

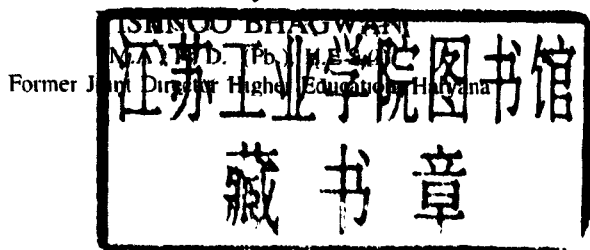
INDIAN CONSTITUTION AN APPRAISAL

Vishnoo Bhagwan



INDIAN CONSTITUTION —AN APPRAISAL

By



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Preface

(Seventh Edition)

"Indian Constitution—an Appraisal" is an updated and thoroughly revised Edition in the light of the momentous developments during the last decade in particular. Since the Xth General Elections the era of One Party Dominance seemed to be extinct. The Indian Electorates were found indecisive. They gave fractured mandate in three successive General Elections — Xth, XIth and XIIth. Hence 'hung parliaments' became a regular feature. After the Xth General Elections the Congress and after XIth and XIIth elections the BJP emerged as the largest parties. Narasimha Rao—the leader of the Congress party and a trusted colleague of a brutally assassinated dynamic leader — Rajiv Gandhi, succeeded in lending stability to the Government during his five year tenure as the Prime Minister. As such the country was saved from mid term poll.

The XIth General Elections gave a severe set back to the scamtainted Congress leaders. The BJP emerged as the largest party, the United Front appeared as next to the BJP and the Congress finished as Number three . The BJP—the largest party formed the Government but it failed in the game of numbers. Hence its leader— A.B. Vajpayee resigned after 13 days of rule, preceded by an uproarious debate in the House. The United Front — a coalition of thirteen parties — with the outside support of the Congress and the Leftists could hold the coveted throne at the Centre barely for 19 months. The Congress could not swallow the humiliating drubbing and remained on the look out to pull out fragile crutches it had provided U.F. Government. It withdrew support twice and plunged the nation into political stalemate. The UF Government survived the first onslaught by agreeing to a change of leadership as desired by the Congress President but was left with no alternative when the latters' favourite choice — I.K. Gujral also was confronted with similar situation on a flimsy ground. Thus the country eventually plunged into deep political crisis and was made to face XIIth General Elections in February, 1998 — a big drain on the national exahequer. History repeated itself. The Indian electorates who were mentally unprepared for General Election and conscious of a massive drain on the national Funds again gave a fractured mandate and returned a 'Hung Parliament'. The country was again caught in the vortex of coalitional compulsions and pressures. The BJP improved its numbers though it could not capture the requisite absolute majority. Hence with the active support of its pre and post poll allies like AIADMK, Lok Shakti, Samata, BJD (Orissa) Akali Dal (Badal) and outside support of Trinamul Congress, and TDP under C.K. Naidu won the game of numbers in the Lok Sabha. A.B. Vajpayee—the Prime minister who headed the BJP, the largest party and was

called by the President to form the Government did not slacken his efforts to win the requisite majority on the scheduled day as per desire of the President of India. However the coalition partners — AIADMK in particular, Trinamul Congress, Samata and Akali Dal have started asking for pounds of flesh and the rambling coalitional structure erected on fragile crutches at times appears to be on miry foundations. However the BJP Government is struggling hard to survive and is making frantic efforts for good governance and creditable performance. Its future still remains unpredictable.

The Congress—the opposition is waiting — which appeared to be a sinking ship before XIIth General Election was salvaged by Mrs. Sonia Gandhi — the charismatic daughter in law of Nehru-Gandhi family. The Congress also improved its position slightly. It might have done better in case Mrs. Sonia Gandhi had broken her stoic silence earlier and responded to the fervent appeals of Congressmen. Presently the Congress is playing the role of healthy opposition and has not taken to the game of manipulations and horse trading to oust BJP.

In this Volume a comparative study has been made regarding the functioning of the Prime Ministers since the times of J.L. Nehru. Whether a Prime Minister acted as a boss over the cabinet or its leader has been clearly brought out. The bearing of dynamism, administrative calibre and political acumen, besides equation with the party High command on such functioning has been critically analysed. It is too early to assess the position of the present P.M. vis-a-vis his council of Ministers keeping in view coalitional compulsions and constant pinpricking at the hands of AIADMK and Trinamul Congress.

The recent election of a *Dalit* as President of India who has established himself as the 'Hero out of Governor vs UP CM the latter vis-a-vis the former UF Government's attempt to destabilize the UP Government and describes himself as the working President; the election of Young Turk of yesteryears as the Vice President, the concept of Judicial activism (as displayed by the apex court in the recent years) — its inherent dangers and utility as a counter check on the high handedness of the executive and legislative indolence indifference or despotism — have been highlighted in this volume.

The denigration of parliamentary Institutions at the State level also has been unmasked. The role of Governors vis-a-vis the Chief Ministers, the Speaker vs. the Opposition, the CM vs the CoM, has been critically evaluated. The UP—the largest State of India which had the privilege of sending five P.Ms at the helm of affairs at the Centre, has been specially chosen to bring out erosion of parliamentary Institutions at the State level as well.

The chapters on Federalism, Union and State Relations,

Integration and Democratisation of states, political parties — their origin, evolution and deterioration the remote possibility of growth of healthy opposition in our democracy, position of Jammu and Kashmir in the light of Article 370, working of parliamentary democracy at the Centre, the Fundamental Rights and the Directive Principles in the light of judgements of the Supreme Court, position, powers and role of judiciary and the Amendments of the constitution since 1950 — have been made up-to-date, minutely informative and analytical.

A sincere effort has been made by the author to appraise the Constitution of India and the centres of extra constitutional authority dispassionately in a lucid style. Irrelevant discussions have been avoided. The facts have not been sacrificed at the altar of verbosity or verbiage. The author is confident that the revised Edition will earn a word of praise from the knowledgeable Readers and meritorious students.

The author is thankful to the learned authors whom he has quoted at appropriate places. The author acknowledges with gratitude the assistance rendered to him by his illustrious daughter — Dr. Vandana Mohla and her husband Commander Pankaj Gupta for the expeditious publication of this volume. My hearty thanks are due to my wife who has been a perennial source of inspiration.

Messer Atma Ram and Sons—the publishers and the typesetters—Messers Typeface, deserve special thanks for the exquisite production of this volume.

October 98

—Vishnoo Bhagwan

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Introductory

"The Assembly adopted the Constitution despite some member's misgivings by acclamation. It could be presented to the nation as the realization of Nehru's original aim. It has been drafted with the welfare of four hundred million Indians in mind."

—Austin

With the passage of the Indian Independence Act, 1947, India cast aside the foreign yoke and embarked upon a new era. The Constituent Assembly which was already in existence was declared sovereign in law as well as in fact. The establishment of Pakistan and subsequent withdrawal of Muslim League from the Indian scene freed the Constituent Assembly from a great handicap which had impeded its progress, since its inception in November, 1946. The Assembly could now fulfil its mission with missionary zeal without restraint from outside, or disruption from within. There was hardly any shade of public opinion not represented in the Assembly. Although it was an indirectly elected body not responsible to the Indian masses yet it was a highly representative body. It consisted of more than 300 members. It was mainly a Congress Assembly. The way for the creation of the Constituent Assembly was cleared by the Cabinet Mission's recommendations made on May 16, 1946. As already said in Volume I, elections to the Constituent Assembly were held in July, 1946 in which Provincial Legislative Assemblies took part. Out of 1585 seats in the Provincial Assemblies, the Congress captured 925 or 58% seats in the elections of 1945. It assured thumping majority of the Congress Party in the elections of the Constituent Assembly in the following year. The Congress candidates filled 203 of the 212 general seats, the League won all but 7 of seats reserved for the Muslims. The remaining 16 seats were captured as follows: Sikhs and Unionists (of Punjab) 3 each, 1 to the Communists, 1 to the Scheduled Castes Federation, and 8 to the Independents.

After the exit of the Muslim League from India due to the partition of the country, the majority of the Congress rose to about 82%. The Princely States nominated 93 members who constituted the non-elected section of the otherwise democratically constituted body. The partition of the country resulted in marginal changes in the representation of the communities. The position of the members representing Indian Provinces and Princely States on 31st December 1947 was as follows :

Statewise membership of the Constituent Assembly of India as on 31st December 1947

Name of Province	No. of Members
1. Madras	49
2. Bombay	21
3. West Bengal	19
4. United Provinces	55
5. East Punjab	12
6. Bihar	36
7. CP and Berar	17
8. Assam	8
9. Orissa	9
10. Delhi	1
11. Ajmer Marwar	1
12. Coorg	1
Total	229

Indian States

Name of State	No. of Members
1. Alwar	1
2. Baroda	3
3. Bhopal	1
4. Bikaner	1
5. Cochin	1
6. Gwalior	4
7. Indore	1
8. Jaipur	3
9. Jodhpur	2
10. Kolhapur	1
11. Kotah	1
12. Mayurbhanj	1
13. Mysore	7
14. Patiala	2
15. Rewa	2
16. Travancore	6
17. Udaipur	2

18. Sikkim & Cooch Bihar Group	1
19. Tripura	1
Manipur and	
Khari States Group	
20. UP States Group	1
21. Eastern Rajputana States Group	3
22. Central India States Group	3
23. Western India States Group	4
24. Gujarat States Group	2
25. Punjab States Group	3
26. Deccan and Madras States	2
27. Eastern Group States	4
28. Eastern States Group II	3
29. Residuary States Group	4
	<hr/>
	Total 70
Grand Total	<hr/> 229 + 70 = 299 <hr/>

On August 29, 1947, the Constituent Assembly set up a Drafting Committee of seven members under the chairmanship of Dr. Ambedkar. Eminent personalities like Sarvashri M. Gopalaswami Ayyanger, B.L. Mitter (who was replaced by N. Madhav Rao), Alladi Krishnaswami Iyer, K.M. Munshi, T.T. Krishnamachari, Mohd. Sadullah, N. Madhav Rao and D.P. Kaithan constituted the Drafting Committee. Sri B.N. Rao, another constitution expert assisted the Committee as Constitutional Adviser. As a legalist, equipped with judicial acumen, he looked to Euro-American constitutional precedents for guidance while framing the Indian Constitution. Shri S.N. Mukerji was its principal draftsman. Pt. Jawaharlal Nehru, our beloved First Prime Minister, and Sardar Patel, iron man of India, were the sources of constant guidance and inspiration to the constitutional pandits. If "Nehru brought to the Assembly the mind of a humanist and wide reading in political theory"¹, Patel brought staunch realism and pragmatism. In fact, Nehru, Patel, Prasad and Azad constituted an "oligarchy within the Assembly". Their practical experience, their personal popularity and their intellectual ability made a member of the Assembly remark that the government rested "in the hands of those who were utterly incapable of doing any wrong to the people"². Infact the Congress Working Committee

1. Austin G. : *The Indian Constitution—Cornerstone of a Nation*, p. 20 (1966 Ed.).

2. *Constituent Assembly Debates Vol. IX p. 1094.*

became the architect of our Constitution. As such, the decision, of the Congress leaders formed the basis of all important decisions taken by the Drafting Committee. Dr. B.R. Ambedkar confessed that members of the Drafting Committee "had to go to another place to obtain a decision and then come to the Assembly."¹

The Drafting Committee submitted the Draft Constitution to the President of Constituent Assembly on February 21, 1948 after putting in strenuous work for 141 days. Eight months' period was allowed for its hair-splitting all over the country. The consideration of the Draft Constitution commenced on November 4, 1948. The Assembly held altogether eleven sessions running into 165 days, out of which 114 days were devoted to the consideration of the Draft Constitution. Though the influence of four men's oligarchy was irresistible yet the Assembly decided all vital issues democratically after full, fair and frank discussions, at times heated and acrimonious. It is rightly contended by the critics that the Assembly and the Drafting Committee constituted mere formal centres of discussions. The real place of discussion was the Congress (Party) Working Committee's premises. The Drafting Committee was a mere yesmen body. A member rightly remarked that the Drafting Committee is really a Drifting Committee.² In fact, such was the need of the hour. There was hardly time for jugglery of words or display of high sounding jargons. Still, enough discussion was allowed. The total number of amendments tabled was approximately 7635, out of which 2573 amendments were actually moved.

It will not be out of place to point out that the Constituent Assembly was a Hindu dominated body because of the demographic composition after the emergence of Pakistan. Commenting on its composition, J. L. Nehru remarked. "The face of communalism failed to have any effect at all on the working of our grand Constituent Assembly for the very reason of the dominant position of the Congress Party that had even been irrevocably wedded to the ideal of secularism and thereby represented itself as the mirror of Nation."³ Besides leading Hindus like Nehru, Patel and Prasad and Muslims like Azad, the Assembly was composed of prominent members of other communities.

After elaborate discussions, the draft was finalised with suitable amendments, on November 26, 1949. Thus it took the Assembly two years, eleven months and twenty days to frame the Constitution of the Indian Republic. The twelfth session of the Assembly which was held on January 24, 1950 elected Dr. Rajendra Prasad, as the first President of the Indian Union. In a very colourful and impressive

1. *Brajeshwar Prasad : CAD, 18, 760-71.*

2. *C. A. Debates, vol. IX p. 1904.*

3. *Nehru : Unity of India, p. 139*

ceremony, the members of the Assembly signed the official copies of the Indian Constitution, which came into force on January 26, 1950. Most of its articles and clauses were passed by majority of votes nearing almost unanimity. In the words of Austin, "*Had the Constitution come from the Constituent Assembly sanctioned by a meagre majority opposed by many it would have been attacked as unworthy of general support and unrepresentative of India's best interest*".¹

The Constitution represents Indians' cherished goal—the ushering in of an era of liberty, equality and justice. It was drafted with "the welfare of four hundred million Indian in mind"². It stands for the pursuit of peace and tranquillity as fraternity is one of the cardinal principles of its preamble. On account of its democratic ideals, it was hailed by the leading-most democracies of the world as a glorious chapter in the history of man's march on the highway of progress and prosperity. Its five basic postulates viz federalism, secularism, democratic socialism, parliamentary government and judicial review—are based on great ideals that the Congress cherished and assiduously followed and finally embodied them in the Constitution. Nehru and Patel were the guiding angels behind these postulates which were the outcome of the currents and cross currents—Nehru's love for Fabianism and Patel's adherence to liberalism. It will therefore not be an exaggeration to say that Nehru and Patel were the first founding fathers of the Constitution and Congress constituted the Constituent Assembly. Austin rightly remarks, "*The Constituent Assembly was one party body in an essentially one party country. The Assembly was the Congress and the Congress was Indian*."³ The working committee of the Congress in which Nehru, Patel, Prasad and Azad played most prominent role and took basic decisions regarding the basic law of the land and then prompted the Drafting Committee to the Draft Constitution in dignified language. Dr. Ambedkar as a Constitutional manoeuvres not only exhibited massive intellect in framing the Constitution but also defended it strongly on the floor of the Constituent Assembly. As such he may not be categorised as the founding father of the Constitution though his versatility as mouth piece of ruling Congress cannot be under-estimated. He once remarked "*I was a heck. I did what I am asked to do. I only carried out the works of the majority*." Dr. Rao calls Ambedkar as the mother of the constitution. Dr. Ambedkar had to bear in fact other's ideas and nurture them and bring them out as his own and did remarkably well."⁴

1. Austin, G. : *op. cit.*, p. 25.

2. C.A.D., Vol. 1, p. 560.

3. G. Austin : *op. cit* pp. 8-9.

4. Rao, K.V: *Parliamentary Democracy in India. A critical commentary* (Ed) p. 1-2.

INDIAN CONSTITUTION—An Appraisal

"This cannot be done by the wisest of lawyers sitting together in conclave; it cannot be done by small committees trying to balance interests and calling that constitution making; it can never be done under the shadow of an external authority. It can only be done effectively when the political and psychological conditions are present and the urge and sanctions come from the masses."

Jawaharlal Nehru

