

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

Series of Weekly Lectures by Sri Devendra Swarup

LECTURE III, Saturday, July 14, 2012

SUMMARY

In his third talk in this series, Sri Devendra Swarup continued with his exploration of the structure and functioning of the Constituent Assembly, emphasising its non-representative character and its failure to take into account any Indian or Gandhian ideas and institutions in its deliberations.

The talk began with a reference to the debates that the Constituent Assembly had on the issue of Panchayat Raj. These debates were compiled by Sri Dharampal in early 1960s, and a soft-copy of the compilation had been sent to the participants in this series. Sri Devendra Swarup pointed out that in these debates almost all the stalwarts of the freedom movement present in the Assembly had regretted the shape and the form the Constitution of free India was taking. Many of them ruefully stated that while the authors of the draft Constitution had painstakingly collected and studied all the European Constitutions to look for ideas and concepts they could adopt for the Constitution of free India, they had no time or inclination to look at anything Indian. The honourable members felt that the proposed Constitution hardly represented what they and the country had struggled for. But their speeches also reflect a sense of helplessness; notwithstanding their high stature and strong feelings, they did not seem to be in a position to alter the draft Constitution in any significant manner. Even the President of the Assembly, Shri Rajendra Prasad, was nearly told off by the Constitutional Adviser with the comment that “it may not be easy to work the *panchayat* idea into the draft Constitution at the present stage. ...In all the principal federations and unions of the world, the Lower House is elected by direct election. ...The world trend is thus strongly towards direct elections for obvious reasons. It may, therefore, not be easy to reverse the decisions already arrived at by the Constituent Assembly.”

The members who thus found themselves in dissonance with the proposed Constitution included Shri Arun Chandra Guha (W.B.), R. K. Sidhwa (CP & Berar), N. G. Ranga (Madras), Gokulbhai Daulat Ram Bhatt (Bombay), M. Ananthasayanam Ayyangar (Madras), Mahavir Tyagi (U.P.), T. Prakasam (Madras), Seth Govind Das (CP & Berar), Lakshminarayan Sahu (Orissa), K. Hanumanthaiya (Mysore State), Shankarrao Deo (Bombay), Algu Rai Shastri (UP), Loknath Mishra (Orissa), B. P. Jhunjhunwala (Bihar), T. J. M. Wilson (Madras), Kamalapati Tripathi (U.P.) and many others. Shri Devendra Swarup said that having heard such stalwarts speak so strongly within the Constituent Assembly

against the appropriateness of this Constitution for India, there is little left to add. After reading these debates, the question that faces us is not how to establish the erroneous of this Constitution, but how to correct the error.

Reverting to the functioning of the Constituent Assembly, Shri Devendra Swarup explained that the Constituent Assembly worked mainly through its several Committees. Not many of the leading lights of the national movement were actively represented in these Committees. Scholars have estimated that there were 20 members who wielded influence in the Assembly and were active members of all the Committees. Only half of these 20 had been active in the Independence Movement; as many as 12 were lawyers and 3 had been high-ranking officials of the British government in India. Reflecting on the situation in the Assembly, K. M. Munshi later wrote that the Constituent Assembly was run by people who had never been to Indian villages and did not represent Gandhi's thoughts, the soul of India or the ethos of the freedom struggle.

Surprisingly, Dr. Ambedkar, known as the architect of the Constitution, offered the most strident indictment. In a speech in the Rajya Sabha on 2nd September 1953 he said, "People always keep saying to me, 'Oh, you are the maker of the Constitution.' My answer is I was a hack. What I was asked to, I did much against my will. I am quite prepared to say that I shall be the first person to burn it. It does not suit anybody."

The roots of what the Constituent Assembly finally delivered lay in the process and the circumstances in which it was constituted. When the formation of a Constituent Assembly was first announced in the Cabinet Mission Plan, the Congress was ecstatic. On 13th May 1946, Sardar Patel wrote to K. M. Munshi that formation of the Assembly would prevent the Partition of the country and the Independence of India could no longer be stalled. On 20th May, Gandhiji expressed a similar appreciation of a Constituent Assembly in a piece titled *Analysis* in the Harijan. In an interview to an American journalist on 21st October, he reiterated the view that with the formation of the Assembly, Partition had been rendered redundant. But gradually it dawned on the Congress leaders and on Mahatma Gandhi that the reality was different.

The reason for their disillusionment was Jinnah. Congress leaders believed and were proclaiming that the Constituent Assembly was a sovereign body and was free to act in any manner it chose. Jinnah, however, forcefully asserted that while some people may want to daydream, yet the Constituent Assembly was not sovereign; it was a body constituted by the Viceroy and was subject to the wishes and directions of the imperial sovereign. Later, in his interview with Louis Fischer, Gandhiji also agreed that it was not a sovereign body.

The Congress had failed to anticipate Jinnah's moves and believed he had accepted the Constituent Assembly. Jinnah had cleverly decided to contest elections to the Constituent

Assembly, but not to allow his members to enter the Assembly. Muslims were assigned 80 seats in the Constituent Assembly; of these, the Muslim League won 73.

This was indeed an indicator of the rapidly changing political alignments in the country in the run up to Independence. In 1937 a majority of the Muslim seats were won by various provincial parties and Muslim League had only a handful of seats. But in 1945, the Muslim society had rallied behind Jinnah. And, already in January 1946, T. B. Sapru had written that Jinnah would not participate in the Constituent Assembly.

Jinnah's strengths were twofold, Muslim Unity and Muslim Violence, and he was aware of these strengths. To utilise these strengths, Jinnah launched the so-called Direct Action on August 16, 1946. The Muslim League did not attend the first session of the Constituent Assembly. Six days earlier, Gandhiji, then at Noakhali, had expressed his disappointment, saying that the Constituent Assembly was created by a State Paper and had no existence independent of the British Government. Gandhiji used to refer to the Cabinet Mission Plan as the State Paper. And, if the Muslim League and the Princely States did not participate in the Constituent Assembly, it did not fulfil the conditions laid down in that Plan, and therefore it had no legitimacy.

Gandhiji advised the Congress leaders to talk to the League and Indian Princes. An agreement reached between them would have made the Constituent Assembly their own, instead of it being a British creation. In November 1946, Gandhiji wrote to GD Birla that if the Constituent Assembly was to meet under the protection of the British army, it would be better not to convene it. On December 17, he repeated his advice for a third time. He urged the Congressmen to keep the British aside, talk to the Muslims and Indian Princes and form a Constituent Assembly with the help of whoever came.

Thus the Constituent Assembly as it was formed did not have Gandhiji's approval. It did not reflect his views and objectives, and it was in conflict with his commitment to the unity of India. The members of the Constituent Assembly, on the other hand, were mostly those who had been conditioned in the British constitutional processes. A majority of them had not been part of the freedom struggle and they had little comprehension of the Indian reality.

The role of Ambedkar in this process also has to be properly evaluated. He was not included in the interim Government. Even when the Muslim League joined, Jogendra Mandal, and not Ambedkar, was chosen to represent the Scheduled Castes. Thus neither the Congress nor the League had adopted him. Ambedkar's biographer, D. Keer, has described his state of mind then. At that stage, he went to England on the advice of his friends. And, the Schedule Castes Federation he had formed in India sent several telegrams to London with the refrain that "Not Jagjivan Ram but Ambedkar is our leader", "We want Ambedkar", "If not Ambedkar, then separate electorates" and so on. In a closed door meeting in the House of Commons,

Ambedkar expressed his anguish at the changed climate in India in which even the Viceroy could no longer do anything. A solution had to be found in the new scenario. He returned a changed man.

On December 13, Pandit Nehru moved the “Resolution on Aims and Objects of Free India’s Constitution” in the Constituent Assembly. On December 15, Dr. Jayakar stood up to say that according to Gandhiji, the Constituent Assembly did not fulfil the requirements of the Cabinet Mission Plan. He was shouted down by the Congress majority and not permitted to speak. He felt humiliated and resigned. In his resignation Ambedkar sensed an opportunity. Ambedkar had been elected with the support of the Muslim League from Bengal. After Partition that seat no longer existed. The Congress facilitated his election to the seat vacated by Jayakar from Bombay. Once elected to the Assembly, he was made Chairman of the “Draft Constitution Scrutiny Committee”. The proceedings show that Ambedkar favoured separate electorate for Scheduled Castes. He also said that the majority had neglected the minorities.

After the Partition was announced, the 23 Muslim League members from the Indian part, who had boycotted the Assembly till then also returned to the Assembly. Shri Deshbandhu Gupta requested the President to enquire from the Muslim League members whether they had renounced the two-nation theory before coming to the Assembly. But, no such assurance was sought or received from them.

Such was the membership and atmosphere of the Constituent Assembly. It is not surprising that the functioning of the Constitution that emerged from this has left India even more divided. We have arrived at a situation where the even the mention of terms like “nationalism” and “patriotism” invokes disdain and ridicule.

The British used the constitutional reform process as an instrument to divide and rule the country. The Act of 1935 was part of that strategy. Our Constitution ended up adopting the same vocabulary. It seems that though the British have left, their way of thinking and even their policies of “divide and rule” continue to dominate our polity? How have the British come to dominate our functioning, thinking and world-view in this manner? Perhaps some answer to this question and some understanding of the fundamental core and direction of the British constitutional processes can be found by looking at the founding of the British power in India in the mid-eighteenth century and its unfolding over the next two centuries. From the next talk, we shall begin looking at these processes in some detail.