

**SOME OBSERVATIONS
ON
THE DRAFT CONSTITUTION**

By

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P R E F A C E

The study which has resulted in this publication was projected in May 1948 as a series of notes on salient features of the Draft Constitution of India. The notes, with many interruptions in writing, continued to grow until it was thought that they might best be embodied in a separate publication. No attempt has been made in this publication at giving a connected account of the genesis, form and contents of the Draft Constitution of India. It confines itself to seeking out the main gaps, maladjustments and defects of the provisions of the Draft Constitution and suggesting suitable amendments. In doing this frequent reference has been made to the provisions of the constitutions of other federations and their interpretations and working.

In a critical study of a constitution in the making it is an advantage to have a clear idea of the political objectives and constitutional concepts of its framers. It can hardly be said that these are available to a student of the Draft Constitution of India. There has not been a sufficient discussion of first principles or any attempt to lay down the theoretic foundations of the constitutional structure either in the proceedings of the Constituent Assembly or in the press or public during or after the work of the Assembly. On a close study the Draft Constitution would appear to be a structure erected primarily under the influence of the 1935 Act and secondarily that of the British Dominions. 1935 Act and secondarily that of the Constitutions of the British Dominions. There has been some borrowing also from federal constitutions of countries outside the British Empire. It is also apparent that constitution-making was too interrupted and the main participants in it too engrossed with other matters to have worked out a consistent theoretical frame of reference. In the circumstances, little space has been devoted in this publication to what might be considered to have

been the ideas of the framers of the Constitution. The salient features of the Constitution and its main provisions have been examined from the point of view of a fully federal representative democracy working according to a cabinet system of government, which, in the existing circumstances, seems to be the most suitable constitutional type for India to begin its modern political career with.

The view taken of the evolution of the Draft Constitution in writing this study and the frequent comparisons with provisions in other federal constitutions appear to have been justified. This may be inferred from the following quotation from an article by Sir B. N. Rau which appeared after the first draft of this study had been completed: "It is undoubtedly true that the Draft has borrowed from other Constitutions and notably from the Act of 1935. To profit from the experience of other countries or from the past experience of one's own is the part of wisdom. There is another advantage in borrowing not only the substance but even the language of established constitution; for, we obtain in this way the benefit of interpretation put upon the borrowed provisions by the courts of the countries of their origin and we thus avoid ambiguity or doubt." The above would appear to justify not only the point of view adopted in making this study but also the form given to the criticisms of constitutional provisions in it.

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