

Constitutional Framework and Structures of Governance in India: A Historical Perspective

Series of Weekly Lectures by Sri Devendra Swarup

LECTURE II, Saturday, July 07, 2012

SUMMARY

In the second talk in this series, Sri Devendra Swarup described the processes of formation of the Constituent Assembly and the making of the Constitution. He brought out in poignant detail how despite the long-standing demand of Mahatma Gandhi and the Congress for a Constituent Assembly based on adult franchise, the British imposed upon India an indirectly selected Assembly that at best represented the extremely limited franchise granted in the Government of India Act, 1935. The Assembly that was thus formed comprised of a large number of lawyers trained in the western legal-constitutional framework. And, even before the Assembly was constituted, the British appointed Shri B. N. Rau as the Constitutional Advisor to the future Assembly in July 1946. Shri Rau, an officer of the Indian Civil Service, was among the more Europeanised Indian intellectuals. He had a long association with the Reforms Office and was thus intimately connected with the implementation of the 1935 Act. As the Constitutional Adviser, he produced a Draft Constitution that was largely based on that Act. He also assembled several volumes of precedents from the western constitutions to guide the Assembly in its deliberations. In any case, many of the important and more active members of the Assembly had experience of running governments under that Act. The Constitution of India that was finally produced was thus a rehash of the 1935 Act; it was based entirely on European constitutional systems, and was little influenced by the essentially Indian ideas and institutions that had formed the bedrock of Indian struggle for Independence under the leadership of Mahatma Gandhi.

Sri Devendra Swarup began his lecture by emphasizing the importance of adopting the right path for attaining the goal. He narrated the story of a disciple of Buddha, who once asked the Master whether he too could attain the exalted state of Tathagata. Buddha replied that it was certainly possible as long as he followed the right path. And, if he proceeded on a wrong trail, there would be enough indications to deter him, if he were to remain heedful. India today is confronted with the question whether it has chosen the right road to attain its national objectives. We have put the entire task of nation-building in the political domain; and, as a corollary, the Constitution has become the corner-stone of all our hopes for the nation. But six decades after independence, and faced with problems of immense magnitude, it is time to inquire whether the Constitution can indeed deliver and whether we are on the right path.

There is a strongly entrenched belief that the stalwarts of the Indian national movement and the finest minds of Indian society, fondly remembered as the founding fathers, drafted the Indian Constitution. It can, therefore, in no way be a flawed document. We often blame ourselves and our current political leaders for not working the Constitution properly. Anticipating this argument, Dr. Ambedkar had himself once remarked that the world's best Constitution, if worked on wrong lines, would lead to bad results. We are experiencing the shortcomings of the Constitutional framework at every turn, yet we cling to the belief that the Constitution should not be meddled with. There is a conviction that it is the key to the unity of the country. But mere sentiments cannot redress national problems. There is a pressing need to comprehend the context and the process of the framing of Indian Constitution to better appreciate its true nature.

The demand for a Constituent Assembly was first raised by the Congress Party in May 1934. The party was firmly committed to the unity of India, which it felt was being endangered by British machinations. The Round Table Conferences had alerted it about British intentions. The British had taken several steps that were inimical to Indian nationalism. They had given separate electorates to the Muslims, allowed the princely states to remain as separate entities and tried to divide Hindu society by promising separate electorates to Harijans. It was in this context that the Congress demanded a Constituent Assembly elected on the basis of adult franchise. Mahatma Gandhi and the Congress felt that such an Assembly shall represent all interests and groups in proportion to their population and shall thus be best suited to accommodate the varied interests that the British were encouraging. Congress made the convening of a Constituent Assembly elected through adult franchise as its main demand after 1934. But the British were not interested in granting this demand. They were keen on propping up sectional groups and leaders.

It was in an endeavour to counter the divisive strategies of the British that the Congress raised the demand for a Constituent Assembly elected by adult franchise. The demand became the main slogan of the Congress at the time of the 1937 elections. On 19 November 1939, Gandhi said that a Constituent Assembly with adult franchise would be a solution to the communal problem for it would give true representation to all sections of society. The Constitution prepared by such an Assembly would be indigenous; it may not be ideal, but it would be real. But Jinnah, Ambedkar and the British Government opposed the demand. Jinnah said that it would lead to Hindu totalitarianism. Ambedkar, who had formed the Scheduled Castes Federation in 1945, said that India did not need a Constituent Assembly and the Act of 1935 was sufficient to meet Indian aspirations. Maurice Dwyer, in a speech at Kashi Vishwa Vidyalaya, also described the demand as unnecessary. Incidentally, it must be remembered that the Congress Party had frequently voiced its reservations about the Act of 1935, but was pushed into accepting it.

In 1941, Reginald Coupland, an eminent constitutional expert, came to India. He was also a member of the Cripps Mission that visited India the following year. The Cabinet Mission

Plan of 16th May 1946 reflected his thinking. He said the demand for a Constituent Assembly was not a nationalist demand, only a Congress demand. Scheduled Castes, Muslims, and the Princely States were not in favour of it. He said India's real problem was the Muslim problem. The Muslims would not accept a Constituent Assembly based on adult franchise.

It is not fashionable to discuss these issues in the environment of today's India, where the Hindus are being held responsible for the Partition. But a people that ignore the facts of history are doomed. It bears recalling that in the aftermath of the Revolt of 1857, Sayyid Ahmad Khan delivered two important speeches at Lucknow and Meerut, in which he pointed out that the national movement would lead to Hindu rule and advised Muslims to stay away from it. He reminded his audience that the Muslims had been rulers of the country and mere numbers could not settle issues of leadership. Muslim thinking did not change in the later years.

Different societies have a collective way of thinking which manifests again and again. Thus, during the freedom struggle, the Hindu society had two choices, one presented by Veer Savarkar, the other by Mahatma Gandhi. Savarkar was an epitome of struggle and sacrifice. He was a tall and presentable personality, a powerful writer, a great orator and a spokesman of Hindu pride. Gandhi was not known as a great orator and was hardly well-built. Romain Rolland has famously described him as a short man with broken teeth and sunken cheeks. But the Hindu society rallied behind Gandhi, not Savarkar. Why?

Similarly Muslim society had two choices before it, one presented by Maulana Azad, the other by Jinnah. Azad was a well-groomed Muslim, who offered *namaz* five times a day. He was also a scholar of the Koran. Jinnah, on the other hand, was every inch an Englishman. He had little to do with the practice of Islam. He knew no Urdu. Gandhi once wrote him a letter and said he expected a reply in Urdu or Kachhi, both Jinnah's native tongues. Jinnah was annoyed and said he would reply only in the language he was comfortable with, which of course was English. But, the Muslim society accepted Jinnah, not Azad. Azad in speech delivered at Jama Masjid in the aftermath of partition lamented to his coreligionists that though he had warned them of the perils ahead, they had not heeded his counsel. Sri Swarup said it was important to recognize the collective consciousness of different societies at work in history.

The British recognised this. They realised that there were two forces at work in India, one which desired unity and Independence and viewed the struggle with the colonial power in civilizational terms. Muslims represented the other force. They did not regard independence as Important and were ready for Partition. The British prepared their strategy according to their appreciation of these two opposing collective psyches. Coupland, therefore, repeatedly emphasised that the communal problem was the only real problem and no constitutional initiative could solve it.

But suddenly, soon after the commencement of the Second World War, the British hijacked the demand for a Constituent Assembly. On 8th August 1940, Lord Linlithgow, the then Viceroy, said that after the war the British would confer on India the right to make their own Constitution. In March 1942, Cripps presented the first outline of the Constituent Assembly in which he proposed that after the War there would be elections to the provincial assemblies according to the processes defined in the 1935 Act, and a Constituent Assembly shall be formed on that basis.

The Congress till then had been adamant in its demand for a Constituent Assembly with adult franchise. Its slogan for the 1937 elections was that it did not want the 1935 Act; it only wanted a Constituent Assembly with adult franchise. When, after the elections, it came to power in many states it again declared that it only wanted a Constituent Assembly with adult franchise. But after the Cripps proposals, the Congress also changed its stance. Why?

This probably had something to do with the time-table worked out by the British for leaving India. When did the British decide to leave India? Some clue to this may be seen in the statement the Secretary of State, Lord Amery, made in the House of Commons on 16 June 1945, before the provincial elections or the formation of a Constituent Assembly. He said that the British had decided to leave India and that it was imperative to have provincial elections and on that basis form a Constituent Assembly. Pending that, the British were prepared to make changes in the character of Viceroy's Executive Council. On 19 September 1945, Lord Wavell returned from London and declared that there would be provincial elections and an interim government would be formed thereafter.

Under the 1935 Act, 15 per cent of the Indian population was entitled to vote; the franchise was slightly expanded for the elections of provincial assemblies in 1945. These assemblies, elected through extremely limited franchise, were to form the indirect electorate for a Constituent Assembly. The Congress demand for an Assembly based on adult franchise was thus rejected. The Congress Working Committee on 23rd September demanded that a Citizen's Register should first be prepared and there was no urgency for constituting a Constituent Assembly. But the British ruled that the ideal of adult franchise would take at least two years to realize and the problems facing India were serious and could not be postponed; it was imperative that Indians be in the Government immediately.

What were the reasons for such urgency? What were the factors at work? The Congress at that stage was not in a position to put any pressure on the Government, and in any case it was not in a hurry on the issue. One reason could be the Azad Hind Fauj; its popularity was a cause of concern for the British. It seemed that the British could not any more rely upon their Indian soldiers and perhaps even the police. And then, Britain's international ratings had slipped in the Second World War. It now ranked at the third place among world powers, after America and Russia. It had also been rendered economically weak.

On 16 May 1946, the Cabinet Mission Plan presented details of the Constituent Assembly. The Constituent Assembly was not made by Indians, but by the British as per the Mission Plan. The Plan dictated that the Constituent Assembly shall form an Advisory Committee that would be concerned about Muslims, Scheduled Tribes and Excluded Areas. The representatives of all these sections would be members of the Committee. It would submit a report to the Constituent Assembly. On 8th December 1946, the Congress declared its nominees for the Advisory Committee. On 9th December, the first meeting of the Committee was held. Why did the Congress, which was the largest party with 208 members, agree to make such compromises? Why did it waver from its demand for a Constituent Assembly elected through adult franchise and accept an electorate that comprised only 15 per cent of the population. Gandhi's views were totally different from that of the Congress.

The Interim Government was formed even before the Constituent Assembly was summoned. The British wanted the Interim Government by 20th June, 1946, though it could be constituted only on September 2. Nehru, Patel, Azad, Prasad all joined it. In 1944, Wavell had written to Winston Churchill that the second rung Congress leadership had been brought into our constitutional processes through the provincial governments, but the central leadership still remained outside these processes. The British, he said, would have to try to bring them in also. That is what would bind them to the British ways of thinking.

Lawyers, trained in the British system, were the predominant group, in the Constituent Assembly. K. M. Munshi later said that their way of thinking was determined by the British legal-constitutional system. This has to be kept in mind while discussing the Constituent Assembly. The most prominent role in the Constituent Assembly was played by BN Rau, ICS, long employed in the British Government's Reforms Office. He was appointed by the Viceroy as the Constitutional Adviser to Constituent Assembly. The first draft of the Constitution was prepared by him, not the Constituent Assembly. The draft was in fact ready by July 1, 1946, much before the Assembly came into being. Rau was among the most westernized of Indian intellectuals. His reference points were not India or Indians. He collected court precedents from 60 nations of Europe and America. Three readings took place on Rau's draft. The Drafting Committee comprised 7 members of whom not more than 2 or 3 were present during the proceedings. T.T. Krishnamachari was to later describe the limited nature of these proceedings.

It is an enduring but false belief that nationalist leaders struggled hard for three long years to prepare the Constitution. National leaders had little role to play in it. It was prepared entirely by professional experts in the European legal-constitutional framework; and in any case, the edifice was built on the pre-existing structure of the Government of India Act of 1935.

Gandhiji was kept out of the entire exercise. In January 1946, Sriman Narain Agarwal published *Gandhian Constitution for Free India*. It carried an introduction by Gandhi, who said that he had gone through the text and there was nothing in it "which has jarred on me as

inconsistent with what I would like to stand for”, though he also warned the reader against assuming that this work represented his “views in every detail”. The Constituent Assembly did no note of this work. On 13 December 1946, Nehru presented the Objective Resolution; it made no mention of Gandhiji or his ideal of Hind Swaraj.

In December 1947, Agarwal wrote to Gandhi that the Draft Constitution did not even mention of Panchayati Raj anywhere. Gandhi wrote in the Harijan that if the Constitution indeed had no mention of Panchayats, then it was not of this soil. This caused a furore. The Assembly was forced to debate the issue of Panchayati Raj. The intense debate revealed that several members were extremely unhappy with the way the Constitution was being framed by experts like B. N. Rau without any reference to Gandhian or Indian ideas and institutions. Rajendra Prasad wrote to Rau asking how the omission of Panchayat Raj had occurred, when it had been the bedrock of Indian polity. Rau politely replied that at that stage it would be difficult to rewrite the draft incorporating the Panchayati Raj; it shall take too long, etc. Initiating the debate on Panchayats in the Assembly, Ambedkar, however, expressed no regrets; he in fact emphatically stated that he was happy that the Constitution had given up the Panchayats. “What is the village”, he asked, “but a sink of localism, a den of ignorance, narrow-mindedness and communalism?”

At the end Congress accepted a Constituent Assembly that was very different from what it had demanded during the freedom struggle and a Constitution that was at complete variance with the ideals that the Congress and the Nation had fought for.

Some years after Nehru’s death, Yehudi Menuhin, in his Nehru memorial lecture at Delhi, expressed regret that though India at the time of Independence could have chartered a new territory, yet it chose to copy the West.

How do we begin charting a new territory of our own, and begin making a mark in the world is a question that agitates all of us today.

The session was chaired by Sri Brij Kishore Sharma.