CHAPTER X
CONCLUSIONS

... What I do say is that the principles embodied in the constitution are the views of the present generation, or if you think this to be overstatement, I say they are views of the members of the Constituent Assembly. Why blame the Drafting Committee for embodying them in the Constitution? I say, why blame even the members of the Constituent Assembly?" - B. R. Ambedkar in the Constituent Assembly(1).

A Unique Assembly

In India, the Cabinet Mission Plan first set up the Constituent Assembly; the June 3, 1947 statement of Mountbatten then split it and the Indian Independence Act finally gave it not only the status of a sovereign Constituent Assembly, but also the power to control a Provisional Government. The Constituent Assembly, in its final form was, therefore, very much different from the Constituent Assembly that had been anticipated by the Cabinet Mission.

(1) Constituent Assembly Debates, vol. XI, p. 975, emphasis added.
Born with a peculiar stigma, while the Constituent Assembly was convened, it was confronted not only with the task of drafting a Constitution for India, but also with the odd job of making the most important political decision for the country, namely, the State's Structure. No other constituent body in the World has had to make such an important decision in as much as each of them merely recorded the achievements of the revolution through which the major political decisions had already been reached.

Yet the Constituent Assembly was given no freedom to act. It was fettered by the legacies of "the Indian Problem." Independence was made conditional upon a so-called "communal solution" which, by far, was impossible to attain. Sovereignty of the Constituent Assembly was achieved only at the cost of India's unity. The Constituent Assembly of India was able to register a very limited success of the Indian national movement.

A comparison between the Indian Constituent Assembly, on the one hand, and the other revolutionary assemblies like the Philadelphia Convention (1787) and the French National Assembly (1789-91), is therefore,
patently inadequate. The Constituent Assembly of India indeed crossed the limit originally set around it by the statement of the Cabinet Mission. Yet, whereas the liberty that the Philadelphia delegates took was of their own choosing and the members of the French National Assembly earned their freedom by their successful struggle with the King, the change of the status of the Constituent Assembly of India was very much a product of the developments which were beyond the control of the House. The freedom of the Indian Constituent Assembly had to be earned from the British at a very high cost — its own and the country's integrity. The Indian Constituent Assembly not only recorded the inevitable misfortune of partition but also was instrumental to its occurrence.

Nevertheless, partition of the country gave the Assembly a sense of direction which its earlier sessions lacked. If the partition was the result of circumstances that developed outside the Constituent Assembly of India, the other major decisions were also taken according to the several political notions that
had got shape in course of the national movement, particularly, on the platform of the Indian National Congress which commanded an overwhelming majority in the Constituent Assembly.

**Decision-making in the Assembly**

Decision-making in the Constituent Assembly is an interesting subject of study. Austin considers the original contribution of the Constituent Assembly to have been "decision-making through consensus" (2). The result of this study has been somewhat different. It has been amply demonstrated that the leadership of the Assembly was convinced in certain very definite principles the most important of which were Federation and Parliamentary Government.

It was left to the changing political situation in the country to determine how 'strong' the Centre of this federation would be. That the principle

(2) Granville Austin: The Indian Constitution, pp.311-17.
of parliamentary government was somewhat crippled at the unit-level, was due to the 'strong centre' growing stronger. But, when it was a question of the nature of the Union Government, the decision of the leadership was firmly for a parliamentary type. The State-level governmental set up was the result of a compromise between centralism and parliamentary government.

On the details, however, the leadership had no clear picture, except the somewhat bitter memory of the provincial administrations in the short pre-World War II period. The formulation of the details was initially left to one of the ablest Indian bureaucrats, B. N. Rau, whose acquaintance with the Indian constitutional development was more through the Reforms office, than through the judiciary. Rau's premises for the Constitution-making, as already noted were (1) the Government of India Act, 1935, (2) the Dominion Constitutions and, to a lesser extent, (3) other Constitutions, e.g., of the U. S. A. and Switzerland.

History, more than any other force, worked out the strong federal structure of India. The original drafts of the Union and Provincial Constitutions formulated by Rau were almost wholly based on the models of the
Government of India Act, 1935 and the Dominion Constitutions. Some of their basic assumptions, therefore, inevitably clashed with the republican and anti-executive notions of the Congress leaders. The result was the intervention of the lawyers like Ayyar and Ayyangar in the question of the Union Constitution and a somewhat unsatisfactory compromise in the question of the Provincial Constitution. On the question of minority representation to the legislature and the executive the Swiss Constitutional precedent was, for a while, considered. But, as the minority problem took a new turn, the scheme was dropped.

Besides the minority question, the States formed the almost only part of the Indian problem. Here, the Constituent Assembly had a very little part to play. It only registered whatever the States’ Ministry worked out in its ‘negotiation’ with the Rulers.

On the question of rights both Rau’s and the Congress leaders’ knowledge appear to be chiefly academic, except for the somewhat vague commitment to socio-economic reforms and the bitter memories of
the suppression of individual freedom, during the
British Raj, on the part of the Congress. Here also
the lawyers' (like Ambedkar and Ayyar) brought about
the compromise, between individual freedom and
executive exigencies, right to property, religion, etc.
and the need for reforms.

The synthesis brought about was not
always quite satisfactory. For instance, the retention
of the terms 'pleasure' and 'discretion' (the latter in
reduced frequency) was not accompanied by proper
explanation of them. The Assembly, after rejecting the
qualification of 'reasonableness' on the restrictions
on Fundamental Rights, brought it back. Many of the
now-apparent 'puzzles' of the Constitution are in fact
due to the drafting anomaly, arising out of the
cross-purposes of the politicians and the administrators.

N. V. Gadgil, a member of the Constituent
Assembly complained in October, 1948 that, "There has
not been a sufficient discussion of first principles or
any attempt to lay down the theoretic foundation of the
constitutional structure either in the proceedings
of the Constituent Assembly or in the press or public
during or after the work of the Assembly. On a close study the Draft Constitution would appear to be a structure erected primarily under the influence of the 1935 Act and secondarily that of the British Dominions" (3).

It was shortly after the Constituent Assembly started the discussion of the Draft Constitution that Jennings gave his first critical appreciation of the Draft in the Hindu, though in a different tone than Gadgil's (Nov. 26, 27, 29, 30, 1948). "The most remarkable feature of the Draft Constitution of India" about which Jennings complained was its length. Yet the Constitution was not complete and needed detailed legislation. An offshoot of this complication was the relative inflexibility of the Constitution. But deeper than these criticisms of the form there is a different complaint. "Though the Constitution proposed is fundamentally British in its machinery, the Constitutional law derives its inspiration from the United States of America, and perhaps rightly so, for the Indians tend to be legalistic in their outlook, whereas English

(3) Some observations on the Draft Constitution, preface.
Constitutional lawyers are interested mainly in machinery. A more considerate British thinker, W. H. Morris-Jones, speaking recently about some legacies of India, wrote: "If the new Indian rulers received a legacy from their own immediate past, they assuredly carried over also a legacy from their own immediate past, from their experience of the nationalist movement".

The claim to originality of any constitutional formula has long been recognised as futile. For a Constitution of the mid-twentieth century-India the expectation of originality is perfectly irrelevant. Yet India in 1949 certainly went much ahead of her constitutional position in 1937. A number of constitutional principles and practices, that were adopted in the republican constitution, could not be

Republicanism itself was unknown in the Commonwealth. ThePointer of Rights (with the extra-ordinary appendage of the Directive Principles) was adopted almost wholly from outside the 1935 frame-work. The new federalism was definitely different from, though influenced by, the 1935 formula. The relation of the Executive and the legislature was greatly modified at the federal level.

A complaint that is more relevant is that all the major and most of the minor decisions were taken behind the open forum of the Constituent Assembly. The feelings of the Assembly members were certainly counted. There was sufficient spirit of accommodation (the desire to form "consensus"—Austin?) on the part of the leadership. But on fundamentals the leadership definitely preferred the expediency of persuasion rather than consensus. The Muslim League and Sikh demands for a decentralised polity were not even slightly heeded. The Socialists were simply cold-shouldered, even occasionally snubbed. Complaints were often heard of the Congress Party steam-rolling the Constituent Assembly.
A study of decision-making in the Constituent Assembly, however, leaves no doubt about the role of this party. Members of the Muslim League, on more than one occasion, referred to the Constituent Assembly being a 'packed house'. During the third reading of the Constitution Shibbanlal Saksena, himself a Congressite, observed that the meetings of the Constituent Assembly only registered the decisions already taken in the meetings of the Congress Party (6).

Ambedkar himself observed on the floor of the Assembly that "they had to go to another place to obtain a decision and come to the Assembly" (7). One can, therefore, only partly agree with Austin's assessment. In spite of this statement, one must readily recognise the fact that the leadership showed a large amount of accommodating spirit, in matters of detail.

Promises and Fulfilment

The leadership of the Indian National Congress had always recognised their debt to the training in constitutionalism that Britain had imparted them. Behind the drafting of the Articles was the skill of the brilliant civilian B. N. Rau, an intellectual bred in the automosphere of English law. As early as in 1945 Ambedkar felt satisfied that in order to have the Constitution of independent India it was only necessary to modify certain provisions of the Government of India Act, 1935(8). Thus, besides recording the fundamental political fact of transfer of power, the Constitution even did not bring about an administrative overhauling.

The 'limited' and 'political' achievement of the Constituent Assembly in India, thus consisted in stalling the disintegrationist forces of India which flowed during the later part of British rule and got encouraged by the fact of partition.

It consolidated the unity of India including the native States. It put an end to the cancerous problem of minorities. In short, it cut the Gordian knot of the classical 'Indian Problem', though the merit of the surgery appears dubious. In any case, the present map of political India was drawn in the Constituent Assembly and a Parliamentary democracy was set up to preside over it.

Writing 'Foreward' to a Socialist Party publication on the work of the Constituent Assembly of India, in 1947, Jayaprakash Narain regretted that the Constituent Assembly's "deliberations have been dominated by cool and sedate lawyers who give no evidence that they comprehend the significance of the turmoilled birth of a nation". He warned that "The Indian constitution is not likely to be, unless drastically amended, a full instrument of full political and social democracy (9). In fact, the Constitution failed to be anything more than the record of a political revolution.

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(9) Socialist Party: Draft Constitution of Indian Republic, p.5.
This was bound to be so. Right from the beginning the makers of the Constitution had no illusion about their aim. On several occasions they made it clear in the Assembly that the Constitution was going to be nothing more than a political document. While criticising the Draft of the Constitution, K. T. Shah, a radical Congressite, observed, "The Constitution's aim, as explained by Dr. Ambedkar, or, as can be derived from the wording of the Constitution itself, is almost entirely political and not at all social or economic" (10).

Truly, the work of the Constituent Assembly was the reflection of the political developments that took place on the national political arena. Yet, the national revolution of India was not complete at the period of work of the Assembly. As a result, the Constituent Assembly was found to be doing a balancing act between the claims of stability and adaptability. Placed between its own commitment to wide-spread socio-economic reforms, repeatedly though—

rather vaguely promised, and the pressure of the propertied class, it upheld the claims of property and at the same time confirmed its promises for socio-economic reforms through the Directive Principles and left the door open for land-reforms in certain States where the programme had already been initiated.

A number of important developments took place during the rather prolonged functioning of the Constituent Assembly and were reflected in the Constitution. As a result the Constituent Assembly members were taken along routes of which they were only vaguely and indistinctly aware at the beginning.

Yet a very important feature of the Constitution was the transitional character of several provisions, among which those relating to the units of the federation are most remarkable. The Parliament got absolute power to change the territorial boundaries of States. Integration of Princely States was not obviously complete. The problem of linguistic reorganisation of States was yet unsolved.
The social forces of the time needed exactly this much and no more. The stable and independent political order that was most urgently needed for the full flowering of the Indian economic prosperity was ensured by the two epoch-making incidents of transfer of power and framing of the Constitution. Right to Property was ensured to the length that a welfare state could afford to ensure.

In his reply to the debate during the third reading of the Constitution Ambedkar showed his awareness of the shortcomings of the same:

"On 26th January, 1950, we are going to enter into a life of contradiction. In politics we will have equality and in social and economic rights we will have inequality. In politics we will be recognising the principle of one man and one vote, one value. In our social and economic rights we shall by reason of our social and economic structure, continue to deny one man one value...........We must remove this contradiction at the earliest possible moment or else those who suffer from inequality will blow up the
structure of political democracy which this Assembly has so laboriously built up” (11).

Rajendra Prasad, in his concluding speech on the third reading, also said,

"The Constitution has provisions in it which appear to be objectionable from one point or another. We must admit that the defects are inherent in the situation in the country and the people at large” (12).

If the Constitution has great omissions, the mistakes of commission are not quite insignificant. Complaints of complicating details in the Constitution have been raised very often and by many, including Jennings. In the Constitutional documents several provisions are overlapping; some may even be considered superfluous. Understandably, the radicals of the country, specially the socialists, demanded the constitution to be

(12) Ibid., p. 998.
amenable by ordinary legislative procedure. Ambedkar answered these demands by citing the American and Australian Constitutions in comparison to which the Draft Indian Constitution laid down "the simplest amendment procedure" (13). His answer on this point is interesting for the theoretical discussion of the merit of a constitution.

"The Constituent Assembly in making a Constitution has no partisan motive. Beyond securing a good and workable constitution it has no axe to grind. In considering the Articles of the Constitution, it has no eye on getting through a particular measure. The future Parliament, if it met as a Constituent Assembly, its members will be acting as partisans seeking to carry amendments to the Constitution to facilitate the passing of party measures which they have failed to get through Parliament by reason of some Article of the Constitution which has acted as an obstacle in their

That is the difference between the Constituent Assembly and the future Parliament. That is the reason why the Constituent Assembly though elected on limited franchise can be trusted to pass the Constitution by simple majority and why the Parliament though elected on adult suffrage cannot be trusted with the same power to amend it" (14).

The claim is valid as far as it goes. For every Constituent Assembly has a mind which can be understood in the light of the concrete political and socio-economic forces of the time and place. The limitations of these forces, therefore, are bound to be attached to the Constitution it produces, and to be exposed gradually with the passage of time.

However, within the Assembly all parties, except the extremist sections of the League, the Sikhs and the Socialists gave their support to the Constitution, full-hearted or qualified. Outside the Assembly the Communist Party was the only considerable political group.

who decried it for long. Of the total strength of 308 of the Assembly 275 members signed the final Constitution, 28 did not. At the end of the Assembly's life there were 5 vacancies (4 Muslim seats from East Punjab and 1 from Rajasthan). No conclusion can definitely be drawn about the members' attitude towards the Constitution by this Statistics; for the absent names include those of the critics as well as supporters (15).

(15) There were 5 vacancies on the last date of the Assembly. Some of the Members who did not sign the Constitution are named below:—

(1) Perumalaswami Reddi, (2) S.H.Prater,
(3) Ramkrishna Ranga Rao, (4) T.A.Ramalingam Chettiar,
(5) P.M.Velayudhapani (Madras);

(6) M.R.Masani; (7) S. Nijalingappa; (8) S.K.Patil,
(9) Abdul Kadir Mohammed Shaikh; (10) Aziz Ahmed Khan
(Bombay).

(11) Damodar Swarup Seth, (13) Govind Ballabh Pant,
(13) Harihar Nath Shastri, (14) Jagannath Baksh Singh
Kidwai (U.P.).

(18) Hukum Singh, (19) Bhopinder Singh Mann (E.
Punjab),
(20) Saraingadhar Das (Orissa State).