

UNIVERSITY OF MADRAS

The Rt. Hon. V. S. SRINIVASA SASTRI
LECTURES

★

**OUR SOVEREIGN
DEMOCRATIC REPUBLIC**

LECTURE I

by

DR. K. M. MUNSHI,
B.A., LL.B., D.Litt., LL.D.

July 14, 1955

OUR SOVEREIGN DEMOCRATIC REPUBLIC

Lecture I

I propose to tell you of what I may call 'Political Science in action', that is, the political outlook of some of those intimately connected with the framing of our Sovereign Democratic Republic.

In doing so, you will forgive me if I appear to be egotistic; but I have had the rare privilege of being associated with Shri Gopalaswami Iyengar and Shri Alladi Krishnaswamy Iyer throughout the period of constitution-making, as we worked at all levels under the guidance of Panditji and the Sardar. That great jurist—Shri B. N. Rau—was, except during the last stages, our constitutional adviser. Among the leading members of the Constituent Assembly, Dr. Shyama Prasad Mukerjee, Dr. Ambedkar and Shri Bakshi Tek Chand were very useful, often influencing the decisions either in cooperation or in opposition.

II

Under the historic Plan announced by the British Cabinet on May 16, 1946, a body had to be set up to frame the Constitution of the Union of India, with freedom to the Provinces to form Sections. In the meantime, an Executive Council, with the support of the main Indian parties was also to be set up at the Centre.

Gandhiji saw in the Plan the seed to 'convert this land of sorrow into one without sorrow and suffering'. I did not feel quite happy. My diary note runs: 'May 16 Plan accepted by the Congress, more as a start than the end of the journey. If it is implemented, India will be cut up into four: one Hindu, two Muslim, and one Princely. The Centre is bound to be weak. The Hindus of Bengal

and Assam will be crushed; the malignant spirit of the zonal division of India, invoked by Professor Coupland, will stalk the land.'

On July, 11, Pandit Jawaharlal Nehru, then the President of the Congress, appointed an Expert Committee to prepare the material and draft proposals for the Constituent Assembly. As one of its members, I prepared a preliminary draft of the Rules of Business of the Constituent Assembly.

It was rather a tough job. The attitude of the Muslim League was uncertain. It might enter the Constituent Assembly and wreck it, or stand away and sabotage the Plan any moment. The rules had, therefore, to be devised so that, whatever the attitude of the British Government or the League, the Constituent Assembly would continue to function as a sovereign constitution-making body.

I also began preparing a preliminary draft constitution as a matter of exercise. Shri V. K. Krishna Menon, who helped me in the beginning, left for England and I was left to complete my amateurish labours myself.

This preliminary draft of about 30 articles had the following preamble:—

"This Constituent Assembly, representing the Indian people and the territories of British India . . . seeking the welfare of a united and independent Motherland, vote and confirm this Constitution."

Articles I and II of the draft ran as follows:—

Article I: The Union of India:

The Union of India is a democratic sovereign Republic.

Article II: Sovereignty of the People:

All powers of government and all authority, executive, legislative and judicial, are derived from the sovereign people of India and the same shall be exercised in the Union and the States, and the rights, interests and liberties of the people served and secured through the organs

established by, under, or in accordance with its Constitution."

As you will see from the preamble, the sovereign power vested in the people of India, one and indivisible; neither classes nor states—organised through the organs set up by the Constitution and expressing their will through their directly elected representatives.

The main difficulty in the way of our people being looked at as a whole was the statutory minorities created by the British constitutional devices in the past. They would fight hard, even to the extent of thwarting national sovereignty, for their vested interests. To overcome this difficulty, we devised an organ of Government called the President in Council; a sort of King in Council as known in the older days in British constitutional history, but with some of the powers of the Senate of the U.S.A.

The Council was to consist of the President, certain Ministers and ten Vice-Presidents, two of whom were to be from among hereditary rulers; two Hindus, two Muslims, one Sikh, one Christian, one Anglo-Indian and one Parsi. The President-in-Council was vested with somewhat extensive powers, including voting, legislation, appointing ambassadors and issuing ordinances.

This ingenuous device makes interesting reading at this distance of time. This attempt at solving an insoluble situation by a constitutional device, even if it had been accepted by the Muslim League, would have been unworkable. It was an ingenuous attempt, but a forlorn hope.

This preliminary exercise, however, gave me an insight into the challenges which the Constituent Assembly would have to meet:—

First, there was the challenge of the British policies and the Cabinet Mission Plan of May 16.

Secondly, there was the challenge of disruptive tendencies in the country represented by the Muslim League and certain other groups.

Thirdly, there was the challenge of the statutory minorities.

Fourthly, there was the challenge which new democracies always present to any effort at setting up a strong centre with plenary powers.

Fifthly, there was the challenge of irresponsibility naturally found when vast power is acquired by a people without attaining political maturity.

At this stage, Shri Gopaldaswami Iyengar and myself, who were great friends already, began our partnership in this constitutional venture.

III

While we were struggling with these problems, Panditji asked us not to worry about any draft constitution, but to finalise the draft rules and the draft resolution on the objective of the Constituent Assembly which he had prepared himself. In this beautifully-worded draft, Panditji cast the horoscope of our Sovereign Democratic Republic. The draft resolution as it finally emerged from the Experts Committee ran as follows:—

"This Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and to draw up for her future governance a Constitution

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

WHEREIN the said territories, whether with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter according to the law of the Constitution, shall possess and retain the status of autonomous units, together with residuary powers, and exercise all 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

WHEREIN all power and authority of the Sovereign Independent India, its constituent parts and organs of government, are derived from the people; and

WHEREIN shall be guaranteed and secured to all the people of India

"Justice, social, economic and political;
equality of status, of opportunity, and before the law;
freedom of thought, expression, belief, faith, worship, vocation,
association and action, subject to law and public morality;
and

WHEREIN adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes; and

WHEREIN shall be maintained the integrity of the territory of the Republic and its sovereign rights on land, sea and air according to justice and the law of civilised nations,
And

this ancient land attain its rightful and honoured place in the world and make its full and willing contribution to the promotion of world peace and the welfare of mankind."

The noteworthy feature of this resolution was the reliance on the doctrine of implied and resultant powers elaborated by the Supreme Court of the United States of America to save the Union from going to pieces in spite of its limited powers. A federation, as you know, enjoys not only powers expressly given, but all those which are 'necessary and proper' for the effective exercise of express powers. Among the 'implied powers,' the more important are the resulting powers, which, in the words of Story, "arise from the aggregate powers of the national government rather than as implied from some specifically granted powers". There is also another class of implied powers which arise from international sovereignty and responsibility. They are "inherent and inalienable rights of every sovereign and independent nation, essential to its safety, its independence and its welfare".

You will have noticed that the word 'democratic' was not used in the Resolution.

IV

Though many of us were keen that the Constituent Assembly should be a sovereign body, it was not.

Brought into existence by the British Government, it could constitutionally speaking, be abolished by it, though as things were, they would have never ventured to do so. The insoluble conflict between the Congress and the Muslim League, to both of whom an opportunity was provided by the Constituent Assembly to come together, was likely to result in breaking it up.

It was Professor Coupland who first devised the three-tier governments for India: Provincial governments with residuary powers; Zonal governments with substantial federal powers; and the Centre as a confederacy of the zonal governments, what he called an 'Agency' Centre, without plenary sovereign powers.

The Mission Plan also envisaged a three-tier government: the Provincial governments with residuary powers; three Sectional governments, two of the eastern zone and the north-western zone being predominantly Muslim, and the Central Zone, predominantly Hindu; and a Federal Centre with limited powers.

A sharp difference arose about the interpretation of the May 16 Plan: Was grouping of Provinces under Sections compulsory? Could the provinces frame their own constitution, or a section do it by a simple majority? The Viceroy had assured Maulana Azad, then the Congress President, that grouping was not compulsory. The President of the Muslim League insisted that it was so, and the British Government supported that construction.

The problem of Assam, a predominantly Hindu State included in the Eastern Section came to the fore: Could it opt out of the predominantly Muslim Section which comprised Bengal and Assam?

In any case, whether the Provinces or the Sections had sovereignty or not, the Centre would have very little of it left.

This major dispute also projected itself in the sphere of constitution-making. Had the representatives of the Sections the final word in framing their own constitution and the constitutions of their component Provinces? Or, were they to get the final sanction of the Constituent Assembly?

The Congress was keen that uniform minority rights should be equal and that the rule of law should prevail through the whole country. The Muslim League did not want the Constituent Assembly as a whole to interfere with the sections which it dominated.

By the Cabinet Mission Plan, the Constituent Assembly had no control over the constitution-making of the Sections and the Provinces. But it could frame its own rules, through which some control could be exercised. Also it had to approve the decisions of the Advisory Committee, which had to deal with minority and fundamental rights, as also the provisions relating to remedial rights to enforce such rights through the judiciary.

In effect, the sovereignty of the Constituent Assembly extended to matters relating to the democratic set up but not to the political set up of the Sections and Provinces, nor could it define or regulate the sovereign rights of the State as a whole.

V

The question of supreme importance was: How was the Constituent Assembly to be supreme over the whole constitution-making field?

Various questions, though small in themselves, also arose which bore directly on the status of the Constituent Assembly. Can the Europeans, being foreigners, take part in the Constituent Assembly? Ultimately they did not join.

The next point, as to who should preside at the first day's session, also assumed some importance. Lord Wavell contended that the British Government having brought the Constituent Assembly into existence, he should appoint the person. Panditji insisted that he had no such right; the Constituent Assembly was sovereign. Ultimately, following the prece-

dents of the Constituent Assemblies of America and France, it was decided that the oldest member of the House should take the Chair, till the Constituent Assembly elected its own Chairman. But the Congress insisted that its President should conduct the Chairman to his seat.

A third question was more delicate. What was to be done to the paintings of the old Governor-Generals, which adorned the walls of the Library Hall of the Legislative Assembly? Surely the Constituent Assembly could not meet with all these ex-satrapes looking down upon it. Ultimately the portraits were all brought down from their perches and transported to some unknown destination.

As soon as the Constituent Assembly met, two challenges had to be faced. The first came from Sir Winston Churchill who in a parliamentary debate had doubted the validity of the Constituent Assembly itself. Can the British Cabinet which had given birth to it decide to kill it? The second proceeded from the Muslim League. If it came in, would it accept the Constituent Assembly and its Rules as binding on the Sections and the Committees?

According to the Rules drafted by the Expert Committee, the Constituent Assembly had the right to frame the rules for the Constituent Assembly, for the Sections and the Committees. To respect the susceptibility of the Muslim League, Acharya Kripalani, while moving the resolution for setting up a fifteen-member committee of the Constituent Assembly for drafting rules of procedure, dropped the words "and for Sections and Committees" from the original draft. Immediately there were protests. Members led by the leaders of Bengal, which happened to be placed in the predominantly Muslim Section, protested against the omission.

In reply Acharya Kripalani relied upon the implied supremacy of the Constituent Assembly; the words 'Sections and Committees', he urged, were superfluous. The retort was obvious and some of us gave it vehemently. If the Constituent Assembly is supreme in rule-making, why leave the powers implied? If it was not, then the Constituent Assembly had no meaning. Ultimately the omitted words were restored to the resolution.

VI

On December 13 Pandit Jawaharlal Nehru moved the Objective Resolution, describing it as 'a solemn pledge to our people which they would redeem in the Constitution they would frame'. 'The fundamental propositions laid down in the Resolution', he said, 'are not controversial'. His words: "Nobody challenges them in India and nobody ought to challenge them and if anybody does challenge, well, we accept that challenge and we hold to our position" were greeted with wild enthusiasm. We were having our first taste of sovereign powers.

Dr. M. R. Jayakar then moved a substitute resolution. He referred to future India only as a free and democratic state, and proposed the postponement of the Objective Resolution with 'a view to securing the cooperation of the Muslim League and the Indian States'. His supporting speech struck perhaps the most discordant note I heard in the Assembly during its life of forty months.

The Constituent Assembly, in effect, he said, was not sovereign; it was subject to the limitations imposed by the Cabinet Mission Statement. It was not possible to go out of them except by an agreement of the League and the States. Dr. Rajendra Prasad, the President, the soul of patience, exclaimed: "If Dr. Jayakar's argument was correct, Panditji's resolution was out of order".

Sardar, usually stolid, also indulged in interruptions: "Was Mr. Jayakar interpreting the policy laid down by His Majesty's Government?" he asked. When Dr. Jayakar said that the States would not deal with the Constituent Assembly if it was composed of one party, Pandit Govind Ballabh Pant interrupted and observed: "Dr. Jayakar has no right to represent the States' view unless the States representatives make the position clear". With all the prestige which he then had as a judge of the Privy Council, Dr. Jayakar was striking at the root of all that we were standing for and hoped to accomplish.

Legalistically he might have been right—I am not sure—but nothing was more wrong at that critical moment in the

country's history. But Dr. Jayakar continued his speech bravely, expressing ill-concealed contempt for the attitude of most of us in every syllable that he uttered. He ended by describing the Objective Resolution as "wrong, illegal, premature, disastrous and dangerous".

Messrs. Ambedkar and Anthony, who supported Dr. Jayakar, however, made it clear that they did so for reasons other than those given by him.

Shri Gopalaswamy Iyengar in his telling way replied that the Constituent Assembly had the residuary power in full for accomplishing the tasks which had been undertaken. He added: 'Whatever is not said but is necessary for the accomplishment of our task, is within our powers to regulate'. Shri Alladi Krishnaswamy Aiyar, the most outstanding lawyer in the Constituent Assembly defined the basic sovereignty which underlay the Cabinet Mission's Statement. The discussion on the Objective Resolution, however, remained unfinished.

On December 21 I moved two resolutions, one to set up a Negotiating Committee with the Chamber of Princes; the other for adopting the report of the Procedure Committee, containing the draft rules.

By the Rules a steering committee was set up 'to act as a general liaison body between the Assembly and its office, between the sections inter se, between committees inter se, and between the President and any part of the Assembly'.

The rules also laid down: 'The President shall be the guardian of the privileges of the Assembly, its spokesman and representative and its highest executive authority'.

The most important rule laid down that the Constituent Assembly should not be dissolved except by a resolution of the Assembly passed by at least two-thirds of the whole number of the members of the Assembly. The rules were adopted on December 23. The Constituent Assembly adjourned to January 20.

Thus, the Constituent Assembly established its sovereign status, enabling it to bring into existence any government it thought best.

Later, the Partition was agreed upon and the British decided to quit India by the 15th of August, 1947. All external challenges to the sovereignty of the Constituent Assembly thereupon disappeared. And when, by the Independence Act, the British Parliament conceded to the Constituent Assembly the right to amend the Act itself, without any reference to the British Parliament, India's sovereignty was constitutionally established.

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**OUR SOVEREIGN
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LECTURE II

by

DR. K. M. MUNSHI,
B.A., LL.B., D.Litt., LL.D.

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July 15, 1955

OUR SOVEREIGN DEMOCRATIC REPUBLIC

Lecture II

The Preamble of the Constitution as ultimately passed by the Constituent Assembly ran as follows:—

"WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN DEMOCRATIC REPUBLIC and 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 the individual and the unity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION."

The Preamble, as it now stands, shows not only the changes which had come over the country but the change in the constitutional outlook of the Constituent Assembly. Among the major changes were the Partition and the integration of the Princely States. The territories of India had assumed a compact shape and, therefore, the Republic could start with a firm territorial base.

The word 'independent' had become redundant, for in 1950, India was, for all practical purposes, independent.

The best definition of an independent state is given by Stevenson. He says: "The test of an independent state is that the law which governs it originates within it, is declared by a law-giver who constitutes a part of it and is enforced by its own power — the power of the aggregate population". India had fulfilled the test.

What was needed was to qualify the sovereignty of the Republic by the word 'democratic'.

The meaning and substance of democracy has been perverted of late by the terminology popularised by some States. But in the Preamble, the content of the word 'democratic' as used by the Constituent Assembly has been made clear by the emphasis laid on liberty of thought, expression, belief, faith and worship and on equality of status and opportunity. These expressions however do not exhaust all the connotations of the word. If an independent sovereign state is not democratic it might as well become dictatorial or might develop what is called 'democratic centralism', which is a contradiction in terms.

Without the governing word 'democratic', even the word 'Republic' would lose much of its significance. Republic, as understood in the Preamble, was not merely a form of government neither monarchic nor oligarchic. It had to be a government of the people and by the people, through their elected representatives.

The Minority Committee of the Constituent Assembly had already found a solution for the minority and class claims created by the British. It was, therefore, unnecessary to set out in the Preamble the safeguards mentioned in the Objective Resolution. The Preamble however emphasized the positive aspect in the shape of an assurance that the unity of the Nation should be maintained.

A new and very important element introduced in the Preamble was the assurance as regards the 'dignity of the individual'. It implied that the Constitution was an instrument not only of ensuring material betterment and maintaining a democratic set-up but that it recognised that the personality of every individual citizen was sacred. 'Dignity', it must not be forgotten, is a word of moral and spiritual import; it implies the need of creating conditions in which the indivi-

dual might be led to Beauty and Perfection, which was thus constituted an end of the State.

The introduction of this phrase, viz., 'dignity of the individual', was also an express rejection of the Hegelian theory in vogue in certain parts of the world that the State was a metaphysical entity, independent of and overshadowing the individual, whose only end was to secure its own existence. It was also a repudiation of the hereditary social distinctions. Mere equality is a matter of conduct; what the Constitution requires is the recognition that every man has an inalienable personality which must be respected.

II

What are the implications of the 'sovereignty' with which our Republic is vested?

Sovereignty has two aspects: one external, that is, in relation to other States enjoying sovereign powers; and the other, internal, that is, in relation to its own citizens. The idea that sovereignty is unlimited or to use the words of Hobbes, 'indivisible, unlimited and illimitable' is as untrue in theory as in practice. The idea was borrowed by nation states from the Divine Right of Kings and has been leading the world to endless misery and confusion during the last three hundred years.

In the past, the sovereignty of a State was always hedged in by treaties, conventions and international law. During recent years, when the world has shrunk fast on account of science, external sovereignty as an illimitable power has no sense.

India, in spite of being a sovereign Republic, is limited in its external relations by its membership of the Commonwealth; by its membership of the United Nations Organization; by the express and implied alliances which it maintains with several nations; by the financial and military difficulties,

which preclude every nation in the world from doing what it likes; and above all, by the increasing pressure of international opinion.

What is true of India is true of all nations. To-day even the two most powerful nations of the world find it difficult to do what they want to do. The pressure of world opinion is rising and would, in the near future, make external sovereignty anything but real.

A leading school of jurists is of the opinion — and rightly — that only the universal state could be sovereign; but then its external relations could only be directed to the Moon or Mars.

External sovereignty can therefore be defined as the power of a State to maintain its internal sovereignty as it likes; to develop and exploit its resources for its own advantage; to resist direct foreign interference in its own affairs; to frame its own foreign policies and choose its allies.

III

Even as regards internal sovereignty, Austin's definition as the 'power to compel obedience' has to be accepted with major qualifications. For instance, as stated by Willis, no State, however powerful, could compel all men to kill their wives. Even in States which enjoy total power over their subjects, that is, where the subjects are not secure in their fundamental rights and have no independent judiciary to enforce them, the power of the State is very circumscribed.

In U.S.S.R., for instance, in spite of every effort on the part of the State to enforce 'scientific atheism', churches flourish and the youth, though subjected to indoctrination, seeks the solace of religion. Again, in spite of all that that State has done to enforce collectivism, the sense of individual possession innate in man has reasserted itself again and again. In fact, human nature has loyalties which no State, however powerful, could break.

In a republic where liberty is a feature of democracy the exercise of sovereignty by naked enforcement becomes still more difficult. For, in such a state the sovereign will is no more than the internal power which can limit the personal liberty or protect it from state control, and is exercised only when supported by general goodwill or passive acquiescence on the part of the people.

In India, as in every free country with a written constitution, there are constitutional limitations which restrict the sovereignty. The Constitution prescribes its limits; it is restricted by the fundamental rights in several respects, and is controlled or regulated by an independent judiciary in the larger interests of liberty.

Satyagraha, the new instrument of collective resistance, also imposes serious limitations on internal sovereignty, if it is practised on a large scale. A State can issue an order; it cannot compel a man to perform it. All that it can do is to punish the law-breaker. And if the punishment invests him with a halo of martyrdom or the act of breaking the law is generally applauded by the public as an act of heroism for others to follow, the exercise of sovereignty at once becomes relatively impotent. Civil disobedience on a large scale is, therefore a collective social force, which, as we saw in the movements between 1930 and 1944, is more powerful than the sovereignty of the State itself.

In 1930 when I described Satyagraha as unconstitutional, Gandhiji publicly rebuked me for it. He said it was constitutional. It is constitutional in the limited sense that if I deliberately break the law, and pay the penalty prescribed for the breach, I recognise the law of the State. At the same time, in seeking to impose my will upon the state, I am in substance doing the same thing though non-violently, that an outlaw does violently.

One difference, however, is noteworthy. When the power to impose one's will is non-violently exercised, the

success depends upon mobilizing the moral instincts of the people. In this way the sanction of the Satyagrahi is the support of public opinion on a large scale. In the case of the outlaw, his success is doomed for it depends upon his gathering sufficient armed force to overcome the armed might of the state, which is overwhelmingly large.

IV

Under our Constitution, therefore, the State is not sovereign because it derives its legal powers from the Constitution. The Supreme Court is not sovereign, though it can declare the acts of the legislature and the executive unconstitutional, for it also derives its legal powers from the Constitution. The States are not sovereign; the residuary powers are with the Centre; and apart from its implied or resultant powers, it has express powers of control, including the power of superseding the government of a State or altering its boundaries. Our Constitution has created not a confederation of states, not even a federation, but a Union of individual citizens with rights and obligations directly related to the State.

The Constitution itself is not sovereign. It is maintained by the support of the people whose representatives can unmake it in the same way as they made it. We have seen in recent times how this Constitution can be amended with ease and promptitude.

The sovereignty in our State, therefore, vests in the people, that is, in substance, in the dominant group among the people which while working the Constitution, can successfully exploit the collective forces operating in the Central and State legislatures which have the power to amend or unmake it.

We must carry our investigation a little further, to discover in whom the sovereignty ultimately vests under our Constitution. We have therefore to examine as to who had

the effective power of making our Constitution when the power was transferred to Indian hands in 1947 and who has it now.

In substance, the sovereignty in India was transferred to the Congress High Command as regards India and the Muslim League High Command for the areas which are now included in Pakistan. The implication was that each of the High Commands had the leadership of the politically-minded dominant minority which had the confidence of the bulk of the people in its area and to whom the power agencies, the Army and the Police would, readily yield allegiance.

The members of the Constituent Assembly fell into four groups:

- (1) the representatives of the Congress;
- (2) a few independent members elected by the Congress parties in the Provincial Legislatures under the direction of the Congress High Command;
- (3) independent members who were elected by non-Congress minorities in the Provincial Legislatures;
- (4) the Muslim members who, though elected by the Muslim League parties in the Provincial Legislatures, did not migrate to Pakistan.

The Congress majority in the Constituent Assembly comprised public workers who had for years participated in the struggle for freedom under the leadership of Mahatma Gandhi. Quite a few of them had been in and out of jail, closely associated in personal friendship. Of these, Dr. Rajendra Prasad, the President of the Constituent Assembly, Pandit Jawaharlal Nehru, Sardar Vallabhbhai Patel and Maulana Azad were the acknowledged leaders. The non-Congress political leaders like Dr. Shyama Prasad and Dr. Ambedkar had also a democratic outlook and a desire to found a sovereign state. In this way among the members of the Constituent Assembly there was no difference in general outlook or fundamental principles. There were no clear-cut opposition parties.

The members of the Constituent Assembly, therefore, were all pledged to found a sovereign State with plenary powers; most of them also shared the conviction that popular government by itself was not a sufficient guarantee of personal liberty which democracy necessarily involves.

However, there was a school of thought in the Constituent Assembly which held the view that once adult franchise and popular representation was established, a democratic republic would follow in due course. This was scarcely the lesson of history and experience. Experience had shown that popular governments would not necessarily remain democratic. In France in 1851, and in Germany in 1935, a government elected on a wide franchise had installed a dictatorship into power. In our new-found power, and in a hurry to achieve results, some of our provincial ministries had also placed on the statute book acts which did not err in favour of liberty nor of the rule of law.

During the Quit India Movement, I had my share of experience in the different High Courts of how personal liberty could only be preserved through the media of constitutional writs. This feeling was shared by many members of the Constituent Assembly. It resulted in the setting up of our independent and integrated judiciary and in the Chapter on Fundamental Rights and the Constitutional Writs in our Constitution.

These constitutional safeguards became all the more necessary when all along we were striving to invest the Centre with plenary powers so essential for the unity — why the very existence — of India, all-important in the light of our unfortunate history and of the stress of modern times. In 1950 when I met Justice Frankfurter of the Supreme Court of the U.S.A., he complimented India on the excellent Constitution it had adopted, in which ample safeguards of freedom were associated with a strong and effective executive machinery.

The composition of the Constituent Assembly as also the atmosphere in which the problems were discussed lent themselves to a broad anti-authoritarian outlook. Most of the members of the Constituent Assembly had been fighters for freedom and lovers of a free democracy. There was complete freedom of discussion for members; and in Dr. Rajendra Prasad we had a President who gave ample opportunity for presenting different points of view. The whip was seldom applied and when applied, more often than not, permission, if sought, was granted to express one's own views.

We had several stages in which the constitutional provisions were discussed. First, we had the Committees which submitted their reports, followed by discussions thereon in the Assembly. Then we had detailed discussions in the party meeting, followed by a second reading of the draft, clause by clause. Later, the Drafting Committee discussed and revised each clause; then the Congress Party went over every clause, sometimes every word. Lastly, there was the open discussion of the final draft in the Constituent Assembly.

The Chief Ministers of the States who were members of the Constituent Assembly contributed their experience. On occasions, the departments of the Central Government and the States submitted elaborate notes. There was always the encyclopaedic knowledge of Sri B. N. Rau at the service of the Assembly. Above all, were Pandit Jawaharlal's vision of a sovereign democratic India and Sardar Vallabhbhai's instinctive perception of the sources from which power and stability sprang.

Thus the sovereignty exercised by the Constituent Assembly in framing the Constitution lay in the dominant Congress minority in the country which had released or set in operation the collective forces during the struggle for freedom for which the Congress stood. In one sense therefore the sovereignty lay with those forces.

VI

What was true of constitution-making in 1947-50 is not necessarily true of the constitutional amendments which are being made since then. The Parliament and the State Legislatures which made the Constitution are not the same as the Constituent Assembly. These bodies are controlled by well-organised majority parties which have to move perpetually in the face of opposition with serried directness. The primary function of the Constituent Assembly was to frame a constitution. On the other hand, the primary object of these majority parties is to stabilise the Government; to carry through a programme of legislation; and to prevent opposition parties from bringing down the government or bringing it into discredit. Naturally, therefore, speeches and votes are controlled by the whips even in the matter of constitutional amendments. In this sense, therefore, the constitution-making sovereign power now, in fact, vests in the majority parties in the legislatures; for they represent that dominant minority in the country, the leadership of which is accepted by the people and the power agencies of the army and the police by active support or passive acquiescence.

Since 1949-50 there has been a shift in the source of sovereignty. Among the causes are: First, the executive governments have found that they need wider powers to maintain stability than what we thought were needed in 1950.

Secondly, some opposition parties in the country instead of developing on the British model follow the technique with which some countries in Europe are familiar, of exploiting freedom and parliamentary traditions in order to subvert them both.

Thirdly, while prior to 1950 the directive principles were no more than the objectives to be reached within the four corners of the justiciable fundamental rights, the impatient pressure from below is now forcing the pace towards whatever is currently conceived to be better life. The doctrine which dominates at present, therefore, is that the justiciable rights

must subserve the swift realisation of the directive principles. If pressed beyond a point, such doctrine is likely to pave the way for impairing the democratic safeguards in the Constitution.

Lastly, a popular government based on adult franchise carries with it the necessity to keep the majority parties in the legislature in power by winning elections. This requires cautious strategy which imposes upon their leaders the necessity of maintaining a strict discipline in the ruling party. In consequence, the majority parties come to be regimented; and compliance is demanded on almost all decisions, whether of a constitutional nature or not.

As a result of these factors, sovereign power tends to pass into the hands of the leaders of the majority parties. The major weapon in their hands which, apart from the hope of office or the loss of favour, is most effective, is the threat to dissolve the legislature. It sends the members of a legislature into shivering panic, for its premature dissolution implies loss of position, heavy expenditure in elections, the possible loss of an election ticket and the uncertainty of winning the election.

These limitations make a parliamentary government on the British model a most effective instrument of stability. But the sovereignty, in the end, passes to a few individuals. This is a feature common to all free democratic countries, developed under the stress of modern uncertain political conditions; a feature which is essential for preserving a strong executive in a free democracy.

VII

This discussion would show that the sovereign power in a State vests in the dominant minority in the country whose representatives control the legislative and executive organs of government. Such a minority naturally tries to prolong its existence by mobilising the educative machinery and the coercive might of the State not only against the enemies of the State, but against rival aspirants to power.

This characteristic is common to all powerful States, whether they be totalitarian or democratic. There is, however, a marked difference between the two. In a totalitarian State there are no limits to the social control exercised by the dominant minority. Under the direction of its leaders it can enforce its will in the name of the people, if necessary, aided by the power agencies of the army and police. It can also drive the people to conform to pre-determined grooves of conduct and thought.

In a democratic State, on the other hand, where there is either an unexpressed common law or political tradition as in England or a written fundamental law as in India, there are fundamental rights and an independent judiciary which generally accepts the rule of law and the liberty of free expression and association. The sovereign power, therefore, has to be exercised by the leaders under conditions in which public opinion develops the courage to resist coercion. The people, therefore, have to be approached by open propaganda; the social forces have to gather power from the spontaneous response of the people as a whole; and at all times, care has to be taken that the people develop and maintain a sense of identity with the ruling dominant minority in the country.

The two forms of State do not fall in water-tight compartments. They are not mutually exclusive. It is difficult at a given time to discover the thin margin which distinguishes excessive from barely essential social control. But the sure test appears to be whether the people develop a sense of identity with their ruling minority as a matter of free response or are regimented by education and coercion imposed from above into developing it. In the first case the sovereignty vests in the people; in the second case, the sovereignty does not vest in the people but the leaders.

In establishing the Sovereign Democratic Republic in India, the Constituent Assembly chose the former pattern.

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