CHAPTER - V

CONSTITUTION MAKING IN INDIA:
THE CONTRIBUTIONS OF
SRI BISWANATH DAS
CHAPTER - V
CONSTITUTION MAKING IN INDIA :
THE CONTRIBUTIONS OF SRI BISWANATH DAS

India's experiment with nationalism, liberalism and democracy started from 1947, when the country became free from the British dominion. Hence, the first task before the leaders of the country was to frame a constitution for the governance of free people of India. Accordingly, a Constituent Assembly was set up for framing the constitution of independent India.

However, prior to independence, Mahatma Gandhi made a demand for setting up a Constituent Assembly composed of the "freely chosen representatives" of the people of India. This demand was confirmed in 1934, by the Swaraj Party, which made the following resolution. "This Conference claims for India, the right of self-determination, and the only method of applying that principle is to convene a Constituent Assembly representative of all sections of the Indian people to frame an acceptable constitution."¹

The policy embodied in this resolution was approved by the All-India-Congress Committee which met at Patna, the capital of Bihar, in May 1934. In November 1939, the Congress Working

¹ Inaugural address by the Chairman in the first session of the Constituent Assembly on 9th Dec. 1946 Constituent Assembly Debates, Vol 1 pp - 5-6.
Committee adopted a resolution which declared for recognition of India's independence and that the right of her people to frame their Constitution through a Constitutional Assembly.²

The first official recognition by the British Government of a demand to the Constituent Assembly came in the form of Cripps proposals, which for the first time declared that the British Government intended to leave the task for framing the Constitution for India by a Constituent Assembly. The Cabinet Mission in their statement issued on May 1946, prescribed the manner in which the Constituent Assembly was to be set up. The Mission conceded the best method of setting it up was by a method based on adult franchise.³ It was however, ruled out because of the long time it involved. The situation in the country demanded quick action without any delay. The only practicable method was to utilise the existing provincial Legislative Assemblies which had been constituted a short while ago as electoral bodies for the purpose. The other recommendations of the Cabinet Mission was that every province was to be allotted seat in the Constituent Assembly on the population basis at the rate of one member for every one million of the inhabitants. The seats assigned to each province were to be

². *CAD*, Vol 1 9th Dec. 1946, p - 6 (in the inaugural address by the Chairman in the first day of Constituent Assembly meeting).
³. Lord Pethick - Lawrence Secretary of State for India, and the senior member of Cabinet Mission, in a broadcast over Delhi Radio, 16th May 1946, IAR 1946, 152.
distributed among the communities on the basis of their numerical strength. Only three communities were recognised for the purpose of representation, the Sikhs, the Muslims, and the General, which included all persons who were neither Muslims nor Sikhs. The representatives were to be elected by the method of single transferable vote.

Later, Cripps proposal was rejected by both the leading parties, the Congress and the Muslim League for different reasons. The proposal of Cabinet Mission was accepted and a Constituent Assembly on the line of the Mission Plan was convened in December 1946, which derived from the people all power and authority.

The election to the Constituent Assembly was held on party-basis. The method of proportional representation by single transferable vote system enabled each party to win seats in proportions to its strength in each Provincial Assembly. The result was that out of 296 seats allotted to British India, Congress got 204, Muslim League 73; Independent 7; Sikhs 4; Hindu Mahasabha 1; Anglo Indians 1 and Communists got 1 seat in the Assembly.4

The above picture of seats in the Constituent Assembly clearly shows that, the Constituent Assembly became in effect, a one party

4. Reports of the Committee Appointed to negotiate with the State's Negotiating Committee, CAD, Vol 1, p - 9.
assembly, the Indian National Congress. Yet "It was representative of India, and its internal decision making process was 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, they were supported and sometimes controlled by the rank and file in the Assembly."5

Sri Biswanath Das and the Making of Indian Constitution

As per the recommendations of the Cabinet Mission Plan, representatives to the Constitution Assembly were elected by the method of single transferable vote.6 The provinces were grouped geographically into three regions, one of which would be predominantly Muslims, one predominantly Hindus, and in the third, the population of the two communities would be nearly equal. The seats allotted to each province was thus distributed among the communities on the basis of their numeral strength. The method of election to the Constituent Assembly was thus an indirect one. Sri Biswananth Das, a Congress leader was thus elected from the Ganjam Constituency in Orissa to the Constituent Assembly and served as one of its members from 1946 to the end of the constitution-making.7

7. The Orissa Gazette, Home Department, 3rd June 89, F/No. 963. Regd. No. 0-14
Objectives Resolution:

Persuant to a Resolution of the Constituent Assembly, the Union Power Committee was constituted by the President on January 25, 1947. It consisted of 12 members and Sri Biswanath Das was nominated as one of such members. The Committee was presided over by Sri Jawaharlal Nehru. The purpose of the Committee was to frame a federal constitution for the country by examining the scope and content of the subjects assigned to the Centre as per the statement of the Cabinet Mission. Under the plan, the subjects assigned to the Centre included defence, communications and foreign affairs; and powers necessary to raise finance for the above subjects. The residuary powers belonged to the Union Government.

The committee brought the Report before the Constituent Assembly on April 28, 1947. However, taking into consideration the partition of the country and the problems of the country, the Report was in favour of a strong Centre. But when the Report was tabled in the Constituent Assembly, Sri Das wanted the report to be thrown back to the Union Powers Committee, because it provided for concentration of powers in the Centre to the detriment of social
welfare and social justice. He was out and out a federalist and a democrat. He strongly advocated for a strong centre as well as strong units, and to him, such set up of polity will enhance democracy, federalism and nationalism. On 13th December 1946, Pandit Nehru moved the Objective Resolution in the floor of the Constituent Assembly. In support of this Resolution, Sri Biswanath Das spoke in Constituent Assembly and highlighted the salient features of the Resolution. Speaking on the Objectives Resolution he said

"The Resolution moved by Hon’ble Pandit Nehru is divided into four parts. The first part contains the main objectives for which India had been fighting. The second part refers the territorial jurisdiction of a free, independent republic of India, including land, air and sea. The third is a declaration that we derive power and authority from people, while the fourth is a very necessary and essential one, beginning with individual freedom in safeguards for tribal areas and the rest."  

Sri Das also found Dr. Ambedkar's objection to Paragraph '3' of the Resolution as baseless. He said that the objection to the omission of the word 'grouping' in paragraph 3 need not be taken seriously because the Resolution did not say anything against grouping, and as such, it kept the matter of grouping open. At the

8. CAD, Vol-1, p.120.
same time Paragraph 3 while conceding autonomy for the units, kept the door open for small provinces to cede in their administrative and economic interests some powers to the centre.

Sri Biswanath Das also ruled out the objections of the Secretary of State Negotiating Committee to the term "independent sovereign republic"; and to the statement that such a republic derived its power from the people Sri Das pointed out that; Constituent Assembly's job was to frame a constitution for an Independent sovereign Republic of India, for which Indian people had been fighting so long. After the withdrawal of the British, paramountcy would disappear, and the power whatever it may be, would be derived from the people."\textsuperscript{9}

Sri Das also spoke against the criticism made in the British Parliament that the Constituent Assembly was a cast Hindu Assembly. He objected it as an erroneous allegation, as in the Constituent Assembly of India, both majority community and all the minority communities were represented. In his argument, he rightly pointed out that there was not a single country in the world, which had no minority. This fact could be clearly be seen in countries like England, where Welsh and Scots form minority. In U.S.A., also there was linguistic and racial minorities.

\textsuperscript{9} \textit{CAD}, Vol-I, p.121.
Highlighting on these important points of the proposed Objectives Resolution of Sri Nehru, Sri Das wanted this Resolution should be discussed and adopted right at the beginning so as to clarify the directions in which the work of the Constituent Assembly should move. In the following paragraphs, we discuss the views of Sri Biswanath Das an different issues raised in the Constituent Assembly.

**Fundamental Rights :**

On 23rd April, 1947, Sardar Vallabhbhai Patel, Chairman of the Committee on Minorities and Fundamental Rights, submitted the Interim Report of the Committee to the Constituent Assembly, the Annexure to which contained the Draft Fundamental Rights, which would be justiciable. Sri Biswanath Das, when joined the debate on the clauses drew attention of the House to Clause 2 which reads as follows :

"All existing laws, notifications, regulations, customs or usages in force within the territories of the Union inconsistent with the rights guaranteed under this part of the Constitution shall stand abrogated..."

In this context, Sri Biswanath Das suggested the House that a thorough examination of the implications of the existing laws should
be conducted, before the House finally adopts this clause. He further told that the discussion on "implications of all the existing local laws and Indian laws that are going to be abrogated is essential before the acceptance of these fundamental rights and making any other interim arrangements in the Constitutions." 10.

Again on 5th November 1948, when Dr. Ambedkar presented the Draft Constitution before the Assembly, Sri Das questioned the Section 7 of the Draft Fundamental Rights, which laid down that; "any Act which comes into conflict with the Fundamental Rights, will be swept away" and the same Section defines that "the laws will include all existing laws, provincial, central as also parliamentary laws that are in operation including Regulations." He opined that regulations and a huge number of codes would be swept away by the operation of the justiciable portion of the Fundamental Rights. Sri Das wanted a thorough examination of the implications of the prevailing laws and regulations.

**State Autonomy :**

The federal outlook of Sri Biswanath Das is clearly visible from his arguments for maximum state autonomy. When Sardar Patel moved the Report on the Principles of Model Provincial

Constitution, Sri Das frankly confessed his view that the draft Constitution had given less powers to the provinces, than what they were enjoying under the Act of 1935. He demanded maximum of State autonomy for the states as component units of India.

Appointment of Governor (Interim Arrangement):

On 21st July 1947, Sardar Patel presented the Report on the Principles of a Model Provincial Constitution, which provided that any person "holding office as Governor in any province immediately before the commencement of this Constitution may be continued..." 11

Joining the discussion on this issue, Sri Das advocated for the Constitution of a new government, which would be a government of the people, for the people and by the people. Even in the interim period, when the Model Constitution would remain in force, he did not want to have men of the permanent services as Governors of Provinces. Although he supported the decision of nominating Lord Mountbatten as the Governor General, but for the provinces he favoured for leaders of the people of the provinces to act as Governors of these provinces. He wanted the new government to be truly representative of the people. In this regard he differed from Sardar Patel and made his views for establishing a democratic

government. Unlike Sri M. Ananthasayanam Ayyangar, he did not make any distinction between nationals and non-nationals. But his only concern was against those ICS people, who did not have Indian outlook, who could not in any sense be termed as public servants or servants of the people.

**Report of the Union Constitution Committee:**

On 29th July 1947, when Sir N. Gopalaswami Ayyangar moved Clause 24 of the Report of the Union Constitution Committee before the Constituent Assembly it evoked serious discussion in the Assembly.

Sri Biswanath Das joined the discussion on Clause 24, that read as "The superintendence, direction and control of all sections whether Federal or Provincial held under this Constitution including the appointment of election tribunals for decision of doubts and disputes arising out of or in connection with such election shall be vested in a commission to be appointed by the President."

Mover of this clause Sir G. Ayyangar clarified that the clause was intended to ensure as far as possible, free and fair election system of the country, federal or provincial, Dr. B. R. Ambedkar stated that the origin of this clause emanates from the Fundamental Rights.

Committee, which resolved that the greatest safeguards for purity of election or for its fairness were to keep it away from the Executive of the day and place it in the hands of an independent authority.

Sri Biswanath Das with his long association in the process of provincial elections, did not whole-heartedly agree to the clause which proposed for an independent Commission to conduct the elections. He advocated that the association of Provincial authority was very much needed in matters like, posting of polling booths, and the like. He partly agreed to the proposal given by Dr. B. R. Ambedkar when he said:

"... I would agree and go to a certain extent with Dr. Ambedkar in his claim that, the control and superintendence of these elections be entrusted to some tribunals or to a Central Authority to keep a watchful eye over them. Having had bitter experience of these elections, both in local bodies and Provincial Assemblies, in certain places and in provinces, we know how awful it would be to leave the entire thing to the provinces. especially when we are to have future elections run on party lines. Under these circumstances, it is necessary that a distinct division should be kept in view, namely that the provinces should conduct the elections and the Central Authority should have a watchful eye over the superintendence and control of these elections." 13

As for the constitution of these Election Tribunals, Sri Das suggested that:

"...Such Tribunals should be appointed independently by the Commission or by a separate and independent authority like the Federal Court, it is thus fair to give the Federation control over the elections, but to say that the election should be solely and wholly conducted by the Federation is an impossibility, and in fact beyond the power and scope of any Federation or Tribunal to undertake..." 14

Thus Sri Biswanath Das, inviting attention of the House to the past conduct of elections, suggested that it would be more practicable to leave the conduct of elections to the Provinces subject to the control and superintendence of these elections by a Central Authority. Since elections in the independent Republic of India would be run on party line, " it is necessary, that a distinct division should be kept in view. So even if Provincial authorities can conduct elections, Central Authority should have a watchful eye over the superintendence and control of these elections.

---


Sri Biswanath Das became victim of political rivalry and was charged with an election case against him. Biswanath Das was the President of the Congress Party in Orissa. He allegedly tried to see that Uma Charan Pattanaik was elected to the Union Legislature. Pattanaik had expertise on defence affairs and he made fruitful contribution to the debates. It was established in the election case that B. Das had spent more than the permissible amount on U. C. Pattanaik's election. Sri Das had to face punitive action. He was prevented from casting election for 6 years from 1946-1952. In 1954, he was again elected to Rajya Sabha (Dr. N. Hazari, "Biswanath Das: A Patriot in S. N. Rath (ed.) Biswanath Das: A Tribute, 1990, pp-19-23."
Prohibition:

On 19th November 1948, when the Constituent Assembly was discussing Art 38, on the question of accepting total or partial prohibition to the Directive part of the Constitution, Sri Biswanath Das joined the discussion by opposing the amendment moved by Syed Karimuddin who wanted to include this in the Directives part of the Constitution.

"... We have been to the principle of entire prohibition... Unfortunately some of my friends want and propose it as a Directive part of the Constitution, that we should prohibit only the manufacture and consumption of liquor. What becomes of opium? Opium is the worst evil prevailing in the country... Therefore, I for myself would not be a party to any prohibition if it does not include the prohibition and manufacture of opium for purposes of consumption..."\(^{15}\)

Sri Biswanath Das wanted not only the prohibition of liquor, but the prohibition of opium also. To him any kind of toxide should be prohibited for general use except for drug purpose. He was also totally opposed to the idea of putting an issue of this magnitude in the Directives Part of the Constitution. Rather, he wanted a practical step to be taken even to the extent of having a National Government of India, guided and led by a Ministry, which

\(^{15}\) CAD, Vol. VIII, pp-484-498.
would be responsible to the Legislature and take up this reform without any delay.

**India's International Policy:**

Art 40 of the Draft Constitution, that dealt with policy and position of India's international relations sparked much controversy in the Constituent Assembly. Dr. Ambedkar moved an amendment laying down specifications of India's role to be played in the international transactions with other nations. This move was supported by Sri Biswanath Das. Sri Das wholeheartedly praised the role, as envisaged by Dr. Ambedkar, of India in the international forum. He spoke in the Constituent Assembly thus:

"... The amendment which is to come as Art 40, reiterates our policy and position regarding India's international relations gives a clear lead to the country... While the contribution of the West to the international relations and promotions of international security was first through the Hague Conference and secondly the League of Nations, now thirdly the United Nations Organisation, India even when she was in letters of bondage had her mighty contribution, not in the shape of influence of powers and wealth, but by bringing her thought into the field of International concept,..."  

Sri Das also highlighted the contributions of Rabindranath Tagore and Mahatma Gandhi, who fought nothing short of international amity, honourable and open relations between nations and countries. According to Sri Das, this was a mighty contribution to the betterment of international relations in a world that was out for cut-throat competition in armament, and soon after was keen to come into the field of economic rivalry. In this context Sri Das welcomed the amendment proposed by Dr. Ambedkar and told in the Constituent Assembly that it is difficult for India, to decide what role India was going to play in the world forum.

"The motion of my Honourable friend Dr. Ambedkar not only lays down what we ought to do, and what we have to do, but also states the limitations within which India is to play her role in international transactions with other nations. The role is honest; the role is upright, the role is open. India, under the leadership of Mahatma Gandhi, our great leader has learnt to take such open course of action. There is nothing hidden in our ways. There is nothing secret in our ways. That explains the differences between the course of action adopted by other states from those adopted by India.  

While discussing on the proposed amendment moved by Ambedkar, Sri Biswanath Das also touched upon the prevailing India's position during that period in the international arena.

"Coming to our relations either present or future with the United Nations Organisation, we see that the Organisation is divided into two major blocs. We have stated in clearest term that we belong to no bloc, despite the fact that we are a young nation, a new born free state, with feeble power though our resources are mighty, we are yet to be developed. In this strife between two blocs ours is a difficult and unenviable position. We have not to be in blocs and we have to fend for ourselves for our own defence and for our own security. Though our respected leader, the Honourable Pandit Jawaharlal Nehru, has told us that we found no theocracy or no communal tendency in the rear and the middle East States, we have the latest announcements in the Press that the very slogan of Islam is in danger is bringing most of the Muslim Arab countries together against us. This is one difficulty. Our neighbour, the Pakistan state, always considers us unfortunately as enemy No.1, despite the fact that we agreed to bring Pakistan into existence, so as to bring about peace and amity between us, the two States.

In the same discussion, Sri Das also stated that "...despite the unanimity of purpose disclosed by the united action of representatives from Pakistan and India, the fact remains that the Muslim countries gave the go-by to India when the South West African question was discussed by the U.N.O." Describing all those practical difficulties which India was facing at that time, Sri Das opposed the amendment of Seth Damodar Swarup, who wanted the
Constituent Assembly to accept a position whereby India would be called up to free the politically and economically exploited people of the world. With the absence of the necessary force to back this great programme, he was hopeful that India might take some time to be the beacon light and focus of attention of the exploited countries of the world.

**Protection of Interests of Minorities**:

Art. 23(1) of the Draft Constitution provided that any section of the citizens residing in the territory of India or any part thereof having a distinct language, script and culture of its own has the right to conserve the same.

During the debate on this clause, Sri Biswanath Das expressed the apprehension that, such a provision might perpetuate different culture zones and create linguistic and script difficulties in the provinces, not only in the existing provinces but also in the provinces to come in. This question could not be considered irrespective of how small or how few such minorities may be.\(^\text{18}\)

Sri Biswanath Das also talked about Art 23(3)(b) which states that "the State shall not in granting aid to educational institutions

discriminate against any educational institution on the ground that it is under the management of a minority whether based on religion, community or language." Sri Das cautioned the House to reconsider this matter seriously, as with practical application of this Article, the provinces might face serious financial difficulties in providing for schooling in so many varieties of languages and scripts. All these issues, he appealed, to be taken up seriously, while considering the question of protecting the interests of the minorities.¹⁹

**Procedure of Election of the President:**

Article 43 of the Draft Constitution envisaged indirect election of the President of India, by an electoral college consisting of the members of both the House of Parliament, and elected members of State Legislature.

Prof K. T. Shah moved an amendment which sought to substitute for indirect election of the President of India, by a direct one whereby all adult citizens of India would elect the President.

Joining the discussion on this issue, Sri Biswanath Das opposed the amendment on the ground that, this would go against the very basic principle of parliamentary responsible government

already adopted by the Constituent Assembly. He also spoke against the conception of a non-party President, which Prof. K.T. Shah wanted for. He explained the practical impossibility of this concept in the following words:

"...Sir, the whole question turns upon one issue, viz, who is going to be responsible to the people of the country, with regard to administration. A President coming through the direct vote of the people as such as an independent existence outside the sphere of the parliament. If so happens sometimes, conflicts may arise between Parliament and the President, and it will make the smooth working of the machinery difficult. Sometimes important programmes may be upset because of these differences."20

With these possible conflicts between an elected parliament and a popularly elected President Sri Das appealed to Prof. Shah to withdraw his amendment and devise way by which this parliamentary system or the cabinet system can function properly with stability.

**Adult Suffrage and Education of Voters:**

Art 149 of the Draft Constitution provided for direct election of State Legislative Assemblies, and laid down that every citizen who is not less than 21 years of age and not disqualified under the Constitution or any law made by the State Legislature shall be

entitled to vote in Assembly elections. Sri Das welcomed this provision, while doing so felt it necessary to place certain facts before the Constituent Assembly:

"...Having adopted this important principle, it is necessary that we realise the immensity of the proposal... There would be minimum of twenty crores of voters, for which there should be at least 1-2 lakhs polling stations and 4 lakhs of polling officers. I, therefore, appeal to the Government and also to you as the person primarily in charge of the work, to take immediate action in time to set up the machinery to carry out this stupendous task. It is through you, that we are devising a special agency for this purpose, namely the election commission, but that does not minimise the tremendousness of the task..." 21

Pointing out the gravity of the problem, Sri Das talked on Art 149, which laid down that the basis of representation had to be devised on the figures of the previous census, that was taken in 1941. But he found the census of 1941 was not a full-fledged one, as the War at that time and the problem of shortage could not make the census a complete one. So he called for a fresh census, so that all eligible adult candidates could get their chance of becoming voters without any further delay.

A second problem which Sri Das considered very important was education of the voters, most of whom were still illiterate; He said:

"...In this country the percentage of literacy is about ten percent. Female literacy is much lower; so also in the case with scheduled castes. As regards literacy among the hilly tribes, whom you have enfranchised in full, and given the right to vote, it is practically next to nothing."

With these instances of difficulties in voting rights, Sri Das warned the Government as well as the Constituent Assembly to see that delimitation of constituencies were to be undertaken and necessary steps should be taken to change the conditions of electorate.

**Constitution of Upper Chambers in the Province:**

When Art 148 of the Draft Constitution, that dealt with the provision of Upper Chamber in the provinces, came up for discussion in the Assembly, Sri Das spoke on behalf of the Orissa Province. Giving the example of the way of functioning of the Second Chamber in the Centre, Sri Das did not see that the constitution of a second chamber in the provinces would be helpful. He stated that;
"...The Second Chamber in the centre is also shown of the usual prestige and responsibility attached to it in the advanced States like U.S.A. Now a days it need hardly be stated that the chamber, which has an indirect election, and much less a chamber having a nomination has the least prestige and influence in the country and much less to arrest the progress of any legislation, be it hasty or revolutionary. Under these circumstances, the system that is being devised and kept ready to be utilised for the Second Chamber in the provinces is not very helpful."\(^{22}\)

He also argued that the Second Chamber could not make a check on the hasty legislation passed by the Lower House, if the condition for making this hasty legislation would remain limited. As per a Second Chamber in the province of Orissa, he held that;

"...Sir, the second chambers are not useful; they are not helpful. As I have already stated, they are only ornamental. But if they were merely ornamental, that would have been something, because ornaments have their values. They make even things attractive. But here it is so very expensive, it entails such a heavy burden on the provincial exchequer, with no useful purpose, that it makes me feel that, it is absolutely unnecessary and that it is an appendage which is better, if it is thrown out.\(^{23}\)

Thus Sri Das expressed his opinion on behalf of the representatives of the Orissa province against the provision of Art 148 for a Second Chamber in the provinces.

\(^{22}\) CAD, Vol.- VII, p-1316.  
\(^{23}\) CAD, Ibid.
Salary of the Members of Parliament and Opposition:

Art 86 of the Draft Constitution provided that 'Members shall get salary fixed by Parliament and that till Parliament meets and fixes the salary, they should be paid the amount as members of the Dominion Legislature or the Constituent Assembly are paid at present" Sri Biswanath Das participated in the discussion, speaking against the amendment moved by Mr. Lari. The amendment moved by Mr. Lari proposed (i) that members should get their salaries which should be one fourth of what a Minister of a Cabinet rank would get, that is he has fixed that whatever salary is fixed for a Cabinet Minister, one fourth of that should be the salary of each individual members, and (ii) that there should be a Leader of the Opposition and that the Leader of the Opposition should get the same salary as a Minister of State, and that is not on Cabinet rank.24

Sri Biswanath Das, in this context believed that, the amendment proposed by Mr Lari would be unfair for the country. He did not feel it fair for the members to be paid salaries for work that they had to do in their constituencies, or in the Assembly. He proposed for a allowance without pay would be the desirable course. So he supported the provision of Art 86 of the Draft Constitution

that laid down that Parliament would determine, by law, the salary and allowances that were to be given to the members.

Again Sri Das opposed to Mr. Lari's proposition that Parliamentary Democracy that was going to be installed in the country, should give a statutory recognition to the Opposition, and provide a scale of pay for the Leader of Opposition. For, the Leader of the Opposition would play the role of necessary evil in the working of Parliamentary Democracy, Sri Das found no justification as to why a specific provision for the status and pay of the Opposition Leader should be made as had been sought in the amendment of the Constitution.

Moreover, Sri Das wanted to lessen the difference in the earning capacity of the top men and the downtrodden in the country by fixing a minimum salary for the Members, as against the scale of payments. His support to the Clause 86 came as; "I support clause 86, as it is, however, much I would desire that, there should be no scale of salary fixed for the honourable Members of this House, who ought to agree to work and serve the country being satisfied with the allowances that the Assembly would fix for themselves..."25

Selection of Judges to the Courts:

While speaking on Art 103 of the Draft Constitution, Sri Das believed that 'selection' in place of 'election' would be the proper mode of appointment of judges.\(^{26}\)

As per the age limit of the Judges of High Courts and Supreme Court, Sri Das thought it should be considered taking average duration of life of the same period. Accordingly, he held for an age limit of 60 years for these judges. Speaking against the proposed 65 years of age limit he said:

"...Men must have some leisure to devote himself, at least in the last days of his life, to some other work—either spiritual or social. Under these circumstances, I believe that the general expectations of society and that the limitation of sixty-five years be given up in favour of allowing Honourable Judges of the Supreme Court, from whom the society, the country, and the State expect much either to live a Vanaprasth or a life of a Sanyasi so that they could devote themselves to their maker and for those who do not believe in God, at least to the service of Society." \(^{27}\)

Sri Das spoke against clause (2) of Art 103, which said:

"Provided that in the case of a Judge, other than the Chief Justice,  

\(^{27}\)Ibid, p-250.
the Chief Justice of India shall always be consulted." He did not find any reason why a Chief Justice of a State, who is a very responsible person, should not be consulted in the case of appointment of the Chief Justice who would be his successor for the same state. He also viewed that the restriction imposed upon the judges of Supreme Court to hold any office of profit while in office or after retirement is not justified.

**Office of Auditor-General of India:**

Art 124 of the Draft Constitution, that had derived its powers from the 1935 Act, gave 'Auditor General' the power to make audit over the Government's accounts and to maintain control over the expenses of Government. When this Article came up for discussion in the Constituent Assembly, Sri T.T. Krishnamachari moved several amendments to the proposed one. Sri Das, joined the discussion by supporting the Amendment No. 25-A to Art 124, moved by T.T. Krishnamachari, that laid down that, all appointments to the staff of the office of Comptroller and Auditor General shall be made by him or such person as he may direct. This gives the power to the Auditor-General of the re-appointment of the existing staff. He spoke against the arguments which hold that the amendment intends
to restrict or limit the power, prestige or responsibility of the legislature. Because, "it is the legislature, that is competent to pass laws. The interpretation of law is being left to the judiciary. It is the Assembly that sanctions money to be spent by the Executive and the Executive is the proper authority to spend money as is sanctioned by the Legislature." Therefore, it no ways limits the authority of the Legislature. On the contrary, Comptroller and Auditor General is the authority to see that the money sanctioned by the Legislature has been spent properly. To discharge this important task, he justified the purpose of instituting a new authority, that had to be created under the law by the Legislature.

Having thus defined the functions of the Executive and the Auditor-General in a definite manner, he mentioned about the ways of functioning of this authority. He justified the functions as specified in the Amendment 25-A, that laid down that all appointments to the staff of the Comptroller and Auditor General shall be made by him or such person as he may direct. This gives power to the Auditor General to re-appoint the existing staff; then as per (4a) amendment, it will give him power to appoint additional staff that may be required for the purpose. Even to certain extent, Auditor General had to

depend upon the Executive for getting approved the rules, that relate to salaries, allowances or leave. Personally, Sri Das was not satisfied with this aspect of the provision and he liked to delete this.

In this context he drew the attention to the provisions prescribed in Art 125, regarding the duties of the Auditor General;

"The Auditor General shall perform such duties and exercise such powers in relation to the accounts of the Government of India, and of the Government of any State, as are or, may be prescribed by or under any Law made by the Parliament. On the other hand, it will be seen that the Auditor and Comptroller General is absolutely left to the mercy of the legislature. Provision for a charged amount has only been made to avoid a clash and a deadlock in future in the operation of responsibilities of the Central-Executive and the Auditor-General. Therefore, the provision is a same one, is a necessary one, is a very desirable one and represents not one view, but merely a compromise view of the two conflicting sets of view." 29

With these explanations in support for the amendment moved on Art 124, by T.T. Krishnamachari Sri Biswanath Das, supported the provision of the Art 124.

Position and Role of Governor:

On Art 147 of the Draft Constitution, that dealt with the powers

of the Governors in the provinces participating on the discussion, Sri Das spoke against the statement of Dr. Deshmukh, who stated that, Governor is to direct and advise. He demanded to know in the House about the proper position of the Governor, whether he was to become a Constitutional Head or a Governor, who has to play his role in advising the Ministry and directing into proper channel ministerial thought and action. He also invited the attention of the House to clause (b) of part IV, Chapter, II, which says "to furnish such information relating to the administration of the affairs of the State and proposals for legislation as the Governor may call for." 30

In this context Sri Das said that, if the position of the Governor is a constitutional one, then there is no justification in assigning him authority as been provided in the clause (b). So all those provisions that call for proceedings of the Council of Ministers should be communicated to the Governor, and all the Legislation that is approved and passed by the Legislature is to be submitted to him for his assent. Therefore, when there is every opportunity given to the Governor to know what legislation is coming and the shape in which it is coming, clause (b) that requires the Council of Ministers to furnish all informations to Governor, is wholly unnecessary.

He again drew the attention of the House to the Fourth Schedule wherein Governor has been provided with the 'Instrument of Instructions' which has no legal force or validity of law. Para (4) of the same Article provides Governor with some executive functions;

"The Governor shall do all that in him lies to maintain standards of good administration, to promote all measures making for moral, social and economic welfare and tending to fit all classes of the population to take their due share in the public life and the Government of the State."\textsuperscript{31}

With these executive powers in the hands of the Executive, there is possibility of clashes between the Governor and the Government. The greatest danger, as Sri Das apprehended to this system, was no limitation to the powers of the Governor at any part of the Draft Constitution.

\textbf{Minor Administration :}

When the Report of the Minor Administration Committee was presented before the House for consideration, on 1st August 1949, Sri Das viewed the Report as a mere reproduction of the Act of 1935, that recommends responsible Government in the Minor Administered States in the Provinces. The provision to have a Lieutnant Governor, instead of a Governor, Sri Das gave his strong

\textsuperscript{31} CAD, Vol.-VIII, p-539.
dissent in the House against this report, because the "Report" did least justice to the people of these Minor Administered Areas, by bringing them under a discredited Act. 32 The reason that he gave in support of his argument was that, the administrative set-up that they proposed in this report was absolutely different from the administrative set-up that had been proposed for the provinces in this Constitution. He also said that the report was hopelessly reactionary from the point of view of Free India.

Secondly, he objected the Report by saying that "...they want and propose to perpetuate in this Constitution a system of administration which has been rejected by all shades of public opinion in this country.33

Thirdly, he rejected the Report saying that "....they bring to bear upon the administration unnecessary burden, which is costly and the share of having the possibility of perpetuating Minor Administration in the grab of provinces." So there was no necessary reason for doing away with the smaller states, who were out to confer responsible government.

In this respect, the recommendations of Simon Commission,

32. CAD, Vol-IX, p-70 (1st August 1949).
33. CAD, Vol. IX.
that laid more stress on the efficiency of the administration and secondly on ground of economy, were favoured by Sri Das. As per the Commission's recommendations, Sri Das preferred the merger of small states in the neighbouring provinces, that would ensure efficiency and would be better on economy ground.34

Thus Sri Biswanath Das opposed to the recommendations of Minor Administration Committee presided by Dr Pattabhai Sitaramayya, the then Congress President and urged the Constituent Assembly to incorporate a suitable provision in Art 212, Art 213 and 214 of the Draft Consitution to make it possible for each Minority Administered Areas join as a contiguous union.35

**Revenue Distribution Between The Centre and The States :**

Article 249 to Art 260 of the Draft Constitution dealt with provisions of collection and assignment of taxes between the centre and the provinces. Sri Das participated in the discussion particularly on the Art 249, that dealt with collection and assignment of Income Tax proceeds between the Centre and the Provinces. In his statement, Sri Das gave his suggestions by pointing out the loopholes of the British system of finance that was prevalent in India. He said that

Britishers never attempted to evolve a national system of finance. The Expert Committee "The Federal Finance Committee", which submitted its report in 1933, to accept collection as the basis of tax distribution was unjustifiable in India, where various local areas were not uniformly developed. On the other hand, the Report of the Sarkar Committee, that proposed for 60 percent and 40 percent share of proceeds for Provinces and Centre respectively was also not justified. Sri Das told in the Constituent Assembly:

"The Sarkar Committee proposes that 60 percent of the proceeds of Income Tax should go to the provinces, and 40 percent should go to the Centre. I claim that they should have given more to the Provinces who are in charge practically of all the nation-building activities of the country. However, Sri Das justified this distribution could be permissible for a short period taking into account the difficult situation that the country was facing at the time, but not as a permanent feature of the Constitution."  

While suggesting for the evolution of a proper and balanced financial distribution between the Centre and the Provinces, Sri Das had referred to the recommendations of Prof Adarkar and Mr Nehru, wherein they had laid down three principal bases of distribution, namely the population, area, and the collection. In the above

37. CAD, 5th August 1949, p-214.
distribution they had given the last place to collection as the basis of tax distribution. Sri Das justified it saying that

"...Collection is an artificial process. True, it is the centres like Calcutta, Bombay and Madras need attention. Let them have something. But it is unfair to claim the major share from the distribution of Income-tax...I want a uniform process of development. I do not want any province to be inconvenienced. While thinking of three developed and advanced provinces, I also want them to see that their brothers and sisters in other provinces also follow them. Let them be behind them, but let them follow them. Otherwise, they will be left singularly alone to themselves. Therefore, I do not agree with the principle of distribution on the basis of collection."\textsuperscript{38}

Finally Sri Das in his debate suggested for a certain 'Reserve Fund', which had to be distributed to the undeveloped areas, on a certain specified basis. Thus taking account of the interest of the whole of India, Sri Das wanted to evolve a just and fair distribution system in India, which will help all parts of India to develop economically.

**Appointment of Finance Commission and Provision of Grants-in-Aid to Provinces:**

 parler on Art 255, of the Draft Constitution that dealt with

\textsuperscript{38} CAD, 5th August 1949, p-214.
provisions of grants-in-aid from the Union to the States, Sri Biswanath Das claimed for a thorough enquiry into our system of taxation, allocation, so as to devise a scientific and national system of finance to keep pace with the needs of social justice.39

While discussing on Art 260 of the Draft Constitution, that dealt with the appointment of a Finance Commission to enable the making of independent grants to the Provinces without interference by the Finance Department of the Central Government, Sri Das justified this Article by saying it as a necessary requirement of federal structure. In this context he referred to Art 260(2) that laid down that, "Parliament by law shall determine the qualifications etc, of the Finance Commission." In this issue he went against the view of Prof K.T. Shah, who said that an appointment of a Finance Commission would create scope for patronage. He also rejected the allegations by Professor Saksena and Mr Kamath who felt that this Article would interfere with the powers of Parliament, and that no discussion of a full and frank nature would be possible under the present circumstances. The organisation of Finance Commission, as Sri Das justified, is not outside the Parliament's control. In fact it

39. CAD, 8th August, 1949, p-250.
is a body created by the Parliament for the purpose of making grants to the Provinces.

To the question of functioning of the Commission, Sri Das point out that:

"On appointment, the Commission makes a thorough, deep, and searching inquiry, also if required sit in examination over the budgets and administration of provinces, and submit a report to the executive. Whose executive? The executive of the Parliament. Thereupon, the Cabinet in the name of the Parliament, in the name of the Governor-General take decisions and they practically accept the recommendations of the Finance Commission just as in the case of the findings of the Election Tribunal, where the Governor, or the Governor-General has ever interfered?..." So Sri Das ruled out any possibility of interference by the Finance Commission to the decisions of the Parliament.

The other point of objection by Members, that, it will give no scope for discussion, was again ruled out by Sri Biswanath Das, when he said that "Any member of the House, under its Rules of Procedure, can raise a debate. Political parties may also move Parliament for a debate and discussion. Therefore, there is a scope for discussion immediately."
Again the control on Finance Commission can be maintained by the Parliament through Money Bill. On this point Sri Das stated that:

"The grant again comes before the Parliament in the shape of a Money Bill. Then again Parliament has got the power to discuss the whole question on its merits. Is it possible for a responsible Ministry and a Cabinet to go beyond the wishes of the Parliament? It is impossible unless we visualise that we are not to have a parliamentary system of democracy having a Cabinet, which is absolutely representative of the wishes, aims and aspirations of this honourable House."\(^{42}\)

With all these justifications for the constitution of a Finance Commission, Sri Das opposed the amendment moved by Prof. K.T. Shah, Prof. Kamath, Shibban Lal Saxena and others and supported the Article strongly as a necessary requirement of our Constitution.

**Emergency Provisions of the Draft Constitution:**

The Article from 275 to Art 277 of the Draft Constitution dealt mainly with the Emergency powers of the Government. Sri Biswanath Das participated in the discussion by analysing the clauses of the mentioned articles. He classified it under three different but related heads.

---

\(^{42}\) *CAD*, 10th August, 1949, p-323
"... Firstly, provisions relating to war emergencies, secondly, provisions relating to domestic violence and thirdly, provisions relating to any such violence and acts of violence which the President considers imminent and dangerous. A Government functioning under any Constitution has always the right to take all necessary powers to deal with the situation in cases of external aggression on war emergencies. To that extent, any restrictions of the powers and privileges of the ordinary citizens may be allowed under Constitution.43

So considering the problems of safety and security of the ordinary citizen through the restriction on their powers and privileges, during times of external aggression on war emergencies, Sri Das justified the provisions of National Emergency during war times, but he did not justify the provisions of emergency during internal violence. He visualised that there would be possibilities of misuse of power in case of domestic violence.

He justified his argument with the reasons as follows:
"...Sir, we come to the question of domestic violence, and any act of violence which according to the President are considered imminent and dangerous. These are different questions and have to be considered from a different point of view. As I have stated on many occasions, I repeat that we are contemplating Party Government in a system of democracy. Party Government necessarily means different

43. CAD, 20th August 1949, p - 513.
parties. In a federation with a centre and units, there is no denying of the fact that different political parties may be in charge of administration in the different units or even in the centre. Under these circumstances, there is a possibility of misuse of these powers. Speaking personally, I have experience of these misuse. Recollecting my past-experience of Madras and the Justice Party, I have seen how the district boards and municipalities had the power kept to itself to supersede these municipalities. What has been done in Madras by a certain party with regard to district boards and municipalities may be repeated by the Centre. Therefore, I plead with the Honourable Members of this House that no power need to be left with the Centre or with the Governor who are practically the agents of the Centre to deal with any such situation."

With all these possibilities of misuse of constitutional powers in the hands of Government both at the Centre as well as in the States, Sri Das opposed to sanction more powers to be reserved in the Centre for dealing in such cases.

He said, it would enhance the possibility of a totalitarian party coming to power at the Centre. He regarded this would mean giving autonomy to Centre, with vengeance to the Provinces. Therefore, he pleaded before the Drafting Committee for a reconsideration of this Article taking into account the above points.

44. CAD, 20th August, 1949, p-513.
To the question of suspension of grants or financial aids to the Provinces, during these emergencies, Sri Das said that the "Centre can not afford to suspend the grants that are given to the provinces to be utilised for nation building activities unless it wants to bury itself." He said that at least a responsible Government could not do this.

Thus Biswanath Das opposed the part of Emergency provision mainly internal and financial emergencies, which he saw as undemocratic and totalitarian.

**Summary :**

Constitution is a machinery by which an independent policy is set up and it works. It is a restraint upon the arbitrary functioning of the government. So constitution-making is a hard task for the leader, when the country becomes independent and needs a new constitution for its governance. Accordingly, when India became independent, a Constituent Assembly was set up to frame a Constitution for the independent democratic India. The Assembly was composed of the representatives of the Provinces and Sri Biswanath Das was one of the representatives of Orissa who contributed much towards the framing of the Constitution.

It is inferred from the debates of the Constituent Assembly that Sri Das had spoken on many issues like powers of the Centre, of the States, Governors, Judiciary and problems of minorities etc. He was very strong in his approach and he could foresee a number of problems which the country is facing today. The alertness of his mind to the implications of the provisions made in the Draft Constitution and the boldness with which he tried to convince the other members of the Assembly exhibit the constitutional ability and perception of Sri Biswanath Das. In the Assembly, he was above the parochial interest of his own province and he was out and out a staunch nationalist. However, he was a federalist and advocated for a policy which would establish a strong nation with strong states. The Assembly debates indicate the democratic approach of Sri Das. Sri Das, in the discussion of the Draft Constitution, tried to see that powers should not be concentrated and centralised in any hands. He advocated for decentralization of power, social welfare, social justice, rights of minorities and on the whole, the democratic spirit of our Constitution. In his wisdom, breadth of vision and constructive approach to constitutional issues, he displays the traits of a statesman and legislator.