CHAPTER VII
FRAMING OF THE CONSTITUTION II:

THE STATE STRUCTURE:

Consequence of Partition:

"The essence of Pakistan is," Ambedkar wrote in 1940, "the opposition to the establishment of one Central Government having supremacy over the whole of India. This gives rise to the second important point. That point is that the issue of Pakistan shall have to be decided upon before the plans for a new constitution are drawn and its foundations are laid. If there is to be one Central Government for India, the design of the Constitutional structure would be different from what it would be if there is to be one Central Government for Hindusthan and another for Pakistan (1).

Until June 3, 1947, however, partition of India was by no means a 'fait accompli'. The States' participation in the new India in some way was also visualised and considered as a matter of time. The future political plan for India was built around the scheme of a rather

(1) Pakistan or partition of India, "P. vii."
loose federation. At the Meerut session of the Congress in November, 1946, its President, Kripalani, said "We shall soon be convening the Constituent Assembly for free India. It will be a democratic constitution and will be federal in character. We may not, however, forget that, in the administrative as in the economic field, more centralisation than is absolutely necessary is inimical to liberty. It is good, therefore, that the Provinces in free India shall have the maximum autonomy consistent with external and internal security"(2).}

The Committee on Union Subjects (elected on 25.1.1947) submitted its report to the Constituent Assembly on April 28, 1947. Elaborate provisions of Defence, Foreign Affairs and communication were laid down as Union subjects permissible under the Cabinet Mission's plan. The sources of revenue were also mentioned therein. The Committee further mentioned a fairly big list of "implied or inherent powers" of the Union. In addition to those subjects which in the view of the Committee came under the scope of the Union government the Committee hoped that a few subjects (e.g. Insurance,

Company Law, Banking and Planning) would also be included in the Union list by agreement.

"Such an arrangement will ensure uniformity throughout the territory of the Union in matters bearing on trade and commerce as has in fact been recognised in many federal constitutions. We have included planning in the above list for the reason that although authority may rest in respect of different subjects with the units, it is obviously in their interests to have a co-ordinating machinery to assist them"(3).

During the submission of the Report, however, N. Gopalswami Ayyanagar requested the House not to take it as final mainly in view of the fact that the Muslim League had not yet participated in the constitution-making and its future actions were not known. There was thus no motion for the consideration of the Report. His request was unanimously granted.

For nobody was definite about how the political geography of India would take shape. The Assembly's President, Rajendra Prasad had, at the beginning of the third session on the same day, given expression to this sense of uncertainty:

Whatever the nature of the Constitution that may have to be drafted, whether for one undivided India or only for parts of it, we shall see to it that it gives satisfaction to all coming under its jurisdiction. It may be that the Union may not comprise all the provinces. If that unfortunately comes to pass we shall have to be content with a Constitution for a part of it. This may mean not only the division of India but a division of some provinces. Let us not be daunted by the immensity of the task or diverted from our purpose by developments which may take place but go ahead with faith in ourselves and the country which has sent us there (4).

Partition of India according to the plan of June 3, 1947 changed the whole perspective of the constitutional problem of India. The 'communal settlement' as contained in the Cabinet Mission's plan became redundant. The demand for 'safeguards' and 'autonomy' for the Muslims in India no longer carried the old sense. The problem of the Sikhs or other less important minorities had never attained the dimension of the Muslim problem inasmuch as the former had never put forward a demand for separate states and had demanded only 'safeguards.'

The compulsion of what had always been regarded as the core of the Indian Problem being absent, a trend towards centralisation became irresistible. Yet the new Indian situation did not at all rule out the necessity of a federation. The composite character of the Indian social organisation was too much real to be ignored. Besides, the provincial aspirations aroused by the previous reforms were heading towards their logical culmination. A federal structure of state with considerable autonomy for the Provinces and regions was, therefore, an historical imperative though the union was certainly going to be much stronger than anticipated by the Cabinet Mission.

A federal structure was also necessitated by the problem of the Indian States. It took a pretty long time to determine the relation between Princely India and the Indian mainland after the transfer of power. Yet it was apparent from the very beginning that at least for some time the States would maintain their identity and even authority within the Union of India.

The Committees

The two most important Committees responsible
for the formulation of the State structure of India were the
Union Constitution Committee and the Union Powers Committee,
both chaired by Nehru and overlappingly manned by most
of the stalwarts. Almost at the beginning of its work,
on June 6, 1947, the Union Constitution Committee decided
that (a) the Constitution would be federal with a strong
Centre, (b) there would be three exhaustive lists of power-
the residuary powers lying with the Union, (c) the States
would be on par with the Provinces in respect of the Federal
Legislative list-subject to the consideration of any special
matter which might be raised when the lists would be fully
prepared and (d) the executive authority of the federation
would be coextensive with the legislative authority (5).

The Report of the Committee on the Model Union
Constitution was placed by Jawaharlal Nehru on July 21, 1947.
He pointed out that the Report was in full conformity with
the Objectives Resolution (6). Nehru said that the
distribution of legislative powers between the Federation
and the Units would be decided upon the recommendation
of the Union Powers Committee. Yet the Union Constitution

(5) Union Constitution Committee's File.
Committee recommended that there should be three exhaustive lists of subjects—one for the Centre, one for the Units and one Concurrent, with the residuary Powers for the Centre. The report also laid down the principles of administrative and financial relations between the Centre and the Units. All Chief Commissioners' Provinces would remain Directly Administered Areas as before. The Report also said that whereas the Federal Government could entrust the Governments of the Units with functions in relation to any federal matter, it could direct them with respect to that matter.

As territories of the Union were mentioned (1) the Governors' Provinces, (11) the Chief Commissioners' Provinces, (111) the Indian States that would accede, (of the last there would be two types of administrative arrangement—(1) Single States and (11) Groups of States. In a supplementary report the Committee recommended that parliament should have power to alter the name of a unit.

"Some parts of the country are seceding to form a separate State and the plan put forward in the statement of the 16th May on the basis of which the Committee was
was working is, in many essentials, no longer
operative. In particular we are not now bound by the limitations
on the scope of Union Powers....."

The Committee therefore, concluded, "Now that partition is a settled fact, we are unanimously of the view that it would be injurious to the interests of the country to provide for a weak central authority which would be incapable of ensuring peace, of co-ordinating vital matters of common concern and speaking effectively for the whole country in the international sphere. At the same time we are quite clear in our minds that there are many matters in which authority must be solely with the Units and that to frame a Constitution on the basis of a unitary state would be a retrograde step, both politically and administratively. We have accordingly come to the conclusion—conclusion which was also reached by the Union Constitution Committee—that the soundest framework for our Constitution is a federation with a strong centre. In the matter of distributing powers between the Centre and the Units we think that the most satisfactory arrangement is to draw up three exhaustive lists on the lines followed in the Government of India Act of 1935, viz., the federal, the provincial and the concurrent"(7).

(7) Constituent Assembly Debates, vol. v, p. 60.
Acceptance of the second report, thus, would amount to the supersession of the first and the contrast between the spirits of the two Reports was hardly to be missed. Hasrat Mohani moved an amendment for postponing consideration of the Report until the revised and final report on the Union Constitution as well as the modified Objective's Resolution was considered (8). His arguments were mainly two: (i) He wanted India to be declared a Union of Socialist Republics. (ii) He opposed the differential treatment of the Provinces and the States. Mohani's amendment was rejected.

When the Report of the Union Powers Committee was taken up for consideration, K. Santhanam besides the Muslim Leaguers, was the most forceful speaker to point out that the Report had a strong unitary bias. He summed up the new position as, "we have got almost a unitary centre which is trying to hand over certain powers to the Provinces and the whole plan of the Union Powers Committee is based on that procedure. They have tried to take the Government of India Act as their basis and considered what items can be transferred from the Provincial List to the Concurrent List and Provincial List to the Federal List...." (9).

(8) Ibid., P.53.
(9) Ibid., P.56.
While admitting that the recommendations of the Union Powers Committee urged for a strong centre Alladi K. Ayyar replied to Santhanam:

"In regard to the scheme of distribution of powers, the House will realise that there is nothing to take exception to generally. While a good number of items in the Central List can be brought under the heads of Defence, Foreign Affairs and Communications, the three main heads envisaged by the Cabinet Mission Scheme, the other items such as Bills of Exchange, Banking, Corporation Law, Intrunit Trade bear upon the general welfare of the country... We have been crying about a strong centre. If you look at the Provincial Lists, very few if at all of the Provincial List have been taken up and transferred to the Federal List" (10).

Ramaswami Mudaliar was severely critical of the provisions for financial allocation (11). Inspite of being the Dewan of Mysore, he spoke from the viewpoint of the Provinces as well as the Indian States. D.P. Khaitan, the Industrialist Congressite from Bengal on the other hand, supported the revenue distribution proposals which... (10) Ibid, P.75. (11) Ibid, pp.84-9.
had been considered extensively centre-oriented by Santhanam.

"........Sir, you will see that all the taxes that are put in the Central List are only such as can be conviently administered by the Centre, as are necessary for the sake of uniformity in the different Provinces and as are absolutely essential for the purposes of the development of agriculture, industry etc. We have got to build a large mileage of railways, we have got to have a large mileage of roads, we have to develop a mercantile marine, we have got to develop so many things, which can only be done by the Centre and unless each one of these items is properly developed, we shall neither have our freedom maintained, nor will it be possible for us to develop either education or health or agriculture or any of other nation-building activities that we are all so anxious that we should develop ............." (12).

B. L. Mitter, as a member of the Committee, explained, "The Committee went into the matter of distribution of powers on a definite principle. It is this, Matters of national

(12) Ibid., p.39.
concern should be vested in the Centre and matters of provincial concern should be vested in the Provinces. We found that the Act of 1935 was a good guide because in making the list in 1935 Act the same principle was kept in view" (13).

In his reply to the debate N. G. Ayyanagar said, "I think I am right in saying that there is hardly a single item in the present provincial list in the Government of India Act which this much-criticised committee, the Union Powers Committee, has transferred to the federal list" (14).

Discussion on the Second Report of the Union Powers Committee was not completed in the fifth session of the Assembly. The Draft Constitution almost wholly adopted the recommendations in the form of the Seventh Schedule, which was discussed item by item from August 29 to September 3, 1949 and adopted with slight modifications (15).

Alladi Krishnaswami Ayyar submitted a separate note to the Constituent Assembly in which he suggested

(13) Ibid, P.101.B.L.Mitter,Dewan of Baroda, worked hard for the integration of States with India.
(15) Constituent Assembly Debates, Vol.IX.
that instead of giving the three lists of Union, State and Concurrent powers and placing the residual powers in the Centre, following section of the 1936 Act, the Draft Constitution should mention first the state subjects, then the concurrent subjects, and then the Union subjects (16). The proposal was not accepted, however.

It was also provided in the Draft Constitution, following the 1935 Act, that if one or more states delegated the power of legislation on a state subject to the parliament, the parliament would be competent to legislate on the subject (Draft Article 229). A major development in the Drafting Committee took place when in November, 1947, B.N. Rau, from abroad, suggested the grant of power to the Union of legislating concurrently with the states on a state subject in case of a special resolution by the Council of States (17). The Drafting Committee, therefore, provided that in case of a resolution by 2/3rds of the total membership of the Council of States to the effect that Parliament should pass laws on a state subject, in the expediency of the national interest, parliament should be able to do so.

(16) Separate notes submitted to the Constituent Assembly by Sir Alladi Krishnaswami Ayyar, Member, Drafting Committee. Appendix to Draft Constitution of India.
(17) B.N. Rau's letter from Washington, dt. 11.11.47-Law Ministry. File OA/116/Cons./47.
The Draft Constitution called India a "Union of States" to consist of four kinds of States (mentioned in the First Schedule).

Part I - The Former Governors' Provinces.
Part II- The three Chief Commissioners' Provinces of Delhi, Ajmeer-Merwara (including PanthPiploda) and Coorg.

Part III-Division A : 18 native states that had already acceded to India.
Division B : All other native states that would join India in future.

Part IV -The Andaman and Nicobar Islands.

During the presentation of the Draft Constitution in the Constituent Assembly, Ambedkar said that, "The Draft constitution is a Federal Constitution inasmuch as it establishes what may be called a Dual Polity. This Dual Polity under the proposed Constitution will consist of the Centre and the States at the periphery, each endowed with sovereign powers to be exercised in the field assigned to them respectively by the Constitution. This Dual Polity resembles the American Constitution." "Yet the differences
that distinguish them are more fundamental and glaring than the similarities between the two. The difference lies in the absence of "rigidity and legalism" in the Indian Constitution (18).

Financial Integration

The Expert Committee on Financial Provisions, appointed by the President of the Constituent Assembly submitted its Report (19) in December, 1947. The Committee consisting of civilians and a businessman from Bengal classified its terms of reference as follows:-

(1) Relations between the Centre and the Units and between the Units inter se;
(ii) Financial Procedure, i.e., relating to the budget expenditure and Money Bills;
(iii) Borrowing powers of Units; and
(iv) Relations of the Union with the States.

The Most important part of the Report related to distribution of revenues. Recognizing the fact that the Indian federation is a product of devaluation of authority the Committee said: "The basic functions of a Federal Government are Defence, Foreign Affairs and the Service of the bulk of the national debt, and they are all expensive functions. The head 'Communications' would ordinarily at least pay for itself. The Federal Government may also have to assume leadership in the co-ordination and development in the co-ordination and development of research and higher technical education. Normally, however, apart from war or large-scale internal disorder, the expenditure of the Centre should be comparatively stable. The needs of the provinces are, in contrast, almost unlimited, particularly in relation to welfare services and general development.

The provinces, therefore, must have as many independent sources of revenue as possible. On the other hand, it is not practicable to augment their sources of revenues to any considerable extent by adding more subjects to the provincial legislative list without simultaneously upsetting the equilibrium of the centre. We cannot, therefore, avoid divided heads."
The net effect of the Committee's recommendations would be that "the Centre would have to transfer to the provinces a sum of the order of Rs. 30 crores annually." The Committee recommended that the provinces should not be able to collect foreign loan except on the permission of the Federal Government. No major change in the list of Federal taxes was recommended. Among other things, the Committee recommended "Stock Exchanges and Future Markets" to be included in the Union Legislative List. The recommendations of the Expert Committee were as T.T. Krishnamachari (then a critic of the Draft Constitution) called, "half-hearted." Yet, Krishnamachari felt that, "either the Drafting Committee was not competent to examine even the half-hearted recommendations made by the Expert Committee, or they felt that it would be better to tread on safer ground and adopt the status quo which idea, I think, more or less dictated the decisions made by the Expert Committee itself." So, the drafting Committee did not adopt the recommendations the Financial Experts committee regarding the Distribution of Revenue between the Centre and the Units," in view of the unstable conditions prevailing at the present moment," and recommended that the existing system of distribution should continue.

(20) Constituent Assembly Debates, vol VII, P. 223
for the next 5 years, and should be altered after a fresh examination by a Finance Commission. There was evidently no desire to relax the 1935 grip of the Centre on the national financial structure.

The "Special Problems" of India

The future of the Centrally Administered Areas and Excluded and Partially Excluded (Tribal) Areas constituted the last problem in connection with the State-structure. The Advisory Committee, it has already been noted, had set up sub-committees on the North-West Frontier and the North East Frontier (Assam) Tribal and Excluded Areas and the Tribal and Excluded Areas outside those regions. Partition made the N.W.F. Committee redundant. On July 30, 1947 the Constituent Assembly authorised the President to appoint a committee to recommend administrative changes in the five Centrally Administered Areas of Panth-Piploda, Andaman and Nicobar Islands, Coorg, Ajmeer-Merwara and Delhi.

The Committee on Centrally Administered Areas submitted its report on October 21, 1947. The Committee recommended the merger of Panth-Piploda with Ajmeer-Merwara (in view of the smallness of the former's size). Andaman and Nicobar would be administered directly by the Centre and called a Chief
Commissioner's Province. Delhi, Ajmeer-Merwara and Coorg would be called Lieutenant-Governor's Provinces and would be given broadly responsible government. Before the report was considered by the Assembly, the Drafting Committee took it up and placed (1) Delhi, (2) Ajmeer Merwara including Panth Piploa and (3) Coorg in Part II of the first Schedule (to be administered by the President through Lieutenant Governors or Chief Commissioners) and the Andaman and Nicobar Islands in Part IV (to be more directly administered by the President through Chief Commissioners). Merger of certain Princely States and taking over their administration by the Government of India led to the increase in the number of the Units of the Indian Union. As noted earlier, the final Draft of the Constitution placed them in Part III. The administrative patterns were more or less unaltered.

The Report of the excluded and partially excluded areas (other than Assam) Sub-committee was submitted on August 18, 1947 and the Report of the North East Frontier (Assam) Tribal and Excluded Areas Sub-committee of the Advisory Committee was submitted on November 4, 1947.
The two Reports were considered by the Advisory Committee on February 24, 1948 and adopted (22). The setting up of several autonomous districts with various tribal areas in Assam and numerous safeguards for the tribal people outside Assam were recommended. The Drafting Committee placed the special provisions for the administration of the Tribal Areas outside Assam and the Tribal Areas in Assam in the fifth and sixth Schedules respectively. Their special representation in legislature and services was retained through various provisions of the Constitution.

The Draft Constitution provided for a Tribes Advisory Council in States containing Scheduled Tribes and Scheduled Areas. The Council would advise the State government on all matters pertaining to the administration of the Scheduled areas and the welfare of the Scheduled Tribes in the state. It would also advise the Governor as to which legislation of the Centre or the State would or would not apply to a tribal area.

On September 5, 1949 Ambedkar moved for the substitution of the original schedule V by a new one (23).

(22) B. Shiva Rao: Select Documents, Vol. 3.
The main purpose of the amendment was to circumscribe the
powers and role of the Tribes Advisory Council in the
States containing the Scheduled Areas and Scheduled Tribes
that had been proposed by the Draft Constitution. Under the
new proposals the President would decide whether to set
up such a Council for the Scheduled Tribes in a State
not living in a Scheduled Area. The amendment also sought
to empower the State Governor rather than the Tribes Advisory
Council to restrict the application of a Parliamentary or
State Assembly's legislation to a tribal area. The new
amendment also authorised the Parliament to amend Schedule
V in future. On September 17, 1949 the Eighth Schedule
mentioning the Scheduled Tribes, was deleted.

The Sixth Schedule was taken up on September 5,
1949. The discussion went on till September 7, para by para.
Ambedkar moved an amendment providing for the inclusion of
any area in the Schedule or creation of an autonomous
district or increase of its size by the Governor (24). The
debate disclosed considerable heat on the question of relation-
ship between the plains and the Hills of Assam.

On September 18, 1949 the Assembly finally decided that "India, that is Bharat, shall be a Union of States" (Article 1). In view of the integration of Indian States Ambedkar, in the tenth session of the Assembly, brought forth a set of new proposals for placing the "States" almost on the same level with the former Provinces (25). On October 14, 1948 substitution of Schedule 1 of the Draft Constitution was proposed (26).


In Part IV was placed the specially administered territory of the Andaman and Nicobar Islands.

The change of names, thus proposed, inspired a flood of new proposals. Finally, the President ruled that all proposals for change of name would be sent to the respective State Governments which would take the opinion of their legislatures. Accordingly the changes could be adopted even during the third reading (17). The proposals for change of names of West Bengal and East Punjab were not favoured by the State legislatures concerned. The final Draft, therefore, reverted to the old names. Meanwhile the provincial governments of the C.P. and Berar and the United Provinces expressed their preferences for the names of Madhya Pradesh and Aryavartha respectively. The second name was, however, opposed in the Constituent Assembly. Accordingly, on November 16, 1949, the Constituent Assembly passed two amendments, sponsored by Kamath and the Drafting Committee, adopting the

Linguistic Provinces

Congress was committed to the linguistic reorganisation of India since 1921. Provincial boundaries, on the other hand, had been drawn and redrawn since the British advent mainly on the basis of administrative convenience. The Cabinet Mission's plan, as Rau interpreted it, recognised the existing units as self-contained and inviolable. "It may, therefore, be urged that the existing boundaries of the several provinces are not to be disturbed under the new Constitution, at least initially," wrote Rau (28). There were indeed practical difficulties of the creation of a number of new States. When the shackles of the Cabinet Mission plan were removed, there arose political difficulties too.

The Union and Provincial Constitution Committees were unable to recommend any reorganisation. The agitation of Andhra by this time rose to a high pitch. The Government

(28) B.N. Rau: India's Constitution in the Making p. 466
of India made a statement that Andhra might be mentioned as a New State in the Draft Constitution as Orissa and Sind had been mentioned in the 1935 Act.

The Drafting Committee thought that to mention Andhra in the Draft Constitution only was not sufficient in order to bring the State into existence at the commencement of the Constitution. For, after the enactment of the 1935 Act, Orissa and Sind were constituted into separate Provinces on April 1, 1936, whereas the Act came into force on April 1, 1937. The Drafting Committee, therefore, suggested, the setting up of a Commission to go into the question of linguistic reorganisation and to take step to implement its recommendation under section 290 of the Government of India Act, 1935. Indeed, under the new Constitution reorganisation was possible, but only after the commencement of the Constitution (29).

Following the recommendations the Government of India appointed the Commission on Linguistic Reorganisation of Provinces with S.K. Dar, retired judge of Allahabad High Court, Pannalal, retired Civil Servant, and J.N. Lal, a

(29) Draft Constitution of India, p. 159n.
member of the Constituent Assembly on June 7, 1948. The Report came out on December 10, 1948, being a passionate brief against linguistic reorganisation (30). The result was the passing of the initiative outside the Assembly. No solution was reached during the period of constitution-making.

Article 391, of the final Draft made a provision that "if any time between the passing of this constitution and its commencement any new Province was created the President would name it under advice of his ministers. On November 16, 1949, when R.K. Sindhva pointed out that the implication of the provision was the preclusion of the Assembly members from expressing their views on an important matter like the creation of Provinces, the President replied that "otherwise the creation of provinces had to be held over till after the new constitution comes into force.....This new article has been brought into enable new Provinces to be created in which such action becomes possible....." (31). Ambedkar elaborated the legal position as follows :-

(30) Report of the Commission on linguistic reorganisation of provinces.
"With regard to the creation of new Provinces between now and the 26th of January, the article that would be operative would be section 290 of the Government of India Act of 1935 and Article 391 of the present Constitution. Sir, article 319 says that if between now and the 26th of January the authority empowered to take action under the Government of India Act does take action, then the President, under article 391 is empowered to give effect to that order made under the Government of India Act, section 290....(32).

On November 24, 1949 the Government of India Act, 1935 was further amended for enabling the Governor-General to change the names of Provinces if their legislatures so desired, (33). No such change, however, took place before January 26, 1950.

Thus, the final structure of the State and its Government took a pretty long time to emerge. The rather long duration of the Constituent Assembly was contributory to the emergence of this strongly unified political organism.

(32) Ibid, P.582.
(33) Ibid, pp.923-38.
Beginning with the hazy idea of a loosely federated India the members of the Constituent Assembly moved a long way to reach this organic unity. The native States gradually surrendered their identity. The provincial aspirations for greater autonomy were effectively checked. The smooth walking through this long way was considerably helped by the bulldozer of the party which enjoyed an eminently dominant position in the House.

Yet the party was not the main reason of this growth of centralism. It was the imperative of the social forces of the time that India would emerge into a strong and organised political entity. Ambedkar effectively represented this social imperative when during the presentation of the Draft to the Constituent Assembly, he severely criticized the demand of the orthodox elements for a village-centred polity. "I am glad that the Draft Constitution has discarded the village and adopted the individual as its unit" (34).