestige, usually winning over their opponents, even high-ranking ones. There were times, however, when the shoe was on the other foot, when, in search of a workable, lasting agreement, the Oligarchy retreated from its position to meet the mood of the Assembly.

When the Oligarchy faced sustained opposition, or its members had split and sought support against each other, the issue usually came to a vote in the party meeting. If the vote gave one side a *large* majority, this was taken to be a party decision, and in the interests of party discipline a Whip was issued.⁸⁴ If the vote was close

⁸⁰ On certain issues, like the formation of linguistic provinces, the Oligarchy was agreed (in this case they were against it), but the Working Committee and the Congress were deeply divided, and no group could impose its will. Hence the decision hung fire until 1953, and was not really faced until 1956.

⁸¹ For a further discussion of consensus, especially in reference to Indian approaches to constitution-making, see the concluding chapter.

⁸² CAD VIII, 20, 821.

⁸³ CAD VII, 7, 431.

⁸⁴ Assembly Party Whips, backed as they almost always were by the will of much more than a simple majority, were a powerful instrument, silencing even such notables as Pandit Pant. See CAD IV, 8, 809ff for Pant, who was bound by the decision of the party because 'members should be guided by the collective wisdom of the many'. The Whip did not quiet every member, however; S. L.

and demonstrated that nothing had been settled, that each faction remained adamant, then there was no Whip; either negotiations continued or the question was settled in the Assembly by a free vote. A Whip was rarely issued on matters of great import or matters involving conscience—such as the language or ‘due process’ controversies; usually the question remained within the Assembly Party meeting until compromise produced agreement by consensus. The Whip was frequently used on smaller matters, almost as a matter of routine, to point out which of several dozen suggested provisions had received the party meeting’s blessing.⁸⁵

Democratic decision-making by the members of the Congress Assembly Party and the Oligarchy’s refusal to arrogate to itself all wisdom and authority helped to make possible a generally acceptable constitution. Had the Constitution come from the Constituent Assembly sanctioned by a meagre majority, opposed by many, it would have been attacked as unworthy of general support and unrepresentative of India’s best interests. But the Assembly adopted the Constitution, despite some of the members’ misgivings, by acclamation. It could be presented to the nation as the realization of Nehru’s original aim: it had been drafted with the welfare of four hundred million Indians in mind.⁸⁶

Saksena frequently spoke in defiance of it and was, apparently, never punished for the delinquency. The ‘independents’ on the Congress ticket, like Kunzru, also did not always heed the Whip.

⁸⁵ This account of the decision-making process in the Assembly is based on documentary evidence and on interviews with more than a dozen former members of the Assembly and of the Secretariat staff. For further discussion of decision-making in the Assembly, see Chapter 13.

⁸⁶ CAD I, 5, 60.