CHAPTER - VIII

FREEDOM, DEMOCRACY AND JUSTICE

A Free Nation is born:

The enactment of the Indian Independence Act, 1947 by the British Parliament marked the end of the British rule and the birth of a free democratic India. It transferred power to Indian hands, which cast a great responsibility on her leaders in so far as they had a special duty to fulfil the objectives placed before the people during the freedom struggle. The transition from the British rule to self-rule was not at all simple and easy. The leaders set themselves the task of giving a more liberal and egalitarian shape to the government and society that was to be ushered in. The Constituent Assembly of India, after a hard labour of nearly three years, accepted the present Constitution of India, that came into force on 26 January 1950.

The Constituent Assembly which gave the Constitution in the name of the people of India, deserves a prominent place in the constitutional history of India. In giving a constitution to India, the first ever made by her own sons, the Constituent Assembly made history. As M.V. Pylee has observed:

... The Assembly held altogether eleven
sessions which covered a period of 165 days. Of these, 114 days were spent on the consideration of the Draft Constitution. The Constitutional Adviser's text on which the Drafting Committee worked consisted of 243 Articles and 13 Schedules. The Draft Constitution prepared by the Committee consisted of 315 Articles and 8 Schedules. At the end of the consideration stage, the number of Articles grew to 386. In its final form, the Constitution had 395 Articles and 8 Schedules.

The work on the Constitution was conducted in a democratic manner. To the Draft Constitution, not less than 7,635 amendments were tabled by the members. Of these, 2,473 were actually moved, discussed and disposed of. This alone should show the manner in which the Assembly conducted its business... it was indeed a great democratic exercise... It was a fullfledged democratic procedure of which Indians can be proud.

It should be obvious to anyone who goes through the voluminous Proceedings of the Constituent Assembly that by adopting the most democratic method, it gave a democratic constitution to the largest democracy of the world today.

The new nations of Asia and Africa today are known by, and have become prominent, not for their positive achievements and political stability, but for their failures and instability. They are discussed more often for their political instability and crisis in the field of government and leadership. Leaders with a charismatic personality like Sukarno, Nkrumah, Patrice Lumumba, Moise Tshombe, Nasser and a host of others have played their own role in the political life of their respective countries. What is more, in a comparatively short time, revolutions — followed invariably by counter-revolutions — have been witnessed in most countries of Asia and Africa in the post-Second World War period. The period was a welcome phase in the nationalist movements of most of these countries in as much as it brought a rich harvest for nationalism and sounded the death knell of colonialism and imperialism in the East and in Africa. It also consequently heralded constitutionalism in most of these countries. The British empire was liquidated. The other colonial powers like France, Spain, and Portugal were forced to take note of the changing spirit of the new Age. But, to the dismay of many an optimist observer, the Asian and African States have come to be looked upon as political mad-houses and happy hunting grounds for ambitious leaders in establishing their own personal
hegemonies. In this race for power the poor citizen, who was expecting redemption, is completely disillusioned and frustrated. What was once true of Latin American countries has come to be true of Asian and African countries today.

India, the earliest of the Asian countries to attain freedom, is perhaps the only honourable exception to this situation of political confusion and despondency. India has enjoyed political stability since independence. Under the charismatic leadership of the late Jawaharlal Nehru, the country enjoyed an unprecedented degree of political stability and continuity of leadership in the government. The smooth change-over in the leadership after Nehru, installing the late Lal Bahadur Shastri and a short while later Mrs. Indira Gandhi as the Prime Minister without any disruption in the political life of the country, is proof enough for the political maturity of the country and the people. Jawaharlal Nehru had the unique privilege of being the Prime Minister of the country continuously for a record period of eighteen years. Such a lengthy period of office for a single individual has, perhaps no parallel in any other democracy, much less in Asia and Africa. India has enjoyed, and has been enjoying, democracy with parliamentary institutions duly
elected three times after independence. She is one of the biggest democracies that is able to withstand all possible onslaughts, including military aggressions on her territory. An independent judiciary is functioning successfully as the guardian of the constitution and the rights of the citizens. We have been able to adopt the peaceful path of economic progress through democratic planning. The three 5-year Plans have already been worked; and the fourth one is being launched. These Plans are the real hopes for Indians to-day for an all-round economic development and higher standards of living which should follow the political emancipation of a people.

Commenting on this phenomenal achievement of India, Morris-Jones has this to say:

The main point to be emphasised is that it is in itself a signal achievement of the Indian polity that it has, over a relatively short period, acquired definable shape and form—stability not in the sense of a stationary state but in the sense of regulated movement ... This is scarcely true of all new states ... India has been given coherence and shape by the character of the three elements in terms of which our account has been given: a machinery of government, a one-dominant-party system and a parliamentary constitutionalism... 2

Such a process has been facilitated by the political institutions that are built into the constitutional frame of the country which "were in minor measure chosen with deliberation, in major part accepted and acquiesced in." These institutions, as Morris-Jones thinks, have made possible whatever development that has been made all these years in the country by controlling and regulating it. The institutions are so firmly established that they have greater chances of survival here than anywhere else in Asia or Africa. This is not to suggest that they lack flexibility and dynamism. They accommodate and adjust themselves to the necessary changes. The constitution, being an organism, should be able to grow and flourish.

To quote Morris-Jones again:

The firmly established nature of the institutions of political life tends to disguise the pace of change, but change is nonetheless taking place. Moreover, the institutions are of a kind which tend to ensure that change is at one about as fast as society can bear and at the same time about as sure (i.e., non-reversible) as man can make it.

The form and spirit of the Constitution of India, framed and adopted by the Constituent Assembly soon after independence, naturally constitutes the chief source of not only our political institutions, but also their utility and efficacy in prescribing the values we cherish. The Members of the Constituent Assembly in general, and of the Drafting Committee in particular, put their heart and soul into this task for nearly three years and thrashed out a Constitution for free India. The adoption of the Constitution and its promulgation on 26 January 1950 ushering in the 'Soberign Democratic Republic of India' was the culmination of the freedom struggle.

Dr. Ambedkar in the Constituent Assembly:

In this stupendous task, in the wake of freedom, Ambedkar played an unique role in his capacity as Chairman of the Drafting Committee and as Minister for Law at the time. He laboured, day in and day out, incessantly for writing the first Constitution of free India, entrenching into it liberty, equality and justice. Here was a life-time's opportunity for a man, who had zealously devoted the best part of his life to the cause of the down-trodden and the underdog; who had faced the toughest opposition from the vested interests and the influential classes in the society; and who had become
almost desperate and disillusioned on the eve of independence. As has been discussed in the foregoing Chapters, he was one of those who had vehemently opposed and criticized the project of the Constituent Assembly itself as utterly superfluous. But he had the astuteness to enter it, when he could not prevent it, and try to make the best use of it. When he entered the Constituent Assembly, being elected from Bengal, he entered it as a 'Protestant'. He had never thought that he was destined to be the 'chief architect' of the Indian Constitution. How could he ever imagine that an untouchable Mahar would be enlisted and marked out for this privilege and honour? When it did come Ambedkar himself was more than surprised. It was all the more greater when he was elected Chairman? He had entered the Assembly with the only hope of safeguarding the rights of the Scheduled Castes. With his election as the Chairman of the Drafting Committee, he was entrusted with the onerous task of safeguarding the rights of every Indian, including the Scheduled Castes, and providing a form of government and society based on the principles of justice-social, political and economic. He was overwhelmed by the gesture and acknowledged his election gratefully. Commenting on his appointment as Member of the Drafting Committee and its Chairman, Dhananjay Keer writes:
... An Untouchable who was kicked out from carts and segregated in schools in his boyhood, who was insulted as a professor, and outings from hotels, hostels, saloons and temples in his youth as a despicable Mahar, and who was cursed as a British stooge, despised as a heartless politician and devil, hated as a reviler of the Mahatma and decried as an executive Councillor, became now the first Law Minister of a free nation and the chief architect of the Constitution to define the will, aim and vision of India! It was a great achievement and a wonder in the history of India. India chose, in amends for her age-long sin of untouchability, her Law-giver, new Manu, and new Guru from among a caste which had been dehumanized, demoralized and devitalized for ages. New India entrusted the work of framing her new laws to a man who had a few years before burnt the Manusarit, the Code of the Hindus! Was it the goddess of Nemesis that played the trick? Or was it a whirligig of time? 5

No doubt, Ambedkar became the modern Manu in giving a new legal and constitutional order to a free people of a free and democratic country. He got a lifetime's opportunity to exhibit his talents, his legal

5. op. cit. p. 396.
acumen, and his expert knowledge as a constitutionalist. He also looked upon it as an opportunity to place at the disposal of the Nation his intellectual resources, abilities and equipment, once he entered the Constituent Assembly. He continued to participate in the proceedings with zeal and vigour and left on it an indelible imprint of an expert in the field. This must be obvious to any objective reader of the Proceedings of the Constituent Assembly of India. It must be mentioned, to the credit of Ambedkar, that the President and the Members of the Constituent Assembly looked to him whenever there was a procedural wrangle, or a difficult constitutional point to be resolved. The immense interest he took in making the Rules of Procedure of the Constituent Assembly helped them to be framed on sound lines. In the early phases of the Assembly's work he was asked to serve on a small sub-committee on the much debated question of additional representation to West Bengal and East Punjab, consequent to Partition. He himself had to seek re-election from Bombay as he lost his seat in the Assembly from Bengal on its partition. Ambedkar had, besides the legal and constitutional acumen, the extra-ordinary capacity to put forth his arguments in a lucid, logical — often cold logic of course — and convincing manner, which would be acceptable to the different sections of the House. This was a great advantage and an asset, indeed, in his favour,
which helped not only in the drafting of the constitution, but its smooth passage and adoption by the Constituent Assembly. There were a number of criticisms and amendments to the Draft Constitution. He accepted a few of them, and rejected a good deal. Nevertheless, the Assembly and its President had reposed absolute confidence in his abilities and accepted his points without cavil. This, in itself, was a great achievement for Ambedkar and a great tribute to his intellectual and parliamentary abilities. He was encyclopaedic in the range of his legal and constitutional knowledge. As Dr. Pylee observes:

Ambedkar brought to bear upon his task a vast array of qualities, erudition, scholarship, imagination, logic, eloquence and experience. He had a rare mastery over even the most complicated problems and situations and an ability to put across his ideas in the most lucid and forceful manner...

Ambedkar made his presence in the Assembly felt in his maiden speech itself. He was unexpectedly called upon by the President to speak on the "Resolution re Aims and Objects" moved by Pandit Jawaharlal Nehru. The
House was discussing the Amendment to the Resolution, moved by Dr. M.R. Jayakar, asking the House to postpone consideration of the Resolution in view of the absence of the Members of the Muslim League from the Constituent Assembly. Jayakar's amendment was dubbed as 'obstructionist' in the flush of independence and enthusiasm about the Aims and Objectives of the Constitution for free India. The mood of the House was to proceed with the task at top-speed without waiting for anyone, much less for the Muslim League Members. This was reflected very well by the Hindu Mahasabha leader Dr. Shyam Prasad Mookherjee, who called it pointless to defer a decision as he feared that it would only encourage the League to stay out and block the progress of the work of the Constituent Assembly.

Dr. Jayakar's amendment did not have any sinister motive, as suspected by some. He was moving it purely on technical and legal considerations and as well on moral grounds. As Hon'ble Shri. C. Rajagopalachariar himself pointed out, on some other occasion, in the Assembly: "it is not only a matter of culture or good-breeding, but it is statesmanship to think of those who are absent, to think of other people than ourselves, when we deal with any matter."

---

Ambedkar naturally supported Jayakar's point of view. He was also for postponing consideration of the Aims and Objectives Resolution till the League Members join them in the proceedings. In his maiden speech Ambedkar was not just formally supporting the Amendment. He utilised the opportunity to draw the attention of the Honourable Members to some of the more serious and deeper issues to be faced by them. It is, therefore, necessary to quote from his lengthy speech, which is vital to a better appreciation of his views on the task of constitution-making. He divided the Aims and Objectives Resolution into two parts — the 'Controversial' and the 'non-controversial' parts. 'The Resolution, coming as it did from a socialist like Jawaharlal Nehru', he said:

... is to my mind very disappointing. As a student of history, I should have preferred this part of the Resolution not being embodied in at all ... I say they have become not only the part and parcel of the mental make-up of modern man in every civilised part of the world, but also in our own country which is so orthodox ... to repeat it now as the Resolution does is, to say the least, pure pedantry.

He also said that the Resolution suffered from some lacunae. While the Resolution enunciated some fundamental rights there were no remedies. Moreover, the rights were made subject to law and morality. Further, he observed that the Executive of the day will have to decide as to what is legal and what is moral. Referring to the enunciation of the economic objectives in the Resolution, he observed:

If this Resolution has a reality behind it and a sincerity ... I should have expected some provision whereby it would have been possible for the State to make economic, social and political justice a reality and I should have from that point of view expected the Resolution to state in most explicit terms that in order that there may be social and economic justice in this country, that there would be nationalisation of industry and nationalisation of land, I do not understand how it could be possible for any future Government which believes in doing justice socially, economically and politically, unless its economy is a socialistic economy. Therefore, personally, although I have no objection to the enunciation of these propositions, the Resolution is, to my mind, somewhat disappointing. 9

Speaking on the first four paragraphs of the Resolution, he referred to the absence of the Muslim

League Members. Pointing to the divisions among the people of this country, he said:

we are a group of warring camps and I may go even to the extent of confessing that I am probably one of the leaders of such a camp. But, Sir, with all this I am quite convinced that given time and circumstances nothing in the world will prevent this country from becoming one. (Applause). With all our castes and creeds, I have not the slightest hesitation that we shall in some form be a united people. (Cheers)

I have no hesitation in saying that notwithstanding the agitation of the Muslim League for the partition of India some day enough light would dawn upon the Muslims themselves and they too will begin to think that a United India is better even for them. (Loud cheers and applause) 10

Then he posed the question as to how to make these heterogeneous groups to come to understanding and to taking common decisions. His appeal was: "... we should leave aside all legal considerations and make some attempt, whereby those who are not prepared to come, will come. Let us make it possible for them to come, that is my appeal." 11

10. Ibid, pp. 100 ff.
Ambedkar thought that the Resolution was almost preventing the Muslim League from coming into the Assembly. Paragraph 3 of the Resolution, amounted to being a directive to the Constituent Assembly to frame the constitution in terms of that para. The idea of grouping of the Provinces was absent in this. Of course, he said, "so far as I am personally concerned, I do not like the idea of grouping, (here, here) I like a strong Centre, (here, hear) much stronger than the Centre we had created under the Government of India Act of 1935." 12 The Congress had accepted the principle of there being an intermediate polity, a sub-federation between the Union Government and the Provinces. In the absence of any reference to that in the Resolution (Paragraph 3), Ambedkar stated that the "Muslim League is bound to take advantage of and justify its continued abstention." 13

Then he took up the question that was posed by Dr. Syam Prasad Mukherji, whether the Resolution was inconsistent with the Cabinet Mission's proposals? The Assembly may be having the right to pass the Resolution. But was it prudent? he asked. He noted further:

... I want this House to consider this matter from the point of view, not of what authority is vested in the Constituent Assembly. I want this House

12. Ibid. p. 102.
to consider the matter from another point of view, namely, whether it would be wise, whether it would be statesmanlike, whether it would be prudent to do so at this stage. The answer that I give is that it would not be wise. I suggest that another attempt may be made to bring about a solution of the dispute between the Congress and the Muslim League. This subject is so vital, so important that I am sure it could never be decided on the mere basis of dignity of one Party or the dignity of another Party. When deciding the destinies of nations, dignities of people, dignities of leaders and dignities of parties ought to count for nothing. The destiny of the country ought to count for everything. 14

Referring to the alternatives, he declared:

Either there shall have to be surrender by the one party to the wishes of the other — that is one way. The other way would be what I call a negotiated peace and the third way would be open war", which he ruled out as dangerous. He drew the attention of the House to a passage from Burke’s great speech on Conciliation with America. "If there is anybody" said Ambedkar," who has in

mind the project of solving the Hindu-Muslim problem by force... 
in order that the Muslims may be 
subjugated and made to surrender 
to the constitution that might be 
prepared without their consent, 
this country would be involved in 
perpetually conquering them. The 
conquest would not be once and for 
ever." He concluded: "Let us 
prove by our conduct that if this 
Assembly has arrogated to itself 
sovereign powers it is prepared to 
exercise them with wisdom. That is 
the only way by which we can carry 
with us all sections of the country. 
There is no other way that can lead 
us to unity. Let us not have any 
doubt on that point. 15

Ambedkar was, of course, voicing the minority opinion 
in the House, when he spoke on Mr. Jayakar's Amendment. 
Even this forthright and cogent argument of his was 
construed by some as 'obstructionist'. Those of the 
Harijan Members who spoke supporting the Resolution, 
whose to appeal to Ambedkar to extend his co-operation 
in the work of constitution-making! Shrimathi Sakthayani 
Valayudhan, an Harijan Member from Madras, for example, 

15. Ibid, p. 103.
made such an appeal. She said: "Let me make a personal appeal to Dr. Ambedkar to join the nationalist forces of this country. He is the only leader of the Harijan community and his non-co-operation with the nationalist forces is a great tragedy to the Harijans; his co-operation with the nationalist forces will enhance the emancipation of the Harijans. Here is a unique occasion for you, Sir, (to Dr. Ambedkar) to place your services before the country." 16 Another Harijan Member from Bengal, Mr. P.R. Thakur referred to Ambedkar's warning regarding the possible dangers from various 'warring communities' in the country. Mr. Thakur said: "... Lastly, I cannot but express my joy that very soon India will be free. The time has come for it. There is no power on earth which could stop it. Some of my friends, especially Dr. Ambedkar, said that there would be civil war in the country before India gets freedom. The Depressed Classes will be very glad to meet it. As a matter of fact they were ready to face it." 17

Such references and appeals as these were made to Ambedkar, obviously, in view of his support to the claim for Pakistan and making a case for it; and his earlier opposition to the Constituent Assembly project itself.

17. Ibid, p. 140.
there was, however, no justification to doubt the nationalist in him. He had made a passionate appeal for forging national unity in his maiden speech. As an expert constitutionalist, he alone could think of the pre-requisites of constitutionalism. One such pre-requisite in national unity and cohesion. "Constitutionalism", as Carl J. Friedrich explains, "wherever it appears, is a refinement of ordinary government. In any society, there is practically always some sort of government, no matter how inadequate, but only a firmly established government is capable of being constitutionalised. In the evolution of our Western world this meant that national unification had to precede constitutionalism." 18

In India nationalism was crystallised, but it was still a divided nationalism so long partition was not implemented. Ambedkar was only pointing out to this factor, and wanted to wait till the issue was finally decided. A constitution could not, obviously, be finalised under uncertain conditions and circumstances. Hence his plea for postponing consideration of the Aims and Objectives Resolution.

Most of the Members, who participated in the debate on the Resolution, supported it and opposed the Amendment moved by Dr. Jayakar for postponing its consideration.

18. Constitutional Government and Democracy,
Revised Edition, 1966; p. 10
till the members of the Muslim League come to the Assembly. It is interesting to note that after some speeches, the Chairman actually postponed consideration of the Resolution, as there were a number of members, who wanted to speak on it. But the Assembly was to be adjourned for Christmas. The Chairman expressed the hope that it will also facilitate the coming in of the League members.

The purpose of Jayakar's Amendment was thus virtually served, though in a different manner and for different reasons. Hence, the Amendment was withdrawn by him. The achievement was shared by Dr. Ambedkar also, in a larger measure. It must be noted here that Ambedkar's maiden speech, making a fervent appeal for national unity, had its own impact on the minds of the members. It was frequently cheered by all sections of the House, including the Congress members. As Mr. Keer observes: "... Dr. Jayakar's speech containing the same appeal aroused resentment while Ambedkar's fine oration evoked a sense of co-operation in their minds, and the hands that were itching to smash his rang with approbation! It was a red-letter day in the romantic life of Ambedkar. The sacrileger had become now a counsel, the scoffers had become a friend who cast a spell on the Congressmen. Few speeches
have given such a turn to the life of a speaker..." 19
It was, in effect, a turning point in the public life of Ambedkar. It may be appropriate to claim that the impression his maiden speech created was, in no less a measure, responsible for his choice as the Chairman of the Drafting Committee, besides other reasons.

Dr. Ambedkar and Constitution-making:

The constitution of a country, coming as it does as the culmination of the aspirations of an emancipated people, can be looked upon as the expression of the will of the people themselves. The modern theory of constitutionalism recognises, beyond doubt, the will of the people as the basis of the government. Right from the days of the Declaration of Independence by Americans, a popular base for the legal frame is accepted as indispensable. As stated in the Declaration of Independence, all 'just powers' exercised by a government are derived from and founded upon the consent of the people. This has been, in fact, 'a basic and constantly recurring theme in Jefferson's political thinking'. In Jefferson's opinion, only a law emanating directly from the authority of the people themselves, a law binding upon the ordinary organs

of government and unchangeable by them deserved to be called a constitution. Since the Constitution of the United States, almost all constitutions have come to be made and adopted in the name of the 'people'.

The constitution of a country seeks, in general, not only to create the 'legal frame of the political society', but also guarantees the fundamental human rights or civil liberties to the members of that political society. While trying to regularise and refine the ordinary government, constitutionalism has been striving to regularize restraints also. In a study of the making of any constitution, we have to watch out carefully for these two aspects, which can be called the two major aspects of a constitution. The study will also have to take into account the essential influences of men and their philosophies, which are almost unavoidable. "Constitutionalism", as Friedrich has observed, has been traced in relation to liberalism, to rationalism, to individualism. Each one of these general philosophies has indeed contributed its fair share to the making of constitutionalism..." 21 as pointed out by him further, there are three outstanding non-political concepts of a constitution. They are: (a) the philosophical (which is a generic concept); (b) the

20. The Political Writings of Thomas Jefferson, ed. Edward Dunbaurd; the American Heritage Series; 1969; Oms. III & IV.
The Aristotelian concept of a constitution was based on the whole order of things in a city. Hegel also entertained more or less a similar idea. The present-day notion, on the other hand, is that "the constitution describes the actual organization of the government in broad outline..." A philosophical notion combined with legal approach, like that of Coke, looks at the constitution as that which "embodies the basic legal conceptions of the community, their outlook on life or Weltanschauung, in so far as it can be embodied in general legal rules." Functionally, a constitution is concerned with effective restraints upon political and governmental action. The effectiveness of the restraints depends upon their regularization in/fundamental law of the land in the form of rights. This invariably implies the choosing of a suitable form of government and their institutions. In order to render the constitutional decision genuine, it is necessary that "the decision must be reached after the mature deliberation of those who participate in the decision..."

The constituent Assembly of India, that was entrusted with the task of constitution-making, was composed of the

22. Ibid, p. 3.
representatives elected from the then elected Legislative Assemblies of the British Indian Provinces, and the representatives of the Princely States, joining at a later stage. It was in no way a body that was elected on the basis of a liberal franchise. It was also true that in view of the special situation in the country, the nominees of the Indian National Congress were predominant, though there were the representatives of the other parties too. There were the Hindus, the Muslims, the Christians, Sikhs, Parsees, Harijans and others. It is also interesting that various estates and interests were fully represented. It was indeed fortunate that top intellectuals, distinguished jurists, constitutional experts of the country also found their places in the Assembly. A galaxy of freedom fighters led by Jawaharlal Nehru, Patel, Rajendra Prasad and others, with the conspicuous absence of Mahatma Gandhi, took a leading part in the making of the constitution. The Princely States, perhaps, provided some of the best lawyers, professors, constitutionalists and administrators like, Sir A.Ramaswami Mudaliar, Sir C.P.Ramaswami Iyer, Sir V.T.Krishnamachari, Sir B.B.Mitter, among others. From the provinces came Sir Alladi Krishnaswami Ayyar, Shri T.T.Krishnamachari, Shri K.M.Munshi, Shri K.Jopala swarmi Ayyangar, Dr. Shyamprasad Mukherji, Prof. K.T.Shah, Shri N.V.Kamath, Shri S.Radhakrishnan, and others. Dr. A.m.
Ambedkar, the President and founder of the Scheduled Castes Federation of India, was elected from Bengal and later from Bombay. The prominent among the lady members were Mrs. Sarojini Naidu, Mrs. Vijayalakshmi Pandit, and Mrs. Durgabai. By and large, the best part of the country's leaders of men, thought and ideas participated in the deliberations of this important and historic Assembly.

One can go to the extent of attributing this to the system of indirect election in the Provinces, and nominations from most of the Princely States. It can also be said that a direct system of election could have only provided the Assembly the representative character, which might not have brought-in the best. The 
locus standi of the Constituent Assembly came to be questioned seriously, as it was not a representative body elected on a broad-based franchise. Technical objections were raised, now and then upon its claim to represent the 'will of the people'. One member, Mr. Maulana Husrat Mohani, even went to the extent of giving notice of a Motion to adjourn the House, as only a newly elected Constituent Assembly on adult franchise could discuss the Draft Constitution. But the motion was rejected as there was no one to support it. Later, Ambedkar set at rest this controversy by declaring on the floor of the House: *I say that this Preamble embodies what is the desire of every member of the House, that this Constitution should have its root, its authority, its sovereignty.
from the people. That it has. It may be worthwhile to ponder over here, whether some of the stalwarts mentioned, who had never fought elections, would have been elected at all in a system of direct elections. In this particular respect, therefore, the composition of the Assembly was most satisfactory, useful and could be expected to bestow the best thought and create a worthy constitution. These persons, who were eminent in their own fields, brought to bear upon the Constitution of India the imprint of their thoughts and philosophies. This, however, is not to suggest that the Constitution was an innovation. No constitution, including the earliest one i.e., the American Constitution, would be claimed as an innovation. A constitution is bound to be shaped, drawing heavily upon the existing system of Government, however imperfect it might be, and the influences of men and organizations like the political parties and their programmes. The role of ideas and interests of individuals in constitution-making has been emphasised time and again. There was Charles A. Beard, who went to the extent of explaining the compromises in the Philadelphia Convention as motivated by the economic interests of the individual delegates, who were zealously trying to preserve their own interests. Such a claim

and conclusion is, however, a farfetched one. Still, the influences of those who are participants in the making of a constitution cannot be ignored.

The Constitution of India, as it emerged from the Drafting Committee, bore, obviously, the influence of Mahatma Gandhi, Pandit Nehru, Sardar Patel and the Congress Party's ideals in general. A large part of the Constitution was, no doubt, an adoption from the Government of India Act, 1935, which was inevitable. Such being the case, we cannot ignore all these factors while examining the constitution-making in India. The Drafting Committee, with Ambedkar as its Chairman, had an important role to play. Hence, it is proposed to examine, in the following, the process of constitution-making in India, with special reference to the role of this Committee and its Chairman.

While we examine the role of Ambedkar as the principal architect of the Constitution, we have to take note of his two different capacities i.e., as champion of the Untouchables, on the one hand; and as a constitutional expert, on the other. Further, his role as a politician should be bifurcated from that of the constitutional expert. He was a man of ripe political experience.
and enormous constitutional knowledge and acumen. Whenever
the question of Untouchables was mooted, his heart would
flow out for them in full measure; and he would go to
any length to rehabilitate and get them maximum political
advantages and protections for their progress. in
fact, as he himself acknowledged, he entered the
Constituent Assembly solely to protect their interests.
When he was thrashing out the new Constitution of India,
he was playing the role of a great constitutional pundit,
though it would be difficult for one to keep the two
roles apart from each other. It is this role of his
that is significant for students of India's constitutional
evolution.

Constitution-making in leading countries of the
world has been subject to several influences, as already
pointed out. Both ideals and men are significant in
shaping the constitutions. In the Constitution of the
U.S.A., Ireland, France, Canada and other countries this
is quite obvious. In the case of India, similarly,
constitution-making was influenced by many factors, such
as the British political ideals and institutions, the
series of British Parliamentary enactments, the impact
of the nationalist movement, struggle of the socially
and educationally backward people, and the minorities
of the country. The Preamble, the Directive Principles
of state policy, the provisions on adult franchise etc., were, for instance, the direct outcome of the political ideals of the Congress organization, which were propagated for years under the guidance of leaders like Mahatma Gandhi and Pandit Nehru. In fact, there was a chorus of condemnation of the Draft in the Constituent Assembly on the count that it did not provide for the Gandhian vision of 'Gram Raj', in which the village constituted the basis of political and administrative arrangement. The criticism was all the more severe in view of Ambedkar's forthright condemnation of the villages as 'dens of ignorance'. Ambedkar had said in his speech, while moving the Draft Constitution for consideration, as follows: "... No doubt village communities have lasted where nothing else lasts. But those who take pride in village communities do not care to consider what little part they have played in the affairs and destiny of the country; and why? ..." 26 quoting Mitcalfe's observations on the Indian villages, Ambedkar had observed: "I hold that these village republics have been the ruination of India. I am, therefore, surprised that those who condemn provincialism and communalism should have come forward as champions of the village. What is the village but a sink of localism, a den of ignorance, narrow-mindedness

and communalism? I am glad that the Draft Constitution has discarded the village and adopted the individual as its unit. This was the signal. Shri T. Prakashan led the attack, and charged that there was a serious drift from the Gandhian ideology in the Draft. He castigated Ambedkar for it in these words: "... I must say that he has not been able to put himself in the position of those who had been fighting for the freedom of this country for thirty long years. In one stroke he condemned the village panchayat system ... it is not a matter which should have been treated by Dr. Ambedkar in that manner ..." 28 Shri Prakashan pleaded for a drastic amendment of the Draft so that the Constitution a truly Gandhian constitution. This was the type of charge that was common in the assembly whenever there used to be a departure from the Gandhian approach and principles. This very well reflects the mood of the members and the degree of influence Gandhism had on constitution-making. We can see, therefore, the influence of Gandhian thought, which is so evident in many other respects.

Ambedkar's participation in the constitution-making in an important capacity as the Chairman of the Drafting Committee, actually enriched the Constitution. This could

27. Ibid, p. 39.
be substantiated from the series of praises and tributes to him by the Members, who participated in the general debate on the Draft. He not only drafted the constitution in the ablest manner possible, but also brought to bear upon the House his originality and skill in the field of constitutionalism, ably supplemented by his fine oratorical abilities. It was only he who could be counted upon to give the House a clear picture of the proposals contained in the draft, in a way that was characteristic of the man. Besides drafting it, he had also to bear the responsibility for piloting the Draft in the Assembly. His speech, introducing the Draft, drew uniform praise and applause by Member after Member for its lucidity, clarity and symmetrical analysis.

The tributes paid to Ambedkar for his industry and skill were genuine. Shri. F.F. Arishnamachari, while congratulating Dr. Ambedkar for the enormous amount of work and enthusiasm he brought to bear on the drafting work, complained that enough attention was not paid to the work by the Drafting Committee as a whole. He pointed out: "... of the seven members nominated ... one had resigned from the House and was replaced. One died and was not replaced. One was away in America and his place was not filled up and another person was engaged in state affairs, and there was a void to that extent. One
or two people were far away from Delhi and perhaps reasons of health did not permit them to attend. So it happened ultimately that the burden of drafting this constitution fell on Dr. Ambedkar and I have no doubt that we are grateful to him for having achieved this task in a manner which is undoubtedly commendable. This was no small a tribute, paid by a member of the Drafting Committee himself, to Ambedkar. Prof. K.T. Shah, who was otherwise highly critical of the draft, did not have reservations as to Ambedkar's abilities and industry. Joining 'in the chorus of congratulations', he said: "I have particularly to felicitate the Law Minister (Dr. Ambedkar) for the very lucid way in which he has put forward the salient features of the Constitution for our consideration, and given us thought-provoking ideas." Later on, during the Third Reading of the Draft, the same Member said: "... while judged as a piece of art in drafting, I am afraid I cannot regard this draft as a gem of its kind, I am willing to admit that, within the circumstances and under the conditions under which they had to work, the Drafting Committee have shown, and the Chairman particularly of that Committee, an erudition, a knowledge and ability to adapt himself to changing circumstances and under the conditions under which they had to work, the Drafting Committee have shown, and the Chairman particularly of that Committee, an erudition, a knowledge and ability to adapt himself to changing conditions."  

29. Ibid, p. 231.
circumstances, and present as good a draft as, under the circumstances, they could... Another Member, Dr. Joseph Alban D'Souza had this tribute to pay: "... the draft Constitution is an excellent piece of work. May I say that it is a monumental piece of work put by the Honourable Dr. Ambedkar and his Drafting Committee after months of laborious work which may definitely be qualified as the work of experts, work which is comparative, selective and efficient in character right from the beginning to end." Mr. Frank Anthony, the Anglo-Indian leader paid his qualified tribute in these words: "... Whatever different views we may hold about this Draft Constitution, I feel that this will be conceded that it is a monumental document at least from the physical point of view, if from no other point of view. And I think it would be churlish for us not to offer a word of special thanks, to the Members of the Drafting Committee, because I am certain that they must have put in an infinite amount of labour and skill to be able to prepare such a vast document."  

These tributes, which are but a few of the many, should indicate the onerous task that was fulfilled by

Ambedkar, working almost single-handed, with the assistance of one or two members occasionally and of J. N. Mukherjee, the Joint-Secretary to the Committee. The work of drafting and piloting the Draft Constitution for a large country was not an easy task. It was beset with responsibilities towards not only the House but to posterity. It may be observed here, in passing, that a parliamentary enactment like the States Re-organization Act, 1956, has exhibited serious deficiencies and constitutional points in the course of its working for a decade now. The inter-state border disputes have become constant irritants and reminders of such shortcomings of an important enactment. In comparison, on the other hand, the working of the Indian Constitution itself as a whole, in spite of a number of amendments to it, has established, beyond doubts, the soundness of its provisions so ably drafted and defended by Ambedkar. He could explain a point with such meticulous care and precision as to leave no one under a doubt. His observations at the time of introducing the First Amendment to the Constitution are worth our notice in this context. When the Supreme Court, for instance, invalidated the Communal G.O., of the Madras Government of 1950, Ambedkar commented on the floor of the House of the People that the judgment of the Supreme Court would have been different if only the judges had attached significance to the word 'only' in the Article.
Throughout the deliberations of the Assembly, Ambedkar, as Pylee puts it:

...with a rich fund of knowledge of constitutional principles and practices in most of the leading countries, and his thorough and intimate understanding of the Government of India Act of 1935, Ambedkar was able to meet any critic in the Assembly and expound the principles underlying the Constitution in an admirable manner. Whenever he spoke in the House, usually to reply to the criticisms advanced against provisions of the Draft Constitution, there emerged a clear and lucid exposition of the provisions of the Constitution. As he sat down, the mist of doubts vanished, as also the clouds of confusion and vagueness. In the Constituent Assembly none else was so forceful and persuasive in argument, clear and lucid in expression, quick and arresting in debate. And yet, he had always the generosity to concede the credit to a critic who made a valid point and to frankly acknowledge it ...

The Constitution of India:

The Constitution of free India, as it emerged from the Constituent Assembly, was chiefly the handi-work

33. M.V. Pylee, op. cit., p. 140.
of this astute constitutionalist. His role in its making and adoption can be appreciated fully by considering, in an objective way, the nature of the political society he provided for free India; and secondly the legal and constitutional restraints upon the authority in the form of Fundamental Rights. Finally, it is also necessary to examine the provisions relating to the minorities. The best way to do it is to base our observations upon his own exposition of the Draft Constitution, while he moved it for its consideration; and further in the light of the observations of the Members of the Assembly. Ultimately, it is proposed to make a final assessment of the stand Ambedkar took in respect to these provisions.

It should be stated at the very outset that the Constituent Assembly had appointed a number of important Committees and sub-committees, besides the Drafting Committee. An 'Advisory Committee' to deal with the question of the rights of Citizens and those related to the minorities, the administration of the Tribal and Excluded areas etc., was appointed with 72 members on it. It was appointed in terms of paragraph 20 of the Cabinet Mission's Statement. Ambedkar was one of the seven members representing the Depressed Classes or the Scheduled Caste people. This was a very important committee, as
it was entrusted with the onerous task of evolving and suggesting a policy and pattern for the rights of the citizens; and for protecting the minorities' interests. As discussed already, the minority problem was the bane of Indian politics and constitutionalism. Upon its satisfactory solution depended the soundness and acceptability of the new constitutional arrangement. The Hon’ble Pandit Govind Vallabh Pant, moving the Resolution for constituting the Advisory Committee, had hoped: "... this Advisory Committee will bring concord and amity, good-will and trust, in place of mutual strife, that occupies the political stage to-day and that as a result of the deliberations of this Committee we will have prepared the ground for Independent India for which we live ..." 34 In view of the special importance of this Committee the Members felt that it should be of a fully representative character. It had to formulate proposals for the protection of minorities and fundamental rights in such a way, "that it would be fair to the larger as well as the smaller interests so that all communities — big or small — would feel satisfied with the recommendations of this Advisory Committee." 35 The Advisory Committee with the Hon’ble Sardar Vallabhbhai Patel as Chairman

had a number of sub-committees of its own for reporting on Frontier, Tribal and other areas. The reports of the sub-committees and the final report of the Advisory Committee itself constituted the chief basis upon which the drafting Committee had to proceed regarding the problems of the minorities and Fundamental Rights. Besides, there was also the report in the form of notes on the fundamental rights submitted by Sir B.N. Rao, the Constitutional Adviser.

Another Committee that was constituted was "the Committee on Subjects Assigned to the Union" to help the Assembly in framing the Constitution so as not to leave for the future any overlapping or conflicts that might occur if various proceedings took place without correlation in different sections of the Assembly or otherwise.36 As the Hon'ble Shri. C. Rajagopalachari stated further, it was to "do the required thinking" and "to help us think out our difficulties and to find solutions for these difficulties."37 The Committee was constituted with Jawaharlal Nehru as the Chairman, Sarat Chandra Bose, Dr. Pattabhi Sitaramayya, Govind Vallabh Pant, Jairamdas Daulatram, Biswanath Das, N. Gopalaswami Ayyangar, Bakshi Sir Tek Chand, Sir Alladi, D.P. Khaitan, M.H. Usmani,

The non-inclusion of Ambedkar on this important Committee was pointed out by Jaipal Singh and others. On the other hand, the consensus of the House was that it was not a Committee on which communal representation was necessary. The only plausible explanation to such a reaction in the House could be that Ambedkar's name had come to be so inseparably and intimately associated with the minority problem only. But the members were committing a fundamental mistake in associating his name with such problems alone. Mr. Jaipal Singh's plea for the inclusion of Ambedkar was not as a minority leader, but as an expert constitutionalist and a specialist on the financial problems. It should be recalled here that his study of the provincial finances of British India was his significant contribution in the field of federal finances. This contention was further justifiable as Mr. Jaipal Singh mentioned the names of Dr. Jayakar and Dr. Deshmukh along with Dr. Ambedkar's. Prof. M.C. Ranga, an economist himself, suggested that "Dr. Ambedkar's name should be included in the list, and I appeal to one of the Members whose names are suggested to offer to withdraw in his favour." 38

Pandit Nehru was also the Chairman of the Union Constitution Committee and the Union Powers Committee—

38. Ibid, p. 358.
the two sub-committees entrusted with recommending model provisions in their respective subjects, which subsequently became the basis for the Draft Constitution. Besides these, there were other committees also like the Committee on Financial provisions of the Union Constitution with Mr. K.V. Rangachari and others. Each one of these Committees submitted its own report after careful study and scrutiny. The Drafting Committee had to take note of these recommendations and give them the necessary legal form and shape in the Draft.

What emerges from this discussion is that Ambedkar and the Drafting Committee were not the free agents. They had to work under guidance from other agencies. In the most fundamental fields, the ideas and decisions of Pandit J. Nehru, Sardar Patel and the Congress party had to be accommodated. Messrs. Nehru and Patel, the combination of an idealist and the realist respectively, had the final word in many matters. They could, as well, be compared to George Washington and Madison in the Philadelphia Convention of 1787 — the commander and the philosopher. If Nehru was the philosopher, Patel was the commander.

The clash between idealism and realism that one comes across in our Constitution is mostly due to these two forces which prevailed ultimately. Ambedkar was himself
against so many things that he wrote into the Constitution. He was, for instance, opposed to the philosophy of the 'socialist state' in the Constitution. He thought, no constitution should contain such a philosophy. He said:

...What should be the policy of the state, how the society should be organised in its social and economic side are matters which must be decided by the people themselves according to time and circumstances. It cannot be laid down in the Constitution itself, because that is destroying democracy altogether. If you state in the Constitution that the social organisation of the state shall take a particular form, you are, in my judgement, taking away the liberty of the people to decide what should be the social organisation in which they wish to live ... 39

But as we know he had to retract from this position and provide for such things. This is but one of many such instances, including his preference for 'due process' clause, which he could not retain. So in a study of the provisions of the Constitution we have to bear in mind this difficulty, which he had to encounter in the course of drafting the Constitution.

The Union Constitution Committee, with Pandit J. Nehru as its Chairman, laid down broadly the principles of the Union Constitution, that was worked upon later by the Drafting Committee. Its job was mostly that of filling in the details. It must be pointed out here that Ambedkar was not a member of this Committee.

The Union Constitution Committee submitted to the Assembly its Report consisting of the Preamble, and eleven parts covering almost the entire field of the structure of the Union government, such as: Federal territory and jurisdiction; Citizenship, Fundamental Rights including the Directive Principles; the Federal Executive; Legislature and Judiciary; the Auditor-General of India; Services and Elections. It also dealt with the distribution of powers between the Union and the States, Amendment of the Constitution and the Transitional Provisions. An 'Ad-hoc Committee on Supreme Court' consisting of Shriyutha S. Varadarajan, Alladi K. Ayyar, B.L. Mitter, K.M. Munshi was constituted, and B.N. Rau. The committee made its recommendations regarding the jurisdiction and powers of the Supreme Court — Advisory jurisdiction and the ancillary powers. It also discussed the strength of the Court vis-à-vis the Constitution, qualifications, mode of appointment and the tenure of the Judges etc.

Ambedkar and the Drafting Committee had the stupendous
task of incorporating into the draft the recommendations of these various committees and produce a Constitution in a coherent and acceptable manner. It was not only to be acceptable to the Members, but had to be so evolved as to serve the special and immediate needs of the infant democracy and also as to stand the test of time. It could not, obviously, be looked upon as a transitory arrangement. It was to be an enduring one. Whatever might be the justification for some flexibility in the Constitution it was to be sacrosanct to the extent it was necessary to make it a document worthy of its name. In this task lay the importance of the role of the Drafting Committee in general, and that of Ambedkar in particular. The responsibility he wielded and discharged fully in this regard is clear from the arguments he put forward in the course of his brilliant and lucid speech moving the draft for consideration and also the compliments the Members paid him.

The Frame Of The Political Society: the form of the Constitution:

The Constitution of India is prefaced by an admirable and precious preamble which provides the clue to a clear understanding of the spirit—the political, economic, and social philosophy that pervades the constitutional
provisions. The Preamble, it should be recalled here, was moved by Pandit J. Nehru in the early stages of the deliberations of the Assembly. Naturally, it breathes the spirit and philosophy of the Congress Party's programmes, and that of Mahatma Gandhi. The Preamble to the Indian Constitution proclaims India as an 'Independent Sovereign Republic'. The Objectives Resolution, on which the Preamble was based, further provided for:

2. Wherein the territories that now comprise British India, the territories that now form the Indian States, and such other parts of India as are outside British India and the States as well as such other territories as are willing to be constituted into the independent sovereign India shall be a Union of them all; and

3. Wherein the said territories, whether with their present boundaries or with such others as may be determined... shall possess and retain the status of autonomous powers and functions of government and administration, save and except such powers and functions as are vested in or assigned to the Union, or as are inherent or implied in the Union or resulting therefrom; and

4. Wherein all powers and authority of the Sovereign Independent India, its constituent parts and organs of Government, are derived from the people ...( italics mine ).

This part of the Resolution not only indicates the source of the Constitution, but, primarily, lays down
the nature of the polity of free India. Though it is a federal polity that we have in the Constitution, nowhere it is referred to as such. Articles 1 of the Constitution calls India an 'Union of States' and the federal character of the polity is, therefore, implied, though not explicitly written out. The Preamble describes India as a 'sovereign Democratic Republic'. A republican form of government implies sovereignty of the people, and the head of the State is elected by the people. He does not hold that office hereditarily. A Republic, as explained by the Americans, is a government opposed to the rule by a single dictator or of an oligarchy. Madison explained it as "a government which derives its powers directly or indirectly from the great body of the people and is administered by persons holding their offices during the pleasure, for a limited period, or during good behaviour. It is essential to such a government that it be derived from the great body of the society, not from an inconsiderable proportion, or a favoured class..." In other words, this means a democratic form of government, that has been provided for in our Constitution.

Another important feature of the constitutional structure of Indian democracy is its federalism. Lord
Bryce, describing the United States of America, called it 'a Commonwealth of Commonwealths, a Republic of Republics, a State which, while one, is nevertheless composed of other states even more essential to its existence than it is to theirs'. This description is apt in the Indian context too. Article 1 (1) of the Constitution states 'India, that is Bharat, shall be a Union of States'. This is, perhaps on the Canadian model, which is also called an 'Union'. There were a number of amendments moved in the Constituent Assembly to call it a 'Federation' instead of 'Union of States'. Ambedkar had his own explanation and justification to call our polity an 'Union of States' and not a federation. He said:

... though India was to be a federation, the Federation was not the result of an agreement by the States to join in a Federation and that the Federation not being the result of an agreement no State has the right to secede from it. The Federation is a Union because it is indestructible. Though the country and the people may be divided into different States for convenience of administration the country is one integral whole, its people a single people living under a single imperium derived from a single source. The Americans had to wage a civil war to establish that the States have no

right of secession and that their Federation was indestructible. The Drafting Committee thought that it was better to make it clear at the outset rather than to leave it to speculation or to dispute. 42

The indestructible character of our Union was assumed in the wording of Article 1. But later, a law had to be made to make it further clear and specific that our federation is indestructible, in the wake of the secessionist forces, forged out by some political parties like the Dravida Munnetra Kazagam in Madras State. Ambedkar also discussed elaborately the main points of difference between the American Federation and the Indian polity. He touched upon the differences between the proposed federation and other Federations in the world, in his speech moving the Draft. A Federal polity, according to Ambedkar, is marked: "(1) by the existence of a Central polity and subsidiary polities side by side, and (2) by each being sovereign in the field assigned to it. In other words, Federation means the establishment of a dual polity ..."43 The proposed Constitution was federal in character in so far as it envisaged a dual polity. This dual polity under

42. CAD., Vol. VII, p. 43.
the proposed Constitution*, said Ambedkar, " will consist of the Union at the Centre and States at the periphery, each endowed with sovereign powers to be exercised in the field assigned to them respectively by the Constitution." 44

But it was not a dual polity in the American way, beyond a point. To Ambedkar: "The differences that distinguish them are more fundamental and glaring than similarities between the two." 45 The differences are in respect of citizenship and the degree of autonomy enjoyed by the states in both the Constitutions. Ambedkar was quite alive to the fact that the Draft Constitution was not set in a tight mould of federalism', as other federations have been, and he took pains to explain this special feature to the House. He did not make a secret of it.

He said:

... All federal systems including the American are placed in a tight mould of federalism. No matter what the circumstances, it cannot change its form and shape. It can never be unitary. On the other hand the Draft Constitution can be both unitary as well as federal according to the requirements of time and circumstances. In normal times, it is framed to work as a federal system.

44. Ibid. p. 33.
45. Ibid. p. 35.
But in times of war it is desired as to make it work as though it was a unitary system. Once the President issues a Proclamation which he is authorised to do under the Provisions of Article 275, (of the Draft, but Article 352 of the Constitution) the whole scene can become transformed and State becomes a unitary State ... 46

He called attention to this fundamental point of difference and also referred to another important aspect of federalism. He continued:

Federalism is described as a weak if not an effete form of Government. There are two weaknesses from which Federation is alleged to suffer. One is rigidity and other is legalism... A Federal Constitution cannot but be a written constitution and a written constitution must necessarily be a rigid constitution. A Federal Constitution means division of sovereignty by no less a sanction than that of the law of the constitution between the Federal Government and the States, with two necessary consequences: (1) that any invasion by the Federal Government in the field assigned to the States and vice versa is a breach of the Constitution and (2) such breach is a justifiable matter to

46. Ibid, p. 34 ff.
be determined by the Judiciary only. This being the nature of federalism, a federal Constitution cannot escape the charge of legalism. These faults of a Federal Constitution have been found in a pronounced form in the Constitution of the United States of America. 47

Ambedkar was keen on reducing these faults of legalism and rigidity in the new Constitution, as the circumstances in the country would not permit such a frame of political society in view of the dangers that were there to this infant nation. This was also done in the Australian Constitution. Ambedkar claimed that in the Draft he had made an improvement over even the Australian Constitution and 'secured the greatest possible elasticity in its federalism which is supposed to be rigid by nature'. A special feature of the Draft in this regard, which was an innovation, was that it 'added new ways of overcoming the rigidity and legalism inherent in federalism'. Ambedkar referred to the relevant provisions, and said, the first special feature is "the power given to Parliament to legislate on exclusively provincial subjects in normal times ... The second means adopted to avoid rigidity and legalism is the provision for facility

47. Ibid, p. 35.
with which the Constitution could be amended..." 48

There is yet another special feature of the Indian federation which distinguishes it from other federations. In the Draft an attempt was made to eliminate the inherent diversities of a dual polity. A federation, as we know, is based on divided authority resulting in diversities in the laws of the States and the Union. Upto a point diversity may be tolerated. But this very diversity, said Ambedkar:

When it goes beyond a certain point is capable of producing chaos and has produced chaos in many federal States...

Such a state of affairs not only weakens the State but becomes intolerant to the citizen who moves from State to State only to find that what is lawful in one State is not lawful in another. The Draft Constitution has sought to forge means and methods whereby India will have Federation and at the same time will have uniformity in all basic matters which are essential to maintain the unity of the country. The means adopted by the Draft Constitution are three: (1) a single judiciary; (2) uniformity in fundamental laws, civil and criminal; and (3) a common All-India Civil Service to man important posts. 49

48. Ibid, p. 36.
49. Ibid, p. 36 ff.
Ambedkar had hoped that with a single judiciary for the entire country, and by providing for a concurrent list of subjects, and finally by providing for an All-India Service recruited on an all-India basis with common qualifications, with uniform scale of pay and the members of which alone could be appointed to strategic posts throughout the Union, it will be possible to achieve the required degree of unity in the life of the newly-born Republic. These were the technical and also the circumstantial justifications he could give to clear the doubts in the minds of the Members as to the nature of our Constitution and the polity.

It is possible to hold that such an arrangement, as provided for in the Draft was, to a large extent, also shaped by personal views of Ambedkar on the subject. He was not an votary of a federal system, for he was a believer in a strong central government. It was particularly necessary in a country like India, centripetal and centrifugal tendencies operating. As he has observed elsewhere, the genius of Indians is to divide and not to unite. Parochialism, casteism, linguistic and such other fissiparous tendencies have persisted all along in the history of our people. He thought, a strong central government is particularly essential to safe-guard the interests of the minorities. His support for such a strong
government was expressed in a Kale Memorial Lecture for 1939 in which he had made a critical study of the scheme for the All-India Federation set out in the Government of India Act, 1935. Referring to the strength of the Federal frame, he had said:

The existence in the country of one Government which can speak and act in the name of and with the unified will of the whole nation is no doubt the strongest Government that can be had and only a strong Government can be depended upon to act in an emergency. The efficiency of a Governmental system must be very weak where there exists within a country a number of Governments which are distinct centres of force, which constitute separately organized political bodies into which different parts of the nation’s strength flows and whose resistance to the will of the Central Government is likely to be more effective than could be the resistance of individuals, because such bodies are each of them endowed with a government, a revenue, a militia, a local patriotism to unite them. The former is the case where the Unitary system of Government prevails. The latter is the case where the Federal form of Government prevails.

50. Federation Versus Freedom; 1939; p. 68.
He was, thus, having a preference for Unitary form of Government. This is further clear in his own words:

I am not opposed to a Federal Form of Government. I confess I have a partiality for a Unitary form of Government. I think India needs it. But I also realise that a Federal form of Government is inevitable if there is to be Provincial Autonomy. 51

But he also realised that "there is no use hugging to Provincial Autonomy and leaving Responsibility in the Centre hanging in the Air. I am convinced that without real responsibility at the Centre, Provincial Autonomy is an empty shell." 52 These observations were made by him, no doubt, in the context of the Federation as envisaged under the 1935 Act, of which he was highly critical. Nevertheless, these views were deep-rooted in his mind and we realise the validity of this when we read his views on the nature of a safe polity for protecting the minorities. That is the reason why he provided for a flexible Federal polity with a strong Centre. Our experience in the course of over fifteen years of the working of the Constitution has shown that Emergency Powers of the President

52. Ibid, p. 156.
have been of great use during times of national crisis
like that of external military aggressions upon India.

The Draft provided for an 'overcentralised' Union
with weak units with a view to vesting real 'responsibility
at the Centre'. There were severe criticisms in the
Constituent Assembly as to an overbearing Centre, which
the Members called a 'betrayal'. Political Scientists
have called the Indian Federation as 'quasi-federal'.
According to K.C. Wheare it establishes a Unitary State
with subsidiary federal features rather than a federal
State with subsidiary Unitary features. 53 To Sirdar D.K.
Sen, it is a 'decentralised Unitary State'. But according
to K. Santhanam, the Constitution embodies the federal
principle in such a substantial measure that it is truly
a federal constitution. 54 It is true that the form of
Constitution we are given is neither completely federal
nor just confederal. It is something more than confederal
and some thing less than a federation, which may not
receive the approval of political scientists. But it is
one that was innovated to suit the conditions of a new
nation emerging, as it did, under very special conditions
and grave circumstances. To the critics of the federal
system in the Constitution, Ambedkar had this

54. Santhanam, K; Union-State Relations in India; 1960; p.8.
reply:

Some critics have said that the Centre is too strong. Others have said that it must be made stronger. The Draft Constitution has struck a balance. However much you may deny powers to the Centre, it is difficult to prevent the Centre from becoming strong. Conditions in modern world are such that centralisation of powers is inevitable. One has only to consider the growth of the Federal Government in the U.S.A. which, notwithstanding the very limited powers given to it by the Constitution, has outgrown its former self and has overshadowed and eclipsed the State Governments. This is due to modern conditions. The same conditions are sure to operate on the Government of India and nothing that one can do will help to prevent it from being strong. On the other hand, we must resist the tendency to make it stronger. It cannot chew more than it can digest. Its strength must be commensurate with its weight. It would be a folly to make it so strong that it may fall by its own weight. 35

In providing for a less rigid form of federation, Ambedkar was guided by the principle that a constitution is, after all, the expression of the will and the needs of a people.

at a given time, and it would be fatal if one were to be guided by strict constructions of constitutional principles and patterns as, for example, the pattern of federalism. He was alive to the fact that no federation functioning in the world was an ideal or perfect one. There is nothing like that. It is functioning with innumerable variations. Each constitution provides for a system that suited the needs of its society, most. A Constitution is, after all, a mechanism providing for a system of Government that will serve the needs of a people. To Ambedkar 'the constitution is merely a mechanism for purpose of regulating the work of the various organs of the State'. So one need not be a slave to a system, but can modify it to suit the requirements of the country. This has been the spirit in the Constitution throughout its construction. After all, as Pylee looks at it:

"what is significant is not the achievement but the movement in itself. Federalism is like any other idea in government, and the correct approach to it should be empirical; the search for its beneficial results is more important than any insistence on rigidity in its form. Hence, theoretical definitions of federalism which ignore the historical evolution of a federalism and its potentialities as a dynamic idea for future experimentation are of little value." 56

56. M.V.Pylee; op. cit., p. 575.
Dr. Ambedkar's distinct contribution in this regard lies in the fact that he could overcome the temptation to be guided by rigid principles, and provide for a system that would suit and work well. He had the vision and forethought to look beyond and think of the needs of a divisive, but a growing society. In spite of there being an overbearing and strong Centre we find today, the States behaving in such a narrow and parochialist way that some right thinking people are wondering whether we should switch over to an Unitary State! There are several advocates of an Unitary form of Government in our own country today. It is not because the federal frame, provided in our Constitution, has completely failed, but, because there are certain dangerous tendencies developing in our body politic that need a stronger Centre. There is a feeling that a strong and an unified Central Government alone can bring about the desired degree of political, administrative and emotional integration amongst our people. A plea for a unitary state has become stronger in view of the developments in the field of inter-state relations, particularly since the reorganisation of the States in the year 1956. The relations between the States are anything but happy since then, either on account of sharing of common natural resources, or because of the location of vital and basic
industrial units like the Steel Plants etc. The Union Government is compelled to reverse its own decisions under local pressures and intimidations through fasts, and acts of vandalism on public property and essential services. No wonder Ambedkar provided for a stronger Centre, only to overcome such difficulties in the future, which was, of course, the maximum he could do in the circumstances then. The question of creating an Unitary State at that time was ruled out. There was the most intriguing problem of bringing within one political frame the areas and political units which were so divergent as the British Indian Provinces and a formidable number of Princely States of all conceivable sizes, patterns and attitudes. The linguistic, religious, cultural and other difference could be accommodated for, only in a federal arrangement. By its very definition, Federalism is looked upon to-day as essentially a principle of reconciliation and compromise to forging a degree of unity among a diverse people, as it is described by Lord Acton, A.V. Dicey, Harold J. Laski and others. So Ambedkar could not but think of a federal polity for India. Moreover, he was not a free agent in constitution-making. If he

57. The inter-state border disputes between Mysore and Maharashtra States and the location of the Fifth Steel Plant in the North are two cases in point.
had the freedom, and circumstances permitting, it is possible to hold that he would have, perhaps provided for a Unitary State. But he had to take note of the various political forces and other compulsions inside the country. He was very well aware of these factors. Looking at the future of the country, he had expressed his deep concern and anxiety, and observed: "What perturbs me greatly is the fact that India has not only once before lost her independence, but she lost it by the infidelity of her own people ... Will history repeat itself?" — he had asked. His anxiety was deepened by the realisation that in addition to their old enemies in the form of castes and creeds, people had too many parties with diverse and opposing creeds. He, therefore, had urged the people of India to resolutely guard against the eventuality of parties placing their creed above the Country or else "our independence will be put at jeopardy a second time and probably be lost for ever. We must be determined to defend our independence till the last drop of our blood." 59

In these utterances of his in the Constituent Assembly, he sounded prophetic; and naturally he had taken all pains to provide for a political frame which would endure all such onslaughts and fissiparous tendencies that might raise their ugly heads within the body politic. Ambedkar

had the full support of his colleagues on the drafting Committee, and other important leaders in the Constituent Assembly in not setting the Indian federation in a tight mould. Mr. Frank Anthony, for example, lent his total support for a strong Centre. He said during the general discussion on the draft Constitution: "I, also, regard as a salutary principle the need for not giving too much power to the Centre. Constitutionally, that is an unexceptionable principle, but in applying it, we must adapt it to local needs and circumstances, and, if we are frank with ourselves, we must admit that in this vast country of ours there is an inherent potential of divergence and disintegration. Because of that I feel that the maximum power possible that can be given to the Centre must be given to the Centre in the interests of the country, in the interests of the integrity and cohesion of the nation ..."60 While providing for a flexible federation Ambedkar was avoiding the extremes and following the golden mean between the unitary and federal forms. This was generally his approach in the making of our Constitution. He so designed it that it should be federal when possible, and unitary when necessary. Ambedkar could convince the critics and those who advocated a strict conformity to federal principles by his lucid, graphic

and realistic appraisal of the political climate of the country. He enlightened the Members on the need for balancing between the Centre and the States. At every stage he had a word of wisdom and warning, though very often it was unpleasant and rather irritating to a section of the House. But he discharged his duty with a great sense of responsibility, not only to the House, but to posterity as well.

**The Form of Government**

The Constitution of India provides for a parliamentary system of government on the British model, in preference to the Presidential form of the American model. The Drafting Committee recommended, after careful consideration, the parliamentary system of government with its own justifications. But once again we should realize that it is not the British model pure and simple that was provided in the draft. There are quite some modifications upon it, both in its form and import. It is not a complete physical importing of the British system into our Constitution. It has been adopted with those modifications that suit the needs and the genius of our people. There was a considerable degree of opposition in the Constituent Assembly for adopting the parliamentary system.
That section of the House led by Prof. K.P. Shan that was opposed to this system pleaded for the adoption of the presidential system of the American type. They argued that for the very reasons of political, religious, and cultural diversities in the country a form of government that would give stability, strength and power to control all fissiparous tendencies was needed. To them, parliamentary system stood for instability and can work only in a political society with a high degree of political maturity and constitutional discipline. They wondered whether such pre-requisites were available in the political life of India. The parliamentary system, in view of its removable character of the executive, might lead to political chaos and constitutional crisis. But the draft constitution envisaged a removable parliamentary system of Executive. Ambedkar gave the following explanation, justifying it:

... A democratic executive must satisfy two conditions — (1) it must be a stable executive and (2) it must be a responsible executive. Unfortunately it has not been possible so far to devise a system which can ensure both in equal degree. You can have a system which can give you more stability but less responsibility or you can have a system which gives you more responsibility but less stability. The American and the Swiss systems give more stability but less responsibility. The British system on the other hand gives you more responsibility but less
stability. The reason for this is obvious... Looking at it from the point of view of responsibility, a non-Parliamentary executive being independent of Parliament tends to be less responsible to the Legislature, while a Parliamentary Executive being more dependent upon a majority in Parliament becomes more responsible. The Parliamentary system differs from a non-Parliamentary system in as much as the former is more responsible than the latter but they also differ as to the time and agency for assessment of their responsibility... Periodic assessment is done by the Electorate at the time of the election which may take place every five years or earlier. The Daily assessment of responsibility which is not available under the American system is, it is felt far more effective than the periodic assessment and far more necessary in a country like India. The Draft Constitution in recommending the Parliamentary system of Executive has preferred more responsibility to more stability. 61

Referring to one of the amendments moved by Prof. K.T. Shah to provide for the separation of the executive

61. Ibid, pp. 32-33.
from the legislature, Ambedkar said:

... it will be realised that the Americans themselves have begun to feel a great deal of doubt with regard to the advantage of a complete separation between the Executive and the Legislature. There is not the slightest doubt in my mind and in the minds of many students of political science, that the work of Parliament is so complicated, so vast that unless and until the Members of the Executive, sitting in Parliament, it would be very difficult for Members of Parliament to carry on the work of the Legislature. The functioning of the members of the Executive along with Members of Parliament in a debate on legislative measures has undoubtedly this advantage, that the Members of the Legislature can receive the necessary guidance on complicated matters and I personally therefore, do not think that there is any great loss that is likely to occur if we do not adopt the American method of separating the Executive from the Legislature. 62

To those who were familiar with Ambedkar's views on the subject, this came as a great surprise and a visible transformation in his views. He, as a champion

of the minorities in general and of the Untouchables in particular, had been pleading for a stronger and more stable form of executive as the only protection against any incursions into their rights. Not long before, he had expressed in most categorical terms, his preference for an irremovable non-parliamentary system in the Memorandum he submitted to the Constituent Assembly on behalf of the All-India Scheduled Castes Federation. It was published in 1947 under the title States and Minorities. He had provided in Article II, Section III of this model constitution that 'the Union and State Executive shall be non-parliamentary (not removable before the term of the legislature). He, obviously, had in his mind not only the American but the Swiss model too, when he provided that "Members of the Executive could be non-legislature in which case they shall have the right to sit in the legislature, speak, vote and answer questions." He had also stated that the special features and requirements of the parliamentary executive being what they are, make the system absolutely unsuitable for India. Further, if adopted, "it would result in permanently vesting executive power in a communal majority ...(which) will be free to run the administration according to its own ideas of what

63. B.R. Ambedkar: States And Minorities — What are their rights and How to secure them in the Constitution of Free India? ; 1947; p. 35.
is good for the minorities. Such a state of affairs could not be called democracy. It will have to be called imperialism."  

The introduction of such a system of government "will be full of menace to the life, liberty and pursuit of happiness of the minorities in general and of the untouchables in particular." He was also of the opinion that the parliamentary system of the British type would not be successful in India and its chances were 'very slender'. He was convinced that 'in view of the clashes of castes and creeds there is bound to be a plethora of parties and groups in the legislatures in India', which may result in the instability of the executive. He was, of course, prophetic in this utterance of his. There are to-day, as we know, a plethora of parties and groups within the ruling party. The irony is, in spite of it there is still the dominance of one political party and that is the Indian National Congress, which has provided almost an one-party rule at the Centre and all the states but one since independence.

Ambedkar had thought, on the other hand, an irremovable executive, modelled largely on American type,

---

64. Ibid, pp. 35-36.
65. Ibid, p. 36.
would serve the following purposes:

(i) To prevent the majority from forming a government without giving any opportunity to the minorities to have a say in the matter.

(ii) To prevent the majority from having exclusive control over administration and thereby make the tyranny of the minority by the majority impossible.

(iii) To prevent the inclusion by the majority in the executive representatives of the minorities who have no confidence of the minorities.

(iv) To provide a stable executive necessary for good and efficient administration. 66

He claimed that "the American form of executive is an equally good type of democratic and responsible form of government," and his proposal was "an improved edition of the American form of government for the reason that under it members of the executive can sit in the legislature and have a right to speak and answer questions." 67

One fails to understand as to why there was such a complete swing to the opposite in Ambedkar's views and stand on this problem as the Chairman of the Drafting Committee. As indicated in his speech in the assembly, he defended the parliamentary system with a removable executive. He argued that such a system with a removable executive provides a greater degree of responsibility, which was the need of the country.

This sudden transformation in his position and views can possibly be explained in the light of the following points: In the first place, it should be remembered that his proposals as contained in his brochure States And Minorities were intended mainly to be the demands of a minority group. He had, therefore, to plead in it for and on behalf of the Scheduled Castes and lay emphasis on such things as would protect their interests at any rate. His plea for an irremovable executive was one such. But as Chairman of the Drafting Committee and as the principal architect of the Constitution, he could not afford to think only on a sectional basis and give expression to his personal views and preferences. He had to take into consideration various other things.

Secondly, as pointed out time and again, he was not his own free agent in the Constituent Assembly. In the third place, there was the model of a parliamentary system
already provided in the Act of 1935, though in a limited way; and also Indians had developed familiarity with parliamentary institutions, at least from a distance, during the long period of British rule. Finally, a more important factor than anything else was, that Prime Minister Nehru had already expressed his preference for the parliamentary system in his speech earlier in the Assembly. It should also be remembered that Mr. Nehru was the Chairman of the Union Constitution Committee, on the basis of whose Report the Drafting Committee had to proceed. The Union Constitution Committee had provided for the Parliamentary system with an indirectly elected President as its constitutional head. Prime Minister Nehru, clarifying the position of the President and the system of indirect election had said that it was not advisable to adopt the system of direct election, as in the case of the American President because:

...we want to emphasize the ministerial character of the Government that power really resided in the Ministry and in the legislature and not in the President as such. At the same time we did not want to make the President just a mere figure-head ... we did not give him any real power but we have made his position one of great authority and dignity ... if we had an election by adult franchise and yet did not give him any real powers, it might become slightly anomalous and there might be just extraordinary expense.
of time and energy and money without any adequate result ... I am quite convinced in my mind that if we try to adopt that ( the American system ) here, we shall prevent the development of any ministerial form of Government.

It was also felt that the British system of Executive, which would provide a strong democratic executive would suit the conditions of our country. The support for adopting this system came from an important section of the Assembly consisting of Shri. K.M. Munshi, Sir Alladi Krishnaswami Iyer and others. Shri. Munshi, for instance, said:

... between the two Executives, one on the American model and the other on the British model, there can be no question of preference. The British model has been approved by every one including leading American constitutional experts as really better fitted for modern conditions.

Apart from that ... during the last 100 years, the Indian public life has largely drawn upon the traditions of the British Constitutional law. Most of us ... have looked up to the British model as the best. For the last thirty

or forty years, some kind of responsibility has been introduced in the
governance of this country. Our
Constitutional traditions have become
parliamentary and we have now all our
provinces functioning more or less on
the British model. As a matter of fact,
today, the Dominion Government of India
is functioning as a full fledged
Parliamentary Government. After this
experience why should we go back upon
the tradition that has been built for
over 100 years, and try a novel
experiment ...? 68

Sir Alladi Krishnaswami Aiyar also expressed his
preference for the parliamentary system so that the Union
executive will have real relationship with those of the
Indian states. Secondly, he thought:

... there are obvious difficulties in
the way of working the Presidential
system. Unless there is some kind of
close union between the Legislature and
the Executive, it is sure to result in
a spoil system ... Parliament may take
one line of action and the Executive
may take another ... An infant democracy
cannot afford, under modern conditions,
to take the risk of a perpetual cleavage, feud or threatened conflict between the Legislature and the executive. The object of the present constitutional structure is to prevent a conflict between the Legislature and the Executive and to promote harmony between the different parts of the Governmental system.... These then, are the reasons which influenced this Assembly as well as the various Committees in adopting the Cabinet system of Government in preference to the Presidential type...

Ambedkar had, therefore, no other alternative but to give legal shape to the parliamentary system with a removable executive by writing it into the constitution and justify its adoption by the Assembly. One still wonders whether the mixed type of executive, which he had envisaged earlier would have been more desirable in the light of what we have witnessed since the adoption of the Constitution. Instead of laying emphasis on responsibility alone, he should have provided for a system, which would ensure responsibility with a certain degree of stability also. Though we have enjoyed political stability

70. Ibid, pp. 985-986.
in the life of the nation, yet much attention, energy and resources are diverted for preserving it. Both the opposition parties and the factional groups within the Congress party are constantly trying to wrest power. No-confidence motions are too very frequent, both at the Centre and the States. At the States level, particularly, we have witnessed frequent changes in the leadership of the Congress Legislature Party during one term of office. In the states of Uttarakhand, Madhya Pradesh, Andhra Pradesh we had such changes, which were not at all in the interests of democracy and parliamentary system. They were mostly prompted by considerations of power for a group or an individual inside the ruling party itself. This can largely be ascribed to the very system of executive we have adopted in the constitution that allows changing of the leader and the government in the middle of his or its tenure of office. As to the opposition, they are interested in creating trouble and cause embarrassment for the removable executive and shake its very existence by moving no-confidence motions in and out of season and very often the Opposition is found playing to the galleries in almost a ridiculous manner. In the circumstances, one feels, if there were to be an irremovable executive as contemplated by Ambedkar in his brochure States and Minorities this scramble for power would not have been a day to day and almost a continuous feature in
Ambedkar, it is possible to hold, would have provided for a mixed type of executive, had the circumstances permitted him. He had realised that a removable executive could work only where there is a greater degree of political maturity and constitutional discipline amongst the people, who are called upon to work it. A removable executive can work smoothly and with grace only where there are sound parliamentary traditions. One is constrained to observe that even after over fifteen years of parliamentary life in India, we woefully lack those traditions. The degree of indiscipline, disorderliness and pandemonium that we witness in the legislatures, fully substantiates the foregoing observations. A mixed type of executive, modelled on the Swiss Executive system, would have served the needs of our country better. Though Ambedkar had the vision to foresee and realise this, he could not succeed in incorporating it into our Constitution for the aforesaid reasons. But he was quite convinced and emphatic about the usefulness of the mixed type of executive for India.
Fundamental Rights and the Constitution:

The need for a Bill of Rights in a Constitution is too well-known to be over-emphasised. A Bill of Rights is designed to achieve a delicate balance between the liberty of the individual and the authority of the State. The State is a repository of vast powers of coercion. An unlimited and unrestrained authority of the State would, naturally, constitute a primary source of threat to individual liberty. This was realised by John Stuart Mill when he referred, in his essay on liberty, to this 'eternal problem' of making 'a fitting adjustment between individual independence and social control' through the State. The problem assumes new dimensions in a democracy wherein the individual liberty looms large. While conceding the same, the authority of the State is also to be safeguarded to prevent the society degenerating into anarchy in the name of democracy. Such a balance is hoped to be achieved and maintained by providing for a Bill of Rights in the fundamental law of the land itself and put them beyond the reach of the fluctuating majority in the Legislatures, as far as possible.

A Constitution written at a time as the Constitution of India could not but provide for a Bill of Rights with
a sense of achievement and pride. Ever since the freedom struggle was launched, Indians were attracted towards the American Declaration of Independence and the Amendments to the American Constitution incorporating the Bill of Rights. The demand for fundamental rights for Indians was one of the important planks in the protracted negotiations between the British and the Indians. Right to life, liberty, freedom of speech, expression, worship, assembly etc., were demanded time and again. The resentment they exhibited against the Rowlatt Bills, which were the blackest laws passed by the British Parliament, could be considered as an effective expression of this demand. The Indian National Congress and various other organisations were demanding these basic freedoms for one and all. The matter was discussed at the Round Table Conferences also. At no stage in Indian history, rights of citizens were recognised in the form we know them to-day. The British consistently refused to grant them to the Indians. The first effective demand was made by the All-Parties Conference in 1928. The Nehru Report provided for fundamental rights, as it was felt that certain safeguards and guarantees are necessary to create and establish a sense of security among the people in view of the communal and other differences. In 1933 the Indian National Congress passed a Resolution on fundamental rights. It demanded political and economic
freedom to be guaranteed in order to put an end to the exploitation of the masses. It declared that any Constitution that is going to be suggested would be acceptable only if it contains fundamental rights besides other things. But the Indian Statutory Commission and the Joint Parliamentary Committee did not recommend the inclusion of fundamental rights. The result was that the Government of India Act, 1935 went without a Bill of Rights. It was only in the Proposals of the Cabinet Mission in 1946 that the British accepted, in principle, for the first time the need for fundamental rights in the proposed Indian Constitution. The Cabinet Mission proposed an Advisory Committee on the Minorities etc. The Constituent Assembly of India had complete unanimity on this question. The Members were all along enthusiastic about a Bill of Rights. As Ambedkar recollected, the Bill of Rights was welcomed by one and all. There was no one who raised his voice against fundamental rights. They probably thought that fundamental rights were an ornament of the Constitution and that without it the Constitution would look nude.71 No wonder it came to occupy a place of importance in the new Constitution.

71. From the 'Council Notes', No. 11, of Dr. B.R. Ambedkar, deposited at the Siddharth College Library, Bombay.
The Constitution has provided for two sets of rights — Fundamental Rights; and the Directive Principles of State Policy. If fundamental rights are justiciable, the Directives are in the form of non-justiciable rights, that is to say, the citizens have no recourse to judicial remedy if they are denied the enjoyment of the rights that are in the form of mere Directives.

The rights guaranteed in the Indian Constitution together with the Directives are quite comprehensive. The objective of the makers of the Constitution in this regard was quite clear. They had in their minds the plight of the Indian citizen during the British rule, which had disregarded his basic freedoms. This had to be remedied for. It was also imperative that certain classes of people who were subjected to the tyranny of a discriminatory treatment and social ostracism in the hands of their own brethren had to be emancipated. The large number of 'Untouchables' had to be rehabilitated on terms of equality in the Indian society. The rights were, therefore, to be emancipatory in their character. Finally, the makers of the Constitution had to shape the rights in such a way as to protect the rights of all sections of the society, so diverse in its composition. The cultural identity of the different racial, linguistic
and religious groups had to be guaranteed and preserved.

Above all, a Constitution that was being written in the middle of the twentieth Century had to take note of the new philosophy of state functions — the welfare-state philosophy. The concept of welfare-state had come to stay and the individual was to be guaranteed such rights as right to education, employment, minimum wage, proper standards of health, nutrition etc. All these find a place in the Constitution as directives, though not as justiciable ones. It was a stupendous task that the Constituent Assembly had to face while it was seized of this problem. It is in the light of this that we have to appreciate the part played by Ambedkar in writing the rights of the citizens into the fundamental law of our land.

**Dr. Ambedkar and Fundamental Rights:**

Ambedkar, as the champion of the downtrodden, was convinced beyond doubt as to the need for a Bill of Rights in the Indian Constitution. He had been pleading continuously for an elaborate system of fundamental rights for the minorities in particular, and for all the citizens in general. His fight for social justice was the main plank in his struggle as the leader of the minorities. He was also convinced that social justice
cannot be secured to one and all unless it is enshrined in the Constitution itself. In the course of the Memorandum — A Scheme of Political Safeguards for the Protection of the Depressed Classes in the future Constitution of a self-governing India — that he submitted jointly with Rao Bahadur H. Srinivasan to the Minorities sub-committee of the First Round Table Conference, he had laid down model Articles on Fundamental Rights, based mostly, on Amendment XIV of the U.S. Constitution; Government of Ireland Act, 1920; U.S. Civil Rights Protection Acts of April 9, 1866 and of March 1, 1875; Burma Anti-Boycott Act of 1922 etc. His views on fundamental rights are more elaborately expressed in his book States and Minorities, which is itself in the form of a model Constitution. Article II of this deals with Fundamental Rights of Citizens. The main feature of this Article is the specific reference to the Protection of Minorities, safeguards for the Scheduled Castes, and sanction for safeguards etc., apart from the Fundamental Rights of citizens in general and the remedies against invasions. Ambedkar largely depended upon the Constitutions of other countries where conditions analogous to those in India prevailed. The rights he enumerated bear a close resemblance to similar provisions in the Constitution of the U.S.A.

Ambedkar designed these rights with the chief
objective of eliminating and for abolishing inequalities. The safeguards he contemplated against a possible invasion by the State or the individual was through the judicial power, guided by the 'due process of law'. He had fully realised that rights without legal remedies are of no use. The fundamental rights enumerated by him in this book are reproduced, in part, below with a view to providing the required perspective in a discussion of his contribution to the body of fundamental rights in the Constitution of India. In Article II, Sections I and II of his model Constitution he provides for the following rights for all citizens:

...Any privilege or disability arising out of rank, birth, person, family, religion or religious usage and custom is abolished.

No deprivation of life, liberty and property without due process of law.

Equality before law.

Equal access to all citizens to places of public resort or convenience — denial of them to any person shall be an offence.

Subjecting a person to forced labour or to involuntary servitude shall be an offence.
Right to vote for all other than the young, the insane and the imprisoned.

No law shall be made abridging the freedom of Speech, of the Press, of Association and of Assembly except for consideration of public order and morality.

No Bill of attainder or ex post facto law shall be passed.

Liberty of conscience including the right to profess, to preach and to convert within limits compatible with public order and morality.

The State shall not recognise any religion as State religion. 72

There were also other provisions dealing with remedies against invasion of Fundamental Rights; protection against unequal treatment; protection against discrimination; protection against economic exploitation with due theoretical justifications regarding the necessity for such provisions in a Constitution. In section III

72. B.R. Ambedkar: States and Minorities — What are their Rights and how to secure them in the Constitution of Free India? 1947; pp. 8 to 35.
of Article II, he discussed other provisions for the protection of Minorities, in addition to the ones already enumerated in the earlier Sections. But in this he worked upon a mixed type of executive as an additional safeguard for protecting the minorities from the tyranny of a communal majority in free India.

These views expressed by him in his model constitution may be considered as his personal views, in whose adequacy, from the national and the minorities' standpoint, he had complete faith. It is now, therefore, proposed to examine how far he could incorporate his views on fundamental rights into the Constitution.

It is already mentioned that Ambedkar was one of the seven Members representing the Scheduled Castes on the seventy two-member Advisory Committee on Minorities, Fundamental Rights etc., appointed in terms of Paragraph 20 of the Cabinet Mission's statement. J. Patel was its Chairman. This Committee was a very important one as it was to deal with problems that were very sensitive and highly controversial throughout the period of political negotiations between the British and the Indians. The reports of the various sub-committees and the final report of the Advisory Committee itself constituted the basis for the work of the Drafting
Committee in this respect. Sir B.N. Rau, the Constitutional Adviser to the Constituent Assembly, also submitted his report in the form of a Note on Fundamental Rights. 73

Nature of Fundamental Rights:

The Advisory Committee had provided for a list of rights in two parts: (i) those rights that are enforceable by appropriate legal process; and (ii) those directive principles of social policy which, "though not enforceable in courts, are nevertheless to be regarded as fundamental in the governance of the country." 74 Under justiciable fundamental rights the Advisory Committee listed Rights of Equality, of Freedom, of Religion, miscellaneous rights, and right to constitutional remedies.

The incorporation of two categories of rights was suggested by Sir B.N. Rau also in his Note, which made a reference to similar provisions in the Irish Constitution, and such a distinction made in Dr. Lauterpact's International Bill of Rights of Men (1945). In framing the draft Bill of Rights for incorporation in the Indian Constitution,

...it is useful to recognise a distinction between two broad classes of rights: there are certain rights which require positive action by the state and which can be guaranteed only so far as such action is practicable, while others merely require that the state shall abstain from prejudicial action. Typical of the former is the right to work, which cannot be guaranteed further than by requiring the state, in the language of the Irish Constitution, "to direct its policy towards securing that the citizens may, through their occupations, find the means of making reasonable provision for their domestic needs"; typical of the latter is the right which requires, in the language of the American Constitution, that "the State shall not deprive any citizen of his liberty without due process of law". It is obvious that rights of the first type are not normally either capable of, or suitable for, enforcement by legal action, while those of the second type may be so enforced... 75

Thus, the Drafting Committee came to provide for two kinds of rights in the course of two Parts — 
Fundamental Rights, and Directive Principles of State

75. B. N. Haug, op. cit. p. 249.
Policy — in Articles 7 to 27 of Part III, and 25 to 40 of Part IV of the Draft Constitution. These two parts adorn the new Constitution of India as Parts III and IV in the course of Articles 12 to 35, and 36 to 51 respectively.

The fundamental rights in the Indian Constitution are more elaborate and comprehensive than in the Bill of Rights in any other Constitution. This was necessitated by the special problems of diverse religious, cultural and social conditions of a heterogeneous society. They are also intended to provide not only security for and quality of citizenship, but also certain standards of conduct, citizenship, justice and fairplay. It is in this part of the Constitution that the lofty principles adumbrated in the Preamble were to find a fuller expression. The core of the Preamble proclaims to secure to all its citizens:

JUSTICE, Social, economic and political;
LIBERTY of thought, expression, belief, faith and worship;
EQUALITY of status and of opportunity;
and to promote among them all FRATERNITY assuring the dignity of individual and the unity of the Nation;

In order to secure these basic freedoms and conditions
essential for the development of human personality and dignity, the Constitution provides for seven categories of Rights thus: (i) Right to Equality — Articles 14 to 18; (ii) Right to Freedom — Articles 19-22; (iii) Right against Exploitation — Articles 23 and 24; (iv) Right to Freedom of Religion — Articles 25 to 28; (v) Cultural and Educational Rights — Articles 29 and 30; (vi) Right to Property — Articles 31, 31A and 31B; and (vii) Right to Constitutional Remedies — Articles 32 to 35.

There are certain special features of these rights. They are not absolute ones. There are a number of restrictions imposed on the enjoyment of these rights. They can be suspended or even restricted. Articles 33 and 34, for instance, empower the Parliament to modify the rights in their application to certain classes of persons. Articles 33 lays down that:

Parliament may by law determine to what extent any of the rights conferred by this Part shall, in their application to the members of the Armed Forces or the Forces charged with the maintenance of public order, be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.

Article 34 of the Constitution further provides that:

Notwithstanding anything in the foregoing
provisions of this Part, Parliament may by law indemnify any person in the service of the Union or of a State or any other person in respect of any act done by him in connection with the maintenance or restoration of order in any area within the territory of India where martial law was in force or validate any sentence passed, punishment inflicted, forfeiture ordered or other act done under martial law in such area.

In addition to these restrictive provisions, the President of India is also empowered by Articles 358 and 359 to suspend provisions of Article 19 and to suspend the enforcement of the rights conferred by Part III as a whole during the proclamation of emergency. Besides these restrictions we also come across some provisions which are in the form of constitutional limitations upon the authority of the state. There are also provisions like Articles 15, 16, 19, 29 and 30 that are applicable only to citizens and not available for aliens. While there are some rights that impose limitations upon state action such as in Articles 14, 15(1), 16 and 18 to 22; there are other provisions also imposing limitations upon the freedom of private individuals in the course of Articles 15 to 17 and 23(1). The Constitution in the course of Article 19(2) to (6), imposes limitations
on the seven freedoms given to the citizens. So to any casual observer the Constitution abounds with restrictions and limitations, while it is also eloquent in its grant of freedoms.

Such a position has subjected the Constitution to severe criticisms, but it is to be remembered that absolute and unrestricted individual rights do not and cannot exist in any modern state. Such is the position even in England where there is no written constitutional guarantee of fundamental rights. This is equally the position in the U.S.A., notwithstanding the constitutional guarantee of individual rights. The U.S. Courts have accepted this position. The U.S. Courts, as a matter of fact, had, therefore, to invent the doctrine of 'police power' to impose some necessary restrictions, while interpreting the Constitution. The doctrine of 'police power' implies the inherent power in the State to impose necessary restrictions upon fundamental rights in order to protect the common good. In other words, it is founded on the doctrine: 'the whole is greater than the sum total of all the parts, and when the individual health and safety and welfare are sacrificed or neglected, the State shall suffer'. "In an

76. Schenck v. the U.S. (1919).
organised society, ... there cannot be any right injurious to the community as a whole. The police power is thus the authority to establish those rules of good conduct and neighbourliness which are calculated to prevent a conflict of rights and to insure to each the uninterrupted enjoyment of his own, so far as that is reasonably consistent with a corresponding enjoyment of others.\textsuperscript{78}

Our Constitution recognised and adopted this principle, instead of leaving it to the Courts. It has improved upon the American Constitution by defining the scope of the limitations in the Constitution itself. Ambedkar maintained that reasonable restrictions are indispensable, if the rights guaranteed are to be fully enjoyed by one and all. In reply to the criticisms in the Constituent Assembly, Ambedkar replied thus:

...the criticism in so far as it seeks to distinguish fundamental rights from non-fundamental rights is not sound. It is incorrect to say that fundamental rights are absolute while non-fundamental rights are not absolute. The real distinction between the two is that non-fundamental rights are created by agreement between parties while fundamental rights are the

gift of the law. Because fundamental rights are the gift of the State it does not follow that the State cannot qualify them. 79

Ambedkar also pointed out, on the basis of the verdicts of the U.S. Supreme Court, that it is wrong to say that fundamental rights are absolute. He explained the point thus:

...In America, the fundamental rights as enumerated by the Constitution were no doubt absolute. Congress, however, soon found that it was absolutely essential to qualify these fundamental rights by limitations. When the question arose as to the constitutionality of these limitations before the Supreme Court, it was contended that the Constitution gave no power to the United States Congress to impose such limitations. The Supreme Court invented the doctrine of police power and refuted the advocates of absolute fundamental rights by the argument that every State has inherent in it police power which is not required to be conferred on it expressly by the Constitution...

What the draft constitution has done is that instead of formulating fundamental rights in absolute terms and depending upon our Supreme Court to

come to the rescue of Parliament by inventing the doctrine of police power, it permits the State directly to impose limitations upon the fundamental rights. There is really no difference in the result. What one does directly the other does indirectly. In both cases the fundamental rights are not absolute...  

As to the criticisms on the provisions regarding the suspension of fundamental rights Ambedkar said:  

....There can be no doubt that while there are certain fundamental rights which the State must guarantee to the individual in order that the individual may have some security and freedom to develop his own personality, it is equally clear that in certain cases where, for instance, the State's very life is in jeopardy, those rights must be subject to certain amount of limitation...In times of emergency the life of the State itself is in jeopardy and if the State is not able to protect itself in times of emergency, the individual himself will be found to have lost his very existence. Consequently, the superior right of the State to protect itself in times of emergency...
emergency, so that it may ...
live to discharge its functions in
order that the individual under the
aegis of the State may develop, must
be guaranteed as safely as the right
of an individual...

This able defence of the limitations by Ambedkar
is a tribute to his constitutional acumen which set at
rest all misgivings and criticisms. His contribution
in this regard lies not only in that he steered through
the Assembly Article 13 of the draft (present Article 19)
safely, but that he conceived a system of rights with
necessary limitations in the interest of individual
freedom and the authority of the State. He evolved and
incorporated a philosophy of rights based on the need
for balancing individual liberty and the need for social
control which alone can provide social justice. Ambedkar's
contention in defence of such restrictions was supported
by other Members also. One of them said:

I have no doubt in my mind that,
though I have had to say something
perhaps harsh on certain occasions
in regard to what the Drafting
Committee has done generally, in
this article, (Article 13 of the draft)
the Drafting Committee has chosen the
golden mean of providing a proper

enumeration of those rights that are considered essential for the individual, and at the same time, putting such checks on them as will ensure that the State and the Constitution which we are trying to bring into being to-day will continue unhampereed and flourish. 82

There is yet another aspect of fundamental rights which also created some controversy and that was regarding the scope for judicial review in India, where there is no constitutional guarantee of the 'due process of law' as in the U.S.A. The Fifth Amendment to the American Constitution says that "no person shall be deprived of his life, liberty or property without due process of law." (Italics mine). Whereas Article 21 of the Indian Constitution says that "no person shall be deprived of his life or personal liberty except according to procedure established by law." (Italics mine)

It is necessary and worthwhile to examine, in this context, the actual implications of the two systems. The term due process of law is very wide in its application as against procedure established by law. Due process has both a procedural and substantive meaning. As such its adoption has given the American Judiciary the scope

82. Shri. T.J. Krishnamachari, Ibid., p. 771.
to examine the validity of laws not only from the point of view of the legislature's competence, but also from the angle of the inherent goodness or otherwise of a law. A law should not only be passed by following the prescribed procedure, but should also be reasonable and good. Therefore, it is all-inclusive and has strengthened the contention of the U.S. Supreme Court vis-a-vis Judicial Review. Such a position is unfortunately not permissible in terms of Article 21, which has used the words procedure established by law. Our Constitution has, therefore, adopted the English principle of the supremacy of the law in preference to the American doctrine of judicial review. The Supreme Court itself opined as follows:

...Article 21 affords no protection against competitive legislative action in the field in the field of substantial criminal law, for there is not provision for judicial review on the ground of reasonableness or otherwise of such laws... The only right given by Article 21 is that no person shall be deprived of his life or liberty except according to 'procedure established by law'. By adopting that phrase, the Constitution

gave the legislature the final word to determine law... Our protection against legislative tyranny if any, lines, in the ultimate analysis, in a free and intelligent public opinion which must eventually assert itself...
It is not for the Court to question the wisdom and policy of the 'Constitution' which the people have given unto themselves... 84

This provision in our Constitution has an interesting history of its own. The Advisory Committee on the Minorities and Fundamental Rights had actually recommended the following provision: "No person shall be deprived of his life, or liberty without due process of law, nor shall any person be denied the equal protection of the laws within the territories of the Union." 85 But the Drafting Committee changed due process to procedure established by law in Article 15 of the Draft in order to be more specific in this respect. This important change was effected by the Drafting Committee, perhaps, under pressure from certain Members. One of them, Sir Alladi Krishnaswami Ayyar, lent his strong support to the procedure clause in these words:

... the support which the amendment has

received reveals the great faith which the Legislature and Constitution makers have in the Judiciary of the land. The Drafting Committee in suggesting "procedure" for "due process of law" was possibly guilty of being apprehensive of judicial vagaries in the moulding of law. The Drafting Committee has made the suggestion and it is ultimately for the House to come to the conclusion whether that is correct, taking into consideration the security of the State, the need for the liberty of the individual and the harmony between the two. I am still open to conviction and if other arguments are forthcoming I might be influenced to come to a different conclusion. 87

Obviously, the Drafting Committee was keenly divided in its opinion on this important question. Another lawyer-member of the Committee, Shri. K.A. Munshi argued in support of the 'due process' clause because, he thought:

...the essence of democracy is that a balance must be struck between individual liberty on the one hand and

social control on the other. We must not forget that the majority in a legislature is more anxious to establish social control than to serve individual liberty. Some scheme therefore, must be devised to adjust the needs of individual liberty and the demands of social control...

Shri. Munshi was of the opinion that the 'due process' clause, if adopted, would be the only device by which the necessary balance between individual liberty and social control would be achieved. For the same reason Ambedkar was in favour of the 'due process' clause. He was of the firm belief that the legislatures would tend to resort to hasty legislation, and unless there is a deterrent in the form of judicial review individual liberty would be destroyed. Ambedkar could have given an able defence for 'due process', which he, however, did not in the course of his reply to the discussion. The reason for his silence was that, in the meantime, the issue had assumed such dimensions that it had to be held over in the House twice to enable a decision at the 'Party' level. Accordingly, the discussion over Article 15 of the Draft was held over for a week, after which Ambedkar was called upon by the Chair to reply.

88. Ibid., pp. 861-862.
to the Debate. He, with his usual mastery over language and constitutional law, confessed that he was in a somewhat 'difficult position with regard to article 15'.\textsuperscript{89} He summed up the discussion skilfully and observed as follows:

\ldots we are therefore placed in two difficult positions. One is to give the judiciary the authority to sit in judgement over the will of the legislature and to question the law made by the legislature on the ground that it is not good law, in consonance with fundamental principles. Is that a desirable principle? The second position is that the legislature ought to be trusted not to make bad laws. It is very difficult to come to any definite conclusion. There are dangers on both sides. For myself I cannot altogether omit the possibility of a Legislature packed by party men making laws which may abrogate or violate what we regard as certain fundamental principles affecting the life and liberty of an individual. At the same time, I do not see how five or six gentlemen sitting in the Federal or Supreme Court examining laws made by the Legislature and by dint of their own individual conscience

\textsuperscript{89} Ibid, p. 999.
or their bias or their prejudices
be trusted to determine which law is
good and which law is bad. It is
rather a case where a man has to sail
between Charybdis and Scylla and
I therefore would not say anything.
I would leave it to the House to
decide in any way it likes. 90

Ambedkar, obviously, was in a dilemma, and,
therefore, he remained neutral on this issue. It was
very unusual for a man of his equipment and temperament
to have remained neutral on this important issue. Not
that he was not prepared to express his specific pre-
ference for 'due process', which he had actually provided
for in his model Constitution. 91 It may be recalled
here that in one of the articles in the said constitu-
tion he had clearly laid down: "No deprivation of
life, liberty and property without due process of law..." 92
He was, perhaps, forced to remain neutral on this issue
by the force of circumstances, particularly because of
the Party pressure. Important leaders of the Congress
Party like Mr. Nehru, who was in favour of 'due process'
clause in the beginning, ultimately leaned in favour of
the 'procedure established by law'. Mr. Nehru had
declared, in some other context, that the Court could not

90. Ibid, p. 1000.
91. B.R. Ambedkar: States and Minorities; 1947;
92. Ibid, Article II, Section I (2); p.9.
become 'a third Chamber', and that Parliament was sovereign. He emphatically asserted:

...Within limits no judge and no Supreme Court can make itself a third chamber. No Supreme Court and no judiciary can stand in judgment over the sovereign will of Parliament representing the will of the entire community. If we go wrong here and there it can point it out, but in the ultimate analysis, where the future of the community is concerned, no judiciary can come in the way. And if it comes in the way ultimately the whole Constitution is a creature of Parliament. ... it is obvious that no court, no system of judiciary can function in the nature of a third House, as a kind of Third House of correction. So it is important that with this limitation the judiciary should function...

Mr. Nehru, essentially a man of the masses, was attached to the idea of the supremacy of the Parliament almost instinctively. How could one expect such a person to favour judicial review and judicial supremacy? Obviously, Article 15 was passed, as contained in the

Draft itself with the procedure clause, under a party
whip. We have reason to believe that Ambedkar, in view
of his background and earlier professing and due to
the influence of American Constitution over him, was
inclined to support the due process clause. The House
was keenly divided on this issue. Ambedkar, if allowed
to have his own way, would have provided for due process,
which would have been a more useful and desirable
clause in our Constitution. But he could not do that,
as discussed in the foregoing.

Ambedkar was, apparently, unhappy over this Article,
though he could not save it at the time of its adoption.
As if to make amends to this, he moved a new Article
Article 15(A) — (Present Article 22) — which was not in
the Draft Constitution at all. This new Article was
moved and adopted almost at the fag end of the deliberations
of the Assembly. It was intended to provide certain
protections against detention, and the substance of the
law of 'due process'. Moving the new article Ambedkar
said:

...A large part of the House including
myself were greatly dissatisfied
with the wording of Article 15.
(present 21)... there is no part of
the Constitution which has been so
violently criticised by the public
outside as Article 15 because all that article 15 does is this, it only prevents the executive from making an arrest. All that is necessary is to have a law and the law need not be subject to any conditions or limitations. It was felt that while this matter was being included in the Chapter dealing with fundamental Rights, we were giving a carte blanche to Parliament to make and provide for the arrest of any person under any circumstances as Parliament may think fit. We are, therefore, now, by introducing article 15A, (present 22) making, if I may say so, compensation for what was done then in passing article 15. In other words, we are providing for the substance of the law of "due process" by the introduction of article 15A... 94

This was the utmost he could do, in the circumstances, to mitigate the evils of a possible executive tyranny in regard to preventive detention. It, however, did not set at rest the controversy over and opposition to the 'procedure' clause. What the article has been able to achieve, as claimed by Ambedkar, is that preventive detention takes place only under the law, and it cannot be at the will of the executive. He wanted "to restore the content of due procedure in its fundamentals without

94. Ibid, p. 1497.
using the words 'due process'?3 This is one of those areas of constitution-making in which Ambedkar could not write into it what he generally preferred and wanted to write.

**Minorities and the Constitution**

One of the main themes of this study has been the problem of securing to the minorities their basic rights and protecting their interests. Ambedkar strived throughout his public life for the emancipation of the largest minority group — the Untouchables in particular and other minorities in general. The Minorities Pact, the Communal Award, the Poona Pact and such other arrangements were designed to give the minorities the necessary protection. The problem of the minorities, therefore, loomed large in the negotiations between the British and the Indians towards a political settlement. The British made it a condition-precedent for transferring power that they should come to an agreement among themselves. It was the Cabinet Mission that ultimately decided to leave the problem of the Minorities to the charge of a special Committee that would recommend to the constitution-making body the principles on which the rights of the citizens, the minorities and also of the tribal and

95. Ibid, p. 1556.
Excluded areas would be secured. Paragraph 20 of the Mission's Statement said:

The Advisory Committee on the rights of citizens, minorities, and tribal and excluded areas should contain full representation of the interests affected, and their function will be to report to the Union Constituent Assembly upon the list of Fundamental Rights, the clauses for the protection of minorities, and a scheme for the administration of the tribal and excluded areas, and to advise whether these rights should be incorporated in the Provincial, Group, or Union Constitution. 96

In fulfilment of this responsibility the Advisory Committee recommended the broad principles on which the rights were to be provided in the Constitution. The Drafting Committee, as Ambedkar himself expressed, did not have any responsibility in this matter. It simply followed the decisions of the Constituent Assembly in regard to the safeguards for the minorities. 97 It is also to be recollected here that Ambedkar was a member of the Advisory Committee and also its special sub-

96. V.P. Menon: The Transfer of Power in India; Appendix IV, p. 473.
committee on Minorities. He utilised the opportunity to participate effectively in the evolving of a system of rights and safeguards for the minorities that would not only satisfy every minority but would also, in the long run, minimise the problem. Though he was but one of the 72 Members of the Committee, he was perhaps one of those few who had suffered most as a member of a minority group, if not for any other reason. Only he could feel the extent of injustice perpetrated upon a large section of the Hindu society, so he was eminently suited to secure justice and fairplay to them and thus paving the way for their allround progress in a free and just society.

Dr. Ambedkar's anxiety was not just to wring some concessions out from the government or to be content with a few more seats for his people. He was anxious, on the other hand, to make use of the opportunity of constitution-making for solving the problem of minorities in India on more enduring grounds and for ever. If he demanded separate electorates; and later on accepted a modified form of joint electorates during his negotiations with the British, he, as the maker of the constitution strove to oblitrate from the country's life the minority problem as such. The attitude he took at this juncture was one of mutual efforts and adjustments among the majority and
...In this country both the minorities and the majorities have followed a wrong path. It is wrong for the majority to deny the existence of minorities. It is equally wrong for the minorities to perpetuate themselves. A solution must be found which will serve a double purpose. It must recognize the existence of the minorities to start with. It must also be such that it will enable minorities to merge some day into one ... To diehards who have developed a kind of fanaticism against minority protection I would like to say two things. One is that minorities are an explosive force which, if it erupts, can blow up the whole fabric of the State... The other is that the minorities in India have agreed to place their existence in the hands of the majority. In the history of negotiations for preventing the partition of Ireland, Redmond said to Carson 'ask for any safeguard you like for the Protestant minority but let us have a United Ireland'. Carson's reply was 'Damn your safeguards, we don't want to be ruled by you'. No minority has taken this stand. (except the Muslims) They
have loyally accepted the rule of the majority which is basically a communal majority to realise its duty not to discriminate against minorities. Whether the minorities will continue or will vanish must depend upon this habit of the majority. The moment the majority loses the habit of discriminating against the minority, the minorities can have no ground to exist. They will vanish...

In these words he welcomed and commended the safeguards provided for the minorities in the draft constitution. Though he disowned responsibility for them, perhaps owing to a sense of modesty on his part, yet the imprint of his philosophy on them is too obvious to be missed by any one. His ardent desire that the minorities should ultimately 'vanish' is the key to understand better, the spirit underlying the safeguards for minorities in the Constitution.

A quick glance at the provisions adumbrated in parts III, IV and XVI of the Constitution indicates the nature of safeguards to the minorities. Articles 14 to 17, 23, 25 to 30, 38, 46 and 330 to 342 are directly...
relevant to the problem of minorities vis-à-vis the fundamental rights.

There are, broadly, three distinct kinds of minorities considered for the purpose of providing protection. They are: the religious minorities such as the Muslims, the Sikhs, the Christians; the linguistic minorities; and the Scheduled Castes and Tribes. If the problem of religious minorities is mostly one of the political rights; the problem of linguistic minorities is one of conservation of language, and rights to education and employment; and the problem of Scheduled Castes is one of social and economic rights, while that of the Tribes is of conserving their culture, laws and tribal property. 99 The problems of each one of these minority groups were appreciated fully, and accordingly they are given certain safeguards. Besides embodying the doctrine of Rule of Law in the course of Articles 14, 15 and 16 for the minorities along with other citizens, in the remaining Articles specific safeguards and protections have been laid down. The Constitution has recognised the right of equality for the religious, linguistic and cultural minorities and has stated them fully.

In this connection special mention must be made of

Article 17 of the Constitution which abolishes the practice of 'Untouchability' in any form. Article 17 in a simple and brief way has abolished 'Untouchability', an age old anachronism of our society. It was for that day, on which the Constituent Assembly adopted this Article in one voice, that Ambedkar was anxiously striving for all along his life and was looking forward. Article 17 states:

"Untouchability" is abolished and its practice in any form is forbidden.
The enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law.

Accordingly, the Untouchability Offences Act, 1955 provided for specific punishment for particular offences under Article 17. As one of the members of the Assembly observed:

...This clause does not propose to give special privileges and safeguards to some minority community, but it proposes to save one-sixth of the Indian population from perpetual subjugation and despair, from perpetual humiliation and disgrace... for the sake of sustaining our good-will and reputation beyond the boundaries
of India, this clause... must find a place in the Constitution of free and independent India, I refuse to believe, Sir, that there is even a single soul in this august body who opposes the spirit and principle contained in this article. So, I think, Sir, that today the 29th November 1948 is a great and memorable day for us the untouchables. This day will go down in history as the day of deliverance, as the day of resurrection of the crores of Indian people...

Last of all, I cannot resist the temptation of saying a few words about our great and eminent Law Minister and Chairman of the Drafting Committee, Dr. Ambedkar. It is an irony of fate that the man who was driven from one school to another, who was forced to take his lessons outside the class room, has been entrusted with this great job of framing the Constitution of free and independent India, and it is he who has finally dealt a death-blow to this custom of untouchability, of which he was himself a victim in his younger days... 100

100. Dr. Monomohon Das; C.A.W. Vol.VII, p.666.
Rightly, 29th November 1948, the day on which Article 12 of the Draft (present Art. 17) came to adore the Constitution and the Members of the Assembly adopting it with the cries of "Mahatma Gandhi Ki Jai", was indeed a day of fulfilment for not only Ambedkar but for the vast number of untouchables. Looking back, one could say Dr. Ambedkar was the man who was destined to emancipate his unfortunate brethren.

It was pointed out that Article 17 did not 'create' any particular right and privilege. Ambedkar was aware of this fact. But as he had pointed out earlier, it was the only effective way in which the determination of the majority communities and also the minorities to eradicate this evil, root and branch, could be expressed emphatically. Untouchability was one of the greatest disabilities suffered mutely by nearly one-sixth of the country's population. If a 'right' means 'a remedy against a disability', the fundamental right created in Article 17 should be a great character of deliverance to those people. Those who had inflicted and perpetuated such an humiliation and disgrace on these unfortunate people, by writing this right into the constitution could repent for their sins. As Pylee puts it:

...The custom of untouchability had

101. 'Victory to Mahatma Gandhi'.
not only thrown millions of the Indian population into abysmal gloom and despair, shame and disgrace, but it had also eaten into the very vital of the nation. There could be no better sign of the determination to eradicate the evil than incorporating this article into the chapter on Fundamental Rights in the Constitution. 102

No doubt with this Article Ambedkar's name would go to posterity as not only a great constitution-maker, but also as a great social revolutionary, reformer and emancipator of the age. The nation owes a debt of gratitude for his most secular approach to the problem of the minorities in free India.

It is necessary, at this stage of the discussion on the minorities, to refer to the political safeguards granted to them in the course of Articles 330 to 342 of the Constitution. The constitution abolished the system of separate electorate on communal lines granted by the British to the religious minorities. We have seen that Ambedkar was always concerned about the position of

the Scheduled Castes as not only social outcastes but also as political outcastes. He was of the firm conviction that once political and economic equality was established, social equality would follow, and law could help then in this regard. This equality was granted in Articles 15 to 17 and 19. In addition to this, Ambedkar thought that 'Adult Franchise' would enable the Scheduled Castes to pull the necessary weight in the political field as they were important numerically, and adult suffrage would mean a 'big change'. Ambedkar was also hopeful that once the seven freedoms and right to equal protection and treatment were assured, the social injustices could be removed easily. He asked: "After all, what are we having this liberty for? We are having this liberty in order to reform our social system, which is so full of inequalities, discriminations and other things, which conflict with our fundamental rights..."103 In view of the changed circumstances in free India, and in view of the adoption of adult suffrage, the problem of safeguards to minorities had to be approached de novo. Ambedkar realised this and thus he abandoned the stand he had taken in this regard earlier. The Advisory Committee also thought that there was no longer any need for

clinging to the philosophy of minority protection through separate electorates and such other devices. So it decided in favour of joint electorates, but with reservation of seats for some minority groups for a specific period. The Constituent Assembly had, on the recommendations of the Advisory Committee in 1947, decided to give some 'political safeguards for minorities' and had provided:

(1) That all elections to the Central and Provincial Legislatures will be held on the basis of joint electorates with reservation of seats for certain specified minorities on their population ratio. This reservation shall be for a period of ten years at the end of which the position is to be reconsidered. There shall be no weightage. But members of the minority communities for whom seats are reserved shall have the right to contest general seats...104

But a year later, in the changed circumstances consequent to Partition, it was felt that such reservation of seats to religious minorities would encourage minority thinking, for which the nation had already paid a heavy

price in Partition. So the Advisory Committee revised its earlier stand and recommended "That the system of reservation for minorities other than Scheduled Castes in legislatures be abolished", in view of the special circumstances under which the Scheduled Castes were placed.105 With this modification, provisions of Part XVI of the Constitution were finalised by the Assembly. Moving for accepting the said amendment and consideration of the reports of the sub-committee, Sardar Patel, Chairman of the Advisory Committee had hoped:

...although temporarily we may recognise this it is up to the majority to create by its generosity a sense of confidence in the minorities; and we also, it will be the duty of the minority communities to forget the past and to reflect on what the country has suffered due to the sense of fairness which the foreigner thought was necessary to keep the balance between community and community...

...It is not our intention to commit the minorities to a particular position in a hurry. If they really have come honestly to the conclusion that in the changed conditions of this country, it is in the interest of all to lay...
down real and genuine foundations of a secular State, then nothing is better for the minorities than to trust the good-sense and sense of fairness of the majority, and to place confidence in them... But in the long run, it would be in the interest of all to forget that there is anything like majority or minority in this country and that in India there is only one community... 106

But a section of the Members representing the Sikhs and Muslims were not happy over this, and they demanded some provision for them by which they can get political safeguards. Some Muslim Members suggested the adoption of the system of Proportional Representation with Multi-member constituencies and cumulative system of voting. Though this suggestion was appreciated in principle, it was rejected owing to practical difficulties that beset such a system in a country with such large numbers of illiterate voters. Further, Ambedkar himself would have preferred a longer period of special protection than ten years for the Scheduled Castes. But the consensus was in favour of ten years, which he accepted gracefully. We are only to recall here that at the end

106. Ibid., p. 272.
of the ten-year period, the special safeguards were extended for a further period of ten years from 1960.*107

The provisions of Part XVI of the Constitution are rightly called special provisions relating to certain classes—the Scheduled Castes and Tribes and the Anglo-Indians. Articles 330 and 332 provide that seats shall be reserved for Scheduled Castes and Scheduled Tribes in the House of the People and Legislative Assemblies of states respectively. Articles 331 and 333 provide for representation of the Anglo-Indian community by nomination by the President and the Governor, in case that community is not adequately represented in the Union and states' lower Houses. According to Articles 334 and 336 the period of such reservations is fixed as ten years from the commencement of the Constitution. Article 335 stipulates that the "claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State." The Constitution also requires the appointment of a Special Officer for Scheduled Castes and Tribes, by Article 338, to investigate and report to the President on all matters relating to the safeguards

107. Eighth Amendment to the Constitution, 1960.
to these classes; and by another Article the President may appoint a Commission to investigate the conditions of backward classes. The President is also vested with the power to notify the castes, races and tribes to be included in the Scheduled Castes' List of a State for purposes of according special protection by Articles 341 and 342.

The scheme of political safeguards for minorities evolved and incorporated into the Constitution heralded a new era in the political and constitutional life of the country. It is significant in so far as it abolished the separate electorates; the reservation of seats in the legislatures for all religious minorities and other special safeguards, excepting to the Scheduled Castes and Tribes. It achieved the twin objectives of preserving the secular character of our polity, and secondly it enabled the Scheduled Castes and Tribes, whose claims for such special treatment were incontrovertible, to receive special protection for a specific period. The implications of the new system of safeguards can be summed up as follows: (i) that the basic philosophy of the State should be such as would discourage minority-thinking; (ii) since minorities in India are essentially religious minorities, only a Secular State would enable the minorities

108. Article 340(1).
to feel secure and satisfied, which would ultimately lead to an integration of the minority and the majority in the more important fields of state activity and public life. This process of integration should not, however, be mistaken for a physical merger of different groups into one, but it would be one of emotional integration. It could be achieved by removing all psychological and social barriers to cooperation. Hence the Constitution enshrined the principle of secularism with tolerance for every religious faith — major or minor — by allowing each religious group to 'profess, practice and propagate' its own religion 'subject to public order morality and health.'

The Constitution has provided for secularism as the sheet anchor of individual freedom of not only the majorities but the minority groups also by granting the right to freedom of religion. Ambedkar, as we know, had been advocating for religious tolerance and equal right of all religious groups in the country if the minorities are to feel secure. He went to the extent of laying in detail, in the course of Article II, Section I of his model constitution, conditions for freedom of conscience and the right to profess and preach any religion "within limits compatible with public order and morality." He pleaded for a secular India when he said: "The State shall not recognise any religion as State religion." In the same spirit,

109. Article 25 (1).
110. States And Minorities, pp. 11-12.
111. Cl. 17. Ibid, p. 12.
and on similar lines the new Constitution of India has also enshrined secularism as a devise to solve the minority problem. By recommending and finally adopting secularism as the basis for constituting free India, Ambedkar rendered a signal service to modern India. This is a distinct contribution of this champion of the downtrodden.

The problem of minorities, that was the knottiest of all problems, was thus sought to be resolved in a novel and satisfactory way. The successive Reports of the Commissioner for Scheduled Castes and Tribes have reported with a sense of pride on the trend of development which is quite encouraging. The Scheduled Castes and Tribes and other backward classes are registering rapid social, economic and educational strides. Though 'untouchability' has not completely vanished yet, its intensity is greatly reduced and one can hope to relegate it to history in the near future. Ambedkar's life's 'mission' has been fulfilled in as much as he set the pace towards an all-round progress of the untouchables and their ultimate emancipation by utilising the opportunity of writing the Constitution of India. He laid the foundations for a just society by embodying the principle of secularism in the Constitution.
Before concluding this discussion on Ambedkar's contribution to the constitutional evolution of India, we have to examine a grave note of warning that he uttered in the Constituent Assembly in his final speech, replying to the debate on the third reading of the Draft Constitution. After meeting the points made out by the critics, he dilated on the nature and conditions of a real democracy. He posed the question whether the Indian citizen would be having democracy in the real sense, in its economic and social aspects with the ushering in of the Republic. To him, democracy was nothing but the consummation of the three "principles of liberty, equality and fraternity... (that) form a union of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy..."\textsuperscript{112} He knew fully well the inadequacies of the Indian society to serve as the base for a full-fledged democratic edifice. One such inadequacy was the 'principle of graded inequality', which meant 'elevation for some and degradation for others'. So also in the economic field. It is for these reasons that he said:

\textsuperscript{112} CAD., Vol. XI, p. 979.
...On the 26th January 1950, we are going to enter into a life of contradictions. In politics we will have equality and in social and economic life we will have inequality. In politics we will be recognising the principle of one man one vote and one vote one value. In our social and economic life, we shall, by reason of our social and economic structure, continue to deny the principle of one man one value. How long shall we continue to deny equality in our social and economic life? If we continue to deny it for long, we will do so only by putting our political democracy in peril. 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...

He also lamented the absence of fraternity — a sense of common brotherhood of all Indians — that gives unity and solidarity to social life was conspicuous by its absence.

113. Ibid., p. 879.
These observations of Ambedkar are so significant that one cannot afford to overlook their implications. They raise some fundamental questions such as: whether the new Constitution was not going to provide social and economic equality, whether it provided only political equality? Then what about the lofty ideals of ‘Justice—social, economic and political’—adumbrated in the Preamble to the Constitution? Was Ambedkar dissatisfied with those parts of the Constitution that claim to provide for social and economic justice?

These and many such questions can be answered only in the light of the relevant provisions of the Constitution. The fundamental rights, no doubt, create political equality and liberty. The article abolishing untouchability along with Articles 14 to 16 and 19 create opportunities for equal treatment in all respects. But specific economic rights like right to work, an adequate living wage, better standards of living etc., are not available as fundamental rights. They are laid down in the constitution only as non-justiciable rights intended to direct the policy of the State towards such objectives. They are not mandatory provisions, though they may constitute the guide-lines of State Policy. No doubt all citizens are at a disadvantage in this regard. But those who were suffering under inequalities for ages would be
at a greater disadvantage in free India! Ambedkar was having this stark reality in his mind, though he defended the Directive Principles of State Policy in the following words:

The Directive Principles are like the Instrument of Instructions which were issued to the Governor-General and to the Governors of the Colonies and to those of India by the British Government under the 1935 Act. Under the Draft Constitution it is proposed to issue such instruments to the President and to the Governors... The only difference is that they are instructions to the Legislature and the Executive. Such a thing is to my mind to be welcomed. Wherever there is a grant of power in general terms for peace, order and good government, it is necessary that it should be accompanied by instructions regulating its exercise.

The inclusion of such instructions in a Constitution such as is proposed in the Draft becomes justifiable for another reason... whoever captures power will not be free to do what he likes with it. In the exercise of it, he will have to respect these instruments of instructions which are called...
Directive Principles. He cannot ignore them. He may not have to answer for their breach in a Court of Law. But he will certainly have to answer for them before the electorate at election time. What great value these directive principles possess will be realized better when the forces of right contrive to capture power.\[114\]

This defence of the Directive by Ambedkar would not satisfy the critics. A number of Amendments were moved. In reply to a Member he said:

...Constitution...is merely a mechanism for the purpose of regulating the work of the various organs of the State... What should be the policy of the State, how the society should be organised in its social and economic side are matters which must be decided by the people themselves according to time and circumstances. It cannot be laid down in the Constitution itself, because that is destroying democracy altogether. If you state in the Constitution that the social organisation of the State shall take a particular form, you are, in my

judgment, taking away the liberty of the people to decide what should be the social organisation in which they wish to live... 115

He further referred to the provisions of the Directive Principles and asked: "...If these directive principles to which I have drawn attention are not socialistic in their direction and in their content, I fail to understand what more socialism can be." 116

It is interesting to recapitulate here his earlier observations on the issue in his model Constitution in which he had provided for a separate clause on 'Protection against economic exploitation'. 117 He had criticised the general tendency of almost all democratic constitutions to stop with adult suffrage and Fundamental Right. He had said:

"...old time constitutional lawyers believed that the scope and function of constitutional law was to prescribe the shape and form of the political structure of the society. They never realized that it was equally essential to prescribe the shape and form of...

117. Article II, Section II, Cl.4; States And Minorities; pp. 30-35.
the economic structure of society, if democracy is to live up to its principle of one man, one value...
All countries which are late comers in the field of constitution-making should not copy the faults of other countries. They should profit by the experience of their predecessors.118

How far Ambedkar himself and the Drafting Committee were profited by this observation is to be noted. He had also argued that it is necessary to plan the economic life of the people on such lines that would lead to highest point of productivity without closing any avenue to private enterprise, and also provide for the equitable distribution of wealth,119 because there is a real connection between individual liberty and the type or form of economic structure of society. He had also maintained that in order to avoid dictatorship, which may be an attractive alternative for economically dissatisfied people, the only way out, he said, "...seems to be to retain Parliamentary Democracy and to prescribe State Socialism by the law of the Constitution so that it will be beyond the reach of a Parliamentary majority to suspend, amend or abrogate it. It is only by this that one can achieve the triple object, namely to establish

---
118. Ibid, p. 35.
socialism, retain Parliamentary Democracy and avoid Dictatorship."120

He was, apparently, in favour of inscribing in the Constitution itself the principles and structure of the economic life of the people. But this could not be achieved by him, as the Chairman of the Drafting Committee, to the extent he wanted it. He had to be satisfied with just mentioning them as principles that are fundamental in the governance of the country, though not fundamental from the point of view of their enforcement. The circumstances, probably, permitted him to achieve only this far and no further. Even that was no mean an achievement, for, the Directives, as we know, provide the ideal of economic democracy the spirit of which, it was hoped, would not be ignored by the changing pattern of power position of the political parties. Though the directives are criticised as 'pious declarations' and 'empty promises' and a 'mere amplification of the Preamble', they have been looked upon as useful in so far as 'they are fundamental', as Justice Chagla thought them to be, 'in the governance of the country.' Chief Justice Fania commended them in these words: "The Directive Principles represent not the temporary will of a minority in the

120. Ibid. p. 34.
legislature but the deliberate wisdom of a nation exercised while settling the paramount and permanent law of the country." The effectiveness of these provisions of the Constitution would have to depend upon a more vigilant and effective public opinion than upon Courts. Ambedkar was aware of this and had fully realised the need for building up such a public opinion constantly vigilant and also a sense of justice and fairplay among stronger sections towards the weaker sections of the Indian society. That was the task lying ahead of the people of India to which Ambedkar drew their attention by saying that bringing about economic and social justice and equality and creating fraternity depends upon the people who should strive to achieve these social and economic goals through constitutional methods in preference to revolution. He disapproved of the coercive, though peaceful, means such as civil disobedience, satyagraha and fasting. He was, in other words, appealing to the people to develop a sense of constitutional morality which alone would take them to the cherished goals. He was rightly apprehensive of the impact of the Gandhian techniques, of fighting a government, upon the people of free India and had warned: "...where constitutional methods are open, there can be no justification for these unconstitutional methods. These methods
are nothing but the Grammar of Anarchy and the sooner they are abandoned, the better for us.\textsuperscript{121} He spoke, as if by a prophetic instinct in him, of the possible evil effects of such unconstitutional methods on the peace and progress of our society. We are to-day witnessing in the public life of the country a widespread tendency of resorting to methods such as fasts, even for good causes. No wonder Ambedkar utilised the opportunity for appealing on behalf of the long-oppressed sections of the society in these words:

\ldots there can be no gainsaying that political power in this country has too long been the monopoly of a few and that many are not only beasts of burden, but also beasts of prey. This monopoly has not merely deprived them of their chance of betterment, it has sapped them of what may be called the significance of life. These downtrodden people are tired of being governed. They are impatient to govern themselves. This urge for self-realisation in the downtrodden classes must not be allowed to devolve into a class struggle or class war. It would lead to a division of the House... Therefore, the sooner room is made for the realization of their aspiration, the better for the few.

\textsuperscript{121} SAD, Vol. XI, p. 978.
the better for the country, the
country, the better for the maintenance for its
independence and the better for the
continuance of its democratic
structure. This can only be done
by the establishment of equality
and fraternity in all spheres of
life. That is why I have laid so
much stress on them.

...independence is no doubt a matter
of joy. But let us not forget that
this independence has thrown on
us great responsibilities. By
independence, we have lost the excuse
of blaming the British for anything
wrong. If hereafter things go
wrong, we will have nobody to blame
except ourselves. There is great
danger of things going wrong. Times
are fast changing. People including
our own are being moved by new ide­
ologies... If we wish to preserve the
Constitution in which we have sought
to enshrine the principle of Govern­
ment of the people, for the people
and by the people, let us resolve
not to be tardy in the recognition
of the evils that lie across our path
and which induce people to prefer
Government for the people to Govern­
ment by the people, nor to be weak
in our initiative to remove them.
That is the only way to serve the
country. I know of no better. 122

These observations of his, mature as they were, bring out the humanist and patriotic fervour in Ambedkar and he served the cause of the country and those for whose emancipation he had vowed all along his life this way. There was, therefore, no essential contradiction in his views on the means to achieve the economic and social objectives. It was the Constitution and the constitutional method that should be utilised for the purpose. But it depends upon the sense of constitutional morality the people possess, if it is to bear fruits. It is gratifying to note that quite a number of Directives such as: organisation of village panchayats; 123 provision for free and compulsory education for children; 124 promotion of educational and economic interests of Scheduled Castes and Tribes and other weaker sections; 125 and provisions of articles 47 and 48 on prohibiting the consumption of intoxicating liquors and cow-slaughter; and the separation of the Judiciary from the Executive 126 have been implemented in most of the States and Union Territories. But this is not all. There are still more important Directives

122. Ibid, pp. 280-81.
123. Article 40.
124. Article 45.
125. Article 46.
126. Article 50.
which need to be implemented and await implementation. The progress so far has set the pace towards an early implementation of them thereby leading the country towards the welfare state. The efforts of the State in this regard are mainly concentrated through the national Five Year Plans. So far three Plans are put through, and the Fourth Plan is being finalised. All the Plans and particularly the Third Five Year Plan has spelled out the Indian concept of socialistic pattern of society and welfare ideology in more concrete terms and form. The late Prime Minister Nehru provided the necessary ideological content and boost to these Plans, which only justifies the statement that the Directives provided for in the Constitution are not allowed to remain as mere platitudes and pious declarations, but have been taken up sincerely for implementation. Ambedkar was after all right in laying emphasis on the need for a vigilant public opinion in support of the Directive Principles in his characteristic powerful way. His endeavours in this regard are bearing fruits.

Conclusion: Ambedkar and Constitution-making; the role determined:

The main theme of discussion in this Chapter is the role of Ambedkar in the making of our Constitution.
The scope of the discussion is confined to some vital areas of constitution-making that have great relevance and real impact on the political, economic and social structure of the Indian society. Ambedkar's life has been a saga of a heroic fight against the forces inimical to justice, equality and fraternity. He did not let go any opportunity, that came his way, of serving the interests of the untouchables. He, in fact, looked upon such opportunities as joining the Viceroy's Executive Council, the Cabinet of Mr. Nehru and of entering the Constituent Assembly itself as too precious to be lost, if the cause of his people, which he had espoused all along, is to be served. While expressing his gratitude for the compliments showered on him by the Members of the Constituent Assembly at the end of its deliberations, he said:

"...to the compliments that have been showered upon me both by the members of the Assembly as well as by my colleagues of the Drafting Committee I feel so overwhelmed that I cannot find adequate words to express fully my gratitude to them. I came into the Constituent Assembly with no greater aspiration than to safeguard the interests of the scheduled Castes. I had not the remotest idea that I would be called upon to undertake more responsible functions. I was therefore greatly
surprised when the Assembly elected me to the Drafting Committee. I was more than surprised when the Drafting Committee elected me to be its Chairman... I am grateful to the Constituent Assembly and the Drafting Committee for reposing in me so much trust and confidence and to have chosen me as their instrument and given me this opportunity of serving the country. (Cheers) 127 (Italics mine)

This statement of his, though full of modesty, is significant for us in determining his role in constitution-making. He had conceded, and rightly so, the claims of other members of the Drafting Committee, the Constitutional Adviser Sir B.N. Nau, and the Secretary Mr. S.H. Mukherjee, whom he called 'the Chief Draftsman of the Constitution', in the following words:

The credit that is given to me does not really belong to me. It belongs partly to Sir B.N. Nau, who prepared a rough draft of the Constitution for the consideration of the Drafting Committee. A part of the credit must go to the members of the Drafting Committee... whose ingenuity to devise new formulae and capacity to tolerate

and to accommodate different points of view, the task of framing the Constitution could not have come to so successful a conclusion. Much greater share of the credit must go to Mr. S.N.Mukherjee, the Chief Draftsman of the Constitution. His ability to put the most intricate proposals in the simplest and clearest legal form can rarely be equalled... He has been an acquisition to the Assembly...126

Ambedkar also acknowledged the active guidance and discipline provided by the Congress Party without which the Constituent Assembly would have been 'merely a motley crowd, a tasseled pavement without cement, a black stone here and a white stone there in which each member or each group was a law unto itself.' He said, further: "...It is because of the discipline of the Congress Party that the Drafting Committee was able to pilot the Constitution in the Assembly with the sure knowledge as to the fate of each article and each amendment. The Congress Party is, therefore, entitled to all the credit for the smooth sailing of the Draft Constitution in the Assembly."129 Moreover, it would be too great

a claim that can be made by, or for any one individual for
an exclusive share and responsibility for himself in so
great and an enormous task as writing the Constitution
of a country. In no country this is possible. The
responsibility and the credit or discredit had to be
shared, as we know, by not only several individuals but
by various organisations that did exert pressure and
influence. 'Rebels' also had their own contribution to
make. A number of amendments moved by them were accepted.
In the framing of the Indian Constitution the responsi-
bility for producing a draft was fixed upon its Drafting
Committee. Dr. Ambedkar as its Chairman had an onerous
duty to discharge this responsibility to the Assembly in
co-operation with other members of the Committee and with
the assistance of the Constitutional Adviser, the Secretary
and his staff. It is already pointed out that a number
of Committees and sub-committees were constituted for
reporting on specific aspects of the Constitution. The
work of the Drafting Committee was, therefore, one of
collecting the points recommended in the course of various
reports and also the ideology that was laid down in the
Aims and Objectives Resolution. The influence of the
Gandhian ideology, the political, social and economic
philosophies of Mr. Nehru, Sardar Patel and the Congress
Party were quite strong and inescapable. It is to be
recalled that it was Mr. Nehru who moved and defended the Aims and Objectives Resolution and Article 24 of the Draft on right to property that was left blank by the Drafting Committee in the Draft. Obviously it was taken away from the hands of the Committee to be discussed and finalised in the Congress Party. It was, once again, Sardar Patel who handled the provisions regarding fundamental rights and minority protection. It was his desire that special safeguards for the Scheduled Castes and Tribes should be granted only for a period of ten years from the commencement of the Constitution. Commenting on the role of Nehru and Patel, Dr. K.V. Rao wrote as follows:

An American writer describing the Philadelphia Convention of 1797 compared and called Washington and Madison the "commander and the philosopher". If there were any two people to deserve those epithets in India they were Nehru and Patel, Nehru, the philosopher, and Patel, the commander. Patel was as much a realist as Nehru was an idealist, the former had as much scorn for Nehru's idealism as Nehru had for Patel's love of realism and details. They worked together and yet separately, and produced this Constitution; and the Constitution bears enough testimony
to the clash of idealism and realism — ... Both Nehru and Patel had the final say in their respective spheres.\footnote{130}

Of course, Ambedkar was associated with Patel both in the main Advisory Committee and its special sub-committee along with Patel, Nehru, Munshi and Rajendra Prasad. Ambedkar's imprint on the Constitution could, therefore, be only to the extent that the circumstances allowed him. He, time and again, pointed out that he and the Drafting Committee were not free agents to write the Constitution as they wanted it to be. This was confirmed by other members. One of the members of the Assembly stated, with his inside knowledge, that "thinking is done by the Congress Party and the Drafting Committee only drafts accordingly,"\footnote{131} and Dr. Ambedkar himself confessed that "they had to go to another place to obtain a decision and come to the Assembly."\footnote{132}

\footnotesize

\begin{itemize}
  \item \textbf{130.} \textit{K.V. Rao, Parliamentary Democracy of India;} 1961; p. 9.
  \item \textbf{131.} \textit{Mahavir iyagi, JAIW, Vol. IX,} p. 1699.
  \item \textbf{132.} \textit{Ibid,} p. 1094.
\end{itemize}
While determining the role of Ambedkar and his contribution to the framing of the Constitution, it is imperative on our part to keep in mind the distinction between Ambedkar as an individual, and Ambedkar as the Chairman of the Drafting Committee. His individual capacity should be bifurcated from his official capacity as the Chairman of the Drafting Committee where he had to work under guidance from a number of other agencies and individuals. To quote Dr. Rao again on this point:

...Dr. Ambedkar had to bear in fact others' ideas, and nurture them, and bring them out as his own, and this he did remarkably well, "possessing legal acumen, untiring industry, consummate skill and firmness tempered with moderation."

While Nehru and Patel supplied the main ideas, and Ambedkar was advocating them in the Assembly as the main spokesman, the devising of institutions, making of schemes, manoeuvring and applying pressure, and all the behind-the-scenes activities, were carried on by K.M. Munshi, with the active co-operation of Alladi and Gopalaswami Ayyangar... 133

133. K.V. Rao, op. cit. p. 11. The source of this information for Dr. Rao is his personal conversation with K.M. Munshi as well as the records of the Assembly maintained by him.
She drafting Committee, it is possible to hold, therefore, produced the Draft Constitution based on the various Reports and also the mandates given by the Constituent Assembly and the Congress Party from time to time. In this task of a technical nature Ambedkar, as the Chairman, brought to bear upon the Draft his technical skill, as he was a great constitutionalist and a man of extra-ordinary legal acumen. In this way he participated in a greater measure than any other member of the Drafting Committee as revealed by a member himself. Mr. T.I.Krishnamachari revealed that owing to the continued absence of most of the members of the Committee for some reason or the other 'there was a void' in the work of the Committee. "So it happened ultimately that the burden of drafting this constitution fell on Dr. Ambedkar and I have no doubt" he said, "that we are grateful to him for having achieved this task in a manner which is undoubtedly commendable." This was acknowledged by almost all members in the Constituent Assembly, including those who were critical of the provisions of the constitution. So there can be no disputing the fact that Ambedkar had a major share in the work of the drafting and could influence it to a greater extent.

In the second place, he had the unique honour and 134. CAD, Vol. VII, p. 231.
special responsibility also of moving the Draft for consideration and defending its provisions one by one at all the three stages of its consideration. He was, of course, eminently suited for this task, both on considerations of practical convenience and legal propriety, as he was the Minister for Law; and he was also the spokesman for the Drafting Committee as its Chairman. Oyer and above this, he had extra-ordinary talents as a constitutional lawyer, parliamentarian and orator. As one senior member of the Assembly said:

...I do not know, Sir, the terms in which I should thank the Drafting Committee, particularly words fail to convey the gratitude that all of us feel for the legal acumen, the untiring industry, the consummate skill and the firmness, tempered with moderation, with which the Chairman of the Drafting Committee has piloted this Constitution through this House and has solved all the knotty questions arising in connection with it...

So the performance of Ambedkar in piloting the Draft was brilliant, though some criticised him and complained of the cavalier fashion in which he was

rejecting the amendments moved by members. Sometimes it bordered on irritation to them. Particularly the non-lawyer members, like MahavirTyagi and a number of others, complained of the 'legal twist' of the provisions in the hands of Dr. Ambedkar. But the Chair always sympathised with Ambedkar in view of the fact that he was overworked. He always enjoyed that sympathy from the chair in view of the enormous mental and physical strain to which he was subjected in the work of drafting and moving the Draft Constitution. In appreciation of the good work done by Ambedkar, the President of the Assembly, Dr. Rajendra Prasad had this tribute to pay:

...Sitting in the Chair and watching the proceedings from day to day, I have realised as nobody else could have, with what zeal and devotion the members of the Drafting Committee and especially its Chairman, Dr. Ambedkar in spite of his indifferent health, have worked. (Cheers). We could never make a decision which was or could be ever so right as when we put him on the Drafting Committee and made him its Chairman. He has not only justified his selection but has added lustre to the work which he has done. In this connection, it would be invidious to make any distinction as among other members of the
Committee. I know they have all worked with the same zeal and devotion as its Chairman, and they deserve the thanks of the country... 136

Dr. Ambedkar, therefore, had played a major and a significant role in the framing of our Constitution, in so far as the form and contents of the Constitution go. But the spirit and philosophy of the Constitution could not be entirely his, as has been discussed in the foregoing. For instance, he could not succeed in providing for a mixed type of executive for the country. He was sceptical on the future of the Cabinet system. It is interesting to note here the comments of one of the few living members of the Committee Shri. K.M. Munshi, made on the eve of the 18th Republic Day. He is reported to have stated, when asked by the UNI News agency to give his views on how he would frame the Constitution if he were to do it to-day, that he would favour Presidential system as in the United States. Mr. Munshi is reported to have said further as follows:

Those of us who supported the British Cabinet system, to which we were

accustomed, thought that it would work effectively in India; but I must confess that we have failed to evolve the two-party democratic tradition necessary to support the Cabinet system. Our democratic instincts have proved immature. The Congress is falling to pieces, many Opposition parties have no constitutional outlook. The Cabinet system of Government has not been a success. The Central Executive has been wobbly. We are heading towards a situation in which either the Presidential system or military rule would become inevitable.

These were exactly the reasons for which Ambedkar was not prepared to support the Cabinet system for India. But he was not allowed to have his way. He was also unable to retain the 'due process of law'; or provide for specific economic rights. It would not be correct to call, in the circumstances, either Ambedkar or any other single individual as 'the Father of Indian Constitution'. There are so many who have had a share in its making as Ambedkar himself has acknowledged. It must be the degree and extent of participation that is to be important.

in determining the role played by and the contribution of Dr. Ambedkar in the framing of our Constitution at the end of a long period of political and constitutional evolution of India ushering in a Sovereign Democratic Republic. In this course of evolution he did participate effectively and did his utmost to achieve the objectives that he had placed before himself. When he was entrusted with the task of constitution-making, he became one of the chief or the principal architects of the Constitution of India, along with others, particularly the other two persons, who are entitled to be ranked as the principal architects are Pandit Jawaharlal Nehru and Sardar Patel. If Nehru provided the required idealism, Patel gave the necessary element of realism and Ambedkar worked upon them and produced a Constitution employing his intellectual abilities which were undoubtedly of a very high calibre. One could get very few persons who could rival him in this respect. His contribution to the framing of the Constitution of India was, therefore, substantial, significant and spectacular. His name undoubtedly goes to posterity as a revolutionary, a social reformer, a great humanist and above all an outstanding constitutionalist. There can be no disputing the fact that he was a great constitution-maker of India.