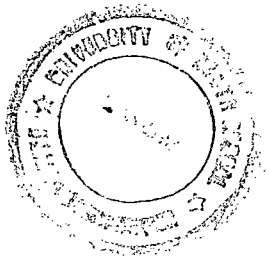
IMPACT OF GANDHIAN THOUGHTS ON THE EVOLUTION OF THE PROVISIONS FOR FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES OF STATE POLICY IN THE INDIAN CONSTITUTION.

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P R E F A C E

The aim of this study is to see how far the Indian Constitution, especially Parts III and IV of the Constitution, were influenced by the ideas of Gandhi. Gandhi had been the undisputed leader of India's freedom movement for long three decades. After his death the task of constitution-making fell to the lot of his disciples and such members of the Constituent Assembly who had for years participated in the struggle for freedom under his leadership. Therefore, it was normally expected that they would work out a constitution basically permeated with his ideas and principles. But, it remains a fact of history that the Indian Constitution, as it finally emerged from the tug and pull of opposing forces in the Constitution-making body, was a substantial deviation and departure from Gandhian ideas and principles. The reasons were many and varied, and must be traced if the air of confusion and misunderstanding has to be cleared for the sake of historical truth. The present study endeavours not only to identify the small areas of marginal approximation of the Constitutional provisions in Parts III and IV to the basic tenets of Gandhian thought, but, what is more important, seeks to unfold Gandhi's chequered relation with the Congress and the architects of the Indian Constitution, as well as other factors and forces, which caused such wide divergence of the constitutional principles from his ideas and thoughts.

In preparing this work, I have relied heavily on the

Constituent Assembly Debates, a Government of India publication. For Gandhian thoughts and ideas, I had to depend on the Collected Works of Gandhi, a Government of India publication 'Selected Works of Gandhi' (Navajivan Publication) in six volumes, Young India and Harijan files, and on 'Mahatma' by D.G.Tendulkar in eight volumes. Besides, I have used materials exhaustively from three published articles of mine-one in 'The Modern Review' Dec. '73 (Calcutta) another in 'Gandhi Marg', January 1974 (Journal of the Gandhi Peace Foundation - Delhi), and third one in Journal of Gandhian Studies, Jan., '77 (Allahabad).

I wish to express my debt of gratitude to all those who have directly or indirectly helped me in accomplishing the various tasks connected with the preparation of this work. I am particularly grateful to Dr. S. N. Ray, Professor and Head, Department of Political Science, University of North Bengal, without whose affectionate guidance this thesis could never have been completed. I am grateful to Prof. B. K. Bajpaie, former Head of the Department of Political Science, and presently Registrar, University of North Bengal, who not only initiated me into this work, but also encouraged me all along and extended all kinds of assistance. My gratefulness is also due to the Librarian and the employees of the National Library, Calcutta, Gandhi Smarak Sangrahalaya, Barrackpore, Sinha Library and the Library of the A.N. Sinha Institute of Social Studies, Patna, and more particularly the Central Library, University of North Bengal, for their

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I N T R O D U C T I O N

Gandhi held a unique place in the history of the Indian freedom movement as well as in the historic transition from tradition to modernity. The period ranging from 1920 to 1947 was popularly believed to be the Gandhian period. It was during this period that Gandhi had exhibited his brilliant skills and techniques which not only brought him to the forefront of national leadership but, by the inexorable logic of history, virtually vested in him the enormous and onerous task of nation-building as its acknowledged "father". Therefore, it was only natural to expect that his leadership, during those fateful and momentous three decades, would have a definite impact in the making of the Constitution for free India. That expectations were mostly belied, at the time of Constitution-making, is a cruel commentary on the unpredictable course of politics in a period of cataclysmic changes as well as the strangely conflicting leader-ship-response to the demands and compulsions for modernization and development.

This study is exploratory as well as analytical and descriptive. It tries to locate and identify the forces which worked for the incorporation or non-incorporation of the Gandhian elements within the Constitution. It also seeks to explore the causes, from their genesis onward, which, in fact, hindered, and acted against the incorporation of the Gandhian ideas. The study

also describes Gandhi's basic ideas and concepts, the history of the Indian National Congress along with the annual resolutions, during the Gandhian era. It gives an account of the Constituent Assembly Debates containing Gandhian elements. It also describes the evolution of the concept of fundamental rights in India and Gandhi's role in this process.

Scores of books have been written on the Indian Constitution in general or on its particular aspects, and even on the fascinating story of Constitution-making in India. Again, there is no dearth of literature on the Indian National Congress or on Gandhi or his ideas and thoughts. But one important aspect of study has not been adequately touched upon, that is, to what extent the Constitution of India had inherited from the Gandhian thoughts; or how far 'India of his dream' had influenced the framing of the Constitution. A common criticism that is labelled against the Indian Constitution is that it is more adventitious and derivative than an original document, something which has not grown out of the indigenous tradition and culture of this country. Gandhi had steadfastly adhered to all that was typically Indian in character. He had resurrected the social and political ideas from India's hoary tradition, and had sought to make them the basis of the nation-building effort. The present study is an attempt to fill this gap, at least in one direction. An attempt has been made, inter alia, to give a dispassionate account of the nature and extent of the influence the Gandhian thoughts had

exerted on the shaping of the content and the contours of the Parts III and IV of the Constitution of India, which are supposed to be the "conscience of the Constitution."

Granville Austin's book, "The Indian Constitution-Cornerstone of a nation", is a "political history of the framing of the Constitution", of how past and present events, ideals and personalities inspired the members of the Constituent Assembly "to write the Constitution as they did ...." (Introduction - p.XV). It is a fascinating story of a still more fascinating experiment in the democratic process, and provides us with "some insight into the political bases and motivations of Indian life." Based on a plethora of source materials including Committee reports, minutes and proceedings, as well as personal files and papers of the prominent decision makers, and other published and unpublished documents and materials, this book has already become a 'classic' in Indian studies, a pioneering and path-breaking effort in understanding the constitutional dynamics in India. Although not exclusively devoted to a study of the working of the Constituent Assembly in relation to Parts III and IV of the Constitution -- it deals with such important aspects as executive, legislature, judiciary, federalism, language, etc. -- its two chapters on Fundamental Rights and the Directive Principles, the "conscience of the Constitution", provide rich materials for understanding the play of forces in the shaping of the 'Rights'

provisions.

An article entitled "The impact of Gandhian ideology on the Indian Constitution" by O.P. Minocha, published in The Indian Political Science Review, Oct. - March, 1969-70, seeks to highlight the implications of the Gandhian Constitution, Gandhi's contribution to the emergence of the Constituent Assembly, choice of the Assembly etc. The author discusses the areas approximate to Gandhian ideology. But here, too, he does not keep his focus on the fundamental rights and the directive principles of state policy alone. He also deals with issues like franchise and elections, minorities, official language etc.

The present work starts with a brief study of the philosophy of Gandhi in the opening chapter. It deals with the metaphysical foundation and ethical principles of Gandhi which includes dharma, karma, 'atmaunnati', universal upliftment, nonviolence, ends and means, satyagraha etc. Besides, the fundamental beliefs and ideas, the fulfilment of which had been the lifelong dream of Gandhi, have been discussed. His ideas are divided into three categories-- political, social and economic. These include, inter alia, his concept of swaraj, rights and duties, political self-government and the right of minorities, removal of untouchability, equal respect for all religions, status of women, sarvodaya, concept of ideal state, and his concept of economic order, trusteeship and ideas on socialism.

The second chapter contains a study of the relation between Gandhi and the Indian National Congress from the time of his entry into the Indian political scene till his death. Secondly, this chapter deals with the nature and extent of the impact of Gandhism on the Indian leaders and statesmen, especially the architects of the Constitution. And, in the light of this discussion, it is intended to bring out the reasons for the departure of the Constitution from Gandhian ideas.

The third chapter deals with the historical evolution of fundamental rights in India, stages in the evolution, Gandhi's influence on the attempt in this direction, and his influence behind various congress resolutions and official reports on fundamental rights.

The fourth chapter deals with the scheme of fundamental rights in the Constitution of India, the different stages in its evolution, their classification into justiciable and non-justiciable rights, fundamental rights and the directive principles of state policy. It discusses the impact of Gandhian principles on the making of the rights to equality, freedom, religion, education and property. Chapter V examines the extent to which the Gandhian principles are working behind the directive principles of state policy. His influence in respect of the incorporation of the constitutional safeguards of minority interests and democratic decentralisation (Panchayati Raj) form

the subject matter of the next two chapters.

The last chapter (Chapter VIII) is a study of the relevance of Gandhi in the present stage of India's constitutional history. This is the operative aspect of Gandhi's ideas. In this part governmental and non-governmental (private agencies or institutions) initiatives with regard to such schemes as sarvodaya, panchayati raj, social welfare, khadi and cottage industry, education, welfare of the weaker sections, prohibition, preservation of animals, social justice etc. have been discussed. And an attempt has been made to see how far the Five Year Plans of India, the provisions of the Constitution, the laws passed by the central and state legislatures etc. are directed towards implementing the above schemes and thereby vindicating the Gandhian ideas.

India is now on the threshhold of the 'big leap forward' from tradition to modernity. There is now a clear sign of realisation, belated though, that much of the Indian Constitution had been dysfunctional in operation, and that radical, far-reaching revisions were needed to make the constitution normative, in the ontological sense, to convert it into an adequate vehicle for realising the new goals of the nation, and to attune it to the political culture of this land and the realities of the political process. The various and rather frequent amendments to the Constitution, especially the Constitution (Forty Second Amendment)

Act, 1976, have sought to make piecemeal and half-hearted attempts to restore stability in the political system and transform the Constitution from the 'nominal' to the 'normative' category. But constitutional amendments have only limited utility; much depends on how the political process translates the norms of the Constitution into concrete and actual reality. However radical or revolutionary these amendments might be, they indicate only structural changes. Their fruition into actual social transformation is a function of human endeavour and the prevailing level of socio-political culture. Much also depends on the capabilities and achievements of the political leadership in giving shape and form to the socio-economic ideals and principles. Considered in this light, one cannot fail to be struck by the failure of the leadership both in incorporating Gandhian thoughts and ideals as the basis of Constitution-making, and in upholding such principles while making the Constitution work. While the tensions and conflicts associated with a 'derivative', 'adventitious' constitution, dissociated from the indigenous political culture symbolised by Gandhian ideals, have been increasingly coming to the fore, one can only regret that a glorious opportunity had been lost, during those fateful years of the making of the Indian Constitution, in imparting greater legitimacy to it and narrowing the hiatus between the norm and the existential reality.

CHAPTER - I

Fundamental Thoughts and Ideas of Gandhi --- Was Gandhi a political philosopher?

"Most religious men I have met", Gandhi once remarked to Mr. Polak, "are politicians in disguise; I however, who wear the guise of a politician, am at heart a religious man" (1). "My bent is not political but religious", he wrote in a letter to Dr. Arundale in 1929 (2). These statements provide a key to Gandhian philosophy. In all his thoughts and actions he took his stand on the principles of religion and morality. These were the very breath of his being. His political philosophy and political techniques were only corollaries of his religious and moral principles. For him politics bereft of religion was a death trap because it kills the soul (3).

Therefore, Gandhi was not a political philosopher in the conventional, western sense of the term. He was not destined to propound a new political philosophy, nor did he pretend or profess to do that. He did not discard old philosophies, and, adhering to certain fundamental principles, and techniques based upon truth, he led men to the realisation of a better order of society than the destructive and cruel chaos in which mankind had hitherto existed. Gandhism is, thus, "not a set of doctrines or dogmas, rules or regulations, injunctions or inhibitions, but it is a way of life. It indicates a new attitude or restates an old one toward's life's issues and offers ancient

solutions for modern problems"[4]. Gandhi never claimed finality for his opinions. He styled his activities as search for, or experiments with truth.[5]

Gandhi himself said that "well, all my philosophy, if it may be called by that pretentious name, is contained in what I have said. But you will not call it Gandhism, there is no 'ism' about it"[6]. He observed, "there is no such thing as Gandhism, and I do not want to leave any sect after me. I do not claim to have originated any new principle or doctrine. I have simply tried in my own way to apply the eternal truths to our daily life and problems ..... The opinions I have formed and conclusions I have arrived at are not final. I may change them tomorrow. I have nothing new to teach the world. Truth and non-violence are as old as the hills. All I have done is to try experiments in both on as vast a scale as I could do....."[7].

Gandhi was not a philosopher in the sense that he thought out a philosophy of life and chalked out a programme of action which he left to others to study and implement. He worked and experimented, identifying himself always and completely with the people. In the acid test of experience he remains not a politician or a reformer, not a philosopher or a moralist, but someone composed of them all, an essentially religious person endowed with the highest and most human qualities and made more lovable by the consciousness of his own limitations[8].

Thus Gandhi never attempted to construct a

system of philosophy since he was not a professional philosopher. His domain was action. He was mainly concerned with applying the ideals and principles that had become part of his life, and in which he had unflinching faith. There was no department of life, particularly embracing the life of Indians, which he did not touch, which he did not influence and in which he did not make his own contribution. And, as a result, his thoughts and ideas could not have taken systematic and coherent form. Dr. Bondurant writes: "Gandhi's political philosophy is, indeed elusive. To the scholar who seeks internally consistent systematised bodies of thought, the study of Gandhi is unrewarding" (9). Paul F. Power also states: "Divergent and sometimes conflicting positions can be traced throughout most of his public life, although one may dominate the others during particular phases" (10).

However, Gandhi had expressed his views on almost all important subjects which affect the lives of individuals, groups and nations and had highlighted some basic principles as guidelines for humanity. These basic ideas and the fundamental thoughts remain scattered in the brochures and pamphlets which were written by Gandhi during his life time, in his writings and speeches on a variety of topics, in his important speeches delivered on memorable and historic occasions, and finally, in the large number of letters written by Gandhi to many of his co-workers as well as men of public importance. Hence, for the better understanding of the present study, an

attempt has been made to present in brief the fundamental beliefs and ideas of Gandhi.

Society must provide opportunities for the maximum growth of the individual which consists in self-less service of society and willing fulfilment of his social obligations. In case either of the two goes wrong the other should resist non-violently. But apart from the pressure of the drastic step of non-violent direct action and the inward morality of the individual, both of which induce him to fulfil his social obligations, there is another non-violent factor which keeps the individual alive to these obligations. This is what Hindu thinkers call dharma.

(I) Metaphysical foundation and Ethical principles. Dharma -

In the village communities of ancient India social and economic life was regulated by dharma of which the law of varnashrama was an important part. The function of the state during those days was not to alter or amend dharma but to subserve it. The disciplinary function which the state performs today by means of law and coercion, mostly belonged, in ancient India, to voluntary associations employing non-coercive methods, that is, moral pressure. It was not a case of an utter lack of social restraint; non-violent moral pressure rather than coercion was the means of this restraint. In a free society Gandhi preferred it to the organised violence of the state.

Dharma is a system of culture and discipline rather than a creed. It is neither subjective in the sense of morality imposed by the individual's conscience, nor external like the law enforced by the state. Dharma is not a fixed code of mechanical rules, but a living spirit which grows and moves in response to the development of society. The function of dharma is to hold together harmoniously the social order and to act as a guide to the individual's conscience so as to train him to realise his potentialities (11).

Gandhi believed in the doctrines of Karma and reincarnation. Karma emphasises constant activisation of moral energy by all individuals for the attainment of perfection. He wrote: "I believe in rebirth as much as I believe in the existence of my present body" (12). To him the law of Karma was inexorable and impossible of evasion. It has been called the law of moral continuity. Gandhi believed in the evolution of moral consciousness in man through successive births and in the accumulation of moral and spiritual merit (punya) and accepted that "death after a life truly lived is but a prelude to a better and richer life" (13).

Karma -

Atmonnati, Universal Upliftment - In Gandhi's philosophy stress is always laid on the individual as the starting point of social regeneration. To him the problem of the group was essentially the problem of the individual. The reason for this emphasis was that man is above all the soul, and the progress of

society depends on the soul-force of the average individual. By means of deep faith and prayer, Gandhi prepared himself to realise God in the hearts of the dumb millions and went to the extent of saying: "I recognise no God except the God that is to be focussed in the hearts of the dumb millions. They do not recognise their presence, I do" (14).

There is no antithesis between genuine social service and the growth of moral individuality. According to Gandhi the work of individual salvation has to go hand in hand with the work of collective emancipation. Efforts, hence, have to be made for the enhancement of the good of all. All the inhabitants of the world, irrespective of race, denomination, caste and sex, are manifestations of God. Loyalty to this divine spirit implies that strenuous efforts have to be made for the growth of the sentiments of love, service, suffering and mutuality. The true sign of developed spirituality is the readiness to laydown one's life for the good of others (15).

Non-Violence :

The central theme, the conceptual foundation of Gandhian thought, is 'non-violence'. It was for this reason that, in offering a critique of the present day society, Gandhi had called it 'violent'. He rejected the basic frame as he found violence ingrained in it. He wanted to leap forward to a non-violent polity and the method of struggle or change that he sought to apply in the process was of 'non-violent Satyagraha'. He found no democracy possible without non-violence

and no institutional frame-work worth its keep until it became truly non-violent. Violence, according to this connotation, means 'exploitation', 'centralization of power' and 'dominance,' all that retards free expression and development of persons and institutions especially of the weak, who live at the base of the society. Non-violence is the autonym of all these; it means non-exploitation, non-organisation and non-dominance (16).

To him, while truth was the end non-violence was the means. They were so intertwined that it was practically impossible to disentangle and separate them. They were like the two sides of a coin (17). Gandhi was so seriously committed to this ideal of non-violence that he declared "I would certainly retire from the political life if I find that India does not imbibe my message and that India wants a bloody revolution. I should have no part in that movement because I do not believe in its utility either for India or, which is the same thing, for the world" (18). Non-violence can be used not only by isolated individuals, but by the masses and by nations in their mutual relations.

Gandhi said, "our non-violence to be true must be in word, thought and deed; non-violence is the law of our species, as violence is the law of the brute. The spirit lies dormant in the brute and he knows no law but that of physical might. The dignity of man requires obedience to a

higher law - to the strength of the spirit"[19]. He wanted India to practise non-violence because he was conscious of her strength and power. It was his expectation that India would, through her path of non-violence, be a messenger of peace to the whole world. He had recognised that the nation had the right to vindicate her freedom even by actual violence. But in that case India would cease to be the land of his love[20]. He said: "If India makes violence her creed, and I have survived, I would not care to live in India. She will cease to evoke any pride in me"[21]. For him non-violence was not a mere philosophical principle. It was the rule and the breath of his life. It was a matter not of the intellect but of the heart[22].

In explaining the meaning and implications of non-violence, Gandhi laid stress on non-violence of the strong, not of the weak. Non-violence presupposes the ability to use physical force to defend the right, but its votary, applying conscious restraint, decides to use soul-force against the wrong-doer. Gandhi preferred violence, where there was only a choice between cowardice and violence. He said "... I would rather have India resort to arms in order to defend her honour than that she should in a cowardly manner become or remain witness to her own dishonour"[23].

Gandhi's life was dedicated to the service of India through the religion of non-violence. Non-violence

in its dynamic condition, means conscious suffering. It does not mean meek submission to the will of the evil doer, but it means putting of one's whole soul against the will of the tyrant. Working under this law, it is possible for a single individual to defy the whole might of an unjust empire to save his honour, his religion, his soul, and lay the foundation for that empire's fall or its regeneration (24). Hence, he wrote "my creed is non-violence under all circumstances. My method is conversion, not coercion; it is self-suffering, not the suffering of the tyrant, I know that method to be infallible" (25).

In its positive form non-violence means the largest love, the greatest charity, and it necessarily includes truth and fearlessness. It is no non-violence if we merely love those that love us. It is non-violence only when we love those that hate us (26). Thus "non-violence is a soul-force or the power of the Godhead within us. We become Godlike to the extent we realise non-violence" (27). Enemies we cannot have, if we practise non-violence. But if others feel enmity towards us, even of them we may not harbour an evil thought. To achieve this ideal, Gandhi said, will cost us many sleepless nights. But once we come near achieving it, the whole world is at our foot. "If you express your love-ahimsa-in such a manner that it impresses itself indelibly upon your so called enemy, he must return that love" (28).

Thus non-violence was considered by Gandhi as

immeasurably superior to violence. Strength does not come from physical capacity. It comes from an indomitable will. Self sacrifice of one innocent man is a million times more potent than the sacrifice of a million men who die in the act of killing others[29]. 'There is no escape from the impending doom save through a bold and unconditional acceptance of the non-violent method with all its glorious implications'[30].

Ends and Means

In Gandhian philosophy means and ends are convertible terms[31]. He did not believe in the Machiavellian maxim that "the end justifies the means." That is, if the end is desirable, even means like cunning, deceit, untruth, opportunism and violence are justified, if they help us to achieve the end. He discarded this Machiavellian diplomacy of terror and deception which, according to Gandhi, might seem to score for the time being over truth and love, justice and open-dealing. But the victory is partial and transitory. He was influenced by the Gita doctrine of 'nishkama Karma' (action without attachment) which teaches us that a good deed only produces a good result. He believed that good means alone can lead us to lasting peace and progress[32]. In his view "means are after all everything. As the means, so the end. There is no wall of separation between means and end. Indeed the creator has given us control over means, none over the end. Realisation of the goal is in

exact proportion to that of the means. This is a proposition that admits of no exception"[33]. To quote Gandhi again, "the means may be likened to a seed, the end to a tree, and there is just the same inviolable connection between the means and the end as there is between the seed and the tree"[34].

Satyagraha

Gandhi's basic ideas on Satyagraha were evolved partly from his study of the teachings of Jesus, of Thoreau (1817-62) and of Tolstoy (1828-1910), as well as from his study of Hindu tradition; and partly from his leadership of (a) the Indian Community in South Africa in their struggle against racial discrimination practised by the white minority there, and (b) the non-co-operation and civil disobedience movements against the British Government in India (1920-1942)[35].

The term Satyagraha was coined by Gandhi in South Africa to express the force that the Indians there used and it was coined in order to distinguish it from the movement then going on in the United Kingdom and South Africa under the name of passive resistance[36]. The latter has been conceived as a weapon of the weak and does not exclude the use of physical force or violence for the purpose of gaining one's end, whereas the former has been conceived as a weapon of the strongest and excludes the use of violence and hatred in any shape or form. Satyagraha is a relentless search for truth and a determination to reach truth not by infliction of suffering on the opponent, but on one's self.

Satyagraha, literally, means holding on to truth. Gandhi therefore, called it the 'soul force.'

Satyagraha is one of the most powerful methods of direct action. A Satyagrahi exhausts all other means before he resorts to Satyagraha. Gandhi also used it as his last weapon against injustice, after having exhausted all other possibilities of persuasion and conciliation.

Satyagraha stresses four basic ideas: (a) it is essentially the use of soul force. (b) Through the suffering of the Satyagrahi it appeals to the heart and thus seeks to convert the wrong doer. (c) It excludes the use of physical force, because 'man is not capable of knowing the absolute truth and, therefore, not competent to punish'. (d) 'Means and ends are convertible terms', 'as the means so the end'. A good result can be produced only by good means (37).

It is a force that may be used by individuals as well as by communities. It may be used against any sort of oppression and exploitation in political as well as in domestic affairs. It is a law of universal application. The idea underlying Satyagraha is to convert the wrong doer, to awaken the sense of justice in him, to show him also that without the co-operation, direct or indirect, of the wronged the wrong doer cannot do the wrong intended by him (38). It is never the intention of the

Satyagrahi to embarrass the wrong doer. The appeal is never to his fear; it is, and must be, always to his heart. The Satyagrahi's object is to convert, not to coerce, the wrong doer.(39)

A Satyagrahi never does anything out of fear from without. He should fear only God and a Satyagrahi never desires to reach the goal by harbouring or increasing ill will or hatred against his opponent.(40)

He becomes a truly fearless person. Once his mind is rid of fear, he will never submit to any arbitrary action. Satyagraha is an attitude of mind. He who has attained the Satyagrahi's state of mind will remain ever victorious, at all times and places and under all conditions irrespective of whether it is a government or a people that he opposes, whether they be strangers, friends or relatives.(41)

Thus Satyagraha is belief in the power of spirit, the power of truth, the power of love by which we can overcome evil through self-suffering and self-sacrifice. A Satyagrahi does not know what defeat is, for he fights for truth without losing any of his strength. Death in the struggle is release and prison a gateway wide open to liberty.(42)

Gandhi observed "Satyagraha as a science is yet young". He wrote, "I have no set theory to go by. I have not worked out the science of Satyagraha in its entirety. I am

still groping, and Satyagraha as conceived by me is a science in the making" (43).

(2) Fundamental beliefs and ideas of Gandhi:

(a) Political concept of Ideal State and Sarvodaya

Gandhi was a philosophical anarchist, who ideally speaking, repudiated the state as such, whatever its form. Gandhi believed that his end that is 'the greatest good of all' could be realized only in the classless stateless democracy of autonomous village communities based on non-violence instead of coercion, on service instead of exploitation, on renunciation instead of acquisitiveness and on the largest measure of local and individual initiative instead of centralization. (44) The compulsive nature of state authority damages the moral value of the individual's action; for an action is moral only when it is voluntary. (45) No action which is not voluntary can be called moral. Besides, according to Gandhi, "the state represents violence in a concentrated and organized form. The individual has a soul, but as the state is a soulless machine, it can never be weaned from violence to which it owes its very existence." (46)

Gandhi held that violence was evil. Violence includes not only physical coercion but also economic and social coercion. Power of physical coercion belongs to the state. This power of the state to coerce is, according to Gandhi, a kind of organized violence in which lies the essence of the modern state. To quote Gandhi:

"I look upon an increase in the power of the state with the greatest fear, because, although while apparently doing good by minimizing exploitation, it does the greatest harm to mankind by destroying individuality which lies at the root of all progress .....

What I disapprove of is an organization based on force which a state is."(47)

Therefore, the ideal society, which he named as Sarvodaya society was the stateless democracy, the state of enlightened anarchy where social life has become so perfect as to be self-regulated.

Gandhi said "..... one (book) that brought about an instantaneous and practical transformation in my life was 'Unto This Last'. I translated it later into Gujrati, entitling it 'sarvodaya' (the welfare of all)."

The teachings of "Unto This Last", he continued, "I understand to be: (1) that the good of the individual is contained in the good of all. (2) That a lawyer's work has the same value as the barber's in as much as all have the same right of earning their livelihood from their work. (3) That a life of labour, i.e., the life of the tiller of the soil and the handicraftsman, is the life worth living ....."(48) Sarvodaya implies welfare of all secured by the conscious effort of

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everyone in the community. It is a new social order, planned by goodwill and co-operation. A believer of Sarvodaya and a votary of Ahimsa cannot subscribe to the utilitarian formula, - 'greatest good of the greatest number,' because under it the interests of a substantial minority could be sacrificed for the good of the majority. But a believer of Sarvodaya will strive for the greatest good of all and die in the attempt to realise the idea (49).

The Sarvodaya society of Gandhi's conception has to be based on the ideal of non-violence in every sphere. There must not be any social or economic exploitation of the poorer segments of the society. He said 'if we would see our dream of a Sarvodaya society realised, we would regard the humblest and the lowest Indian as being equal with the tallest in the land. In such a society the prince and the peasant, the wealthy and the poor, the employer and the employee, all would be placed on the same level'. (50)

Sarvodaya society postulates that development of self-governing village communities, decision of local issues by consensus or near unanimity, limitation of wants and the development of people's capacity to run their affairs with minimum governmental control and assistance will lead to the welfare of all and social harmony (51). Life in such a society will be a life of mutual aid and sharing, and of freedom.

Sarvodaya society will be based on truth and non-violence in which there will be no distinction of caste or creed, no opportunity for exploitation and full scope for development both for individuals as well as groups. 'Everybody would know how to earn an honest living by the sweat of one's brow and make no distinction between intellectual and physical labour. No one would then harbour any distinction between community and community, caste and outcaste. Everybody would regard all as equal with oneself and hold them together in the silken net of love...'(52)

There is a somewhat detailed account of the ideal, decentralized classless, stateless, egalitarian society of non-violent citizens in Gandhi's Hind Swaraj, written in 1909.

Again, speaking of his own ultimate political ideal, he wrote in 1931: "If national life becomes so perfect as to become self-regulated, no representation becomes necessary. There is then a state of enlightened anarchy. In such a State, everyone is his own ruler. He rules himself in such a manner that he is never a hindrance to his neighbour. In the Ideal State, therefore, there is no political power because there is no State. But the ideal is never fully realized in life. Hence the classical statement of Thoreau that 'that Government is best which governs the least.'"(53)

Gandhi's ultimate ideal was Stateless society. Self-government, according to him, meant continuous effort to be

independent of government control.(54)

Therefore, Gandhi's ultimate political ideal was stateless democracy. The stateless society of self-regulating harmony was ideal in the Platonic sense that it was a model to strive for not a goal that could be attained. But as the 'golden age' was far off he thought it practicable to work for the malization of a 'predominantly non-violent society.' Gandhi stated: "Let us be sure of our ideal. We shall ever fail to realize it, but should never cease to strive for it."(55)

In the words of Dr. G. N. Dhawan: "The ideal non-violent society of Gandhiji, unattainable due to human imperfection, indicate the direction rather than the destination, the process rather than the consummation."(56)

The ultimate ideal of stateless society being unrealizable, Gandhi's thought was moving in the direction of the evolution of a predominantly non-violent state.

"By a non-violent state" says Dr. Dhawan, "we mean the state that is predominantly non-violent. A State depending as it does more or less on coercion is the negation of non-violence. The completely non-violent state would no longer be a state. It would then be the stateless society and society can be stateless when it is completely or almost completely non-violent. This is an ideal that may not be fully realized. What we may get in actual practice may be a predominantly

non-violent state advancing towards, though perhaps never reaching the stateless stage."(57)

Gandhi did not expect that his ideal social order could be realized in its fullness. It is not given to man to achieve perfection. But he said, 'Let India live for this true picture, though never realizable in completeness. It sets a goal to achieve.'(58)

He was no mere visionary. Being a practical idealist, Gandhi believed that the ideal society of his conception could never be established in actual life. And, since an ideal society which he named as Sarvodaya society could not come into existence immediately, it was therefore, necessary to continue with the existing state, but modifying and purifying it with the nobler and virtuous ideals of Sarvodaya till the people were ready and worthy to be free of the state and government.

Taking for granted the human nature, as it was, he realized that it was impossible to achieve such a stage in the human development wherein there would be no necessity of the state organization to control human affairs. Therefore, he stood for an immediate goal of establishing a predominantly non-violent state. This predominantly non-violent state was Gandhi's second best ideal. Thus understanding the practical impossibility of realizing his ideal society, Gandhi had to compromise between

ideal and near-ideal; the former meaning stateless Sarvodaya society and the latter meaning predominantly non-violent state. And he also indicated in his speeches and writings the broad lines of the kind of state he aimed at.

In 1931, on the eve of his departure for London to attend the Round Table Conference Gandhi stated, "..... I shall work for an India, in which the poorest shall feel that it is their country in whose making they have an effective voice; an India in which all communities shall live in perfect harmony. There shall be no room in such an India for the curse of untouchability or the curse of the intoxicating drinks or drugs, women will enjoy the same rights as men. Since we shall be in peace with all the rest of the world, neither exploiting, nor being exploited, we shall have the smallest army imaginable. All interests not in conflict with the interests of the dumb millions will be scrupulously respected, whether foreign or indigeneous .... This is the India of my dream ..... I shall be satisfied with nothing less."(59) This statement gives us a complete picture of Gandhi's contemplated state, which will be based on equality in the very comprehensive sense of the term, i.e., social, economic and political. Such a State will be, according to Gandhi, a predominantly non-violent state, internally free and externally

equal to other states. Freedom will exist and flourish, because the state is subject to no one else, and all its people, without barriers of caste, creed, religion, colour and sex, participate in its governance. The policemen will be reformers. Their police work will be confined to robbers and decoits. Quarrels between labour and capital and strikes will be few and far between in a non-violent state. Similarly, there will be no room for communal disturbances.(60) There will be no need for army to save the country from any kind of external aggression. The state of Gandhi's contemplation will have an army consisting of the entire non-violent populace, who meet the aggressor in offering non-violent resistance upto death and to the last man like true Satyagrahis.

Now, remaining conscious of the fact that there is a real difference between the Sarvodaya stateless Society of Gandhi's conception and his concept of Ideal State and that while Sarvodaya society is his Utopia, the predominantly non-violent state is realizable and attainable, we find that the contemplated social welfare state of to-day bears to a limited extent the marks of the predominantly non-violent state of Gandhi's conception so far as the former means an assurance about an unfailing access of all to the means of life, assurance to every citizen of the basic socio-economic and political rights and attempts to raise the standard of the uneducated and backward. But, from strictly theoretical point of view, the believers in Sarvodaya reject the state and its government no

matter what its form, because both are coercive institutions and force is the ultimate sanction behind them. Hence, even the welfare state does not offer them any satisfaction because the welfare state in the name of welfare threatens as much to enslave man to the state as the totalitarian state.

There is something in common in Sarvodaya and communism. Both strive and aim at the disappearance of the state, abolition of exploitation, and classless society. But there are significant differences between the two. Sarvodaya bases its whole philosophy on love, non-violence and social harmony instead of on class struggle and conflict. The essentially spiritual basis of Sarvodaya is the very antithesis of communism which is avowedly materialistic although in regard to its goal Sarvodaya is similar to communism.

Gandhi while asserting that the State is the embodiment of violence in a concentrated and organized form would not however, agree with a Marxist that this violence is in its essence violence of class domination.

Secondly, unlike Marxism, Gandhian programme is not the revolutionary seizure of power but a programme of transformation of relationships ending in a peaceful transfer of power.

Thirdly, it is generally supposed that Gandhism and Marxism, while sharing the common ideal, depart

from each other on the question of method. But it should be remembered that Marxism does not advocate violent means for its own sake. The extent of violence depends on the intensity of the resistance which is countenanced.(61)

Gandhi's concept of Ideal State meaning his second best, predominantly non-violent, but practically realisable political order, may be said to have influenced the Directive Principles of the Indian Constitution. The ideals contained in these provisions resemble to a certain extent the ideals of a Gandhian State. Some of these provisions aim at establishing socio-economic justice in general which was the life-long dream of Gandhi and for which he suffered much, and the other provisions deal with individual issues like prohibition, cottage-industry, decentralization, ban-on-cow slaughter etc. which are nothing but part of the socio-economic disease.

Article 38 aims at bringing justice, social, economic and political. Article 39, a charter for the poor man, is directed towards eradicating poverty, injustice and exploitation. Article 40 deals with village panchayat. Articles 41,42 and 43 aim at furthering the welfare of the common man and a coverage at their distress. Article 46 deals with the promotion of educational and economic interests of the weaker sections of the people. Article 47, inter alia, intends to bring about prohibition of intoxicating drinks and Article 51 deals with the

promotion of international peace and security.

Therefore, it may be assumed that, sumtotal of all these provisions could produce a social order which would be nearer to Gandhi's concept of Ideal State.

"The word 'swaraj' is a sacred word, a vedic word, meaning self-rule and self-restraint, and not Swaraj - freedom from all restraint which 'independence' often means" (62).

By 'swaraj' Gandhi meant the government by the consent of the Indian people as ascertained by the largest number of the adult population, male or female, native-born or domiciled, who have contributed by manual labour to the service of the state, and who have taken the trouble of having their names registered as voters. Real swaraj will come not by the acquisition of authority by a few, but by the acquisition of the capacity by all to resist authority when abused. In other words, swaraj is to be attained by educating the masses to a sense of their capacity to regulate and control authority (63).

Swaraj or self-government, can never be a free gift by one nation to another. It is a treasure to be purchased with a nation's best blood. Swaraj will be the fruit of incessant labour, suffering beyond measure.

The swaraj of Gandhi's dream recognised no

racial or religious distinctions. Nor was it to be the monopoly of the educated persons, and the monied men. Swaraj has to be for all, including the former, but emphatically including the maimed, the blind, the starving, toiling millions (64).

Under swaraj based on non-violence, nobody is anybody's enemy, everybody contributes his or her due quota to the common goal, all can read and write, and their knowledge keeps growing from day to day. Sickness and disease are reduced to the minimum. No one is pauper and labour can always find employment. There is no place under such a government for gambling, drinking and immorality or for class-hatred. The rich will use their riches wisely and usefully (65).

His swaraj is the poor man's swaraj or Ram Raj. Ram symbolized justice, equality, truth and charity. Ram Raj can only come out of truth and non-violence pursued as a creed. It is complete independence of alien control and complete economic independence. Besides these two ends, i.e., political and economic independence, it has two other ends. One of them is moral and social, the corresponding end is Dharma, i.e., religion in the highest sense of the term (66).

Self-government

Self-government means continuous effort to be independent of government control whether it is foreign government or whether it is national. "Swaraj government will be a sorry affair", said Gandhi,

"if people look up to it for the regulation of every detail of life (67).

Gandhi's conception of self-government means, a man governing his own being is the highest type of reformer. This concept is the basis of Gandhi's philosophy. Economic reform, political reform, social reform, religious reform are but extensions of individual reform. For example, he said, "Indian economic independence means to me the economic uplift of every individual, male and female, by his or her own conscious effort" (68).

One may here find a striking similarity between Gandhi's concept of 'self-government' and J.S.Mill's concept of 'Liberty'. The central idea of Mill's essay 'On Liberty' is the immense importance to mankind of encouraging and promoting a large variety of types of character and modes of thinking. Thus, like Gandhi, Mill was also in favour of permitting full freedom to human nature to expand and improve in all kinds of directions. Like Gandhi he also disliked 'over government'. Mill pointed out that the powers of society and the government over the individual are constantly growing and that unless they be restrained by a strong conviction of the value of individual liberty, the government and public opinion may impose upon mankind an oppressive yoke of uniformity in thought and practice, unfavourable to the development of new ideas and of moral standards (69). Hence, Mill declared, "the only part of

the conduct of any one, for which he is amenable to society, is that which concerns others. In the part which merely concerns himself, his independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign"[70].

Rights and Duties

Gandhi attached far greater importance to duties than to rights. Rights are the opportunities for self-realisation. The way to self-realisation is the realisation of one's spiritual unity with others by serving them and doing one's duty by them. Thus every right is the right to do one's duty. The true source of rights is duty. If we all discharge our duties, rights will not be far to seek, If leaving duties unperformed we run after rights, they will escape us like a will-O' the-wisp. The more we pursue them, the further will they fly[71].

It is true that the capitalists and zamindars talk of their rights, the labourer on the other hand of his, the prince of his divine right to rule, the ryot of his to resist it. But Gandhi thought that "if all simply insist on rights, and no duties there will be utter confusion and chaos"[72].

Gandhi believed that if, instead of insisting on the rights, everyone performed his duty, there would immediately be the rule of order established among mankind. It was, therefore, necessary to understand the correlation of rights and duties. He suggested that "the rights that do not flow

directly from duty well-performed, are not worth having. They will be usurptions, sooner discarded the better"[73].

Gandhi pointed out that in swaraj based on Ahimsa, people need not know their rights, but it is necessary for them to know their duties. Because there cannot be any duty that can not create a corresponding right. Rights of true citizenship accrue only to those who serve the state to which they belong. Swaraj comes only from performance by individuals of their duty as citizens[74].

(b) Social:

Gandhi always laid emphasis on social service rather than on the self-regarding propensities of the individual.

Emphasis on Social Service

He wrote, "people who obtain rights as a result to performance of duty, exercise them only for the service of society, never for themselves"[75].

Gandhi's swaraj is concerned with a simultaneous reform of the individual and society. There can not be a divorce between the two. The individual and society both act and react upon each other. To Gandhi society was just like a family, and the relation between the individual and society was one of close interdependence. He rejected alike the unrestricted individualism that ignores social obligations as well as

the other extreme view which regards the individual as a mere cog in the social machine. He wrote, "I value individual freedom, but you must not forget that man is essentially a social being. He has risen to the present status by learning to adjust his individualism to the requirements of social progress"(76). Hence, his individualism is not egoism but proceeds from a recognition of the extension of the dimensions of the human spirit through service.

In Gandhi's philosophy one has to lose oneself in the continuous service of all life. The individual must live for social service, he must work not only for his own freedom but also for that of his fellow beings. Gandhi reconciled self-realisation with service to society. The conception that salvation can be sought in the seclusion of solitude was not acceptable to him. Self-realisation to him meant realisation of 'the greatest good of all'. His constant aim was the realisation of God and truth through service of mankind. In Gandhism, spiritual realisation and social service were integrally connected.

Untouchability means pollution by the touch of certain persons by reason of their birth in a particular state or family(77). Gandhi was a determined opponent of untouchability; which he regarded as a blot on the fair face of India. He said, "I have never been able to reconcile myself to 'untouchability' I have always regarded it as an excrescence"(78).

Untouchability

Gandhi liked 'Varna' Dharma which sanctions four orders based on scriptural authority. This 'Varna' scheme places all the 'Varnas' on equal footing, doing the services, respectively assigned to them, and there is nothing in this law of 'varna' to warrant a belief in untouchability. Gandhi was very unhappy with the contemporary caste system in Indian society, which to him was a social evil, and encouraged inequality and disruption of which the worst manifestation was untouchability that had turned caste against caste and religion against religion. His suggestion was that untouchables or Adi Sudras should cease to be untouchables and be accepted as inalienable part of Sudra varna. Therefore, he meant by the removal of untouchability, the abolition of fifth caste. The untouchable should freely exercise all the rights of a non-Brahmin (79).

Gandhi broke in his own person and encouraged other high caste Hindus to break all the traditional taboos which separated them from the lower castes. He took a low caste girl to live in his house. He loved to make his dwelling in the Bhangi quarters of Delhi. He called the lower castes - Harijans (God's children) and gave that title to his own weekly paper.

To him untouchability was a soul-destroying sin. It has been a passion of his life to serve the untouchables because he had felt that he could not remain a Hindu if it was true that untouchability was a part of Hinduism. "I think we are committing a great sin in treating a whole class of people

as untouchables. If we don't mind contact with a Christian or a Muslim, why should we mind it with one belonging to our own religion?", he asked (80). This he regarded as rank irreligion, fit only to be destroyed. He treated removal of untouchability as an Ashram observance to assert his belief, that it was not only not a part and parcel of Hinduism, but a plague which it was the bounden duty of every Hindu to combat. Gandhi regarded untouchability, a hindrance to swaraj and to the attainment of Hindu-Muslim unity. He said in his Presidential address at Belgaum Congress, "this is an essentially Hindu question and Hindus cannot claim to take swaraj till they have restored the liberty of the suppressed classes. They have sunk with the latter's suppression ..... The sooner we remove the blot, the better it is for the Hindus ..... To remove untouchability is a penance that caste Hindus owe to Hinduism and to themselves" (81). He said that he should be content to be torn to pieces rather than disown the suppressed classes ..... He loved Hinduism dearer than life itself; the taint had become for him an intolerable burden. "Let us not deny God by denying to a fifth of our race the right of association on an equal footing" (82). He wished that if he had to be reborn, he should be an 'untouchable' so that he could share their sorrows, sufferings and the affronts levelled at them in order that he might endeavour to free them from their miserable condition" (83).

Besides Gandhi, Ambedkar and Savarkar were

the other two forces which began to operate for the uplift of the untouchables. Gandhi was a reformer while Savarkar and Ambedkar were social revolutionaries. A reformer rebuilds the old structure. A revolutionary blows up the old building and builds a new one (84).

As a humanist, Gandhi's efforts stemmed from his genuine sympathy for the suppressed people under the sun. It was not his purpose to refashion or to reorganise Hindu society. As a believer in the caste system and the four varnas, it was his aim to solve the problem within the social structure prevailing in his time.

Savarkar's stand was nationalistic, realistic and revolutionary in its outlook as well as in action inasmuch as he aimed at moulding the different castes of the Hindus into a casteless Hindu society in which all Hindus would be socially, economically and politically equal. It was his aim to establish a powerful state on the invincible foundation of oneness and unity of the Hindus (85). He said that untouchability must be condemned and abolished not only as the need of the hour but also as the command of true religion, not only as a policy or as an act of expediency, but also a matter of justice; not only as a matter of obligation but also as a service to humanity (86).

Ambedkar sprang from amongst the untouchables themselves. He was a leader who thought as they thought

and felt as they felt. Over a decade he had observed, experienced and studied their utter privations, the appalling penury of their lives and their unclean habits. He boiled at their degraded condition and gave vent to their pent-up passions, their mind and their stifled self.

He was a man who regarded the woes and miseries of those classes as a personal humiliation, and therefore he had taken a vow to make self-respecting citizens out of those virtual slaves.

Ambedkar hated the sense of dependency and abhorred the feeling of patronage of the caste Hindu reformers. He taught the untouchables self-respect and self-reliance and exhorted them to fight for self-elevation (87).

Now, if we try to assess their respective positions, we find that Gandhi saw the problem of untouchability from one angle and Ambedkar and Savarkar saw the same problem from a completely different angle. To Gandhi it was a problem of adjustment and understanding amongst the members of the four varnas. As such, his attempts to this end remained primarily confined to appeals to the Hindus and ethical prescriptions and suggestions to different communities. On the other hand, Ambedkar and Savarkar had condemned the caste system. On this issue they were very near to each other. Savarkar fearlessly and whole-heartedly supported Ambedkar's struggle. Their unity of mind and character is reflected from a letter from Ambedkar to

Savarkar where the former wrote "..... if the untouchables are to be part and parcel of Hindu society, then it is not enough to remove untouchability, for that matter you must destroy chaturvarna. I am glad that you are one of the very few who have realised this (88).

Gandhi's wishes on this issue found partial and limited expression in the article for Fundamental Rights and the Directive Principles of the Indian Constitution. Article 17 categorically declares that 'untouchability' is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of 'untouchability' shall be an offence punishable in accordance with law. Besides, there are other provisions, viz., article 14 assuring equality before the law and equal protection of the laws, article 15(1) prohibiting the state to discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them and article 15(2) assuring all citizens access to shops, public restaurants, hotels and places of public entertainment and throwing open all wells, tanks, bathing ghats, roads and places of public resort. Article 16 goes further in matters relating to employment. Article 19 guarantees seven freedoms to all the citizens irrespective of religion, race, caste, sex etc. Articles 23 and 24 guarantee 'right against exploitation'. Article 46 declares - "the state shall promote with special care the

educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

Status of Woman

With equal generosity Gandhi took up another great cause, that is, emancipation of women in India. Indian womanhood was in a pitiable condition at the beginning of this century. Both law and religion gave her a subordinate status in comparison with man. She was denied educational facilities and bartered away in marriage at a tender age when she knew not what it meant to be a wife. The agonies of child wives and child mothers were numerous and the woes of widows and deserted wives innumerable. The evil custom of 'Devadasi' in South India condemned her to a life of shame and the pernicious institution of Purdah in North sentenced her to a life long prison where, without light of knowledge illuminating her vision, steeped in ignorance and prejudice, groping in the dark, she became a martyr to the conventions of the society in which she had been born (89).

Gandhi was uncompromising in the matter of woman's rights. His opinion was that she should labour under no legal disability, not suffered by man. He would treat the daughters and sons on a footing of equality (90). He was a passionate advocate of the utmost freedom for Indian women. He detested child marriages. He shuddered to see a child widow, and

and shivered with rage when a husband, just widowed, with brutal indifference, contracted another marriage. He deplored the criminal indifference of parents who kept their daughters utterly ignorant and illiterate and brought them up only for the purpose of marrying them off to some young man of means (91).

He had been a fierce opponent of Purdah (92) and called it a 'vicious and brutal custom' which had kept women backward and under-developed. He condemned their domestic slavery and urged that woman should have the same liberty and opportunity of self-development as men. The division of the spheres of work being recognised, the general qualities and culture required were practically the same for both the sexes (93). He opposed the dowry system and the Devadashi system as an institution for the perpetuation of vice, which must go if Hinduism was to be purified (94). In exceptional cases of extreme cruelty on the part of the husband, he even favoured divorce. He termed that religion as irreligion, which assigned a subordinate place to women, and sanctioned evil customs like child marriage (95). His firm opinion was that India's salvation depended on the sacrifice and enlightenment of her women (96). In his speech on New year's day, January 1, 1948, he said, "a community or country in which women are not honoured cannot be considered as civilised (97). At his call our women came to the front and took charge of the Civil Disobedience movement which took not only the British Government but their own men-folk by surprise (98).

Gandhi included the uplift of women in the

Constructive Programme and appealed to the Congressmen to give the women of India a lifting hand (99).

Certain provisions in Parts III and IV of the Constitution of India may be considered to have been somewhat influenced by Gandhi's spadework on the subject. Equal status of women is first of all recognised by the 'right to equality'. According to Article 14, all persons, implying both men and women alike, are assured of equality before the law and equal protection of the laws. Article 15(3) reserves the right for the state to make special provisions for women. Article 16 guarantees equality in respect of public employment. Article 39(a) and (d) state, respectively, that "the state shall, in particular, direct its policy towards securing - (a) that the citizens, men and women equally, have the right to an adequate means of livelihood; (d) that there is equal pay for equal work for both men and women.

Equal respect for all religions

To Gandhi, all religions were one in spirit - so many pathways to the same ultimate reality - the sovereign God of Love and Truth. Though his inclination was greater for Hinduism, he was not a blind believer accepting unquestioningly all the ill-traditions and evil customs of his religion. His religion must satisfy his reason and correspond to the dictates of his conscience. By religion he did not mean the Hindu religion which he

certainly prized above all other religions, but the religion which transcends Hinduism, which changes one's very nature, which binds one indissolubly to the truth within and which ever purifies. He pointed out that it was the permanent element in human nature which counts no cost too great in order to find full expression and which leaves the soul utterly restless until it has found itself, known its Maker and appreciated the true correspondence between the Maker and itself" (100).

He believed in the fundamental truth of all great religions of the world. To him these were all God-given (101). If only we could all of us read the scriptures of different faiths from the stand point of the followers of those faiths we should find that they were at bottom all one and were all helpful to one another (102). He said: "The essence of all religions is one, only their approaches are different" (103). For him the different religions were beautiful flowers from the same garden, or they were branches of the same majestic tree, or leaves on a tree, there was no antagonism between them, they were equally true. Men being imperfect, all religions were also imperfect revelations of truth and liable to error (104).

The need of the moment, he said, was not one religion, but mutual respect and tolerance of the devotees of the different religions. We want to reach not the dead level but unity in diversity (105).

Gandhi did not believe in state religion (106). He contemplated a secular state which had nothing to do with religion. "If I were a dictator", he said in 1946, "religion and state would be separate. Religion is purely a personal concern". According to him the state cannot concern itself or cope with religious education, which must be the sole concern of religious associations. He was also opposed to state aid partly or wholly to religious bodies. An institution or group, which does not manage to finance its own religious teaching is a stranger to true religion. Here Gandhi meant denominationalism and not fundamental ethics common to all religions. Teaching of fundamental ethics was a function of the state.

Gandhi's views have found their place in the 'Right to Freedom of Religion' (article 25-28) and 'Cultural and Educational Rights' (article 29,30) of the Indian Constitution. In fact, his whole concept of secularism has found suitable expression in the Constitution. These provisions, taken together, give to the religious minorities, freedom of religion, protection of language, script and culture, and the right to maintain their religious and educational institutions, and safeguard against discrimination based on grounds of race, religion, caste etc.

Besides, the protection of minorities (including religious minorities) figured very prominently in the Constituent

Assembly. And after much debate, the minorities were again granted some privileges which are embodied in Articles 330-340 of the Indian Constitution.

(C) Economic: Concept of Economic Order

Gandhi was of the opinion that the economic constitution of India and for the matter of that, of the world, should be such that no one under it should suffer from want of food and clothing. He thought, this ideal could be universally realised, if the means of production of the elementary necessaries of life remained in the control of the masses (107).

To Gandhi the contrast between the rich and the poor was a 'painful sight'. He thought it disgraceful that poor villagers who produced the food go hungry. His picture of economic equality conveyed the idea that everyone must have balanced diet, a decent house to live in, facilities for the education of one's children, and adequate medical relief. He was not opposed to everything above and beyond the bare necessaries but they must come after the essential needs of the poor were satisfied. First things must come first (108).

At the centre of Gandhi's economic programme for India, was his plan for revival of the village economy. He took up the cause of the peasants and clearly saw the tendency towards urbanisation and the exploitation of the villages for the sake of urban centred economy. He saw that the only way of

bringing hope of good living to the people in the rural areas is by making the villages the centre-piece in the economic programme.

In his "Constructive Programme" working for 'economic equality' was one of the programmes. To Gandhi it meant, abolishing the eternal conflict between capital and labour, it meant the levelling down of the few rich in whose hands was concentrated the bulk of the nation's wealth on the one hand, and a levelling up of the semi-starved naked millions on the other. In his view, a non-violent system of government was clearly an impossibility so long as the wide gulf between the rich and the hungry millions persisted (109). In his judgement, any kind of economy which exploits people and concentrate wealth in a few hands, stands self-condemned.

According to Gandhi, Khadi and village industries represent the symbol of economic freedom and equality. He felt that real economic freedom means that the common necessaries of life should be found through the labour of villagers (110). His attempts to find a solution for the poverty of the country were not entirely motivated by economic consideration. It was a case of applying certain basic principles, highly ethical in their content, to the special field of economics. It was a newly created 'Economy of delight' in the service of the good that would come eventually to lead and to direct the quantitative economy (111).

Gandhi was opposed to the machine-age, but not to the machine as such. He believed that machine is good when it serves man, but not when it seeks to master him.

Gandhi did not reject machinery as such. What he objected to was the craze for machinery. The craze is for what they call labour-saving machinery. Men go on saving labour till thousands are without work and thrown on the open streets to die of starvation. He held that machinery was harmful when the samething could be done easily by millions of hands not otherwise occupied. An industrialised India must therefore mean utter extinction of many millions. Therefore, he never agreed with those who favoured the use of machine in India (112).

Gandhi's ideas on Socialism

Gandhi was not a doctrinaire socialist believing in the state ownership of the means of production. If he was a socialist at all, his type of socialism was village socialism. To quote him, "my socialism means even unto this last. I do not want to rise on the ashes of the blind, the deaf, and the dumb ..... I want freedom for the full expression of my personality ..... under the other socialism, there is no individual freedom. You own nothing, not even your body" (113). Socialism and communism of the West are based, according to Gandhi, on their belief in the essential selfishness of human nature. Gandhi did not subscribe to that view. He did not approve of the idea of class-war. His own method was 'conversion', not compulsion. In his opinion

class-war was not inevitable, if the doctrine of trusteeship is accepted and implemented. Gandhi wrote in Young India in 1929: 'The idea I want to realise is not spoliation of the property of private owners, but to restrict its enjoyment so as to avoid all pauperism, consequent discontent and the hideously ugly contrast that exists today between the lives and surroundings of the rich and the poor'(114).

It was not out of any theoretical study or critical intellectual analysis of the social development of history that Gandhi arrived at his socialism. His concept of socialism was entirely his own in the sense that socialism did not represent itself to him as a necessary and logical stage in social evolution growing out of production relations of capitalism.

He developed his concept of socialism when he was confronted with the growing influence of scientific socialism and when the whole country was surcharged with socialist slogans. Even the platform of the Indian National Congress was utilized to voice the urges of the newly emerging socialist forces. Jawaharlal advocated socialism in 'the scientific, economic sense'(115) as 'the only key to the solution of the world's problems and of India's problems'. At the Faizpur Congress (December 1936) the same fervour was noticeable.

In 1916 Gandhi said: "I am no socialist and I do not want to dispossess those who have got possessions. I should then be departing from the rule of Ahimsa"(116). But in 1924 he

admitted the necessity of nationalization or state control. Thus Gandhi was not a dogmatist. He always tried to adapt himself with the changed situation. But it was only after 1934 when the idea of a substantial section of Congressmen and of the educated public in general turned for the first time towards socialism, that he also began to call himself a socialist. But he was a socialist not in the Marxist sense of the term. Gandhi said, "I call myself a socialist, I love the very word, but I will not preach the same socialism as most socialists do." (117)

During his detention in the Aga Khan Palace (1942-4) Gandhi read for the first time, at the age of seventy four, Karl Marx's first volume of Capital. He did not care whether Marxism was right or wrong. Moral indignation against acquisitiveness was the axiology of socialism for him. He said "All I know is that the poor are being crushed. Something has got to be done for them. To me this is axiomatic" (118).

By economic equality Gandhi did not mean absolute equality, because that was neither possible nor desirable. He believed in approximate equality. Gandhi wrote: "Economic equality must never be supposed to mean possession of an equal amount of worldly goods by everyone. It does mean, however, that everyone will have a proper house to live in, sufficient food to eat and cloth to wear. It also means that the cruel inequality that obtains to-day will be removed by purely non-violent means." (119)

Therefore, his conception of economic equality did not mean that everyone would literally have the same amount. It simply meant that everybody should have enough for his or her needs, so the real meaning of economic equality was, "to each according to his needs" (120).

It meant the levelling down of the few rich in whose hands was concentrated the bulk of the nation's wealth on the one hand, and the levelling up of the semi-starved, naked millions on the other. A violent and bloody revolution, he believed, was a certainty one day, unless there was a voluntary abdication of riches and the power that riches give, and sharing them for the common good (121).

The Encyclopaedia of the Labour Movement gives the definition of socialism as follows:

> "Socialism is a working class doctrine and movement aiming through the class struggle, at the collective control of society, by the capture of the state machine by the workers and the establishment of self-government in industry." (122) Gandhian socialism is based on assumptions different from the assumptions stated in the above definition.

Nevertheless, Gandhi often claimed in the course of his discussion with communist and socialist friends that he was a better communist or a socialist than they. Their goal was

identical. The difference in regard to the means and the technique employed was however fundamental. Changing the structure of society through violence had no attraction for him because he believed that it would not benefit the dumb millions of India (123).

Gandhi believed that economic justice could not be achieved through violence and coercion. "By non-violent method we seek", he wrote in March 1931, "not to destroy the capitalist, we seek to destroy capitalism ....." (124) He believed that exploitation of the poor could be ended not by destroying a few capitalists but by removing the ignorance of the poor and teaching them to non-cooperate with their exploiters.

Therefore, Gandhi's opposition to capitalism was not based on any logic, like that of the materialist conception of history propounded by Marx, from which to arrive at the inevitability of socialism. Gandhi did not adopt any theory of value which could explain accumulation of the surplus value. He opposed capitalism, because there was too much of inequality in it, because he did not subscribe to the capitalistic code of justice.

But with the passage of time, his criticism of capitalism grew more severe. The soul-killing process and the economic inquality generated by capitalism repelled him and he tried in his own way to bring about an end to the rule of capital. The ideal society as he conceived it, was not to be brought about by forcible overthrow of capitalism but by pursuing the principle

of trusteeship. And that was in keeping with his general creed of conversion since he believed that man was not beyond redemption. The theory of conversion or change of heart follows from his concept of human nature.

After the 1917 Revolution of Russia, Gandhi's views on Bolshevism was as follows: "I must confess that I have not yet been able fully to understand the meaning of Bolshevism. All that I know is that it aims at the abolition of the institution of private property. This is only an application of the ethical ideal of non-possession in the realm of economics, and if the people adopted this ideal of their own accord or could be made to accept it by means of peaceful persuasion, there would be nothing like it. But from what I know of Bolshevism, it not only does not preclude the use of force but freely sanctions it for the expropriation of private property and for maintaining the collective state ownership of the same. And if that is so, I have no hesitation in saying that the Bolshevik regime in its present form cannot last for long. For it is my firm conviction that nothing enduring can be built on violence ....."

Gandhi expected to convert the capitalists by the non-violent method and therefore, there was for him nothing like an inevitability of class conflict. He said: "the moment the cultivators of the soil realize their power, the zamindari evil will be sterilized ... In reality the toiler is the owner of what he produces. If the toilers intelligently combine, they

will become an irresistible power. That is how I do not see the necessity of class conflict" (126). He did not believe that there was an irreconcilable antagonism between the interests of the capitalists and those of the masses. What was needed, according to him, was not the extinction of capitalists, but a transformation of the existing relationship into something healthier and purer.

Hence, we have seen that there are common points between Marx's socialism and Gandhi's socialism, since both of them originated from a desire for the welfare of the masses. The cause of the poor, the exploited, and the have-nots is the basic sentiment running through both. But Gandhi's socialism was more a code of personal conduct and a programme for service of the poor than an economic ideology. Socialism for Gandhi was neither a gospel for the expropriation of the rich nor a programme for the nationalization of the means of production, distribution, and exchange, but it was based essentially on ideas of non-possession, trusteeship, non-violence, human equality, and service of the poor (127). Gandhi's faith was in individuals and co-operative effort and not in the state. He could not trust the state with unlimited power for bringing about a radical social and economic transformation. An omnipotent state would not bring about a good society, it would only emerge as the most powerful tyrant and create a situation in which the Marxian dream of the state withering away would never be fulfilled. Gandhi therefore, wanted to establish a village based

utterly decentralized society where power would be universally dispersed (128).

Gandhi, while attacking the inequitable and unjustifiable basis of capitalism and vested interests, went on pleading for the adoption of trusteeship. The theory of trusteeship occupies a central place in the scheme of Gandhian thought.

Concept of trusteeship

Whatever talents, physical strength, wealth or other capacities a person might possess, he should take them as having been given to him as a trustee, for the benefit of the world. This is the noble idea of trusteeship (129). Where persons possess property, whether that possession is vested in them in a manner deemed legal at the time or otherwise, they must be deemed to hold it in trust for society and not for themselves (130).

In the nature of things, some will have ability to earn more, and they will utilise their talents for this purpose. If they utilise their talents kindly, they will be performing the work of the state. Such people exist as trustees, on no other terms. Gandhi said "I would allow a man of intellect to earn more, I would not cramp his talent. But the bulk of his greater earnings must be used for the good of the state" (131).

In an interview with Prof. N. K. Bose in November 1934 explaining why he preferred the doctrine of Trusteeship, Gandhi said: "Those who own money now are asked to

behave like trustees holding their riches on behalf of the poor. You may say that trusteeship is a legal fiction. But if people meditate over it constantly and try to act up to it, then life on earth would be governed far more by love than it is at present. Absolute trusteeship is an abstraction. But if we strive for it, we shall be able to go further in realizing a state of equality on earth than by any other method."(132)

In 1939, in reply to a question by a member of the Gandhi Seva Sangha, he explained the theory of trusteeship in the following terms:

> "Supposing I have come by a fair amount of wealth .... I must know that all the wealth does not belong to me; what belongs to me is the right to an honourable livelihood, no better than that enjoyed by millions of others. The rest of my wealth belongs to the community and must be used for the welfare of the community ..."(133) Gandhi wanted the capitalists to outgrow their greed and sense of possession, and to come down inspite of their wealth to the level of those who earn their bread by labour.

Gandhi asked the owners of wealth to make their choice between class war and voluntarily converting themselves into trustees of their wealth. They would be allowed to retain the stewardship of their possessions and to use their talent to

increase the wealth, not for their own sake, but for the sake of the nation and, therefore, without exploitation. The state would regulate the rate of commission which they would get commensurate with the service rendered, and its value to society.

If, however, the rich do not rise to the occasion and accept the new basis of ownership, then Gandhi proposed to employ the weapon of non-violent, non-co-operation and civil-disobedience, but if they fail, he was not against the state resorting to confiscation with the minimum exercise of violence when necessary.

Gandhi summed up his idea of trusteeship in the following formula:

(1) Trusteeship provides a means of transforming the present capitalist order of society into an egalitarian one; it gives no quarter to capitalism, but gives the present owner-class a chance of reforming itself. It is based on the faith that human nature is never beyond redemption.

(2) It does not recognise any right of private ownership of property except in as much as it may be permitted by society for its own welfare.

(3) It does not exclude legislative regulation of the ownership and use of wealth.

(4) Thus, under state regulated trusteeship, an individual will not be free to hold or use his wealth for selfish

satisfaction or in disregard of the interest of society.

(5) Just as it is proposed to fix a decent minimum living wage, even so a limit should be fixed for the maximum income that could be allowed to any person in society. The difference between such minimum and maximum incomes should be reasonable and equitable and variable from time to time, so much so, that the tendency would be towards obliteration of the difference.

(6) Under the Gandhian economic order the character of production will be determined by social necessity and not by personal whim or greed (134).

Gandhi was not a believer in class struggle. His emphasis was on class-co-operation, all working together for a common good. He insisted upon adherence to truth and non-violence for achieving this object. He was a philosophical idealist. While Marx, a dialectical materialist, did not care about the quality of the means, provided they appear efficient enough for achieving the end as quickly as possible (135). Marx puts forth the theories of class war, expropriation of land, mines and other material sources of wealth and its end through the Dictatorship of the Proletariat. As against this the Gandhian theories are those of satyagraha, decentralisation, trusteeship etc.

The theory of trusteeship has been generally objected to on the ground that as a means of effecting social transformation this theory, its ethical content notwithstanding, is ineffective.

According to the Marxist thinkers, the division of society into the property-owning and the property-less classes, which is the characteristic of capitalism, is sought to be retained in Gandhism also. The only difference in Gandhism is that the erstwhile capitalist, property-owning class will consider itself trustee on behalf of the proletariat. The change is purely in the subjective sphere, the objective conditions of production will continue by remaining as they were in capitalism. Production will continue by unplanned private competition among the individual trustees. These conditions of production have a compelling logic of their own which lead to the same contradictions as are witnessed under capitalism to-day. The class appropriation of surplus value, which trust productions will continue in a pious guise, will mean larger and larger accumulations of the capital on the one hand and pauperization of the masses on the other .... These evils can not be banished by wishing a change in the hearts and minds of the owners of property. (136)

Gunnar Myrdal maintains that "The trusteeship idea is fundamentally a concept that fits into a paternalistic, feudal, pre-democratic society. It is so flexible that it can serve as a justification for inequality ....." (137)

Jawaharlal Nehru wrote: "Is it reasonable to believe in the theory of trusteeship to give unchecked power and wealth to an individual and to expect him to use it entirely for the public good? Are the best of us so perfect as to be trusted in this way? ... And is it good for the others to have even these benevolent supermen over them?"(138)

According to Professor Amlan Datta: "In actual practice the Gandhian theory lends itself to being employed as a shield against any movement for overthrowing the dominant classes in existing society."(139)

As to the argument that trusteeship will help in the process of humanization of social relationship, it may be submitted that the socialization of property is the basic pre-condition for such transformation to take place in reality. Humanism is an empty concept so long as class divisions persist.(140)

In providing for adequate means of livelihood to all citizens, a proper distribution of the material resources of the community for the common good, the prevention of concentration of wealth to the common detriment, in Article 39, right to work, education and public assistance in cases of undeserved want, in Article 41, living wage and decent standard of life, in Article 43, one can feel the vibrations of the cherished ideas of the Gandhian economic order, but it will be hardly possible to establish a clear linkage between the two.

NOTES AND REFERENCES.

1. As quoted in Gopinath Dhawan, The Political Philosophy of Mahatma Gandhi, Navajivan Publishing House, Ahmedabad, 1946, p. 38.

2. Ibid.

3. Ibid.

4. P. Sitaramayya, Gandhi and Gandhism, 1942, Vol. I, p. 35.

5. J. B. Kripalani, The Gandhian Way, Bombay, 1938, p. 159.

6. D. G. Tendulkar, Mahatma, Government of India Publication, 1963, Vol.IV, pp. 54-55.

7. Ibid, p. 55.

8. S. Radhakrishnan (Ed.), Mahatma Gandhi - life and reflections, Jaico Publishing House, Bombay, 3rd Edn., 1964, p.14.

9. As quoted in B.S. Sharma, "Understanding Gandhi", The Indian Political Science Review, Vol. IV. No. 1, (October 1969 - March 1970) p. 2.

10. Paul F. Power, Gandhi on World Affairs, Public Affairs Press, Washington D.C., 1960, p. 35.

11. G. Dhawan, op. cit., (n.1) pp. 287-88.

12. Young India, II, p. 1204.

13. V.P.Varma, "Philosophical Foundations of Gandhi's Political Thought", The Indian Political Science Review, Vol. IV. No. 1, p. 16.

14. Harijan, March 11, 1939.

15. V.P. Varma, op. cit., pp. 14-15.

16. Sugata Dasgupta, "The Central Theme" Seminar, October, 1969, p. 15.

17. A. Appadorai, Indian Political Thinking - from Naoroji to Nehru, O.U.P. 1971, p. 40.

18. Collected Works of Mahatma Gandhi, Government of India Publications, Vol. XXVI, p. 140.

19. As quoted in Romain Rolland, Mahatma Gandhi, Government of India Publication, p. 36.

20. Harijan, January 25, 1942.

21. Young India, April 6, 1921.

22. As quoted in C.F. Andrews, Mahatma Gandhi's Ideas, George Allen & Unwin, 1949, pp. 142-43.

23. A. Appadorai, op. cit. (n. 17) p. 41.

24. Young India, August 11, 1920.

25. D.G.Tendulkar, op. cit., (n.6) Vol. II, p. 327.

26. Selected Works of Mahatma Gandhi, Navajivan Publishing House, Ahmedabad, Vol. VI, p. 155.

27. Harijan, November 12, 1938.

28. As quoted in Polak, Brailsford and Pathick Lawrence, Mahatma Gandhi, Jaico Publishing House, Bombay, 1952, p. 117.

29. A. Appadorai, op. cit., (n. 17) p. 42.

30. Harijan, 12 November, 1938, p. 328 as quoted in Appadorai, (n. 17) p. 42.

31. Young India, December 26, 1924, p. 424.

32. G. Dhawan, op. cit., (n. 1) p. 55.

33. Young India, July 17, 1924, p. 236.

34. M. K. Gandhi - Hind Swaraj, 1958, p. 71.

35. A. Appadorai, op. cit., (n. 17) p. 37.

36. Appadorai, Documents on Political Thought in Modern India, Vol. 1, O.U.P., 1973, Document-124, p. 290.

37. A. Appadorai, op. cit., (n. 17) p. 37.

38. A. Appadorai, op. cit., (n. 36) Document-204, pp. 369-70.

39. Ibid., Document No. 209, p. 372.

40. Ibid., Document No. 118, p. 282.

41. Ibid., Document No. 98, pp. 254-56.

42. S. Radhakrishnan (Ed.), op. cit., (n. 8) p. 271.

43. Harijan, May 27, 1939, p. 136.

44. G. Dhawan, op. cit., p. 317.

45. Ibid., p. 282.

46. N. K. Bose, Selections from Gandhi, Navajivan, Ahmedabad, 1957, p. 41.

47. Ibid., pp. 40-41.

48. Selected Works of Mahatma Gandhi, (n. 26) Vol. VI, pp.229-30.

49. Young India, December 9, 1926, p. 432.

50. Harijan, January 18, 1948.

51. A. Appadorai, op. cit., (n. 17) p. 127.

52. Selected Works of Mahatma Gandhi, (n. 26) Vol. II, p. 231.

53. Young India, 2.7.31. p. 162.

54. Young India, 6.8.25. p. 276.

55. Speeches & writings of M. K. Gandhi, G.A. Natesan & Co., Madras, 3rd Ed., 1922 p. 301.

56. G. Dhawan, op. cit., p. 328.

57. Ibid., p. 314, f.n.

58. K.P. Misra & Rajendra Avasthi Ed., Politics of Persuation, Manaktala, Bombay, 1967, p. 295.

59. Young India, September 10, 1931, also M. K. Gandhi, India of my dream, Navajivan, Ahmedabad, 1947, p. 6.

60. Harijan, September 1, 1940.

61. Buddhadeva Bhattacharyya, Evolution of the Political Philosophy of Gandhi, Calcutta Book House, 1969, pp. 375-77.

62. Young India, March 19, 1931.

63. Young India, January 29, 1925.

64. Young India, March 26, 1931.

65. Harijan, March 18, 1939.

66. Harijan, January 2, 1937.

67. Young India, August 6, 1925, p. 276.

68. S. Radhakrishnan (Ed.), op. cit., (n. 8) p. 235.

69. J. S. Mill, On Liberty, O.U.P., 1954, p. IX.

70. Ibid., p. 15.

71. Young India, January 8, 1925.

72. M. K. Gandhi, My Non-violence, Navajivan Publishing House, Ahmedabad, 1960, p. 312.

73. Ibid.

74. Selected Works of Mahatma Gandhi, (n. 26) Vol. VI, pp.442-43.

75. Harijan, March 25, 1939.

76. G. Dhawan, op. cit., (n. 1) p. 287.

77. Selected Works of Mahatma Gandhi, (n. 26) Vol. V, p. 235.

78. C.F. Andrews, op. cit., (n. 22) p. 40.

79. Collected Works of Mahatma Gandhi, (n. 18) Vol. XXII, p.136.

80. Selected Works of Mahatma Gandhi, (n.26) Vol. V, p. 443.

81. Collected Works of Mahatma Gandhi, (n. 18) Vol. XXV, p. 479.

82. As quoted in C.F. Andrews, op. cit., (n.22), pp. 41-42.

83. As quoted in Romain Rolland, op. cit., (n.19) p. 25.

84. Dhananjay Keer, Dr. Ambedkar - Life and mission, Popular Prakashan, Bombay, 3rd Edn., 1971, p.59.

85. Ibid.

86. Ibid., p. 79.

87. Ibid., pp. 59-60.

88. As quoted in D. Keer, pp. 230-31.

89. P. C. Ray, Life and Time of C.R. Das, as quoted in P.D. Kaushik, The Congress Ideology and Programme, Allied Publishers, 1964, p. 152.

90. Young India, October 17, 1929, p. 340.

91. As quoted in C.F. Andrews, op. cit., (n. 22) p. 323.

92. Young India, July 26, 1928.

93. D.G. Tendulkar, op. cit., (n. 6) Vol. V, p. 97.

94. Harijan, September 14, 1934.

95. Young India, August 16, 1926.

96. Harijan, June 27, 1936, p. 153.

97. Selected Works of Mahatma Gandhi, (n. 26) Vol. VI, p. 489.

98. Jawaharlal Nehru, The Discovery of India, Asia Publishing House, 1969, p. 41.

99. D.G. Tendulkar, op. cit., (n. 6) Vol. VI, p. 24.

100. Young India, May 12, 1920, p. 2.

101. Harijan, February 16, 1934, pp. 5-6.

102. Ibid.

103. Selected Works of Mahatma Gandhi, Vol. VI, op.cit., (n. 26), p. 269.

104. Harijan, January 30, 1937, p. 407 and Harijan, May 25, 1946, p. 154.

105. Young India, September 25, 1924, pp. 317-18.

106. References to Gandhi's views on this topic are: Harijan, September 22, 1946; March 16, 1947; November 9, 1947; March 23, 1947.

107. Young India, November 15, 1923, p. 381.

108. Harijan, March 31, 1946, p. 63.

109. D.G. Tendulkar, op. cit., (n. 6) Vol. VI, p. 7.

110. K. Vasudevan, Gandhian Economics, Bharatiya Vidya Bhawan, Bombay, 1967, p. XII.

111. Ibid., pp. 4-5.

112. Harijan, May 11, 1935.

113. Pyarelal, "Socialist with a difference", in K.G. Mashruwala, Gandhi and Marx, Navajivan Publishing House, Ahmedabad, 1951, Appendix-III, p. 110.

114. A. Appadorai, op. cit., (n. 17) pp. 122-23.

115. Presidential Address to the National Congress, Lucknow, April 1936.

116. Speeches and writings of Mahatma Gandhi, G.A. Natesan & Co., Madras, 3rd Ed., 1922, p. 324.

117. Buddhadeva Bhattacharyya, op. cit., pp. 254-55.

118. Tendulkar op. cit., Vol. VI, p. 235.

119. Harijan, August 18, 1940, p. 253.

120. Pyarelal, "Gandhi's Communism" in K.G. Mashruwala, Gandhi and Marx, Appendix-II, p. 106.

121. M. K. Gandhi, Constructive Programme, Navajivan, 1945, pp. 20-21.

122. Encyclopaedia of the Labour Movement, Vol. III, p. 154, as quoted in Buddhadeva Bhattacharyya, op. cit., p. 266.

123. Pyarelal, op. cit., (n. 120) p. 105.

124. Harijan, 28 July, 1940.

125. Young India, 15.11.28, p. 381; also Tendulkar, op. cit., Vol. II, pp. 333-34.

126. Harijan, 5.12.36, p. 338.

127. Shankar Ghosh, Socialism, Democracy and Nationalism in India, Allied, '73, pp. 331-32.

128. Ibid., p. 455.

129. K.G.Mashruwala, op. cit., (n.113) pp. 24-25.

130. Ibid., p. 78.

131. Young India, November 26, 1931.

132. N. K. Bose, Studies in Gandhism, 1962, pp. 64-65.

133. Harijan, 3.6.39, p. 145.

134. Pyarelal, Mahatma Gandhi: The Last Phase, Navajivan, Ahmedabad, 1958, Vol. II, pp. 633-34.

135. K.G. Mashruwala, op. cit., pp. 40-42.

136. Cited in M.L. Dantwala, Gandhism Reconsidered, Padma Publications Ltd., Bombay, 1945, pp. 54-55.

137. Gunnar Myrdal, Asian Drama: An Enquiry into the poverty of nations, Penguin Books, 1968, Vol. II. pp. 755-56.

138. J. Nehru, An Autobiography, Allied Publishers Pvt. Ltd., 1962, p. 528.

139. Amlan Dutta, For Democracy, Prachi Prakashan, Calcutta, 1953, p. 59.

140. Buddhadeva Bhattacharyya, op. cit., p. 247.

CHAPTER - 2

While moving the resolution on 'aims and objects', in the Constituent Assembly, Jawaharlal Nehru characterized Gandhi as the 'leader of the people', 'father of the nation; 'architect of the assembly'[1].

How far Gandhian Principles were Adopted in the Making of the Indian Constitution?

Alladi Krishnaswami Aiyar described Gandhi as the 'architect of India's political destiny'[2]. These plaudits set the initial tone and the pattern of constitution-making in India.

But, as the deliberation of the Constituent Assembly proceeded and gained momentum, and revealed sharp conflicts and contradictions in the ideas and sentiments of the members, it became apparent that Gandhi's worshippers would be out numbered and out paced by those in different ideas, and Gandhi remained only as a ceremonial object of adulation, an object of worship and ritual celebration, and it was no wonder that the Constitution that finally emerged was such a deviation from his ideas and principles.

I

One of the major causes of deviation from Gandhian principles was the gulf between the professions of Gandhi's disciples and the approach they adopted within the Constituent Assembly. The Congress Party, not wholly wedded to the Gandhian principles, made little efforts to build up a constitution based upon

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them. There had been differences between Gandhi and the Congress on many issues.

Few of the younger generation of intellectuals, whether they were Hindus, Muslims or Parsis, accepted Gandhi's philosophy of life. They gave a qualified allegiance to his economic views. Most of them were rationalists and many of them were inclined to socialism. The wealthy men who contributed lavishly to Congress funds were equally far from his old-world outlook. Only a minority in Congress, insignificant in its numbers, shared Gandhi's pacifism, the deepest of his convictions. Congress had managed to draw up from time to time, by majority decisions, an agreed constructive programme, which was a compromise between Gandhism and an advanced liberal view of social reform, but this was secondary to its real purpose. It was first of all and all the time a nationalist party bent on liberating India from foreign rule. Most of the time, the Congress tried to obey Gandhi but it had never accepted the principle of dictatorship. In fact, Gandhi had several times been defeated over big issues, and some of his chief ideas he had never succeeded in imposing on it at all, notably his hostility to industrial development. His mystical view of non-violence, his philosophy behind non-co-operation, his doctrine of the purity of means appealed only to a minority (3). To quote Nehru: "always there has been that inner conflict within him and in our national politics, between Gandhi as a national leader and Gandhi as a man with a

prophetic message, which was not confined to India but was for humanity and the world ...."(4)

So long as his colleagues in the field of politics were able to remain convinced of the practicability of his policy, they continued to support it. But when other problems and concrete situations arose in which Gandhi still believed his non-violent technique was relevant but in which he offered only generalizations, they went their own way and rejected both his general policy and its universal ethic(5).

Gandhi was pre-occupied with his activities in South Africa upto the second decade of the present century. Therefore, till that time, he could not associate himself directly with the Indian struggle for freedom, although he kept up a tenuous relationship with the Congress Organization.

It was at Amritsar in 1919 that Gandhi became a live force in the Congress. ' I must regard my participation in Congress proceedings at Amritsar as my real entrance into the Congress politics', said Gandhi(6).

In 1920, finally, Gandhi assumed political leadership; upto then he had almost mockingly insisted on declaring himself, a professional political expert only in certain subsidiary jobs like collecting money and drafting resolutions, but now the Congress gave him a mandate to revise the whole organization from setting up party cells in the villages to

redefining the functions of the grand committees. For he was now truly the "only one available" for the political job of anchoring the independence movement in the spirit of the Indian masses (7).

At the special session in Calcutta, in September 1920, his programme of non-co-operation was approved by the Congress. In the same year, at the Nagpur session, he came out victorious. Older Congress leaders, curious about the new personality, asked themselves and each other, 'who is this man who speaks with such a tone of authority and when did he come? Congress luminaries like Pal, Malaviya and Jinnah, stalwarts like C. R. Das and Lajpat Rai were virtually over-powered (8).

The Congress before Gandhi's entry was, according to Lala Lajpat Rai, neither inspired by the people nor devised or planned by them. It was a movement not from within. It lacked the essentials of a popular movement. Its leaders were not in touch with the masses. It was not effective, and encouraged 'opportunism' and 'trading' in the name of patriotism. It demanded concessions and not liberty. It was not based on sacrifice. It was rather a distinguished group of intellectuals, which included many able, wealthy and influential men, but without any mass following, for they never knew how to touch the heart of the multitude (9). The pre-Gandhi Congress was virtually a place where members, mostly from middle-class society, used to assemble and indulge in endless discussions.

Gandhi aroused the emotions of the multitude,

his message reached every nook and corner of the seven lakh villages in India and captivated the hearts of the peasants who constitute the real India. Gandhi's leadership gave the Congress a dynamism and drive it had never known before and the Constitution of 1920, which may be aptly termed 'the Gandhian Constitution', revolutionized the organisation. Instead of remaining a 'three days wonder', it became an organisation humming with activity throughout the year (10). Gandhi realised that no nation had risen without suffering; he broke the country's quietism before long and the people found that if they wanted to be free, they must strike the blow themselves. They cheerfully agreed and marched forward. A new era started. Gandhi remained for a long period as the sole spokesman and leader of the Congress, rivalled and disputed by none. This new era gave the nation a new concept of leadership, saw the emergence of a new type of nationalism and a new psychology to the masses.

Therefore, it is to a large extent true that Congress ideology after the First World War was mainly a creation of Gandhi. In 1920-22, he led the non-co-operation movement and it was he who suspended it; in 1930-34 he led the Civil Disobedience Movement, conferred with the Viceroy, represented the Congress at the Round Table Conference, and suspended the movement. In 1940, again, he conducted the Individual satyagraha and in August 1942, the All India Congress Committee formally requested him to take the lead and guide the nation. Yet it is too much to

say that the Congress was a 'one man show'[11], or that the Congress ideology was identical with the Gandhian principles. On the contrary, there were significant differences between Gandhi and the Congress, revealed in various Congress meetings since 1924. The Congress was never a body of his 'yes men'. It was too vast and heterogeneous. Though Gandhi was its centre of gravity, there were other thought currents which influenced its development[12].

On the 18th of March, 1919, the repressive Rowlatt Act was passed. The Amritsar tragedy was the signal for the birth of the non-co-operation movement. This was vigorously challenged by several sections of the Congress. The opposition came from Bengal in two forms: in the form of the Swarajya Party, and in the form of renewed activities of the anarchists. A section of the members of the Congress Party regarded the freedom movement under Gandhi as negation of democracy and 'reversion to an autocracy of the oriental type dominated by priestly influences, and worked especially for the benefit of profiteering banias'[13].

The swarajya revolt represented an important phase in the internal struggle of the Congress. The official Congress under the leadership of Gandhi stood as a block of "no-changers". The Swarajists gained strength and prestige gradually till the death of C. R. Das with which the party collapsed.

Other oppositions of lesser significance came in the form of the Responsivist Party; headed by Jayakar and Kelkar in 1925 and the Independent Party, headed by Lala Lajpat Rai and Malaviya in 1926 (14).

In the Ahmedabad session, (1921) Gandhi was appointed the sole executive authority of the Congress (15). But he had a bad time during the A.I.C.C. meeting (1922) in Delhi. On Individual Civil Disobedience he faced a vote of censure (16). In the Gaya Congress (1922) there was serious conflict, on the issue of 'Council Entry', between those that raised politics to a spiritual level and those that worked politics on the intellectual and the material plane. That the leader (Gandhi) of the former group was not present in flesh and blood made no difference (17). Ultimately Gandhi had to surrender at the All Parties Conference in Bombay (1924) to C. R. Das and Motilal Nehru on the question of 'Council Entry' and the lifting of the boycott (18). In the same year, Gandhi wept openly in a meeting of the A.I.C.C. because 70 out of 148 members who voted believed in political murders - a clear indication of the fact that their non-violence was only skindeep. However, at the December 1924 meeting in Belgeum, Gandhi was elected President in a cordial atmosphere. But during the mid-twenties, Gandhi wished not to lead the Congress anymore, kept in the background and allowed the Swaraj Party under the leadership of Das and Motilal to fill the picture, burried himself in his ashram at Sabarmati, for 'Constructive Work', the propagation of khadi, the preaching of non-

violence, communal unity and social reform. Neither the British Government nor the Indian parties took those innocent activities seriously; they tended to regard "the saint of sabarmati" as a spent force[19].

Again, Gandhi took an active part in the Gauhati Congress (1926)[20]. But in the Lahore Congress (1929) he was not able to carry the House with him[21], and immediately after that, the first meeting of the A.I.C.C. for the year 1930 was held for the principal purpose of appointing the Working Committee for the new year. There was a split over the procedure adopted by the President (supported by Gandhi) in electing members and as a result, Mr. Srinivasa Iyengar and Mr. Subhas Chandra Bose announced the formation of a new party in the Congress camp called "The Congress Democratic Party"[22]. Gandhi termed himself a 'spent bullet'.

It was only with the dramatic 'salt' satyagraha in the spring of 1930 that Gandhi once again became a dominant factor in national politics. He was authorised by the Working Committee to conduct Civil Disobedience at his discretion[23]. Salt satyagraha and Dandi march of 18 March 1930, made him the hero of the movement. The Working Committee recorded its appreciation of the lead given by Gandhi (then arrested) and resolved to carry on the struggle with redoubled vigour. Gandhi was appointed the sole representative of the Indian National Congress at the Round Table Conference. His speech at the Conference (1931) was a token of his deep love and attachment for the

Congress. He exhorted them to find a little corner for the frail man, sixty two years gone, and, the organisation that he represented. He said "you distrust that organization though you may seemingly trust me. Do not for one moment differentiate me from the organization of which I am but a drop in the ocean. I am no greater than the organization to which I belong. I am infinitely smaller than that organization ..." (21) The Delhi session of the Congress in April 1932 congratulated the nation on its splendid response to Gandhi's call and expressed complete faith in his leadership.

Then came the notorious Communal Award of Ramsay McDonald. Gandhi underwent a fast which ended with the All Parties Conference in Bombay then at Poona.

In 1933 Gandhi suspended mass Civil Disobedience and allowed only Individual Civil Disobedience (25). Gandhi's decision was not palatable to many Congress leaders. Subhas Bose and Vithalbhai Patel denounced it. They wrote "the latest act of Mahatma Gandhi in suspending Civil Disobedience is a confession of failure. We are of the opinion that the Mahatma as a political leader has failed. The time has now come for a radical reorganization of the Congress on new principles with a new method for which a new leader is essential, as it is unfair to expect the Mahatma to work a programme not consistent with his life long principle" (26). To many Congressmen, the suspension of the movement in favour of the Harijan work, came as a

shock. They regarded the removal of untouchability as subsidiary to the main struggle in which tens of thousands had suffered (27).

Gandhi's activities and utterances gave rise to the rumour that he intended to leave the Congress altogether. He confirmed it and gave reasons in a long statement, dated, Wardha September 17, 1934. In this statement, among other reasons, he pointed out his fundamental difference with the Congress Socialist Group, some of whose ideas were distasteful to him, and his differences with the Congress on many policy matters and ideals (28). In the annual session of the Congress in Bombay in October 26, Gandhi wanted the creed to be changed to "truthful and non-violent" methods in place of "peaceful and legitimate" methods but the A.I.C.C. did not accept it. Finally in October 28 Gandhi severed his official connection with the Congress (29).

After the session of the Congress in Bombay, though he chose to cease to be a formal member, Gandhi remained as a consultant, and guide to the Congress.

The spirit that prevailed in the Lucknow session (1936) could be judged from the omission of any resolution on the Constructive Programme. Jawaharlal Nehru's presidential address gave the impression of a support for communism. Nehru, with his three lieutenants in his side, formed a solid bloc, and Gandhi with his ten members in the Working Committee formed another (30).

However, Nehru, in his concluding address,

admitted candidly that they had differed from Gandhi in the past and would probably differ from him in the future about many things. It was right that each one of them should act up to his convictions. But it was Nehru's firm belief that the bonds that held them together were stronger and more vital than the differences. Nehru pointed out that the pledge of independence that they took together still remained to be redeemed and they were waiting again for Gandhi to guide them with his wise councel (31).

Gandhi in the penumbra of retirement was no less a force than Gandhi in the lime light. The younger folks were impatient over the slow progress of the ideas rooted in non-violence. It was in the midst of conflict between violence and non-violence and subdued resentment against the Congress ministers for their slow progress that the Haripura session of the Congress met in February 1938, under the presidency of Subhas Chandra Bose.

In 1939, at the Tripuri session of the Congress, the biggest ever drama was staged. The issue was the Congress Presidential election. Gandhi openly opposed Subhas. When Subhas Chandra Bose was elected, Gandhi came out with the historic statement that the defeat of Subhas's 'rival' was his defeat. Those who had voted for Subhash Chandra Bose, came out with a fresh voting of confidence in Gandhi and Gandhi's leadership. That created an awkward situation. Within a week it looked as though the tables were turned. Because of Gandhi's reaction towards Subhash Bose's election, most of the members of

the Congress Working Committee resigned. Bose found himself isolated and had to resign from the presidentship of the Congress. The drama finally ended in Bose resigning from the Congress and forming a new party, the Forward Bloc (32).

In 1940 at Ramghar, simultaneously with the Congress session was held the Anti Compromise Conference. It was Subhas Bose's belief that what had distressed and bewildered the Indian masses during those eventful years was the fact that while strong resolutions were passed and statements were issued by the members of the Working Committee, other remarks were simultaneously made and statements issued by Gandhi or by the top leaders, which had created a totally different impression on the average mind. The result had been that the British Government had ceased to take the Congress seriously and had formed the impression that however much the Congressmen might talk, they would not ultimately come out openly. As such, Bose felt the need of a determined and widespread effort (33).

During the second world war, on the issue of co-operation with the British, Gandhi's intention did not find favour. He was sorry to find himself alone in thinking that whatever support was to be given to the British, should be given unconditionally. Jawaharlal Nehru's resolution, was supported, which intended to take this as the opportune moment for India's independence. Gandhi's non-violence was not wholly liked by the Working Committee.

At Wardha, the Congress parted from Gandhi. In Delhi, a fortnight earlier, Gandhi drafted a resolution of his own which was replaced by one that was passed (34). The A.I.C.C. meeting at Poona, held at the end of July 1940, ratified by ninety five votes to forty seven the resolution passed by the Working Committee at Delhi. The resolution explained how, while the Congress must continue to adhere strictly to the principle of non-violence in the struggle for independence, it was unable in the present circumstances to declare that the principle should be extended to India's national defence. Gandhi was not even present in Poona this time to tender his advice. President Azad, as the spokesman of the Congress, admitted that non-violence was of secondary importance to the Congress. In the interest of winning freedom, it might surrender non-violence. Gandhi might have to propagate the message of non-violence to the world, but the Congress had to consider its position as the representative of the Indian nation. It was a political organisation pledged to win the political independence of the country. It was not an institution for organising the world peace. Azad said honestly that they could not go as far as Mahatma Gandhi wanted them to go. The Congress admitted that it was a weakness on its part. It had also to recognize the hard fact of Mahatma Gandhi's separation from the Congress. The Congress had to bear it bravely (35). In its eagerness to reach a settlement with the British Government, the Congress organization went to the length of parting ways with its

cherished and well-loved leader[36].

But it was quite clear that the Congress leaders after their brief defection had resumed their allegiance to Gandhi. Back to Ramghar was the note of Azad's opening speech at the A.I.C.C. meeting in Bombay (1940). The time had come to take the "next step". "The offer Great Britain had made .....is not worth looking at" said Azad. "These events made us decide to again request Mahatma Gandhi to assume the active leadership of the Congress. I am glad to inform you that he has agreed to do this ...." [37]. A year had already passed after the out break of the war. Every effort had been made to avoid conflict with British during her distress. Even Gandhi's leadership was forsaken. It only remained for the prodigal son to return to the father after wasting his talents-empty handed, repentant, trustful and importunate[38]. The Working Committee at Bardoli in December 1941 expressed that "the Congress was compelled in order to defend the honour and elementary rights of the people and integrity of the nationalist movement, to request Gandhi to guide the Congress in the action that should be taken ....."[39] But Gandhi found it impossible to lead the country. He stood for complete non-participation in war under all circumstances. In a letter to President Azad he wrote: "In the course of discussion, I discovered that I had committed a grave error in the interpretation of the Bombay resolution. I had interpreted it to mean that the Congress was to refuse participation in the present or all wars on the ground principally of non-violence. I found to

my astonishment that most members differed from my interpretation and held that the opposition need not be on the ground of non-violence." The Working Committee relieved him of the responsibility laid upon him by the Bombay Resolution (40).

The A.I.C.C. met at Bombay in 1942, passed the Quit India resolution, and considering that such a struggle must inevitably be under the leadership of Gandhi, again requested him to take the lead and guide the nation in the steps to be taken (41).

On September 2, 1946, Nehru and his colleagues took charge of the interim government. For Gandhi, it was a day of great significance. In the early hours of the morning he sat down to draft a note for Nehru as to the duty of the members of the new government in this supreme hour. At the appointed hour the ministers arrived at the Bhangi Colony to receive his blessings (42).

Again, on the question of partition, it seemed that the Congress was more with the Viceroy than with Gandhi. The Congress Working Committee had practically decided to concede Pakistan. The very idea of vivisection of India made Gandhi shudder. But in that he was left alone. Even Sardar Patel and Jawaharlal Nehru thought that Gandhi's reading of the political situation was wrong, and peace was sure to return if partition was agreed upon. Gandhi's view was completely

different. He therefore cautioned that he might not be alive to witness the result, but if the apprehended evil overtook India and her independence was imperilled, "let posterity knew what agony this old soul went through thinking of it. Let it not be said that Gandhi was party to India's vivisection" (43). A few weeks later he was lamenting, "who listens to me today? I am being told to retire to the Hamalayas ... Nobody really wants to follow my advice ..... Neither the people nor those in power have any use for me" (44).

The attainment of Independence further widened the gulf. Gandhi was conscious that the Swaraj that was coming must be far removed from the Swaraj of his dreams. His visionary, idealistic solutions of practical problems were not very helpful to men who had to grapple with the realities. In important matters he was still usually consulted, but not always; his advice was listened to with respect, but not always followed. Already, his advice to reject wholly the Cabinet Mission's constitutional plan had been overruled. Before Independence, the Congress leaders had to accept many of the Gandhian suggestions and ideas, because they were unable to put forward either an alternative plan of action, or an alternative leadership. But, in the post-Independence era, they rejected or side-tracked many of the Gandhian ideas as too lofty, mediaeval and impractical. With the formulation of the interim government, the real direction of Congress policy was passing from him to Nehru and Patel

and he, as though by a natural instinct, was drifting away from the seats of power, in order to devote himself to direct service of the people. The remaining fifteen months of his life were politically ineffectual though morally that was the crown of his career. The politician gave way to the saint (45).

Gandhi did not rejoice over the way India had won her Independence. It was the annihilation of his principles of truth and non-violence. He refused to give a message for the people on that historic day of the transfer of power. He said "there is no message at all, if it is bad, let it be so". Thirty two years of work, Gandhi stated, have come to 'an inglorious end'. Independence brought sadness to the architect of Independence. The 'father of the nation' was disappointed with his country. Mountbatten told the Royal Empire Society on 6 October 1948, that the people paid him homage and rejected his teachings. They held his person holy and desecrated his personality. They glorified the shell and trampled the essence. They believed in him but not in his principles (46). On his seventy eighth birthday (October 2, 1947) he asked the congratulators ' would it not be more appropriate to send condolences. There is nothing but an anguish in my heart ..... Today mine is a lone voice. I have lost all desire to live long, let alone 125 years .....' (47) The Congress Party had accepted Gandhi's leadership as an expedient way to political freedom. As the time finally came, his political associates left him and went their own way (48).

The distressing developments inside the Congress

after Independence and the moral degradation of the men in the Congress agonised Gandhi; he gave a serious thought to the future of the Congress. Gandhi found his voice sunk in the wilderness. The Congress having come into the power showed signs of giving his constructive programme the go-by (49). On receipt of a complaint from Shriman Narayan Agarwal that in the Constitution that was being framed, there was no mention of gram panchayat, Gandhi said "we must recognize the fact that the social order of our dreams can not come through the Congress of today. Nobody knows what shape the Constitution will ultimately take ..." (50)

In the Draft Constitution of the Congress which he sketched in the last days (29 January) of his life, Gandhi believed that the Congress, as a propaganda vehicle and parliamentary machine, had outlived its use. India had still to attain social, moral and economic independence in terms of India's seven hundred thousand villages, as distinguished from cities and towns. The struggle for the ascendancy of civil over military power was bound to take place in India's progress towards its democratic goal. The Congress must be kept out of unhealthy competition with the political parties and communal bodies. For these and other similar reasons, Gandhi suggested the All India Congress Committee to resolve to disband the existing Congress organization and flower into a Lok Sevak Sangh (51). He then listed the proposed rules and method of organization for the new association. The next day (30 January), Gandhi was no more. His

unfinished revolution remained unfinished. This plan of Gandhi was not accepted by the A.I.C.C. believing that the Congress could neither forego its political role nor become so decentralized.

II

It was not before 1917 that C. R. Das came to the forefront of Nationalist politics. In that year he was invited to preside over the Bengal Provincial Conference held in Calcutta. In course of only eight years (1917-25), he rose to all-India fame by virtue of his ardent sincerity. In 1920, at a special session of the Congress held in Calcutta under the presidency of Lala Lajpat Rai, Gandhi gave his famous programme of non-co-operation with the government. Das sought some changes in it, but in vain. He, however, had the support of Pal, Malaviya, Jinnah and Mrs. Besant. Three months later, at the Nagpur session, he, however, accepted Gandhi's lead (52).

Other thought-currents within the Congress: (i) C. R. Das.

With the suspension of the non-co-operation movement at the instance of Gandhi following the Chauri Chaura incident, the whole country went into despondency. At this critical hour, Das endeavoured to give a new orientation to Indian politics through his Council Entry programme, i.e., "non-co-operation from within the Council." He however, met with vehement opposition from Gandhi and the "no changers". C.R.Das presided over

the Gaya session of the Congress. A section of the Congress led by C. Rajagopalachari opposed the Council Entry programme. His motion being lost, Das resigned the presidentship and formed the Swarajya Party in collaboration with Motilal Nehru, the Ali brothers, Ajmal Khan, Vithalbhi Patel and others. The Congress was thus divided between no-changers and pro-changers (53). Inspite of the bitter criticism launched by the "No changers", the Jalpaiguri conference was organized by the Swarajists in 1923. Through the efforts of the Swarajists, Azad was elected, President of the Congress special session at Delhi, where the programme of Council Entry was approved. The programme was later confirmed at the Cocanada session (54).

Das was a realist. His non-violence was different from its Gandhian prototype. Hence, on 27 June, 1924, at the Ahmedabad meeting of the A.I.C.C. when Gandhi moved the resolution condemning the murder of Mr. Earnest Day by Gopi Nath Saha, Das hotly opposed it (55).

(ii) Motilal Nehru

Motilal Nehru was another founder-leader of the Swaraj Party and a whole time associate of C.R.Das till the latter's death in 1925. Motilal could never adjust himself wholly with the Gandhian ideals and techniques. Once he spoke bluntly that "..... his (Gandhi) hobbies do not interest me beyond a certain point". Gandhi too could not persuade himself that these political intellectuals were close to him, or that his interests

were theirs (56).

At first, Motilal Nehru was dead against the idea of non-violent resistance with its law-breaking and jail-going. Jawaharlal's enthusiasm for Satyagraha with its imprisonment possibility was totally incomprehensible to the father (57).

Gandhi was a saint in the guise of a politician, but Das and Motilal Nehru were patriotic statesmen, pure and simple. While Gandhi introduced into human politics the strongest religious impetus of the last two thousand years, Motilal Nehru said, 'religion has been degraded and politics has sunk into the mire, complete divorce of one from the other is the only remedy'. Gandhi was an idealist, in his own words 'a practical idealist' (58) but Das and Motilal were patriotic realists (59). To Motilal Nehru, "pure idealism has no place in politics and is but a happy dream which must sooner or later end in a rude awakening. However high-pitched the ideal may be, and higher the better, the actual work to be done in the pursuit of that ideal must be guided solely by practical considerations" (60). Both Das and Motilal believed in swift action. They had no patience with slow-moving devices like Gandhi's constructive programme. They could enthusiastically take up non-co-operation or Civil Disobedience because there was swift and breathless activity in them, but when non-co-operation was suspended, their way lay not in Constructive Programme but in Council Entry, where they could beard the British lion in his den (61). To quote Gandhi, 'their method is not my method. I am

trying to work from bottom upward..... to an onlooker it is exasperatingly slow work. They are working from top down ward - a process much more difficult and complicated than the former'.(62)

The difference of outlook was most glaring in their respective attitudes towards non-violence and non-co-operation. Motilal spoke of his faith in 'truth, fearlessness and non-violence'(63), which had little place for the doctrines of 'change of heart of enemy' or 'non-embarassment of enemy.'

(iii) Subhas Chandra Bose

Subhas Chandra Bose had been deeply disturbed by grave developments at home. He returned to India in 1921, and straight went to Gandhi for guidance who, perceiving the passion for India's freedom that consumed Subhas, directed him to C. R. Das who had been at that time the uncrowned king of Bengal.

Gandhi's salt satyagraha movement (1930) found Subhas in the thick of the fight, and the government arrested him and lodged him in jail. When the satyagraha movement was called off in March 1931 upon the conclusion of the Gandhi-Irwin Pact, Subhas Bose raised his voice in protest against the Pact and the suspension of the movement, especially when patriots like Bhagat Singh and his associates had not been saved from the gallows(64).

Gandhi had known him well enough in 1929 at

Lahore when Subhas Bose staged a walkout and formed a new party, the Congress Democratic Party. Again, one of the reasons behind Gandhi's formal retirement from the Congress in 1934 was his knowledge of Bose's rivalry of the first magnitude. In 1933 Bose, with Vithalbhai Patel, had issued a manifesto asserting that Gandhi had failed and that fresh leadership was required. In 1934 he expanded this thesis into a book, 'The Indian Struggle'.(65)

In connection with the Congress Presidential election in 1939, Bose entered into headlong clash with Gandhi. In fact, this episode (which has already been narrated-note-32) was the turning point of his career. Soon after the Presidential election, the members of the Congress Working Committee resigned and the Congress met at Tripuri under the shadow of a crisis within the Party, as well as internationally. With prophetic foresight Subhas warned that an imperialist war would break out in Europe within six months, demanded that the Congress should deliver a six months' ultimatum to Britain and in the event of its rejection, a country-wide struggle for 'poorna swaraj' should be launched, taking full advantage of Britain's entanglement in the war. His warning and advice, however, went unheeded, and what was worse, the followers of Gandhi sought to curtail his power as Congress President. He resigned his presidentship, formed the Forward Bloc and ultimately severed all relations with the Congress Party.(66)

As already narrated, in 1940, with the Congress

Session (Ramghar), a parallel-Anti Compromise Conference was held under the presidency of Subhas Bose at a place called Kisan Nagar. This session thoroughly opposed Gandhi's policy, pleaded direct struggle and condemned spinning and Constructive Proramme.(67)

They represented two diametrically opposite forces. Gandhi was moved by instinct, Subhas Bose was guided by reason. Bose felt that there was a deplorable lack of clarity in the plan which Gandhi had formulated and that he himself did not have clear idea of the successive stages of the campaign which would bring India to her cherished goal of freedom. Subhas's was a life of service and suffering but it was in accordance with the views and convictions of C. R. Das who again differed with Gandhi on the main points of Gandhi's programme.(68)

Gandhi was a moralist, Bose was an Indian nationalist first and an Indian nationalist last. He had little faith in non-violence and in the doctrine of purity of means. To him, "Gandhism had been found wanting, because it was wedded to non-violence ....."(69) Gandhi's spiritualism had no attraction for Bose. "... Ascetics and yogies", he said, "have held ..... honoured place in society, but it is not their lead that we shall have to follow if we are to create a new India, at once free, happy and great"(70). Although Bose was a deeply religious man, he was totally against mixing religion with politics. He often criticised Gandhi for playing the dual role of a political leader and world-teacher with a new doctrine to preach(71).

Bose regarded Gandhi's habit of putting all his cards on the table, his opposition to the policy of social boycott of political opponents, his hope of a change of heart on the part of the British Government etc., as some of the defects in his leadership (72).

On economic issues also, Bose and Gandhi differed radically. Bose deplored the ideas that 'modernisation is bad, large scale production is an evil, wants should not be increased and standard of living should not be raised' (73). In his opinion, "if India is to attain and maintain her freedom and grow as a modern state, she must have not only a socialist order but also modern arms and modern industries. ... the state will have to be a peoples' state and strong centralised state" (74). Bose wanted the Congress to 'adopt a radical economic programme' (75), including abolition of land lordism, extension of co-operative movement, a comprehensive scheme of industrial development under state ownership and state control (76). Thus Subhas's place had not been in the ivory tower of a dreamer or idealist but in the hard facts of life - that beset the path of a fighter. As such, while acknowledging the indisputable position of Gandhi in the Indian movement, Bose was irreconcilably opposed to his dogma of non-violence, charka and cottage industries economy, isolationism from foreign influence and, above all, to his reformism, trusteeship theory and class collaboration (77).

III

Gandhi and the architects of the Indian Constitution: (i) B. R. Ambedkar

Dr. B. R. Ambedkar was a life-long opponent of Gandhi and the Indian National Congress. But inspite of his opposition to the Congress, which he regarded as dominated by caste Hindus, he was nominated by the Congress to the Constituent Assembly. He was the Chairman of the Drafting Committee to frame the Constitution of India and piloted the Bill successfully, winning encomium from all (78).

The accumulated bitterness against Hindus that rankled for centuries in millions of Harijan Breasts found expression in Ambedkar's Himalayan hatred. He preferred British Raj to Hindu Raj (79). In recognition of his claim as a leader of the Depressed Classes, Ambedkar was nominated as a delegate to the three Round Table Conferences in London (1930-33). Before proceeding for the Round Table Conference Gandhi arranged a meeting with Ambedkar to know his demands. Ambedkar frankly told Gandhi that the Congress did nothing for the upliftment of the untouchables, beyond giving formal recognition to this problem, that the Congress was not sincere about its professions. He asked: "Why should the Congressmen oppose our movement and dub me a traitor?" The interview ended in a grim atmosphere. It sounded the beginning of a war between Gandhi and Ambedkar (80).

His demand for separate electorates for the untouchable

was opposed by Gandhi at the meeting of the Minorities Committee of the Second Round Table Conference (November 1931), as Gandhi felt that it would permanently divide the Hindu society. The Communal Award, announced on 17 August 1932 conceded separate electorates for the untouchables. Gandhi went on fast unto death. Ambedkar called the fast ' a political stunt' (81). On 24 September, the Poona Pact was signed which provided for reservation of seats for the untouchables in the general constituencies (82).

Their uneasy relationship reached its height in London during the conferences. Ambedkar in a statement said: "the Mahatma has been claiming that Congress stands for the Depressed Classes, more than I or my colleagues can do. To that claim I can only say that it is one of the false claims which irresponsible people keep on making ...." (83)

About the role that Gandhi played during the Round Table Conference, Ambedkar lamented that the Congress chose Mr. Gandhi as its representative. In his opinion, a worse person could not have been chosen to guide India's destiny, for, as a unifying force, he was a failure (84). Ambedkar alleged that it was Gandhi's habit to treat the whole non-Congress delegation with contempt. He insulted them whenever an occasion furnished him with an excuse by openly telling them that they did not count, and that he alone, as the delegate of the Congress, represented the country. It was Ambedkar's belief that Gandhi had many platitudes to utter but no views or suggestions of constructive

character to offer [84].

Ambedkar, in his book 'What Gandhi and the Congress have done to the Untouchables', brought forward serious charges - that Gandhi and the Congress opposed, inch by inch, upto the very last moment, everyone of their demands for political safeguards. Gandhi was neither earnest, honest and sincere nor a friend of any of untouchables. That Gandhism constituted the doom of the untouchables, because it was simply another form of sanatanism which was the ancient name for militant orthodox Hinduism [85].

Gandhi admired his rival's learning, respected the great powers of his brain and mind, and yet showed little sympathy with his policy. Ambedkar acknowledged the great powers of Gandhi and his humanitarian services to the untouchables, but believed that Mahatmas like fleeting phantoms, raised dust, but raised no level. Gandhi thought himself to be the natural guardian of the untouchables whereas Ambedkar considered himself to be the natural leader of the Depressed Classes [86].

Their relation had never become normal. Even in 1946, Gandhi, in a letter to Sardar Patel about Harijan seats in the Assemblies, wrote "..... the main thing is about Dr. Ambedkar. I see risk in coming to any sort of understanding with him ...." [87]

Dr. Ambedkar, as Chairman of the Drafting

Committee produced the Draft Constitution which did not embody the Gandhian ideals of a state. Dr. Ambedkar believed that Gandhian scheme was not practicable at that moment and would ensure continued oppression of the Harijans by the upper caste communities. As such he had suggested a centralized Parliamentary system. Shri T. Prakasam attributed this lapse to Dr. Ambedkar's non-participation in the Gandhian movement for independence and his antagonism towards Gandhian ideas.(88)

A particular case in point was - the subject matter of Article 40 of the Indian Constitution which did not find a place in his Draft Constitution. When the Draft was published, the absence was noticed and a criticism was levelled that the new Constitution should have been drafted on the ancient Hindu model, and that, instead of incorporating western theories, the new Constitution should have been raised and built upon village panchayats. While introducing the motion on the Draft Constitution on 4 November 1948, Ambedkar felt gratified that the Draft had rightly discarded the village.(89) This attitude of Dr. Ambedkar towards village communities in particular and Gandhi's ideas in general was vehemently criticised by almost all the members participating in the discussion (for detailed discussion please see Chapter VII). Moreover, the memorandum, which he submitted to the Advisory Committee of the Constituent Assembly, did not incorporate any such provision which could be treated as bearing a clear impact or mark of Gandhi's ideas.(90)

(II) Maulana Abul Kalam Azad

In 1916, Maulana Azad was interned by the British Government. After nearly four years when he came out, he took his place immediately among the leaders of the Indian National Congress. Ever since, he had been holding a prominent position in the highest Congress executive, and looked upon, inspite of his youthful years, as one of the 'elders' of the Congress, whose advice both in regard to the communal and minority questions was highly valued.(91)

Azad was twice elected President of the Indian National Congress the first time in 1923, and the second time in 1940. He continued as the President of the Congress till 1946. He led the negotiations with the British Cabinet Mission in 1946. In the Constituent Assembly, his role was primarily that of a hero of the freedom movement. He was a member of four committees, Steering, Advisory, States and Union Constitution.

To Maulana Azad, Congress was primarily a political organization. He often differed with Gandhi and his followers on many issues. During the Second World War, Gandhi's idea of non-embarrassment of enemies was not agreeable to him. In a letter to Nehru he wrote: "if our present stand is such that it embarrasses her .... we are not responsible for it; it lies with the imprudent vanity of the British Government".(92)

For Azad, non-violence was a matter of policy, not of creed. His view was that the Indians had the right to

take the sword if they had no other alternative. He declared openly that the Indian National Congress was not a pacifist organization but one for achieving India's freedom (93). Under his presidency, the A.I.C.C. at Poona parted ways with Gandhi and left him alone. President Azad observed, "..... the Congress is a political organization pledged to win the political independence of the country. It is not an institution for organizing the world peace. Honestly, we cannot go as far as Mahatma Gandhi wants us to go ...." (94)

Azad had, on earlier occasions, differed from Gandhi on some points, but never before had their differences been so complete. The issue was non-violent movement, which Azad did not favour during war-time, and on 5 July, 1942, Gandhi sent him a letter to the effect that Azad's stand was so different from his that they could not work together. If Congress wanted Gandhi to lead the movement, Azad must resign from the presidentship and also withdraw from the Working Committee (95).

In the debates of the Constituent Assembly, too, Azad was not found to have championed any ideal, the realisation of which was the dream of Gandhi. On the contrary, he chose to acquiesce in Nehru's ideas and wishes.

(III) K. M. Munshi

Another very important figure in the Constituent Assembly was K. M. Munshi who was a member of a eight major committees: Rules, Steering, Advisory, Union Subjects, Provincial Constitution, Union Constitution, States and Drafting. He participated in the debates

off and on, and enriched the House with his valuable suggestions.

Munshi's relation with Gandhi can be ascertained from a letter from him to the latter, dated 22 May 1941,".... since I came to you in 1930, you have been more to me than a political leader, you have been to the whole of our family a father, you have been a beacon for the last ten years lighting me on the path of the little spirituality that I can lay claim to....." (96) Their very cordial relation had been reflected through their series of correspondences especially in 1934 (97). On the proposed Civil Disobedience Gandhi wrote to Munshi "..... I have set my eyes on you ..... I do not know who else would go (to jail), I do not feel like insisting on anybody's going ....." (98) When Gandhi proposed to leave the Congress, Munshi wrote ".... the moment your supreme authority is gone, the Congress will meet a terrible fate" (99).

But Munshi could not remain sincere to Gandhi's concept of non-violence. He felt that non-violence could not be practised for the immediate solution of the problems connected with national defence (100). Since Gandhi expressed his opinion to the effect that those who favoured violent resistance (by way of self defence) must get out of the Congress, Munshi finally resigned from the Congress in July 1941 (101). The note on Fundamental Rights submitted by Munshi (102) to the Fundamental Rights

Sub Committee, did not contain any specific mention of Gandhian ideals. On the contrary, he was keen on the Euro-American systems. In the Constituent Assembly Munshi posed the question: "why should the Assembly turn its back on a hundred year-old tradition of parliamentary government in India ?"(103) Munshi did not want to write into the Constitution a clause prohibiting military conscription. He believed that any such prohibition would be very dangerous in time of war (104).

(IV) Jawaharlal Nehru

Gandhi loved Nehru as a son and Nehru loved Gandhi as a father. Nehru never hid the deep difference between his outlook and Gandhi's. He spoke and wrote about it frequently. Gandhi welcomed the frankness. Their affection for one another did not depend on agreement (105). Nehru recognized that Gandhi had straightened their backs and stiffened their spines, congratulated Gandhi during salt satyagraha for the success of non-violence (106). Gandhi hailed the A.I.C.C. resolution, electing Nehru as the Congress helmsman for the year 1929-30 (107); he wished that Nehru might long remain the jewel of India (108). He declared "..... Jawaharlal will be my successor .... when I am gone he will speak my language ....." (109) But instances are not rare when Nehru did not speak his language.

The sharp clash with Gandhi, the first of a series during the next two decades, took place when Nehru moved a resolution on the political objective of the Madras Session (1927). The Congress declared its goal of the Indian people to

be complete national independence. Though it did not alter the party's official creed which, under Gandhi's influence in 1920, had been defined merely as Swaraj (self rule), Nehru's formulation reflected the rumblings of discontent among the impatient nationalist youth. A similar proposal had been raised at every Congress session from 1921-25, but Gandhi's firm opposition had thwarted its sponsors. At this Gandhi was very much disturbed and what pained him most was the tone of Nehru's speeches, his surge to radicalism, and his apparent abandonment of non-violence. It was as if a son had gone astray.

The sense of an imminent break pained Gandhi in 1928. He wrote ".... I see quite clearly that you must carry on open warfare against me and my views. The differences between you and me appear to be so vast and so radical that there seems to be no meeting ground between us"(110). The gap widened, reaching its climax at the Calcutta session of the Congress in December 1928. Speaking as a champion of the peasants and urban workers, Nehru called for basic economic and social changes. He criticised the theory of trusteeship and differed with Gandhi on the question of violence. Nehru judged the issue on practical grounds. He thought that ... if the Congress came to the conclusion that methods of violence would rid them of slavery, then he had no doubt that it would adopt them. He considered ends of prior value(111).

Gandhi's fasts were not understandable to Nehru.

On May 8, 1933, when Civil Disobedience was at its lowest ebb, Gandhi began a twenty-one day-fast for 'self-purification'. Nehru's mind rebelled at the master's strange tactics (112). Nehru did not like secrecy in political tactics. Gandhi's 'inner voice' was vague to him. Gandhi emphasized the 'constructive activities' of the Congress, notably spinning, the removal of untouchability and communal unity, while Nehru did not even mention them in his programme (113). Nehru was hurt and angry when Gandhi termed the earthquake in Bihar as a punishment for the sin of untouchability. This mystical outlook widened still more the intellectual gap between them. When, in April 1934, Nehru learnt of Gandhi's decision to terminate all forms of Civil Disobedience primarily because a valued companion of long standing was found reluctant to perform the full prison task, he was appalled, and said that " .... the whole statement frightened me and oppressed me tremendously ... A vast distance seemed to separate him (Gandhi) from me .... a bond that I had valued very greatly had snapped" (114). In the Lucknow session, Nehru pleaded communism and formed a bloc of his own (115). In a letter to Nehru, dated October 10, 1939, Gandhi wrote that differences in outlook between them were becoming more marked. He felt that Nehru should take full charge and lead the Country, leaving him (Gandhi) free to voice his opinion... (116). In the A.I.C.C. meeting of 1940, Nehru, along with others, defied Gandhi on the crucial issue of violence (117), and on the question of partition, Gandhi found himself all alone (118).

Though Nehru was not actively involved in the

debates of the Constituent Assembly, his role was very important because it was he who dominated the early proceedings with his Objective Resolution which defined the principles which constitute the granite foundation of the Constitution. Moreover, Nehru was chairman of three important committees - States, Union Powers and Union Constitution - from the reports of which the Draft was prepared by Ambedkar and his colleagues.

The Congress Experts Committee which was set up by the Congress Working Committee with Nehru as its Chairman, set India on the road to the present Constitution. Discarding the Gandhian plan as conservative and undemocratic, the Committee proposed a liberal democratic, parliamentary system of government with a federation. Nehru envisaged a centralised administration. He liked the new Constitution to place the greatest emphasis on state activities: such as planning, industrial development, relief of unemployment, nationalisation of key industries etc.(119) In course of a long exchange of letters between Gandhi and Nehru(120) in October 1945, Gandhi stressed the need for decentralized political institutions. He voiced his resolve to stand by the system of government envisaged in Hind Swaraj.(121) But the Congress Party and many of the Indian leaders were couching their demands for independence in terms of a parliamentary democracy, and many had participated in the modified forms of representative government which were introduced in British India(122). According to Nehru, the Congress had 'never considered' the Gandhian view of

society (as exemplified in Hind Swaraj), 'much less adopted it'[123]. There was no mention either of panchayat or of indirect government in the Objective Resolution moved by Nehru.

In fact there was fundamental divergence of views regarding methods and approaches between Gandhi on the one hand and Nehru and many others on the other. To both Gandhi and Nehru, the aim was the same, that is, common good, minimizing the social and economic differences among the people; but while Gandhi believed that the means should be trusteeship, decentralization, etc., Nehru and many others, on the other hand, believed that the means should be "socialism", central planning and a "modern" economy with considerable emphasis on industrialization. Nehru believed that Gandhian schemes were very difficult to work out in practice and any consideration of them would be divorced from reality.

It was in the field of economic ideology that the differences between Gandhi and Nehru were more marked. 'Few of us, I think' wrote Nehru, 'accepted Gandhi's old ideas about machinery and modern civilization.'[124] To Gandhi modern civilization was a disease and machinery represented a great sin.[125] But Nehru had no conflict with machinery provided that machinery is used primarily for absorbing labour and not for creating fresh unemployment.[126]

Both of them aimed at the amelioration of peasantry, but when Gandhi's programme for achieving this end was a

programme[127] of spinning wheel and village industries, of swadeshi and satyagraha,[128] of trusteeship,[129] and change of heart on the part of Zamindars,[130] Nehru's programme was a programme of rent reduction, debt cancellation and abolition of land lordism.[131]

Nehru had made his views clear throughout the thirties and expressed them even more plainly to B. N. Rau in November 1945, when he said ' I should also like the new constitution to lay the greatest emphasis on State activities, such as planning, industrial development, relief of unemployment, nationalization of key industries, etc.'[132] How far 'Nehru asked, 'will this sort of progress fit in with a purely village society?'[133]

Therefore, in order to quell internal disturbances, to maintain law and order, and to implement a programme of state planning, it was necessary to establish a centralized political structure, and not a decentralized economy of Gandhi's dream. Accordingly, in a letter to Gandhi on 9 October 1948, Nehru enquired how the political and economic progress of India could be made to "fit in with a purely village society."[134]

Nehru rejected altogether Gandhi's views on industrialism. He believed in science, technology, large-scale production, and higher standards of living.[135] Gandhi's views as formulated in the Hind Swaraj seemed to him utterly wrong and harmful doctrine, and impossible of achievement.

Nehru believed that industrialization was inevitable but its evils must be opposed. He thought that if industries were socialized, they would be free from the evils of capitalism; whereas Gandhi believed that the evils were inherent in industrialism. No amount of socialization could eradicate them. One of the reasons why Gandhi had reservations about scientific socialism, which Nehru repeatedly avowed, was that he believed in the ideal of economic simplicity whereas the advocates of socialism were supporters of large scale production.

In the Second Plan, Nehru insisted that more importance should be given to industry. Soon after the Third Plan was launched the election manifesto of the Congress for Third General Elections held in 1962 was issued. It approvingly referred to the Industrial Policy Resolution of 1956 which had laid down that, in view of the accepted policy of socialization, the public sector would increasingly expand and play a dominant role for accelerating the industrialization of the country.

Nehru considered that in a country with arrested economic growth, planning was very essential. He believed, only through planned economic progress, socio-economic revolution could be achieved.

Nehru was influenced by all the modern trends and movements which had inspired the intelligentia of modern India. He sought to combine liberalism with egalitarianism, democracy and individual liberty with socialism and planning. He acknowledged

himself to be a socialist, and was attracted to Marxism though did not give his absolute allegiance to it.

After Independence, the first major pronouncement of the Congress on economic matters was contained in its election manifesto for the First General Elections of 1951-52. This manifesto made it clear that the progress of the country would involve planning of diverse aspects of national life and activity.

In January 1955, when the First Plan was in operation, the Congress at its historic Avadi Session declared that, in order to realize the objectives as laid down in Article I of the Congress Constitution, as also those stated in the Preamble and Directive Principles of State Policy of the Indian Constitution, "planning should take place with a view to the establishment of a socialist pattern of society. Nehru was primarily responsible for the Avadi Resolution.

Therefore, the policy which Nehru followed at this stage was not one of rigid socialism, but was none the less a policy which laid great stress on economic planning. Economic planning was dear to Nehru's heart and the example of planning in Soviet Russia had enthused him greatly.(136)

Ever since Nehru attended the Brussels Conference of Down trodden people of Africa and Asia in 1926, and his visit of the Soviet Union, the establishment of socialism, in the scientific sense in India has been his desire and that too, much

against the wishes of Gandhi. The whole country was then surcharged with socialist slogans. The platform of the Indian National Congress was also utilized to voice the urges of the newly emerging socialist forces. Nehru advocated socialism in 'the scientific economic sense'(137) as 'the only key to the solution of the world's problems and of India's problems'. In this session, Gandhi spoke of Swadeshi and left socialism to Nehru. At the Faizpur Congress (December 1936), the same fervour was noticeable. Gandhi was not a believer in scientific socialism. His firm conviction was that nothing enduring could be built on violence.(138) Gandhi had all the praises for socialism if it did not involve violence. 'Gandhian socialism was based on State's ethics rather than on any programme'(139) At one stage, Nehru's views on socialism led to all sorts of rumours and Gandhi in an article in Harijan entitled "Are we Rivals?" had to state that "I can not think of myself as a rival of Jawaharlal or him to me ...."

Gandhi stood for village industries and decentralized production. He feared that if the state monopolized all the means of production, then that would only lead to concentration of power and the establishment of the dictatorship of a party or a bureaucracy.(140) In fact, Gandhi would have liked India to be a land of only self-sufficient, self-contained villages. He was against industrialization on a mass scale and against the inevitable emphasis of an industrial civilization on urbanization.

Nehru, unlike Gandhi, had no doubt in his mind that big machines and large-scale industrialization had come to stay. "It is true, I think", wrote Nehru in September 1939, "that there are certain inherent dangers in big industry and the big machine. There is a tendency to concentrate power ..... But I can not conceive of the world .... doing away with big machine. Even if this was possible, this would result in lowering production tremendously and in thus reducing standards of life greatly." (141)

Nehru had no desire to mix religion with politics. Gandhi's faith was in truth, Nehru's faith was in socialism. "For a hungry man," Nehru said in 1947, "truth has little meaning, he wants food, and India is a hungry, starving country ..." (142)

Nehru's views found support from large section of the Assembly members. The architects of free India's Constitution favoured modern methods and techniques for tackling problems they were confronted with than those of Gandhian means and methods. Nehru, Patel, Azad and Prasad were the heroes in the Constituent Assembly. This oligarchy was found to have always shared Nehru's views and favoured a centralized constitution. It was reasonably clear, that the Assembly leadership was not contemplating a Gandhian Constitution. In the debate on the Objectives Resolution, members spoke of democracy, socialism etc., but there was no criticism of the omission of panchayati raj.

V. Gandhi and others sharing Nehru's views.

In view of their long experience with representative government, the bulk of the Assembly members favoured a parlia-

mentary constitution. K. M. Munshi asked: "why should the Assembly turn its back on a hundred-year-old tradition of parliamentary government in India?(143) Sir Alladi Krishnaswami Ayyar also expressed similar views.(144)

To Nehru, Patel and other Congress leaders, the critical question in 1947-49 was how to repair the damage inflicted by the partition, and how to hold together the country. They did not think Gandhi's village-based economy could generate enough resources to end poverty, and make-up the backlog of last centuries. They felt that a strong central government and a highly industrialized economy were essential to safeguard national independence and to rid the country of poverty and backwardness.

"Two men" says Michael Brecher, "ruled India during the critical transition period from 1947 to 1950- Jawaharlal Nehru and Vallabhabai Patel.(145) The duumvirs of the new India, mutually co-operated throughout the proceedings of the Assembly in threshing out the present Constitution. Patel, Prasad and Azad were also committed only to effective government. Patel believed that security was the first requirement of any progressive country. Seth Govind Das expressed that, "we should adopt all that the modern world had to give us to fulfil our needs, as also all the inventions of the modern science. We need not have contempt for things European or American.(146) When Nehru indicated that India needed a centralized constitution to protect herself from foreign aggression and to establish stability and unity necessary to the

social revolution, the Assembly readily agreed with him. Many members of the Assembly felt that if the economic problems of the country were to be solved, a centralized political democracy had to be set up. With Nehru, they also felt that a purely decentralized village-based society could neither bring about rapid industrialization nor provide the political framework for undertaking a policy of planning by the state without which the economic problems of India could not be solved. Shri Shankarrao Deo stated: "People expect, alas perhaps wrongly, what they do not deserve. They expect that the Constitution which has been made by the apostles of the great Martyr will breath his breath. But should we not be rational and must not be moved by sentiment. Reason demands that we must be realistic. There is no scope in this world of stern reality for building a Utopia."(147) Shri Nandkishore Das expressed that Gandhiji throughout his life laid repeated emphasis on decentralization of powers but our Constitution had proceeded on the reverse line, namely, over-centralization. Our leaders thought rightly that without a strong centre this infant democracy would be in danger of being destroyed by disintegrating forces from all sides. He (Shri Das) said, "we can not afford the luxury of over-decentralization simply in order to satisfy mere slogans and catchwords ...."(148)

Therefore, the architects stood for strong central government and favoured industrialization and state planning and ultimately the realists who refused to recognize the spinning wheel as the symbol of modern India won.

(VI) Sardar Vallavbhai Patel.

The Kaira Satyagraha (1918) was the occasion which brought Gandhi and Patel together. It was the beginning of Sardar Patel's public life (149). He earned the nick name of being Gandhi's 'yes' man. He did not mind that, and even he flaunted it as a compliment. Gandhi's word had been law to him (150). Patel was accustomed to subordinate his judgement to that of Gandhi (151). He belonged to Gandhi's inner circle and was very dear to him. In fact, he owed his entire political existence to Gandhi. It was Gandhi who made him a member of the Congress Working Committee. Again, it was because of Gandhi that he became President of the Congress in 1931 (152).

All these facts, nevertheless, could not hide their differences, especially in the later period. On every occasion when Congress failed to follow Gandhi's lead, Sardar had been found to take the side of his opponents. Patel issued a statement accepting Gandhi's decision to leave the Congress in 1934. Besides, partition further widened the gulf. Gandhi opposed the plan in the Working Committee meeting. But Nehru and Patel had at least shaken themselves free from Gandhi's leading strings and were their own masters. It was they who were guiding the Working Committee and Patel assured the Viceroy that Gandhi would loyally abide by any decision the Working Committee might take (153). Gandhi lamented to find himself all alone. Even the Sardar and Jawaharlal thought that his reading of the political situation was wrong and peace was sure to return if partition was agreed

upon (154). After Independence, it hurt Gandhi deeply that even Patel followed a policy which was quite contrary to everything for which he himself stood. Gandhi's fast of 12 January, 1948, was in a sense directed against the attitude of Patel. Patel complained that Gandhi was fasting without any justification and that there was no real reason for such a fast. In view of the fast when Patel was requested by Azad to postpone his visit to Bombay, Patel shouted back "what is the use of my staying, Gandhi is not prepared to listen to me .... I have no use for him ..." (155) When Gandhi was assassinated, men like Jaya Prakash Narayan, Prafulla Chandra Ghosh openly accused Patel telling that he could not escape the responsibility for this assassination (156).

The cleavage between Nehru and Patel which had come into the open in 1947, was evident long before the coming of Independence, especially on the issue of socialism. By the early thirtees Nehru had emerged as the leader of the 'left' and the protector of the Congress Socialists. Patel was hostile from the outset, and used his influence to thwart all efforts to commit the Congress to a socialist programme. Inspite of that, Nehru had primacy of place in the affections of Gandhi. On three occasions - 1926, 1937 and 1946, Patel had been persuaded to withdraw his candidacy for Congress President in favour of Nehru. Nehru had been designated by Gandhi as his political successor, despite Patel's seniority (157). Gandhi played a very important role during the most crucial stage of their conflict (158). Though Gandhi had satisfied the pride of his favourite son by acknowledging Nehru's right as Prime Minister to dismiss any member of the

cabinet, he was 'Bapu' or father to both Nehru and Patel, and in this capacity he, on the last day of his life (30 January, 1948) extracted from Patel a pledge that he would never break with Nehru (159).

In the Constituent Assembly Sardar Patel played a vital role as Chairman of three important committees - Fundamental Rights, Provincial Constitutions and Minorities. While neither Nehru nor Patel held the centre of the stage in the Assembly, both were involved in all basic decisions in the party caucus. It was inconceivable that anything of more than technical importance could be incorporated without their approval (160). Patel, though not a member of the Congress Experts Committee, attended many committee meetings and influenced the fate of the present Constitution considerably. He was committed only to effective government, and the Constituent Assembly watched their (Nehru and Patel) mutual co-operation throughout the proceedings of the Assembly (161), in thrashing out the present Constitution.

(VII) Dr. Rajendra Prasad

Prasad first met Gandhi in Champaran in 1917 during the struggle for the indigo share-croppers (162). He was entirely the creation of Gandhi. During Gandhi's life time, Prasad rarely tried to judge things on his own, he used to show unqualified faith and loyalty in Gandhi (163). Prasad was a devout believer in pure non-violence; among all of Gandhi's leading political disciples, he was the most spiritually akin to Gandhi (164).

In the Gaya Congress, Prasad, with others, opposed C. R. Das and defeated his proposal (165). After Gandhi's withdrawal from active politics, in the Bombay session of the Congress in October 1934, Prasad spokesman for Gandhi and the rightwing- presided. An attempt by the socialists to introduce a radical economic programme was soundly defeated - with Gandhi's full backing (166). Prasad was Congress President three times, in 1934, 1939 and 1948.

Even Prasad defied Gandhi in November 1947. He allowed himself to be persuaded by Nehru and Patel, and became the Congress President though Gandhi did not like it (167).

Prasad was the President of the Constitutent Assembly. Besides, he was Chairman of two committees, Rules and Steering. He was one of the four chiefs (Nehru, Patel, Azad and Prasad) involved in decision-making in the Assembly. He involved himself least in the debates of the Assembly, but on one occasion, the suggestion of having 'village republics' as the basis of the whole constitution being rejected by the Drafting Committee, Prasad pointed out this omission in May 1948, (nearly two and half months after the publication of the Draft Constitution). He expressed, in a letter to B. N. Rau, his opinion that he liked the Constitution to begin with the village and go up to the centre. 'The village has been and will ever continue to be our unit in the country.' He strongly advocated the idea of 'utilising the adult franchise only for the village panchayats and making the village

panchayats the electoral college for electing representatives to the provinces and the centre"[168]. Prasad, therefore, suggested that necessary articles should be redrafted to put the whole thing in right perspective. Firmly, but kindly, Rau rejected Prasad's suggestion.

Besides, in the Constituent Assembly, he was not seen to have become active to incorporate any Gandhian ideal within the Constitution. On the contrary, in his concluding speech in the Assembly on 26 November 1949, he expressed his pleasure and satisfaction at the newly emerged Constitution[169]. He considered that it was not his purpose to appraise the value of the work that the Assembly had done or the merits or demerits of the Constitution which it had framed. He was content to leave that to others and to posterity[170]. Moreover, he was sufficiently glad to see the incorporation of some of the ideals of Gandhi in the chapter on Directive Principles of State Policy. He stated: "..... in a world torn with conflicts, in a world which, even after devastation of two world wars, is still depending on armaments, to establish peace and goodwill, we are destined to play a great part, if we prove true to the teachings of the Father of the Nation and give effect to these directive principles in our Constitution...."[171]

(VIII) Bengal Narshing Rau

B. N. Rau was appointed as the Constitutional Adviser to the Constituent Assembly in July 1946. He must be placed among those important in the framing of the Indian Constitution.

As Constitutional Adviser, Rau's advice was heard in the Assembly's inner councils, although he was not an Assembly member. A legalist, an eminent advocate and judge, a student of constitutional history, and an able draftsman, one of the more Europeanized intellectuals in the Assembly, Rau looked to Euro-American constitutional precedent perhaps even more than other Assembly members for the devices to be used in India's Constitution (172).

He constructed a framework of Constitution based entirely on Euro-American models by suggesting a Parliamentary system of Government with a centralized federation, incorporating Fundamental Rights and Directive Principles of State Policy etc. He rejected the Gandhian plan and did not incorporate any of his principles.

B. N. Rau politely rejected a request from Rajendra Prasad suggesting change in the Draft Constitution to incorporate village panchayats. Rau, in his reply, said that the Assembly had already decided on direct election of lower houses both at the centre and in the provinces, and that, he was doubtful if the vote could be reversed. He also protested that to write into the Constitution all the details of local government would make it impossibly long and unduly delay its completion. (173)

When the Fundamental Rights Sub-Committee met for the first time on 27 February 1947, it had before it a draft list of rights prepared among others by B. N. Rau. Rau's draft rights were in addition to the extensive passages on rights in his "Constitutional Precedents" (174), which were collections of a series of

pamphlets which he prepared for the use of members of the Constituent Assembly. The provisions contained in these documents, which subsequently influenced the present Constitution, were taken from foreign constitutions and were not at all affected by Gandhi's ideas.

IV

Other forces and factors operating towards a deviation from Gandhian ideals:-

(I) Impact of the Congress Socialist Party -

The Congress Socialist Party, a faction within the Congress, was created in the Spring of 1934 by a group of left nationalists headed by Jaya Prakash Narayan. In order to organize the socialist forces, as also to strengthen the nationalist movement, and to give it a revolutionary, rather than a constitutional character, they formed this party (175).

Both Nehru and Subhas Chandra Bose welcomed the formation of this Party. In his presidential address at the Haripura Congress in 1938, Bose said that though he was not a member of that Party, he was in agreement with its general principles, and he felt that it was desirable for the leftist elements to be consolidated into one party (176).

Nehru acted as the Congress Socialist Party's godfather and continued to give it his blessing, though he never

associated himself officially with this group. His influence among them was great. His clear enunciation of socialist ideas in 'Whither India' was a model for many of them. Politically he was their main hope to 'capture' the Congress machine. He had come to their defence in August 1934 with a blunt attack on the old guards' contemptuous attitude to socialism. At the Bombay session of the Congress a few months later, the Congress Socialist Party controlled one third of the delegates to the A.I.C.C. Only Gandhi's opposition at that time prevented a change in the party's economic and social programme (177). Moreover, in 1930, when Nehru was elected Congress President, he appointed three prominent Congress Socialists - Jaya Prakash Narayan, Narendra Deva and Achyut Patwardhan to the Working Committee.

Both Bose and Nehru believed in economic planning. Bose visualized the emergence of a left party which would advocate planning by the state for the reorganization of the agricultural and industrial life of the country (178). Similarly, Nehru held the view that in a country of arrested economic development, such as India, planning was essential (179).

Referring to this group in the Congress, Gandhi said : "if they gain ascendancy in the Congress, as they well may, I can not remain in the Congress. For, to be in active opposition should be unthinkable" (180). In fact, the activities of this party were partly responsible for his severing all 'physical connection' with the Congress in 1934. While citing reasons in favour of his decision, Gandhi, in his statement of

September 1934, said that he had fundamental differences with the Congress Socialist Party on the programme published in their authorised pamphlets (181).

In 1938, Jaya Prakash Narayan, Secretary of the All India Congress Socialist Party, addressing a meeting at Patna, said that Gandhi's ideas were too old and should be replaced by new ones (182).

But they did not seek to convert the Congress to socialism for they knew that that was not possible, in the circumstances then prevailing; they only wanted to make the Congress a truly anti-imperialist body. Jaya Prakash Narayan admitted that it was not their purpose to convert the whole Congress into a full fledged socialist party. All that they sought to do was to change the content and policy of that organization, so that it would truly represent the masses having the object of emancipating them both from the foreign power and the native system of exploitation (183).

The Congress Socialist Party had no faith in the Constituent Assembly that was set up in terms of the Cabinet Mission Plan. They opposed the resolution of the Congress Working Committee, passed in January 1946, in which faith in non-violence was reaffirmed. It said that the Congress leaders had abandoned the path of revolution for that of constitutionalism, and that it was because of this that they had decided to participate in the Constituent Assembly (184). However, they had changed their

attitude later.

Therefore, the activities and thinking of this Congress socialist Group and Socialist group outside the Congress influenced considerably the task of constitution-making. Further, they published, from time to time, their programmes regarding the future socio-economic pattern of India drawing inspirations from the western concept of socialism and state planning. This intelectual atmosphere prevalent at the time of framing the constitution, found considerable expression in the resolution regarding Aims and Objects of the Constitution moved by Nehru. Under such circumstances, they welcomed the Draft Constitution, deviating from Gandhian ideas, but incorporating many of their cherished provisions borrowed from Western constitutions.

(II) Other reasons

Indians had been associated with local self-government since 1861, and from the 1909 Government of India Act through those of 1919 and 1935, Indians came to play an increasing role in both the executive and legislative sides of provincial and central government. Along with this an increasing number of electorates were also having experience of the parliamentary process. Based on the experience and knowledge gained by Indians in the parliamentary form of government (185), there was more or less universal demand for such a form of government in the new Constitution (186).

Gandhi knew that his message had failed to get home. He lamented " .... I do not know how many swear by non-

violence or the Charka or, believing in decentralization, regard the village as the nucleus. I know, on the contrary, that many would have India .... a strong centre and build the whole structure round it" (187).

Furthermore, many influential and powerful members of the Constituent Assembly had become intellectually committed to a liberal democratic tradition of Euro-American type, through their training and education. They had been relentless critics of Gandhian principles.

Equally, the Congress's long-standing affinity with the Irish nationalist movement made the example of constitutional socialism expressed in the Irish 'Directive Principles of Social Policy', especially attractive to a wide range of Assembly members (188).

Another reason was that the lawyer members of the Assembly, (who were many) were keen on having a practicable and workable (from legal point of view) Constitution. They wanted that the Constitution, since it was to be interpreted by the judiciary, must not be vague or based on platitudes or utopian ideals. In that case, it may lead to arbitrary powers of the executive.

But the immediate reasons responsible for the deviation were the circumstances under which the Constitution was framed. The interim government, faced with problems like famine,

procurement and proper distribution of food grains, compelled the founding fathers not to think in terms of decentralized 'village republics'. The partition of the country, communal riots, integration of Princely States, Pakistan - inspired invasion in Kashmir forced them to think in terms of a centralized constitution to bring stability and unity in the country. The constitutional experts felt that the socio-economic revolution can only be achieved by a central authority through planning for economic development and by developing modern methods of cultivation, transport and communication, heavy and light industries, electric power and all other aspects of economy on modern lines (189).

Therefore, the founding fathers regarded the Gandhian Constitution as difficult to work out in practice. Nehru believed, 'any consideration of these questions must keep present facts, forces and the human material we have today in view, otherwise it will be divorced from reality' (190). The whole system of indiredt election was found to be undemocratic and politically dangerous. It was felt that highly decentralized administration may not be condusive to the defence of our newly won independence. In Nehru's judgement, 'the scope of the centre, even though limited, inevitably grows, because it cannot exist otherwise' (191). To Sardar Patel, ".... the first requirement of any progressive country is internal and external security ..." (192) Direct election, they realised, was the pillar to social revolution and the members so elected will have wider contact with the people. The

system of direct election will cut across groups and factions, based on caste, creed, language and religion, existing in our villages. The system of election as envisaged by Gandhi, it was felt, would make the village a whirlpool of social and economic development. The idealistic appeal to the spirit of service and rejection of sordid payment for public work, the members felt, would leave public affairs, as in the mediaeval times, in the hands of the leisured people and their hirelings or with priests.

V

Conclusion

The cumulative effect of all these, therefore, was the emergence of the present Constitution of India not on the lines chalked out by Gandhi, but in unceremonious rejection of his basic ideas and principles. The foregoing account establishes beyond any shadow of doubt, that the roots of such substantive repudiation of Gandhian ideas lay as basically in the course of political events and the emerging reality of the political process as in the cleavage of personalities and ideologies. The ideological consensus which was based on compromise and accommodation found its institutional realization in a predominently Anglo-American model of political system interspersed with a sprinkling of Gandhian ideals in Part III and Part IV of the Constitution. This was, not surprising, because, although it was Gandhi, more than anybody else, who, with his charismatic but dynamic and constructive leadership, had given the freedom movement a direction and a purpose, and had

really initiated the process of modernization of a tradition-bound, static society he had, during the last few years of his life, become totally estranged from the mainstream of Indian political life and ideas represented by the emerging political elite of the country.

N O T E S A N D R E F E R E N C E S.

1. Constituent Assembly, Debates, Vol. I, p. 60.
2. Ibid., p. 143.
3. H. N. Brailsford, Subject India, Bombay, 1946, pp. 34-35.
4. Jawaharlal Nehru, The Discovery of India, Asia Publishing House, 1969 (reprint), p. 444.
5. Gene Sharp, "Non-violence: Moral principle or Political technique?" in the Indian Political Science Review, Vol. IV, No.I, p. 34.
6. M. K. Gandhi, An Autobiography, Navajivan Publishing House, Ahmedabad, 1958, p. 238.
7. Erik H. Erikson, Gandhi's truth - on the origin of Militant non-violence, Faber & Faber Ltd., London, 1970, p. 391.
8. P. Sitaramayya, The History of the Indian National Congress, (reprint), S. Chand & Co., Delhi, 1969, Vol. I, p. 348.
9. H. N. Brailsford, op.cit., (n.3), p. 31.
10. P. D. Kaushik, The Congress Ideology and Programme, Allied Publishers, 1964, p. 35.
11. Ibid., pp. 43-44 and also see Dilip K. Chatterjee, "Gandhi and the Directive Principles of State Policy" in Gandhi Marg, January, 1974, p. 66.
12. P. D. Kaushik, op. cit., p. 45.
13. B.C. Pal, "The Gandhian Mind", as quoted in K.B. Krishna, Minority Problem or Communal Representation in India, George Allen & Unwin, London, 1939, p. 167.
14. Ibid., pp. 169-71.

15. Collected Works of Mahatma Gandhi, Government of India Publication, Vol. XXII, p. 102.

16. P. Sitaramayya, op. cit., (n. 8), pp. 236-37.

17. Ibid., pp. 251-52.

18. Ibid., p. 276.

19. B. R. Nanda, "The relevance of Gandhi" in S. C. Biswas Ed. Gandhi, Theory and practice-social impact and contemporary relevance, Indian Institute of Advanced Studies, Simla, p.495.

20. P. Sitaramayya, op.cit., (n.8), pp. 303-305.

21. Ibid., pp. 358-61.

22. Indian Annual Register, 1930, Vol. I, p. 17.

23. Ibid., p. 26.

24. Round Table Speech, S. Radhakrishnan (Ed.), Mahatma Gandhi, Jaico Publishing House, Bombay, 1964, Appendix III, pp.389-97

25. Indian Annual Register, 1933, Vol. I, p. 21.

26. As quoted in D.G.Tendulkar, Mahatma, Government of India Publication, new rev. edn., 1963., [illegible], Vol. III, p. 205.

27. Ibid.

28. Ibid., pp. 295-99.

29. Ibid., p. 304.

30. P. Sitaramayya, The History of the Indian National Congress, Padma Publications, Bombay, 1947, Vol. II, pp. 11-13.

31. As quoted in D. G. Tendulkar, op.cit., (n. 26), Vol. IV, pp.64-65.

32. P. Sitaramayya, op. cit., Vol. II, (n. 30), pp. 105-14.

33. As quoted in D. G. Tendulkar, op. cit., (n. 26), Vol. V, p. 265.

34. P. Sitaramayya, op.cit., (n. 30), pp. 195-97.

35. D. G. Tendulkar, op. cit., (n. 26), Vol. V, pp. 308-309.

36. Jawaharlal Nehru, op. cit., (n.4), pp. 436-37.

37. As quoted in D. G. Tendulkar, op. cit., (n. 26), Vol. V, p. 318.

38. P. Sitaramayya, op. cit., (n. 30), pp. 211-16.

39. Ibid., p. 291.

40. Congress Working Committee resolution as quoted in D. G. Tendulkar, op. cit., (n. 26), Vol. VI, pp. 33-34.

41. Ibid., p. 151.

42. D. G. Tendulkar, op. cit., Vol. VII, p. 198.

43. Ibid., pp. 414-15.

44. As quoted in Penderal Moon, Gandhi and Modern India, The English University Press Ltd., p. 257.

45. Ibid., pp. 249-50.

46. Louis Fischer, The Life of Mahatma Gandhi, Bharatiya Vidya Bhavan, Bombay, 1970, pp. 250-51.

47. Ibid., p. 261.

48. Gene Sharp, Gandhi faces the storm, Navajivan Publishing House, Ahmedabad, 1961, p. 6.

49. D.G. Tendulkar, op. cit., (n. 26), Vol. VIII, p. 227.

50. Ibid., p. 231.

51. As quoted in, Ibid., pp. 283-84.

52. S. P. Sen Ed., Dictionary of National Biography, Institute of Historical Studies, Calcutta, 1972, Vol. I, p. 341.

53. Maulana Abul Kalam Azad, India Wins Freedom, Orient Longmans, 1959, pp. 13-16.

54. S. P. Sen Ed., op. cit., (n. 52), p. 342.

55. D. G. Tendulkar, opl cit., (n. 26), Vol. II, pp. 184-85.

56. Geoffrey Ashe, Gandhi - A study in Revolution, Asia Publishing House, 1968, pp. 245-46.

57. William Stuart Nelson, Non-Violence and India's Independence, in Gandhi Marg, January 1971, p. 51.

58. Young India, 11 August, 1920.

59. P. D. Kaushik, op. cit., (n. 10), p. 45.

60. Congress Presidential address, Second series, Vol. II, 1911-1934, Madras, Natesan, 1933-34, p. 854.

61. P. D. Kaushik, op. cit., (n. 10), p. 46.

62. As quoted in D. G. Tendulkar, op. cit., (n. 26), Vol. II, p. 309.

63. Congress Presidential Address, op. cit., p. 432.

64. S. P. Sen Ed., op. cit., (n. 52), p. 227.

65. Geoffrey Ashe, op. cit., (n. 56), pp. 322-23.

66. D. G. Tendulkar, op. cit., (n. 26), p. 95, and also see Indian Annual Register 1939, Vol. I, pp. 6-8, 15, 17, 28-32, Vol. II, p. 15.

67. P. Sitaramayya, op. cit., (n. 30), p. 179.

68. P. Sitaramayya, op. cit., (n. 30), p. 679.

69. S. C. Bose, The Indian Struggle-1935-42, Calcutta, 1952, p.26.

70. J. S. Bright Ed., Important speeches and writings of Subhas Bose (Bose's speech, 25 Dec., 1925), Lahore, 1947, pp.57-58.

71. R. S. Ruiker (Issued by), Ideology of Netaji, Calcutta, 1949 p.31.

72. S. C. Bose, Through Congress Eyes, Allahabad, Kitabistan, 1938, p. 144.

73. J. S. Bright Ed., op. cit., (n. 70) (Bose's speech 25 December, 1928), p. 57.

74. R. S. Ruiker, op. cit., (n. 71), p. 14.

75. S.C. Bose, Through Congress Eyes, op. cit., (n. 72), p. 72.

76. Report of the fifty first Indian National Congress, Haripura (1938), Ahmedabad Reception Committee, 1938, Presidential speech at Haripura Congress, pp. 176-77.

77. R.S.Ruiker, op. cit., (n. 71), p. 26.

78. S. P. Sen Ed., op. cit., (n. 52), p. 48.

79. Louis Fischer, op. cit., (n. 46), p. 68.

80. Dhananjay Keer, Dr. Ambedkar - life and mission, popular Prakashan, Bombay, 3rd Edn., 1971, pp.165-68.

81. Louis Fischer, op. cit., (n. 46), pp. 68-69.

82. S. P. Sen Ed., op. cit., (n. 52), p. 47.

83. Proceedings of Federal Structure Committee and Minorities Committee, p. 534.

84. As quoted in Ibid., pp. 184-85.

85. B.R.Ambedkar, 'What Gandhi and the Congress have done to the untouchables', pp. ii, 266-68, 271-72 and pp. 285, 306-307, 2nd edn., Thacker & Co., Bombay, 1946.

86. Dhananjay Keer, op. cit., (n. 80) pp. 182-83.

87. As quoted in D.G. Tendulkar, op.cit., (n. 26) Vol. VII, pp.155-56.

88. Constituent Assembly Debates, Vol. VII, pp. 257-59.

89. Ibid., pp. 38-40.

90. K. C. Markandan, Directive Principles in the Indian Constitution, Allied Publishers, 1966, Appendices B (vii), p. 369.

91. Jawaharlal Nehru, op. cit., (n. 4) p. 349.

92. Michael Brecher, Nehru - A political Biography, Oxford, 1959, p. 267.

93. Maulana Azad, op. cit., (n. 53), pp. 29-30.

94. D. G. Tendulkar, op. cit., (n. 26) Vol. V, pp. 308-309.

95. Maulana Azad, op. cit., (n. 53) p. 58.

96. K. M. Munshi, Indian Constitutional Documents, Vol. I, Pilgrimage to freedom (1902-50) Bharatiya Vidya Bhawan, Bombay, 1967, Appendix, p. 410.

97. Ibid., pp. 357-82.

98. Ibid., p. 374. The letter was dated 16.4.1934.

99. Ibid., pp. 378-79.

100. Ibid., (letter dated 20.6.1940) pp. 403-404.

101. Ibid., (letter from Munshi to Gandhi, 26.5.1941) pp. 409-10.

102. K. C. Markandan, op. cit., (n. 90) pp. 343-44 and pp. 348-49.

103. Constituent Assembly Debates, Vol. VII, pp. 894-95.

104. Granville Austin, The Indian Constitution-Cornerstone of a Nation, O.U.P, 1966, p. 65.

105. Louis Fisher, op. cit., (n. 46) p. 129.

106. G. Ashe, op. cit., (n. 56), p. 293.

107. P. Sitaramayya, op. cit., Vol. II, (n.30) p. 9.

108. L. Fischer, op. cit., (n. 46) p. 283.

109. D. G. Tendulkar, op. cit., (n. 26) Vol. VI, p. 43.

110. D. G. Tendulkar, Vol. VIII, Appendices (letter from Gandhi to Nehru, January 17, 1928) p. 290.

111. Michael Brecher, op. cit., (n. 92) p. 145.

112. Ibid., p. 191.

113. Ibid., p. 193.

114. Ibid., pp. 200-201.

115. P. Sitaramayya, op. cit., Vol. II, (n. 30), p. 13.

116. D.G.Tendulkar, op. cit., (n. 26), Vol. VIII, pp. 300-301.

117. M. Brecher, op. cit., (n. 92) pp. 268-69.

118. D. G. Tendulkar, op. cit., (no. 26), Vol. VII, pp. 414-15.

119. B. N. Rau, Indian Constitution in the Making, p. XXXV.

120. See J. Nehru, A Bunch of Old Letters, Asia Publishing House, 2nd Edn., 1960, pp. 505-12.

121. Ibid., (Letter dated 5.10.45, from Gandhi to Nehru) p. 505.

122. Mrs. Besant's Bill, Nehru Report 1928 and Sapru Report of 1945 proposed parliamentary system of government with direct elections.

123. Nehru, op. cit., (n. 120), (letter dated 9 October'45, from Nehru to Gandhi) p. 509.

124. Nehru, An Autobiography, London, 1958, p. 767.

125. Gandhi, Hind Swaraj, Madras, 1921, pp. 22-96.

126. Nehru, Discovery of India, op. cit., p. 412.

127. Young India, December 10, 1919.

128. Ibid., February 4, 1926.

129. Ibid., May 28, 1931.

130. Ibid., February 4, 1926.

131. Nehru's Presidential Address at Faizpur Congress, Indian Annual Register, 1936, Vol. II, pp. 229-31.

132. B. N. Rau, India's Constitution in the Making, p.xxxiv, also see Austin, p. 40.

133. Nehru, A Bunch of Old Letters, (letter from Nehru to Gandhi, dated, 9.10.1945), p. 509.

134. Ibid., p. 508.

135. Nehru, Whither India, Allahabad 2nd ed., 1933, p. 36.

136. For a detailed study, see S. Ghosh, op. cit., pp. 347-55.

137. Presidential Address to the National Congress, Lucknow, April, 1936.

138. Young India, 15.11.28.

139. Keer, op. cit., pp. 629-30.

140. Young India, April, 17, 1924.

141. Nehru, A Bunch of Old Letters, 1958, p. 382.

142. Sankar Ghosh, op. cit., p. 322.

143. C.A.D. Vol. VII, pp. 984-85.

144. Ibid., pp. 985-86.

145. Brecher, op. cit., p. 389.

146. C.A.D., Vol. XI, p. 611.

147. Ibid., p. 732.

148. Ibid., p. 852.

149. P. Sitaramayya, op. cit., Vol. I, (n.8), p. 239.

150. D.G.Tendulkar, op. cit., (n. 26) Vol. VII, p. 145.

151. Azad, op. cit., (n. 53), p. 67.

152. Ibid., p. 193.

153. P. Moon, op. cit., (n. 44), p. 258.

154. D. G. Tendulkar, op. cit., (n. 42).

155. Azad, op. cit., (n. 53) pp. 193-94.

156. Ibid., p. 200.

157. M. Brecher, op. cit., (n. 92), pp. 391-94.

158. Durga Das (Ed.): Sardar Patel's Correspondence, Navajivan Publishing House, Ahmedabad, 1971, Vol. VI (exchanges of letters between Patel and Nehru from December 1947 to January 1948), pp. 9-26.

159. M. Brecher, op. cit., (n. 92) p. 399 and also G. Ashe, op. cit., (n. 57) p. 381.

160. Ibid., p. 424.

161. G. Austin, op. cit., (n. 104), pp. 42-43.

162. L. Fischer, op. cit., (n. 46) p. 267.

163. Azad, op. cit., (n. 53) pp. 68 and 193.

164. M. Brecher, op. cit., (n. 92), p. 86.

165. Azad, op. cit., (n. 53), p. 16.

166. M. Brecher, op. cit., (n. 92) p. 207.

167. G. Ashe, op. cit., (n. 56) p. 377 and also see L. Fischer, op. cit., (n. 46) p. 267.

168. As quoted in G. Austin, op. cit., (n. 104) p. 35.

169. Constituent Assembly Debates, Vol. XI, pp. 954-95.

170. Ibid., pp. 984-85.

171. Ibid., pp. 992-93.

172. G. Austin, op. cit., (n. 104) p.20.

173. B. N. Rau, India's Constitution in the Making, B.Shiva Rao Ed., Orient Longmans, Calcutta, 1960, pp. 331-33.

174. B. N. Rau, Constitutional Precedents, First Series, Parts 8-12 and Third Series Parts 2-5.

175. Shankar Ghose, Socialism, Democracy and Nationalism in India, Allied Publishers, 1970, p. 408.

176. Ibid., p. 345.

177. M. Brecher, op. cit., (n. 92) pp. 217-18.

178. Subhas Bose, The Indian Struggle, op. cit., (n. 69) p. 344.

179. Nehru, Discovery of India, op. cit., (n. 4) pp. 396 and 400.

180. B. N. Ganguly, Gandhi's Social Philosophy - Perspective and relevance, Vikash Publishing House, 1973, p. 172.

181. D. G. Tendulkar, op. cit., (n. 26) Vol. III, p. 297 and also see Indian Annual Register, 1934, Vol. II, p. 25.

182. Indian Annual Register, 1938, Vol. I, p. 4.

183. Jaya Prakash Narayan, Towards Struggle, p. 130. as quoted in S. Ghose, op. cit., (n. 175) p. 407.

184. S. Ghosh, op. cit., p. 414.

185. W. H. Morris Jones, Parliament in India, Longmans Green, London, 1967, pp. 43-73. Also, J. Nehru, Discovery of India, op. cit., (n. 4) (Indian dynamism versus British conservatism in India) pp. 371-80.

186. M. N. Roy's Constitution for Free India, 1944, Hindu Mahasabha's Constitution of Hindustani Free State, 1944 and Socialist Party, Draft Constitution of Indian Republic, 1948.

187. Harijan, 28 July, 1946.

188. G. Austin, op. cit., (n. 104) p. 70.

189. Ibid., pp. 44-45.

190. Nehru, A bunch of old letters, op. cit., p. 509 also Austin, op. cit., p. 43.

191. G. Austin, op. cit., (n. 104), p. 45.

192. Ibid.

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CHAPTER - 3

I

The idea of defining and declaring the rights of man and of citizen is not a very recent contribution to political theory.

Origin & growth of fundamental human rights.

Since the days of the French Revolution, the notion of defining Rights of Man and of Citizen has become an article of faith for liberalism (1).

Men normally value liberty only when it is denied to them. But its denial is a denial of all that makes life worth living, so that the spirit of the prisoner cries out for liberty and again for liberty, as the lungs of the man who is choking cry out for air. Liberty indeed is the air of the spirit (2).

Fundamental Rights represent the modernised version of the traditional natural rights. They have been regarded as not only basic to the development of human personality, but also as an indispensable condition of the peaceful progress of the world and vitally essential for a stable international society. In a much narrower sense, the aim of having a declaration of fundamental rights is that certain elementary freedom of faith and so on, should be regarded as inviolable under all conditions and that the country should not be able to tamper with them (3).

The modern conception of rights was unknown in ancient

Greece where society was divided into free citizens and slaves who had no rights. The Roman period was not conducive to the development of such a conception in a universal sense. The advent of christianity improved matters considerably from the stand point of human life and personality, but it was not until the late seventeenth and the eighteenth centuries that the necessity for a set of written guarantees of human freedoms was seriously felt, as the symbol of a new philosophy and new way of life, unthinkable, in the feudal, monarchical and absolutist society preceding it. Even the historically famous Magna Carta, which has been hailed in some quarters as the greatest charter of human liberty, should be considered as no more or no better than an attempt of the feudal Barons of the Middle Ages to secure their privilege and position against the monarch. It was not a declaration of the rights of all citizens, much less of all men[4]. It was Locke, Rousseau and Thomas Paine's sincere and zealous advocacy of the rights of man that initiated the process of constitutional incorporation and safeguard of rights of individuals living in a free democratic society-free from the arbitrary shackles of an authoritarian absolutist rule, not of laws but of man.

Locke was of the opinion that the original state of nature was one in which peace and reason prevailed. It was not lawless, since men lived under natural law. Under the law of nature all men were equal and possessed equal natural rights. Locke defined these as the rights to life, liberty and property. In his opinion, the powers of the legislatures were not to be absolute; behind it

stood the community, which retained its natural rights, and which might dissolve the government if it acted contrary to its trust.

"Men are born and remain free and equal in rights", and "the law is the expression of the general will", were the opinions of Rousseau, which influenced the governmental changes of the period. His doctrines of human equality, of popular sovereignty and many of his other principles had great impact on the political experiments of the French Revolution and were expressed in the Declaration of the Rights of Man in 1789 (5).

In America, the growth of democratic and republican sentiment was stimulated by the writings of Thomas Paine (1737-1809). Paine urged the Colonists to declare Independence. The later American attitude towards monarchy and the system of nobility, the emphasis on popular elections, and the idea of independence owed much to the influence of Paine (6).

The French Revolution was supported in England by Paine. He held that a republican form of government and a written constitution were necessary for the proper organisation of the popular consent. Paine strongly upheld the natural law philosophy of the Declaration of the Rights of Man. He believed that men are free and equal, that they possess the natural rights of security, liberty, and property, and that all authority is derived from the people. He insisted that the state was made for man and that government should be his servant (7).

The British Constitution, being unwritten, contains no formal declaration of rights; nevertheless, it can not be denied that the earliest charters of fundamental rights are to be found amongst the British Constitutional documents. Of these, the most ancient and important is the charter granted by King John, in 1215, generally known as Magna Carta[8]. The next constitutional charter was the Petition of Rights of 1628, the preamble of which expressly states that it concerns "Diverse rights and liberties of the subjects". The next was the Bill of Rights of 1689, which was expressly described as "an Act declaring the rights and liberties of the subject". These three declarations were the forerunners of modern Bill of Rights.

A direct descendant of these constitutional charters was the Virginia Declaration of 1776. As Professor Goodhart says, "Magna Carta crossed oceans in the 17th and 18th centuries because the colonists brought these documents with them"[9]. Originally, the British settlers in these colonies claimed the same rights as were enjoyed by their fellow citizens in Great Britain under the Common Law. Though there was no declaration of fundamental rights in the Constitution of the United States which came into force on the 25th September 1789, the gap was subsequently filled up by the first ten amendments which armed the people with all important rights.

On the 27th of August, 1789, the French Constituent

Assembly gave its final approval to a Declaration of Rights which, because of its historical importance, became the source of the charters of liberties not only on the continent of Europe, but also in other parts of the world.

Internationalisation of fundamental rights really began with the charter of the United Nations, which reaffirms "faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of the nations large and small" (10). The second step in this direction was taken by the General Assembly on the 10th December, 1948, when it proclaimed the Universal Declaration of Human Rights.

With its long history of foreign rule and sensitive to its disabilities and discriminations, the Indian mind had come to regard a Bill of Rights as an essential part of their constitution.

Pandit Jawaharlal Nehru held that we did not have to go abroad for ideas of religious and cultural toleration; these were inherent in Indian life. In regard to individual and political rights and civil liberties, we were influenced by the ideas of the French and American revolutions, as also by the constitutional history of the British Parliament. Socialistic ideas, and the influence of the Soviet Revolution, came in later to give a powerful economic turn to our thoughts. (11)

In his Memorandum on Fundamental Rights, which was submitted to the Constituent Assembly, Sir B. N. Rau, the Constitu-

tional Adviser, refers to Magna Carta, the Petition of Rights, and the Bill of Rights - the triple pillars of the British Constitution, and also invites attention to the following declarations of rights: (1) Amendments to the Constitution of the United States, (2) Articles of the Swiss Constitution dealing with fundamental rights, (3) Articles 109-160 of the German (Weimar) Constitution of 1919, (4) Articles 118-128 of the 1936 Constitution of the USSR and (5) Articles 40-44 of the Constitution of the Republic of Ireland (12).

But there is no denying the fact that the American Bill of Rights became the foundation of the declaration embodied in the Indian Constitution. The rights which the Indian Constitution recognises as "fundamental" are generally to be found in the American Bill of Rights.

Inspite of the long association of the Indian statesmen and politicians with the British political system, the Constituent Assembly deliberately departed from the British conception and adopted a formal declaration of fundamental rights in the Constitution in accordance with the American practice. Historically speaking the persistent refusal on the part of the British rulers to grant even a semblance of human freedom to the oppressed Indians, and the ardent conviction of the Indian leaders that an unwritten assurance was no effective guarantee or remedy against a possible interference by the state, perhaps accounted for this departure. The history of this country, the composition of its population, ideological differences

amongst the different sections of the population, India's social traditions, and the requirements of true democracy, were determining factors with the members of the Constituent Assembly in their task of enunciating a set of justiciable rights for the newly independent people of India (13). Apart from this "the notion for many years had great appeal not only as representing advanced democratic thought but more particularly as a convenient way of setting at rest the fears of minorities" (14). Moreover, that a declaration of rights had assumed such importance was not surprising. India was a land of communities, of minorities, social, religious, linguistic and caste. For India to become a state, these minorities had to agree to be governed both at the centre and in the provinces by fellow Indian members, perhaps, of another minority - and not by a mediatory third power, the British. On both psychological and political grounds, therefore, the demand for written rights proved overwhelming (15).

The rights embodied in the Indian Constitution are not absolute. The notion of qualified or restricted rights is of recent origin. Modern states are welfare states. The existence of the welfare state is conditioned by a right balance between individual liberty and social welfare. This balance between individual liberty and social control imples qualified rights.

Mill championed an individualistic and negative approach to liberty. In his opinion, the only part of the conduct of any one, for which he is amenable to society, is that which

concerns others. In the part which merely concerns himself, his independence is, of right, absolute. "Over himself, over his own body and mind, the individual is sovereign"(16). The central idea of Mill's 'Liberty' is the immense importance to mankind of encouraging and promoting a large variety of character and modes of thinking, thus giving full freedom to human nature to expand and improve in all directions.

Modern political scientists like Harold Laski and Ernest Barker put emphasis on positive content of liberty and its qualified character. Laski means by liberty "the absence of restraint upon the existence of those special conditions which, in modern civilisation, are the necessary guarantees of individual happiness"(17). For something like a century and a half, says Laski, it has been the central purpose of western civilisation to find the secret of combining individual freedom with social order. The fulfilment of that purpose has been achieved in different ways, and in different degrees; there has been one method in France and another in Great Britain. But it is an aim, the fulfilment of which has been generally and increasingly desired whereever there has been respect for human personality(18).

Barker holds the view that Liberty within the state is a relative and regulated liberty: it is the greatest common measure of liberty which is possible for all, as determined and defined (1) by the need of each to enjoy similar and equal liberty with others, and (2) by the need of all to enjoy the specific

liberty of realising specific capacities .... "A relative and regulated liberty, actually operative and enjoyed, is a liberty greater in amount than absolute liberty could ever be"(19). In the twentieth century, especially after the First World War, fundamental rights and human freedoms have acquired altogether new dimensions. While in the 18th century, people talked of inalienable and unchangeable natural rights basic to human development, in the second half of the nineteenth century, they talked more and more of civil liberties, especially those concerned with political participation. A new dimension was added in the twentieth century when, thanks to President Roosevelt's famous declaration of "four freedoms" namely, freedom of expression, freedom of participation, freedom from want and freedom from fear, liberties were transformed into freedoms. This new dimension of freedom calls for social security, for right to work, education and leisure, and requires a rich cultural life and internal order. This was partly epitomised in the Bill of Rights of the Soviet Constitution of 1936, and received complete fruition and fulfilment in the Universal Declaration of Human Rights of the U. N. when fundamental rights were, for the first time, internationalised. This, indeed, has been a revolution in itself. One other development requires attention. While there has been significant and substantial addition to the quantum and content of the freedoms, the corresponding restrictions and limitations on such freedoms have also increased, due partly to the growth in the activities and functions of the state, and partly to the growing need for discipline, order, security and stability

of the state society. This has resulted in a new equilibrium between freedom and authority. The Constitution of India, in a large measure, seeks to recognize these changing dimensions and patterns in the field of human freedoms, not in Part III in isolation, but in Parts III & IV taken together as an integrated scheme of freedom. Part IV, in a large measure, seeks to symbolize, albeit partially and superficially, the new shift in the evolution of rights and freedoms.

The difference between the Indian Constitution and the Constitution of the U.S.A., so far as fundamental rights are concerned, is really, as Dr. Ambedkar rightly pointed out in the Constituent Assembly on November 4, 1948, "one of form and not of substance" (20). The fundamental rights of the American citizen as judicially interpreted, are not absolute rights. There is really no difference in the result. What one does directly, the other does indirectly. In both cases the fundamental rights are not absolute.

The urge for liberty in India was the product of a mixture of events. Mill's essay "On Liberty" in 1859 was a source of inspiration to the educated Indians. The foundation of High Courts in Calcutta, Bombay and Madras in 1862 was an important landmark in the history of civil liberties in India. The immortal documents like Magna Carta, Petition of Rights and the Bill of Rights inspired the students of constitutional history and the

lawyers. Indians, educated in the western line, inspired by the teachings of Locke, Hume, Paine and Bentham, were suffering from a sense of frustration seeing the glaring contrast between the ideal of civil liberty which the Indians got from the study of English history and literature and its virtual denial in their everyday life under the British rule. American Bill of Rights and the French Declaration of the Rights of Man and Citizen had immense effect in this direction.

The Indian National Congress which led the national movement of the country, was the most important political organisation in British India. From 1885, the year of its inception, upto 1905, it was dominated by leaders, who were known as the Moderates. Demands like (1) Indianisation of the Services, (2) expansion of the Legislative Councils, (3) removal of the restrictions on the Press, (4) the extension of the rule of law by taking such steps as the separation of the judiciary from the executive, were articulated by such stalwarts as Ranade, Surendranath Banerjea, Pherozeshah Mehta and G.K.Gokhale; and the line of activity the Congress persued, was to apply constitutional pressure both in India and in England through the normal channels of political communication.

National consciousness began to grow fast. The development of transport and communications through the railways, posts and telegraphs and press, helped the growth of such consciousness. The first popular movement began under the leadership of B.G.Tilak

in Maharashtra in the year 1890, and the Partition of Bengal (1905) gave a great fillip and a radical turn to the nationalist movement. It is significant that in 1906 Dadabhai Naoroji, in his Presidential address to the annual session of the Indian National Congress, placed before the people 'swaraj' or 'self-government' as the goal to be attained (21).

The Fundamental Rights and the Directive Principles had their roots deep in the struggle for Independence; they were included in the Constitution in the hope and expectation that one day the tree of liberty would be securely planted in India. The Rights and Principles thus connect India's future, present and past, adding greatly to the significance of their inclusion in the constitution and giving strength to the persuit of the social revolution in India (22).

The majority provisions of the Constitution are either directly aimed at furthering the goals of the social revolution or attempt to foster this revolution by establishing the conditions necessary for its achievement. Though the entire Constitution is directed towards this end, the core of the commitment to the social revolution lies in Parts III and IV, in the Fundamental Rights and in the Directive Principles of State Policy. These, according to Granville Austin, are the 'Conscience' of the Constitution (23).

In the Directive Principles, however, one finds a

more concrete statement of social revolution, and the institutionalization of such goals. These principles aim at making the Indian masses free from the passivity engendered by centuries of social-political constraints, free from the abject physical conditions that had prevented them from fulfilling their best selves (24).

The preamble to the Constitution of India lays down "justice, social, economic and political", and "equality of status and of opportunity", as objects to be secured to all its citizens. Part IV explains more precisely what it means by the objective of the Preamble. Article 38, the essence of the Directives, echoing the Preamble, states that "the state shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life."

The formulation of social and economic objectives in national constitutions owes its origin essentially to the realisation that the content of political freedom is impaired by the absence of social justice and that without adequate protection for social and economic rights constitutional guarantees of what are known as "classical individual liberties" such as the right to equality, liberty of person and freedom of speech and association may lose much of their significance. This close association between political freedom and social justice has become a common concept since the French Revolution (25).

In India, it was hoped that the Constitution would be framed in such a way that a true socio-economic revolution could be heralded and through this revolution the basic needs of the common man could be fulfilled. The Assembly members were also conscious of the need for a fundamental change in the structure of Indian society and of a powerful infusion of energy and rationalism. And as a result the theme of social revolution runs throughout the proceedings and documents of the Assembly (26).

Jawaharlal Nehru was of the opinion that "the service of India meant the service of the millions who suffer. It meant the ending of poverty and ignorance and disease and inequality of opportunity. The ambition of the greatest man of our generation" he said "has been to wipe every tear from every eye" (27). Nehru believed that two revolutions, the national and the social, had been running parallel in India since the end of the First World War. With Independence, the national revolution would be completed, but the social revolution must go on. Freedom was not an end in itself, only a means to an end, that end being the raising of the people to higher levels and the general advancement of humanity (28).

The choice for India, wrote Santhanam, was between rapid evolution and violent revolution because the Indian masses could not and would not wait for a long time to obtain the satisfaction of their minimum needs (29).

And it may be said that the Directive Principles serve

this purpose, representing the minimum of the ambitions and aspirations cherished by the people of India. They are the ideals of a welfare state, and represent a dynamic move towards a certain objective.

Gandhi was a firm believer in 'liberty', 'equality' and 'fraternity' as being the essence of democracy. Consistently with his own social philosophy, Gandhi tried to pour a new content of ideas into 'liberty', 'equality' and 'fraternity'. These ideas were characteristically egalitarian and socialistic, and were rooted in his conception of non-violence as the very essence of democracy.

Gandhi said in 1942 that the liberty of the people should not depend upon the will of the individual, however noble and ancient may be his descent. Nor can, any person, whether prince or princely zamindar or merchant, be the sole owner and disposer of the possessions, hereditary or self-acquired. Every individual must have the fullest liberty to use his talents consistently with equal use by his neighbours. Referring to the French ideal of 'liberty', 'equality' and 'fraternity', Gandhi said, "it is a heritage not for the French only but for all mankind, what the French never realised, it is open to us to do" (30).

An attempt to outline the rights desired by Gandhi for the citizens of free India is largely frustrated in the absence of specific political or constitutional ideas of Gandhi. In the early years of his political career, he was

preoccupied with his Constructive Programme. Throughout his life, he showed the least interest in participating in the governmental affairs. He neither participated in the debates of the Constituent Assembly nor allowed himself to express anything he deemed proper during the long debates in the Assembly. His role in the later years was one of disinterestedness, except under special circumstances when he made some casual expressions. Therefore, the task to ascertain his views on the rights of the people is to depend on his sporadic remarks or statements lying scattered here and there, which he made either in personal capacity or as the leader of the Congress.

The book 'Hind Swaraj' or 'Indian Home Rule' written by Gandhi in 1909 contained his basic ideals on which the future Constitution of India should be based (31).

Again, on the eve of his departure for London to attend the Round Table Conference in 1931, being asked by a correspondent what type of constitution he would like to bring home, if he was allowed to, Gandhi asserted that he would strive for a constitution, which would release India form all thraldom and patronage, and give her if need be, the right to sin. He reiterated his vow to work for an India in which the poorest should feel that it was their country - in whose making they had an effective voice; an India in which there would be no high class and low class of people; an India in which all communities would live in perfect harmony. There could be no room in such an

India for the curse of untouchability or the curse of intoxicating drinks and drugs. Women would enjoy the same rights as men..... This was the India of his dreams. He would be satisfied with nothing less (32). We find an echo of his ideas in some of the Directive Principles of State Policy, which were later adopted.

With reasonable caution and reservations we can accept Shriman Narayan Agarwal's book 'Gandhian Constitution for Free India' as Gandhi's own conception or idea about India's constitution; because Gandhi himself approved this book, and in foreword he wrote that the merit of Shriman Narayan Agarwal's attempt consisted in the fact that he had done what for want of time Gandhi himself had failed to do. In this brochure, Shriman Narayan Agarwal intended to draw the attention of the future rulers of the people to what Gandhi had contemplated. Therefore, the fifth chapter of this brochure, which contains the 'fundamental rights and duties' may accordingly be expected to be Gandhi's prescriptions for the people of free India.

The following are the rights enumerated in the book:

(1) All citizens shall be equal before the law, irrespective of caste, colour, creed, sex, religion or material wealth.

(2) No citizen shall suffer from any disability on account of his or her religion, caste or creed in regard to

public employment, public honour, trade and commerce.

(3) Subject to the principles of non-violence and public morality, every citizen shall enjoy freedom of person; freedom of speech; freedom of assembly, combination and discussion.

(4) Every citizen shall enjoy freedom of conscience and the right to follow personal and social customs, subject to public order and morality.

(5) All citizens shall be free to preserve and develop their script, language and culture.

(6) All citizens shall have an equal right to the use of wells, tanks, roads, schools and places of public resort, maintained out of state or local funds, or dedicated by private persons for the use of the general public.

(7) Every citizen shall be entitled to free basic education, otherwise known as 'Nai Talim'.

(8) Every citizen shall have the right to obtain legal and public protection from violence, compulsion or intimidation in regard to his or her persons and personal property.

(9) Every citizen shall have the right to obtain a minimum living wage through honest work or employment.

(10) Every citizen shall have the right to rest, by not being compelled to work for more than eight hours a day.

(11) Every citizen shall have the right to medical freedom.

(12) Every citizen shall have the right to take part

in Public Administration through his or her vote on the basis of adult franchise.

(13) Every citizen shall have the right to keep and bear arms in accordance with rules and regulations made in this behalf.

Duties:-

(1) All citizens shall be faithful to the state specially in times of national emergencies and foreign agression.

(2) Every citizen shall promote public welfare by contributing to state funds in cash, kind or labour as required by law.

(3) Every citizen shall avoid, check and, if necessary, resist exploitation of man by man (33).

II

Genesis of fundamental rights in India

The inclusion of a set of Fundamental Rights in the Indian Constitution had its genesis in the forces that operated in the national struggle during the British rule. With the British authorities resorting to all sorts of arbitrary acts to curb the liberty of the people in the early decades of this century, this become an article of faith with the leaders of the freedom movement. Of course, the Indian desire for civil rights had its roots deep in the nineteenth century. It was implicit in the formation of the Indian National Congress in 1885. Indians wanted the same rights and privileges that their British masters enjoyed in India.

Sir B. N. Rau, in his report on Human Rights (December 1947), says that at the end of the First World War, when the League of Nations and the International Labour Organisation came into being, India's membership of these bodies and her participation in their periodical conferences had an immense educative effect on the Indian public. So too had Mahatma Gandhi's powerful and persistent efforts to ameliorate the position of Harijans. Almost simultaneously came the introduction of responsible government in the Provinces, at first, partially, under the Government of India Act 1919 and later, more completely, under the Act of 1935. The legislatures became more and more responsible to public opinion and this had the effect of facilitating, if not compelling, the transition of the new ideals into law. The process was further accelerated by the Second World War and the establishment, upon its end, of the United Nations (34).

The first explicit demand for fundamental rights appeared in the Constitution of India Bill, 1895. This Bill guaranteed to everyone of her citizens freedom of expression, inviolability of one's house, right to property, equality before the law and in regard to admission to public offices, right to present claims, petitions and complaints and right to personal liberty. (Clauses 16-21 and 23, 24 of the Bill, select Documents 1,2,p.7) (35). This was the starting point and subsequent resolutions of the Indian National Congress sought to lay emphasis on the securing of fundamental rights, in any future consti-

tution in India, as an article of faith. The Calcutta Congress in 1906 resolved that in the opinion of this Congress, "the time has arrived for the people all over the country earnestly to take up the question of National Education for both boys and girls and organise a system of education - literary, scientific and technical, suited to the requirements of the country on national lines and under national control."(36)

The Calcutta Congress of 1907 demanded equality of women and men in regard to the franchise and education. On the allied question of the Depressed Classes, the Congress urged upon the people of India the necessity, justice and righteousness of removing all disabilities imposed by custom upon the Depressed Classes, the disabilities being of a most oppressive character, subjecting those classes to considerable hardship and inconvenience(37).

By the mid-twenties, Congress and Indian leaders had generally achieved a new forcefulness and a consciousness of their Indianness and of the needs of the people, thanks largely to the experience of the First World War, to the disappointment of the Mantagu-Chelmsford Reforms, to Woodrow Wilson's support for self-determination, and to Gandhi's arrival on the scene. These influences were reflected in the tone and form of demands for civil rights(38).

Ever since his advent into Indian politics,

Gandhi exercised tremendous influence in moulding public opinion and guiding Indian leaders. He held the field for about three decades at one time as the active head of the Congress, at another as the sole inspirer. It is immaterial whether he was or was not all along a formal member of the Congress organisation. Upto the last day of his life he had been the consultant, whose experiments in satyagraha and other non-violent techniques placed him in the position of a guide to the Congress. Under his leadership, the aim of the Congress was to win India's freedom and to secure rights and liberty for the people. Therefore, it would not be unfair or irrelevant to assume that the Congress, its struggle for individual rights, its reports and resolutions during that (Gandhi's) period, were to a great extent influenced by Gandhi. Hence, it will be illuminating and most interesting to have here a brief survey of the evolution of Fundamental Rights, through different stages, side by side with Gandhi's attempts in this direction.

Following the publication, in 1918, of the Montagu Chelmsford Report, the Indian National Congress at its special session, held in Bombay in August, 1918, demanded that the new Government of India Act should include a Declaration of the Rights of the People of India as British citizens. The proposed declaration was to include, inter alia, guarantees in regard to equality before the law, protection in respect of liberty, life and property, freedom of speech and press, and right of association. In the same year, at its Delhi session in December, the Congress

passed another resolution demanding the immediate repeal of all laws, regulations and ordinances, restricting the free discussions of political questions and conferring on the executive the power to arrest, detain, intern, extern or imprison any British subject in India outside the process of ordinary civil or criminal law (39).

The war ended in a victory for the British, the feeling grew that the attitude of the British would turn for the worse. The Government of India announced in January 1919, its intention to make new laws with a view to restrict freedom of expression and movement and to arrest a person without showing cause. In February 1919 the Rowlatt Bills made their appearance. Gandhi characterised these as "unjust, subversive of the principles of liberty and justice and destructive of the elementary rights of an individual" (40). Government turned a deaf year and passed the Rowlatt Bill, Gandhi threatened Satyagraha, if the Bill which was subversive of the principles of liberty and justice and destructive of the elementary rights of an individual was passed.

Under the inspiring leadership of Gandhi the Amritsar Congress in 1919 passed a resolution supporting vigorously the civil liberty and denouncing the excesses committed by the Government. The whole Congress was a triumph for Gandhi. He had impressed the Congress with his principles and philosophy, his code of ethics, his cult of truth and non-violence (41).

After a long and earnest consideration the resolution of Gandhi for non-co-operation (due to Khilaphat and Punjab excesses) was passed in the Calcutta Congress in September 1920.

Many important changes took place at Nagpur, in the same year. The creed of the Congress was changed, the object of the Indian National Congress was declared to be the attainment of swaraj by the people of India by peaceful and legitimate means. Previously, the Congress creed was the attainment of a form of administration within the British empire on the lines of those in the colonies. Swarajya, in the creed adopted at Nagpur, meant, according to Gandhi, "within the British Empire if possible, outside the Empire if necessary" (42). This session was a personal victory of Gandhi. The drastic changes made in the Congress organisation by Gandhi made it a real, solid organisation. At Nagpur, Gandhi became the undisputed leader of India.

Resolution No. 8 of this session proclaimed that "the Congress is of opinion that Indian labour should be organised with a view to improve and promote their well being and secure to them their just rights and also to prevent the exploitation (1) of the Indian labour (2) of Indian resources by foreign agencies, and that the All India Congress Committee should appoint a committee to take effective steps in that behalf (43).

Resolution No. 14 read: ---- "as free elementary education is the primary and urgent need of the masses of India, this Congress urges on all Congress organisations to introduce and

enforce the same in their respective areas on national lines" (44).

The Congress, as early as 1920, began to implement the ideals of the 'Constructive Programme' of Gandhi, consisting of untouchability, Hindu-Muslim unity, Khadi, prohibition, etc. The Ahmedabad Congress of 1921, in its resolution No. 2, put an appeal to the Congress workers and the nation "to help the cause of prohibition and removal of untouchability and to help the condition of the submerged classes" (45).

At the Gaya session of the Congress in 1922, there appeared a fight between those that raised politics to a spiritual level, and those that worked politics on the intellectual and material plans. That the leader of the former group was not present in flesh and blood made no difference. The issue was Council entry. To Gandhi it was opposed to non-co-operation. The spirit of Gandhi was all pervading. Everyone took it to be an act of disloyalty to the master to turn his back on him, the moment he was found to be absent from the Congress (46). A handsome tribute was paid to Gandhi and his principles: "This Congress places on record its grateful appreciation of the services of Mahatma Gandhi to the cause of India and humanity by his messages of peace and truth and reiterates its faith in the principle of non-violent, non-co-operation inaugurated by him for the enforcement of the rights of the people of India" (47).

The Gaya Congress also reiterated its previous stand taken in the Nagpur Congress, 1920, (resolution no. 8) on

the rights of the labourers.

The Indian National Congress, in its Belgaum session in December 1924, took resolutions on removal of untouchability, prohibition of intoxicating drinks, abolition of race distinction in services and religious freedom to various denominations. Among these the first two items found prominence. (Items 7 & 13 of the resolution)(48). Gandhi, in his presidential address at this Congress, said that "untouchability is another hindrance to swaraj. Its removal is just as essential for swaraj, as the attainment of Hindu Muslim unity. This is an essentially Hindu question and Hindus cannot claim or take swaraj till they have restored the liberty of the suppressed classes. They have sunk with the latter's suppression..... The sooner we remove the blot, the better it is for us Hindus"(49).

Gandhi placed his 'twelve points' Swaraj scheme. The fourth point of the scheme demanded that the revenues from intoxicating liquors and drugs should be abolished, and the eleventh point demanded recognition of complete religious freedom to various denominations, subject to mutual forbearance.

The 40th session of the Congress at Kanpur, in December 1925, adopted the following programme of political work- (i) The work in the country shall be directed to the education of the people in their political rights, and training them to acquire the necessary strength and power of resistence to win those rights by carrying out the constructive programme of the

Congress with special reference to popularising the spinning wheel and khaddar, promoting inter-communal unity, the removal of untouchability, ameliorating the condition of the suppressed classes and the removal of the drink and drug evil, the organisation of labour, both industrial and agricultural, the adjustment of relations between employees and workmen and between landlords and tenants and the general advancement of the national, economic and industrial and commercial interests of the country (50). It requires no mention that almost all the rights of the above programme were the manifestations of Gandhi's ideas and wishes.

In the same year Mrs. Annie Besant's Commonwealth of India Bill appeared with seven fundamental rights. The rights were: - individual liberty, freedom of conscience, free expression of opinion, free assembly, equality before the law, free elementary education, equal right to the use of roads, courts of justice and all other places of business or resort dedicated to the public. Thus the Bill may be said to have been the precursor of several provisions of Fundamental Rights and the Directive Principles. By now, Indian opinion, including that of the minorities, had become attuned to the necessity for such a list of fundamental rights. The minorities regarded these rights as the sheet anchor of their political existence, and even the Muslims found in such declarations a solution to all their problems (51).

Again, in the Gauhati Congress in 1926, Gandhi took a very active role in the deliberations. Special attention

was given to untouchability and prohibition, freedom of person, speech, association and of the press. Improvement of agriculture and protection of the rights of labour, agricultural and industrial, were taken to be the aim (52).

Within two years of the appearance of the Annie Besant Bill came the announcement that the Simon Commission would undertake a study of possible constitutional reforms in India. In response, the annual session of the Congress at Madras in 1927 resolved that the Working Committee should draft a 'swaraj' constitution for India on the basis of a declaration of rights. Since the problem of minorities in India further strengthened the general argument in favour of the inclusion of fundamental rights in the Indian Constitution, this Congress passed a resolution which categorically laid down that the basis of the future constitution of India must be a declaration of fundamental rights.

The session of the Indian National Congress held in Calcutta in the month of December 1928, demanded total prohibition of intoxicating drugs and drinks (resolution no. 1), removal of the disability of the women (resolution no. 2), and removal of untouchability (resolution no. 3) (53).

This Congress also urged the Ruling Princes of the Indian States to introduce responsible government based on representative institutions in the States, and to issue immediately proclamations or enact laws guaranteeing elementary fundamental rights of association, free speech, free press and

security of person and property (54).

The Nehru Committee appointed by the All Parties Conference in its Report in 1923, incorporated a provision for the enumeration of rights. The rights of this Report ultimately formed the basis of the fundamental rights in the constitution of India - "ten of the nineteen sub-clauses re-appear, materially unchanged, and three of the Nehru Rights are included in the Directive Principles ..... In this report the desire to afford protection to minorities was specially prominent ."(55)

Some of the more important rights recommended by the Nehru Committee may be summed up as follows:

(1) personal liberty and inviolability of dwelling place and property, (2) freedom of conscience and of profession and practice of religion, (3) right to free expression of opinion and to assemble peaceably, to form associations or unions; (4) right to free elementary education without distinction of caste or creed in the matter of admission into any educational institutions maintained or aided by the state; (5) equality for all citizens before the law and in civic rights; (6) non-discrimination against any person on grounds of religion, caste or creed in the matter of public employment; (7) equality of the right to all citizens in the matter of access to, and use of public roads, public wells and all other places of public resort; (8) freedom of combination and association for the maintenance and improvement of labour and economic conditions; (9) equality of

rights to men and women as citizens[56].

The Lahore session in 1929 was altogether a strenuous session as it was critical. The alternative proposals put forward against Gandhi were either academic or destructive. Gandhi was all too powerful here. The session ended amidst cries of 'Mahatma Gandhi Ki Jai'. "After Lahore, Gandhi again became the undisputed leader of the Congress. After experimenting on swarajist modification for about six years the country again found that circumstanced as India was, salvation of India lay through Gandhi's programme of undiluted non-violent, non-co-operation"[57].

The resolution which was issued on behalf of the Working Committee for adoption by public meetings all over the country on Purna Swarajya day, January 26th, 1930, proclaimed: "We believe that it is an inalienable right of the Indian people to have freedom and to enjoy the fruits of their toil and have the necessities of life, so that they may have full opportunities of growth"[58]. In the same month Gandhi offered an 'eleven point' Swaraj Scheme to Lord Irwin, which contained vital needs of India[59].

The Simon Commission which was appointed by the British Government in 1926, published its Report in 1930, totally rejecting the demands voiced by the Nehru Committee Report. However, this could not dampen the Indians enthusiasm; in 1931, a new dimension was added to the demand for constitutional rights. The Congress session held at Karachi in March 1931, adopted the

resolutions on fundamental rights and economic and social change, which was both a declaration of rights and a humanitarian socialist manifesto. The provisions did, in fact, become in some cases the direct antecedents of the Directive Principles. There were, in all, 17 articles in this resolution, divided under 4 heads as (1) fundamental rights and duties (article 1 with 14 sub-clauses), (2) labour (articles 2 to 6), (3) taxation and expenditure (articles 7 to 11) and (4) economic and social programme (articles 12 to 17)(60).

The Karachi resolution stated that, 'in order to end the exploitation of the masses, political freedom must include the real economic freedom of the starving millions'. The state was to safeguard 'the interests of industrial workers', ensuring that 'suitable legislation' should secure them a living wage, healthy conditions, limited hours of labour, and protection from the economic consequences of old age, sickness and unemployment, women and children were also to be protected in various ways and accorded special benefits. The state was to own and control key industries and services, mineral resources, railways, waterways, shipping and other means of public transport. Another item called for the reform of the systems of land tenure, revenue and rent.

"Several clauses reflected the Gandhian side of the Congress: for example, the demand for greatly reduced military expenditure, the ceiling of five hundred rupees per month

for civil servants' salaries, no salt duty, prohibition and the demand for protection against foreign cloth. The provisions concerning the salt-tax, prohibition, and protection for domestic textiles had the ring of a tactical programme for the Independence Movement - these subjects had indeed, been at the centre of the civil disobedience campaign of the previous year ..." (61)

The question of a Bill of Rights for the Indian people came up before the Round Table Conference. The subject of fundamental rights designed to secure either to the community in general or to specified sections of the people of India rights and immunities, was discussed at length and memoranda were also submitted by individuals and groups for the inclusion of a chapter on Fundamental Rights in the proposed Constitution of India. This demand was vigorously championed by Dr. B. R. Ambedkar. And a strong case for social and economic rights was made out by prominent Labour members like N. M. Joshi, B. Shiva Rau and V.V. Giri (62).

A memorandum circulated by Gandhi at the second session of the conference, demanded, inter alia, that the new constitution should include a guarantee to the communities concerned of the protection of their cultures, languages, scripts, education, profession and practice of religion and religious endowments, and protect personal laws, and that the protection of political and other rights of minority communities should be the concern of the Federal Government (63).

At the third session of the Conference, the

subject of fundamental rights was discussed on the 17th and 19th December 1932, and although the British Government realised the importance attached to them, it expressed the practical difficulties which might result from including many, indeed most of them as conditions which might be complied with as universal rules by executive or by legislative authority (64).

In 1932 a spate of correspondence between Gandhi and the Viceroy proved futile. Gandhi was arrested, along with other leaders including Jawaharlal Nehru and Sardar Patel. Amongst the leaders, only Pandit Malavya remained free. Terrible repression took place everywhere. Two Congress sessions, apparently insignificant, were held in April, 1932 in Delhi and in 1933 in Calcutta. The Delhi session (1) reiterated complete independence as the goal of the Congress, (2) endorsed Civil Disobedience, (3) congratulated the nation on its splendid response to Mahatma Gandhi's call and expressing complete faith in his leadership, (4) reaffirmed deep faith in non-violence (65).

The Calcutta Congress, (1) regarded Civil Disobedience to be a perfectly legitimate means for the protection of the rights of the people, (2) asked the people to boycott foreign clothes, (3) held that "no constitution framed by the British Government, while it is engaged in conducting a campaign of ruthless repression - involving the imprisonment and internment of the most trusted leaders of the nation and thousands of their followers, suppression of the fundamental rights of free speech

and association, stringent restraint on the liberty of the press and replacement of the normal civil law by virtual Martial law, deliberately initiated by it on the eve of Mahatma Gandhi's return from England with a view to crush the national spirit, could be worthy of consideration by or acceptable to the people of India"[66]. (4) The Congress offered its congratulations to the country on the successful termination of Mahatma Gandhi's fast of September, 1932, and hoped that untouchability would before long become a thing of the past. (5) It reiterated the resolution on fundamental rights of the Karachi Congress[67].

In the year 1934, the Working Committee met at Wardha on June 12 and 13, and in Bombay on June 17 and 18, and laid down for the newly organised Congress Committees a Constructive programme which contained: removal of untouchability, the promotion of inter-communal unity, the promotion of total abstinence from intoxicating drinks and drugs and advocacy of prohibition, promotion of education on national lines, promotion and development of useful small industries, organisation and reconstruction of village life in its economic, educational, social and hygenic aspects, spread of useful knowledge amongst the adult population in the villages, or organisation of industrial labour[68].

The Government of India Act, 1935, was passed without any Bill of Rights, much to the disappointment of the Indian leaders. Based as it was on the recommendations of the Joint Select Committee of the British Parliament, it provided

for only a few rights and privileges under sections 275,297,298, 299 and 300. Under section 298, the Act aimed at preventing discrimination against citizens in matters relating to holding of office under the Crown, holding, acquiring and disposing of property, and carrying on any trade in British India, on grounds of race, religion or place of birth or any of them, Section 299 provided that no person shall be deprived of his property in British India save by authority of law. Over and above these constitutional provisions, there were ordinary provisions of statutory enactments turning on individual rights, privileges and immunities.

On the whole, however, the position was not very satisfying; rather, it failed to come upto the Indian expectations and was bitterly resented by those sections of Indian leaders who wanted nothing short of complete independence and a full scale Bill of Rights for the subjugated Indian people, long denied the basic human freedom as members of a civilised society. By and large the Act was ineffective in safeguarding the people against executive despotism.

The session of the Indian National Congress at Lucknow in the month of April 1936 resolved that "the Congress draws public attention again to the widespread and intensive suppression of civil and in many instances personal liberties in India by the British Government: crushing labour and peasant movements, banning of books and periodicals, restriction of the

free movement of persons within the country, prevention from carrying on their usual occupations and business". The demand for a Constituent Assembly, elected by the people, to frame a constitution for India and to determine India's political destiny, which was first seriously made in 1934 by the Indian National Congress, was reiterated in the Lucknow session, and in this session an exhaustive agrarian programme was also taken (69).

The Draft Election Manifesto prepared in connection with the election to the provincial legislatures in February 1937, which was approved at a meeting of the All India Congress Committee, held in Bombay on 22nd and 23rd of August 1936, was to a great extent manifestations of Gandhi's wishes. The manifesto stated that "it stands by the Karachi resolution relating to fundamental rights and duties and will give its first attention to prohibition". Various agrarian reforms were also suggested. It was further stated that "in the domain of industrial labour, settlement of disputes and relief against old age, sickness and unemployment and the right to form unions and to declare strikes, will be the reforms aimed at removal of sickness, disability, maternity benefits and protection of women workers, equality with men in regard to privileges and obligations of citizenship and the removal of untouchability and uplift of the Harijans and backward classes, encouragement of Khadi and village industries, will largely constitute the programme of the Congress in the legislatures" (70).

A convention of newly elected members of legislatures and others met in Delhi in March 19 and 20. This convention was preceded by a sitting of the All India Congress Committee on the 17th March. The members pledged to be governed by certain principles, and put emphasis on the promotion of Khadi, prohibition of intoxicating liquor or drugs, unemployment relief, reduction of high salaries, allowances, and cost of administration of government, substantial reduction of military expenditure, freedom of speech, press and association etc.(71)

The Faizpur Congress was from all accounts a great success. The power behind the Congress was Gandhi, and Gandhi in the penumbras of retirement was no less a force than Gandhi in the limelight. India claimed for herself the right to frame her own Constitution, and if a genuine democratic state, with its political power transferred to the people as a whole, should come into existence, it could only come through a Constituent Assembly elected by adult suffrage and invested with the power to determine finally the Constitution of the country(72). Nehru, in his presidential address, said that the Congress today stands for full democracy in India and fights for a democratic state(73). Gandhi added his voice and by political independence he interpreted 'Ramarajya'(74).

The Indian National Congress, after assuming office in some of the provinces under the scheme of Provincial Autonomy, once again voiced its demand for Fundamental Rights at its

Calcutta session in October 1937.

The Labour Commission formulated a comprehensive programme of reform which was accepted by the All India Congress Committee in October 1937 in a resolution. The Congress included in its resolution on fundamental rights that (1) "every citizen of India has the right of free expression of opinion, the right of free association and combination and the right to assemble peaceably and without arms. (2) freedom of conscience and the right freely to profess and practise his religion. (3) The culture, language and script of the minorities and of the different linguistic areas shall be protected.

(4) All citizens are equal before the law irrespective of religion, caste, creed or sex.

(5) No disability attaches to any citizen by reason of his or her religion, caste, creed or sex in regard to public employment, office of power or honour or in the exercise of any trade or calling.

(6) All citizens have equal rights and duties in regard to wells, tanks, roads, schools and places of public resort maintained out of state or local funds or dedicated by private person for the use of the general public.

(7) The state shall observe neutrality in regard to all religions.

(8) The franchise shall be on the basis of universal adult suffrage.

(9) Every citizen is free to move throughout India and to stay

and settle in any part thereof, to acquire property and to follow any trade or calling and to be treated equally with regard to legal prosecution or protection in all parts of India"(75).

The 51st session of the Indian National Congress at Haripura in 1938 was another truimph for Gandhi. He was successful in evolving a national education principle in the line of his concept of basic education. An All India Education Board was formed under the advice of Gandhi.

The Congress also approved of the resolution of the Working Committee on Minority Rights, passed in Calcutta in October 1937, and declared afresh that it regarded its primary duty and fundamental policy to protect the religious, linguistic, cultural and other rights of the minorities in India so as to ensure and safeguard them in any scheme of government to which the Congress would be a party(76).

Apart from this, the pledge for the Independence Day on January 26, 1930 declared that "it is the inalienable right of the Indian people, as of any other people, to have freedom and to enjoy the fruits of their toil and have the necessities of life, so that they may have full opportunities of growth, and that the Congress believes that if any government deprives a people of these rights and oppresses them, the people have a further right to alter it or to abolish it"(77).

The Congress pledged anew to the independence of

India and solemnly resolved to carry on non-violently the struggle for freedom till Purna Swaraj was attained.(78)

The 52nd session of the Indian National Congress, held at Tripuri in March 1939, demanded full freedom and a constitution through a Constituent Assembly, and declared its firm adherence to the fundamental policies which have governed its programme in the past years under the guidance of Gandhi, and opined that there should be no break in these policies, and that they should continue to govern the Congress Programme in future. In view of the critical situation that might develop during the coming year, and in view of the fact that Gandhi alone could lead the Congress and the country to victory during such crisis, the Congress regarded it as imperative that its executive should command his implicit confidence and requested the President to appoint the Working Committee in accordance with the wishes of Gandhi.(79)

In 1940, Gandhi's influence in the Congress was immense. On some issues based on ideology and programme, he had some differences with many of the Congress leaders, but later he was unanimously declared as the 'General'. Gandhi's impact was visible quite abundantly in the Independence pledge as well as in the resolution of the Congress session of the year.

Independence Day pledge for January 26, 1940 said that "non-violent action in general and preparation for non-violent direct action in particular, require successful working of the Constructive Programme of khadi, communal harmony and removal of untouchability". Distinction on the basis of caste and creed and Harijans was denounced.(80)

The 53rd session of the Indian National Congress held at Ramgarh in March 1940 resolved that "the Congress has always aimed at a constitution where the fullest freedom and opportunities of development are guaranteed to the group and the individual, and social injustice yields place to a juster social order".(81)

Then, in the holocaust of the war, sank all clamour for rights and liberties. The end of the war saw the revival of this demand, and the major contribution in this direction was made by the Sapru Committee (appointed by the All Parties Conference, 1944-45) Report of 1945. The Report pointed out that the fundamental rights will be a 'standing warning' to all "that what the constitution demands and expects is perfect equality between one section of the community and another in the matter of political and civic rights, and equality of liberty and security in the enjoyment of the freedom of religion, worship, and the pursuit of the ordinary applications of life".(82) For the first time, the Report distinguished between "justiciable" and "non-justiciable" rights, i.e., "breaches of some may form the subject of judicial pronouncement, and the breaches of others may be remedied without resort to courts of law".(83) This distinction exercised tremendous influence later in the framing of the fundamental rights for the new Constitution of India.

During these years, Gandhi was the key figure. The nation experienced his leadership including the 'Quit India' movement, during this great crisis. A meeting of the Working Committee of the Congress was convened in Poona and later in Bombay in September 1945. Azad presided and Gandhi, who was present in most of the sittings, declared that "fundamental rights as laid down by the Karachi Congress and subsequently added to, must form an integral part of this constitution".(84) In October the

Congress Working Committee issued a 12-point election manifesto (85) which was a combination of socio-economic and constitutional right for the people. This manifesto also contained many of Gandhi's wishes. A good number of these rights were later incorporated in the present Constitution of India.

The British Cabinet Mission in 1945 recognised the need for a written guarantee of fundamental rights in the Constitution of India. In paragraphs 19 and 20 of its statement of may 16, 1946, envisaging a Constituent Assembly for framing the Constitution of India, it recommended the setting up of an advisory committee for reporting inter alia, on fundamental rights. (86)

By the Objectives Resolution adopted on January 22, 1947, the Constituent Assembly solemnly pledged itself to draw up for India's future governance a constitution where in "shall be guaranteed and secured to all the people of India justice, social, economic and political, equality of status and 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 would be provided for minorities, backward and tribal areas and depressed and other classes. (87)

Two days after the adoption of the Resolution the Assembly elected an Advisory Committee for reporting on minorities, fundamental rights and on the tribal and excluded areas (88). The Advisory Committee in its turn constituted on February 27, 1947, five Sub-Committees, one of which was to deal with fundamental rights.

The members of the Constituent Assembly sought to reconcile two guiding principles which motivated and inspired them: the desire for

incorporating guaranteed rights for the individuals, including the minorities, and the ushering in of a welfare state which would bring maximum good to the maximum people.(89)

A thorny problem that faced the Constituent Assembly at the outset was what to leave out and what to include as rights. Some 'leftish' (sic) pressure to make fundamental rights all inclusive was resisted on the common sense ground that, it was pointless to give men guaranteed rights to things that no one would have the capacity, for at least some time, to provide.(90) The Irish Constitution came to the rescue. The Fundamental Rights Sub-Committee recommended, in line with the Irish model, division of rights into two parts -- one part consisting of justiciable rights, i.e., rights enforceable by appropriate legal process, and the other part consisting of non-justiciable rights in the same way as directive principles of social policy of the Irish Constitution, which, though not cognisable in any court of law, should be regarded as fundamental in the governance of the country.(91)

The Sub-Committee had before it draft list of rights by Sir B. N. Rau, K. T. Shah, K. M. Munshi, Dr. B.R.Ambedkar, Harnam Singh and other Congress experts. On these the Sub-Committee drafted the rights in its ten meetings during March and April 1947 and then submitted the Report to the Advisory Committee on 16th April. Sardar Patel then presented the Interim Report of the Advisory Committee on Fundamental Rights to the Constituent Assembly on 29th April, 1947.(92) Sardar Patel disclosed that there were two schools of thought in the Committee-one school in favour of inclusion of as many rights as possible easily and straightaway enforceable in a court of law, and the other school in favour of restriction of fundamental rights to a few very essential things, and that,

the final report represented a compromise. The recommendations of the Committee were accepted by the Constituent Assembly in the third session of the preliminary meeting. The decisions of the Assembly were incorporated by the Drafting Committee in Part III, of the Draft Constitutions (93). The Drafting Committee under the Chairmanship of Dr. B.R.Ambedkar, prepared a Draft of the Constitution and presented it to the Constituent Assembly, on November 4, 1948. Except for several controversial provisions, the drafting of the rights was completed in mid-December, 1948.

NOTES AND REFERENCES.

1. Note on Fundamental Rights by Prof. K.T.Shah, as quoted in K.C. Markandan, Directive Principles in the Indian Constitution, 1966, Appendix, B(vi).
2. C.E.M. Joad, Liberty Today, London, Watts & Co. Rev. Edn.1938, p.120.
3. A.I.R. 1952, Mad.613, cited by Dr.S.N.Ray, Judicial Review and Fundamental Rights, Eastern Law House, Calcutta,1974, p.90.
4. Prof. K.T.Shah,op.cit., (n.1).
5. Dilip Kumar Chatterjee, Origin of the concept of Fundamental Rights in India, The Modern Review, December 1973, p.442.
6. Gettell,History of Political Thought. George Allen & Unwin, 2nd Edn. 1953, p.294.
7. Ibid., pp. 304-305.
8. Sirdar D.K.Sen, A Comparative study of the Indian Constitution,Orient Longmans, 1966, Vol. II, p.123.
9. As quoted in Sirdar D.K.Sen (n. 8) p. 126.
10. U. N. Charter.
11. Jawaharlal Nehru, The Discovery of India, Asia Publishing House,1961, p. 382.
12. B. Shiva Rao Ed. The Framing of India's Constitution. Vol.II, p. 21.
13. Prof. D.N.Banerjee, Our Fundamental Rights, World Press, Calcutta, Second Rev. Edn, 1968, p. 37.

19. Ernest Barker, Principles of Social and Political theory, O.U.P., 1967, pp. 145-46.

20. Constituent Assembly Debates, Vol. VII, p. 41.

21. A. Appadorai, Indian Political Thinking, O.U.P., 1971, pp.XIX-XXVI.

22. Granville Austin, op. cit., (n. 15), p. 50.

23. Ibid.

24. Ibid., p. 51.

25. B. Shiva Rau (Ed)., The Framing of India's Constitution, Vol.V (A Study), 1967, p. 319.

26. Austin, op. cit., (n.15), p. XI.

27. Nehru, Unity of India, p. 11; written in 1938 as quoted in Austin p.26.

28. Austin, p. 26.

29. The Hindusthan Times Magazine Section, 17th August, 1947.

30. B. N. Ganguly, Gandhi's Social Philosophy, Vikash Publishing House, 1973, p. 173.

31. M. K. Gandhi, Hind Swaraj or Indian Home Rule, 6th Edn., Madras, Natesan, 1947, Ch. V & XIII.

32. M. K. Gandhi, India of My Dream, Navajivan Publishing House, Ahmedabad, 1947, p. 6.
Also quoted in Chapter I. (n.59).

33. S.N.Agarwal, Gandhian Constitution for Free India, Allahabad, 1946, Ch. V.

34. B. Shiva Rau, op. cit., (n. 25), p. 171.

35. Ibid., p. 172.

36. P. D. Kaushik, The Congress Ideology and Programme 1920-47, Allied Publishers, 1964, Appendix I, p. 377.

37. P. Sitaramayya, History of the Indian National Congress, S.Chand & Co., 1969, Vol. I, p. 52.

38. Austin, op. cit., (n.15), p. 53.

39. Sitaramayya, op. cit., (n. 37), pp. 153-54.

40. Ibid., p. 161.

36. P. D. Kaushik, The Congress Ideology and Programme 1920-47, Allied Publishers, 1964, Appendix I, p. 377.

37. P.Sitaramayya, History of the Indian National Congress, S. Chand & Co., 1969, Vol. I, p. 52.

38. Austin, op. cit., (n.15), p. 53.

39. Sitaramayya, op. cit., (n. 37), pp. 153-54.

40. Ibid., p. 161.

41. Ibid., p. 180.

42. Prafulla Ghosh, From Nagpur to Lahore - A Short History of the Indian National Congress, Abhay Ashram, Coomilla, p. 6.

43. Report of the 35th session of the Indian National Congress, held at Nagpur, 1920.

44. Ibid.

45. Sitaramayya, op.cit., (n. 37), p. 227.

46. Ibid., pp. 251-52.

47. Report of the 37th Indian National Congress, Gaya, 1922.

48. Report of the 39th Indian National Congress, Belgaum, December, 1924.

49. The Collected Works of Mahatma Gandhi, Government of India Publication, Vol. XXV, p. 479.

50. Report of the 40th session of the Indian National Congress Cawanpur, December, 1925 (item VII of the resolution).

51. S.A. Khan, The Indian Federation, 1937, p. 290.

52. Sitaramayya, op. cit., (n. 37) pp. 303-305.

53. Report of the 43rd session of the Indian National Congress, Calcutta, December, 1928.

54. Sitaramayya, op. cit., (n. 37), pp. 328-30.

55. Austin, op. cit., (n. 15), p. 55.

56. Report of the Nehru Committee - 1928.

57. Prafulla Ghosh, op. cit., (n. 42), p. 125.

58. Sitaramayya, op. cit., (n. 37), pp. 363-64.

59. Indian Annual Register, 1930, Vol. I, p. 24.

60. Resolutions of the All India Congress Committee and The Indian National Congress (1931-33).

61. Austin, op. cit., (n. 15), p. 56.

62. K. C. Markandan, Directive Principles in the Indian Constitution, Allied Publishers, 1966, pp. 32-37.

63. Shiva Rau, op. cit., (n.25), pp. 173-74.

64. I.R.T.C. Proceedings - Report (Third session), p. 66.

65. Sitaramayya, op. cit., (n. 37), p. 531.

66. Ibid., p. 557.

67. Ibid., pp. 557-58.

68. Ibid., p. 572.

69. Report of the 49th session of the Indian National Congress, Lucknow, April, 1936.

70. Sitaramayya, The History of the Indian National Congress, Vol.II, Padma Publications, Bombay, 1947, p. 24.

71. Ibid., pp. 41-42.

72. Ibid., pp. 31-35.

73. B.N. Ganguly, op. cit., (n. 30), p. 152.

74. Ibid., p. 174.

75. Sitaramayya, op. cit., (n.70), p. 67.

76. Report of the 51st session of the Indian National Congress, Haripura, 1938.

77. Sitaramayya, op. cit., (n.70), pp. 70-71.

78. Ibid., p. 71.

79. Report of the Annual Session of the Indian National Congress, March, 1939.

80. Sitaramayya, op. cit., (n. 70), pp. 159-60.

81. Indian National Congress, March 1940 to September 1946, published by the General Secretary, A.I.C.C. Allahabad.

82. The Constitutional Proposals of the Sapru Committee, 1946, p. 260.

83. Ibid., p. 259.

84. Tendulkar, Mahatma, Government of India Publication, Rev. Edn. 1963, Vol. VII, pp. 11-32.

85. Sitaramayya, op. cit., (n. 70), Appendix-I, pp. I-V.

86. Select Documents I, 48 (i), pp. 214-16.

87. Select Documents II, 1, p. 4.

88. Constituent Assembly Debates, Vol. II, pp. 325-27.

89. V.G.Ramachandran, Fundamental Rights and Constitutional remedies, Lucknow, 1964, Vol. IV, Ch. IV, p. 335.

90. W. H. Morris Jones, op. cit., (n. 14), p. 83.

91. Interim Report on Fundamental Rights, Para 2, No. CA/24/Com/47, Constituent Assembly Debates, Vol. III, p. 457 and Supplementary Report on Fundamental Rights Para 2, Constituent Assembly Debates, Vol. V, p. 373.

92. Constituent Assembly Debates, Vol. III, No. 2, Dated, April 29, 1947.

93. Pratap Kumar Ghosh, The Constitution of India - How it has been Framed, 1966, World Press, Calcutta, pp. 70-71.

* * *

CHAPTER - 4

I

When the opportunity to frame their own constitution came, the Indians were really placed at a very happy position; because, after hard struggle, they got an opportunity to give expression to their dreams of a new order. They sharply responded to the call, and united themselves in a common adventure of building up a new nation which would ensure justice in every sphere of life. This was, in essence, the rebirth of a nation. Under the imperial rule, India remained subjugated not only politically, but her independent economic growth was crippled and the society was steeped in traditional moorings, shackled by old customs and prejudices. The framers of the Constitution were conscious of these facts, and as such, they intended to utilise the emerging Constitution as the vehicle or agency through which the social revolution and the national renascence could be effected. As we have already seen in the previous chapter, although the entire Constitution was aimed at national renascence, the "core of the commitment to the social revolution" lies in Part III and IV, in the Fundamental Rights and in the Directive Principles of State Policy which are, in the words of Austin, "the conscience of the constitution" (1).

Gandhian Influence Behind the Scheme of Fundamental Rights - Introduction

II

The Fundamental Rights and the Directive Principles,

as we have seen in the earlier Chapter, had their roots deep in the struggle for independence. As such, a climate of hope and expectation had already been created that the constitution of free India would ensure certain rights for the realisation of which the Indians had striven and suffered so long. Therefore, apart from giving strength to the pursuit of the social revolution, the inclusion of the Rights in the Constitution was aimed at creating an atmosphere of trust and confidence which was deemed most valuable at that time.

Scheme of Fundamental Rights in the Constitution of India

Jawaharlal Nehru observed, while moving for consideration the Constitution (First Amendment) Bill in the Lok Sabha on 16th May, 1951, that "the whole conception of the Fundamental Rights is the protection of individual liberty and freedom ....." According to Nehru, this conception was derived from the European history, especially from the days of the French Revolution. It remained as the dominating idea of the 19th century and as the 20th century went ahead, other additional ideas came into the field which are represented by our Directive Principles of State Policy (2).

The Cabinet Mission laid down, in its 16 May Plan, that the Constituent Assembly should have an Advisory Committee, whose duty it would be to report to the Assembly on the list of Fundamental Rights, the clauses for the protection of minorities and the administration of the tribal areas (3). The Cabinet

Mission's recommendations and the intentions of the Congress coincided; the Working Committee of the Congress drew up a resolution establishing the Advisory Committee at the meeting of 8 December, 1946 (4), the day before the Constituent Assembly was convened. The resolution was to be moved during the early days of the first session, but was delayed for some time in the hope that the Muslim League might enter the Assembly (5). It was on 24 January 1947, that the Assembly voted to create the Advisory Committee. The Committee initially consisted of fifty members with Patel as the Chairman, and it was proportionately represented by the religious minorities, scheduled castes and the backward tribes (6).

Acharya Kripalani became the Chairman of the Fundamental Rights Sub-Committee (7). The membership of the Fundamental Rights and other sub-committees was set up, as had been the whole Advisory Committee, by the leadership of the Congress in consultation with the leaders of the minority groups themselves. Members of the Rights Sub-Committee were: the two ladies, Rajkumari Amrit Kaur and Hansa Mehta, Acharya Kripalani, Minoo Masani, K.T.Shah, Alladi Krishnaswamy Ayyar, K. M. Munshi, Sardar Harnam Singh, Maulana Azad, B.R. Ambedkar, J. Daulatram and K.M. Panikkar.

Among them, three of the members already had some familiarity with the formal consideration of the rights issues. K.T. Shah and K. M. Munshi had both been members of the Congress

experts committee, which had drafted a list of rights for the Assembly's guidance. Ambedkar had attended the Round Table Conference and had taken strong interests in rights issues. When the Fundamental Rights Sub-Committee met for the first time on 27 February 1947, it had before it draft lists of rights prepared by B. N. Rau (8), Shah, Munshi, Ambedkar, Harnam Singh and the Congress experts committee, as well as miscellaneous notes and memoranda on various aspects of rights (9).

Drawing on this mass of precedent, the Sub-Committee drafted the rights during ten meetings held in March and April 1947. Early in April, it passed its tentative conclusions to the Minorities Sub-Committee of the Advisory Committee for suggestions, and on 4 April completed a draft report. After considering the Sub-Committee's recommendations, and reconsidering their own draft report, the Rights Sub-Committee members submitted their report on 16th April to the Advisory Committee as a whole. Five days later, the Advisory Committee met and made certain changes in it. Patel, as Committee Chairman, presented the Interim Report of the Advisory Committee, on the subject of Fundamental Rights, to the Constituent Assembly on 29th April 1947 (10). The Assembly debated it for the remainder of the Third session, and considered the rights a second time in November 1948 during the debate on the Draft Constitution. Except for several controversial provisions, the drafting of the rights was completed by December, 1948.

Nehru initiated on 12 December, 1946 the resolution on Aims and Objectives which was discussed during first two sessions of the Constituent Assembly. While introducing the resolution, Nehru said, "we have met here today because of the strength of ~~the strength of~~ the people behind us and we shall go as far as the people - not of any party or group but the people as a whole- shall wish us to go. We should, therefore, always keep in mind the passions that lie in the hearts of the masses of the Indian people and try to fulfil them" (11).

At this time he remembered Gandhi with high regards and said, "there is another person who is absent here and who must be in the minds of many of us today - the great leader of our people, the father of our Nation - who has been the architect of this Assembly and all that has gone before it and possibly of much that will follow..... his spirit hovers over this place and blesses our undertaking (12).

There were members who at the time of extending their support to the resolution initiated by Nehru, either remembered in general, the contribution of Gandhi or put emphasis on specific aspects of Gandhi's aspirations.

Shri Purushottam Das Tandon acclaimed Gandhi and credited him for vanguarding the Indian national movement. In his opinion, Gandhi's appearance in the field of politics had changed the methods of the freedom struggle. Prior to his emergence, our leaders had confined themselves within prayers and petitions.

Gandhi rejected the politics of persuasion and openly defied the British laws without minding the dire consequences (13).

Mr. M. R. Masani spoke in favour of democratic decentralization in order to ensure the freedom of the individual, and in this connection he referred to Gandhi's ideas (14).

Seth Govind Das declared satyagraha as the greatest contribution of Gandhi to the world (15).

Prof. Ranga also offered homage to Gandhi as the creator of the unique and aspiring weapon, satyagraha. He considered it to be the most useful means for safeguarding individual rights (16).

Rev. J. J. M. Nichols - Roy wanted that the Assembly, in the holy task of constitution-making, be guided by the ideals of Gandhi, with a view to establishing a strong and united India (17).

Dr. P. K. Sen also wished that the spirit of Gandhi be felt at every moment of constitution-making (18).

Mrs. Hansa Mehta pleaded the cause of Indian women, and at this time, with extreme gratitude, she remembered the contribution made by Gandhi in the upliftment of the status of Indian women (19).

Mr. P. R. Thakur sought adequate safeguards to be provided for the Depressed-Classes for their political salvation and in this connection he said that ".... the Poona Pact is

Mahatma Gandhi's creation, and his writings in the 'Harijan' amply prove that the interests of the Depressed Classes must be carefully looked after"(20).

While speaking on behalf of the Harijan Community, Shrimati Dakshayani Velayndan also paid humble homage to Gandhi(21).

Sir S. Radhakrishnan expressed his hope that the Assembly would work for the establishment of 'swaraj' for all the Indian people and to bring about real satisfaction of the fundamental needs of the common man of the country(22).

Shri R. V. Daulekar supported the resolution, since in his view it was based on the twin principles of truth and non-violence, for which Gandhi stood(23).

After examining the tune and sentiments reflected through the speech delivered by the members, we can further point out that, the Resolution states as its source that "......(4) all power and authority of the Sovereign Independent India ..... are derived from the people. It also declares as its objectives (5) that 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..... (6) wherein adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes....."(24)

All these amply demonstrate that the Resolution contained many such items which were the tenets of Gandhi's Programme and that Gandhi's legacy remained very much alive at least at that time.

The objectives in this Resolution which ultimately took the form of the Preamble and guided a long way in framing the Fundamental Rights and Directive Principles of State Policy, were all at least superficial vibrations of Gandhian concept of free India. His desire that the Constitution framed by the free will of the Indians should provide social equality, economic and political justice and freedom of religion was well reflected through this Resolution. Shri Alladi Krishnaswami Ayyar, during the debate on this Resolution, said, ".... more than any argument, as the Resolution before the House has received the blessings and support of Mahatma Gandhi, the architect of India's political destiny ..... I trust that it will be carried with acclamation by the whole House without dissent....."(25)

The 1937 Constitution of Ireland made a distinction between the "Fundamental Rights", strictly so called, and the "Directive Principles of Social Policy."

Justiciable and non-Justiciable Rights

In our case the division of rights into justiciable and non-justiciable rights was for the first time envisaged in the Report of the Sapru-Committee in 1944-45(26).

In one of the pamphlets issued for the use of the members of the Constituent Assembly, B. N. Rau, the Constitutional Adviser, referred to the Irish Constitution and to Lauterpacht's International Bill of Rights. He commended the classification of this right into two parts, one dealing with Fundamental Principles of State Policy and the other with Fundamental Rights as such.

The proposal relating to the incorporation of non-justiciable rights in the Constitution did not initially find favour with some members of the Sub-Committee on Fundamental Rights, To this group belonged men like Alladi Krishnaswami Ayyar, Masani, Ambedkar and K. M. Munshi.

The opposition to the proposal did not however, remain formidable for long. Alladi Krishnaswami Ayyar supported it in a note submitted on March 14, 1947, in which he stressed the distinction between justiciable rights and rights which were merely intended as a guide and directing objectives of state policy (27). Gradually, most other members of the Sub-Committee also came round to this view realising that it was not practicable to categorise declarations of social and economic policies as justiciable rights.

The principles of social policy set forth, were intended for the general guidance of the legislatures and governments in India. The state shall take all possible care to implement these principles which shall not be cognizable by any court.

The Fundamental Rights Sub-Committee recommended that

the list of Fundamental Rights should be prepared in two parts, the first part consisting of rights enforceable by appropriate legal process, and the second consisting of Directive Principles of Social Policy which, though not enforceable in courts, are nevertheless to be regarded as fundamental in the governance of the country.

Sardar Patel, while presenting the Interim Report on Fundamental Rights, in his report to the President of the Assembly, stated that great importance was attached to the Constitution, making these rights justiciable. The right of the citizen to be protected in certain matters was a special feature of the American Constitution and the more recent democratic constitutions. In the part of the constitution Act, dealing with the powers and jurisdiction of the Supreme Court, suitable and adequate provision would have to be made to define the scope of the remedies for the enforcement of these Fundamental Rights. "We recommend that the rights set out be incorporated in the Constitution so as to be binding upon all authorities whether of the union or the units" (28).

Gandhi never dreamt of political freedom only. To him social and economic emancipation was more important. His struggle was aimed at emancipating the individual from bondage and suffering in every sphere of life. To him political freedom was necessary because social and economic equality cannot be materialised if the state is not free.

When the Interim Report on Fundamental Rights was

placed before the Assembly, it was seen, to the utter surprise and dismay of many members, that the economic and social rights, which were more important to the common man, and for which Gandhi had spoken and written so extensively, had been placed at the second part of the Report and were made non-justiciable -- a distressing evidence of the double-standard in the role of politicians and leaders in paying lip service to the ideals and programmes of the 'Father of the Nation', while showering glowing tributes in words.

During the proceedings of the Assembly, an important matter which attracted the attention of a large number of the members and which was also subjected to a great deal of criticism, was the justiciability and non-justiciability of the Rights.

Mr. Promatha Ranjan Thakur wanted that greater importance should have been given to the economic rights, and they should have been made justiciable (29).

Mr. Somnath Lahiri characterised this distinction as 'arbitrary' (30). In his opinion "..... it is rather difficult to make a fine distinction between what are justiciable and what are not....." (31)

Again, during the general discussion of the Draft, Shri Krishna Chandra Sharma wanted specific provisions within the Constitution for the enforcement of work for able-bodied citizens,

and he further supported legal obligation imposed on the state to fulfil the rights given in the Constitution (32).

Mr. Naziruddin Ahmed compared the Directive Principles with pious wishes and superfluities in the absence of their being enforced in a court of law. In his opinion "..... every constitutional principle should give a right, and every right should be justiciable in a court of law....." (33)

Kazi Syed Karimuddin expressed his displeasure in the absence of a bold and clear economic policy in the Draft. He said "......not to have a definite economic pattern in the constitution of Free India is a great tragedy ....." (34)

He also moved, in the later stage when debate on the Draft was going on, an amendment to the effect that the Directive Principles should be treated more emphatically and be made Fundamental Principles of State Policy. In his view the word 'Directive' was unnecessary and meaningless (35).

Mr. Naziruddin Ahmed strongly supported the amendment of Syed Karimuddin and believed that these pious principles should not be enunciated unless there was the backing of the law and they were also made justiciable (36). He compared thes non-justiciable principles with resolutions made on New Year's day which are broken on the very next day (37).

Shri H. V. Kamath moved an amendment to the

effect "that in the heading under Part IV, for the word 'Directive', the word 'Fundamental' be substituted"(38).

Prof. K. T. Shah also expressed his deep concern in this regard, and, while moving an amendment to article 29 of the Draft (article 37 of the present constitution) he demanded that the provisions contained in this part should be treated as the obligations of the state towards the citizens, and should be enforceable in appropriate manner(39). To him this part looked ".....like a cheque on a bank payable when able... in the absence of any mandatory direction to those who may have the governance of the country hereafter....."(40)

During the debate on article 30 of the Draft (article 38 of the present) Mr. Hussain Imam also expressed similar views(41).

However, when the Interim Report came out on 23 April, 1947, it was found that Gandhi's ideas and wishes had been accommodated within this Report although mainly in the shape of non-justiciable rights.

During the proceedings of the Second Round Table Conference, Gandhi circulated a memorandum, in the second session of the Conference, which, inter alia, demanded that the new Constitution should include a guarantee to the communities concerned, of protection of their culture, language, script, education, profession and practice of religion and religious endowments, per-

sonal law, political and other rights of minority communities. His views found their place in the rights relating to religion and in the Cultural and Educational Rights, the relevant part of which read as follows:- [Rights relating to religion -(13) All persons are equally entitled to freedom of conscience, and the right freely to profess, practice and propagate religion.....
(14) Every religious denomination shall have the right to manage its own affairs in matters of religion and, subject to the general law, to own, acquire and administer property, movable and immovable, and to establish and maintain institutions for religious or charitable purposes.
(15) No person may be compelled to pay taxes, the proceeds of which are specifically appropriated to further or maintain any particular religion or denomination.
(16) No person attending any school maintained or receiving aid out of public funds shall be compelled to take part in any religious institution that may be given in the school or to attend religious worship held in the school or in premises attached thereto.
(17) Conversion from one religion to another brought about by coersion or undue influence shall not be recognised by law].

[Cultural and Educational Rights -
18(1) Minorities in every unit shall be protected in respect of their language, script and culture and no laws or regulations may be enacted that may operate oppressively or prejudicially in this respect.

(2) No minority, whether based on religion, community or language, shall be discriminated against in regard to the admission into state educational institutions, nor shall any religious instruction be compulsorily imposed on them.

3(a) All minorities, whether based on religion, community or language, shall be free in any unit to establish and administer educational institutions of their choice.

(b) The state shall not, while providing state aid to schools, discriminate against schools under the management of minorities whether based on religion, community or language7.

In fact, Gandhi's whole concept of secularism which, according to him, was an essential aspect of the 'non-violent state', found expression in the Advisory Committee's Report on Fundamental Rights.

Again, Gandhi's advocacy for social equality and his life-long campaign for abolishing untouchability, exploitation in the name of castes, racialism and communalism and exploitation of children and women, found expression in this report under the caption - Rights of Equality and Rights of Freedom.

[Rights of Equality - 4(1) The state shall make no discrimination against any citizen on grounds of religion, race, caste or sex. (2) There shall be no discrimination against any citizen on any ground of religion, race, caste or sex in regard to -

(a) access to trading establishments including public restaurants

and hotels,

(b) the use of wells, tanks, roads and places of public resort maintained wholly or partly out of public funds or dedicated to the use of the general public.

(5) There shall be equality of opportunity for all citizens in matters of public employment and in the exercise or carrying on of any occupation, trade, business or profession.....

No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, or any of them, be ineligible for public office, or be prohibited from acquiring, holding or disposing of property or exercising or carrying on any occupation, trade, business or profession within the union.

(6) "Untouchability" in any form is abolished and the imposition of any disability on that account shall be an offence.

(7) No heritable title shall be conferred by the Union/

/Rights of Freedom-

8(a) The right of every citizen to freedom of speech and expression.....

(b) The right of the citizens to assemble peaceably and without arms.....

(c) The right of citizens to form associations or unions.....

(d) The right of every citizen to move freely throughout the union.....

(e) The right of every citizen to reside or settle in any part of the Union, to acquire property and to follow any occupa-

tion, trade, business or profession.

11(a) Traffic in human beings, and

(b) forced labour in any form including begar and involuntary servitude.....are hereby prohibited and any contravention of this prohibition shall be an offence.....

(12) No child below the age of 14 years shall be engaged to work in any factory, mine or any other hazardous employment[42]

Nevertheless, it cannot be said that this Report could satisfy all the members of the Constituent Assembly. Some of them wanted seriously, and endeavoured hard to make the constitution more Gandhian, but they were outnumbered and out voted by other more prominent, more vocal members who were in no mood to incorporate Gandhian principles.

Mr. Promatha Ranjan Thakur was not satisfied with Clause 6 of the Report, on untouchability, which, according to him, was unable to root out the evil of untouchability, if abolition of the caste system was not simultaneously introduced. In his view "..... untouchability is nothing but the symptom of the disease, namely, the caste system"[43]. Dr. B. C. Banerjee supported the view of Mr. Thakur, expressed similar opinion and wanted that the word untouchability should be clearly defined[44]. Srijut Rohini Kumar Chaudhury moved an amendment and said that the word 'untouchability' should be clearly and properly defined[45]. Mr. Dhirendra Nath Dutta supported the arguments put forward by Mr.

Rohini Kumar Choudhury and Mr. Thakur, and also expressed his view in favour of a uniform definition of the term 'untouchability'[46].

Shri V. C. Kesava Rau narrated before the House the woeful picture of the Harijans or the untouchables and moved an amendment to the Sub Clause 2 (b) of Clause 4, to the effect that after the word 'roads' the words schools, temples or places of worship be inserted[47].

Serious discussion was held on the subject of abolition of titles. However, Sardar Vallabhbhai Patel, in his concluding speech, observed that this abolition of titles did not mean that the people were prevented from conferring a title, nor did it mean taking away a title conferred by the people. "They are not titles really. They are attributes of virtues, which people see in them. If Mahatma Gandhi is called 'Mahatma Gandhi', it is not because people want to confer any title on him, but they see in him something divine, some virtues they see in him which they admire and respect and therefore, the state has nothing to do with it...."[48]

The Constituent Assembly met for considering the Draft Constitution on 4th November 1948. Before the Draft Constitution was placed, the members paid their tribute of homage to Gandhi. The President, in his speech, expressed their willingness to be guided by the spirit, life and teaching of Gandhi[49].

— another clear instance of divergence among leaders between precept and practice, pious homilies and concrete action.

The Drafting Committee was appointed by the Constituent Assembly on 29th August 1947. Dr. Ambedkar, as the Chairman of the Committee, placed before the House the Draft Constitution which contained 315 Articles and 8 Schedules.

As soon as Dr. Ambedkar's speech, which was a bid to discard the criticisms levelled against the Draft Constitution ended, many members raised their voice at its being borrowed largely from foreign Constitutions and its departure from Gandhi's ideas.

Sharp attack came from Maulana Hasrat Mohoni. He said "..... look at our new Constitution drafted by Dr. Ambedkar. There is nothing new in it. He has mostly copied out either the Government of India Act of 1935 or, as admitted by himself, has drawn from the Constitutions of other countries. A bit from here and a bit from there - it is a Pandora's Box....." (50)

Shri Damodar Swarup Seth pointed out the same thing. He expressed his displeasure at the slavish imitation of the Constitutions of America, Britain and many other foreign countries (51).

While commenting on the general observation on the Draft Constitution, made by Dr. Ambedkar, Shri H.V.Kamath said

that with some pride Dr. Ambedkar had informed the House, that the Constitution was borrowed largely from the Government of India Act and considerably from the Constitutions of the United Kingdom, United States, Australia and Canada. But, he (Shri Kamath) had expected Dr. Ambedkar to tell the House what had been borrowed from the political past of India and from the political and spiritual genious of the Indian people (52).

According to Seth Govind Das, since the opportunity to frame their own Constitution came after centuries, the members ".....must use it well and frame a Constitution that is suited to the genius of our land" (53).

Shri Ramnarayan Singh said emphatically that the Constitution was not what was wanted by the country. He criticised Dr. Ambedkar and said that "..... he (Dr. Ambedkar) was not ashamed to admit that many things have been borrowed from other constitutions....." (54)

Dr. P. S. Deshmukh differed from the view of Dr. Ambedkar that the ancient Indian civilisation was not worth utilising for the future building up of the Indian nation. Since India is a land of agriculturists, Dr. Deshmukh suggested that adequate amendments should be made to accommodate the aspirations of the common man, so that they could feel that they were the real masters of the nation, and that their Raj and Kingdom were going to dawn (55).

Shri Arun Chandra Guha pointed out that in the whole Draft Constitution there was no trace of Congress outlook, and no trace of Gandhian social and political outlook (56).

He further criticised the Draft Constitution on the ground that it took much pain to protect the right to property and there by tried to safeguard the rights of those who had already got something, and remained silent about those who were dispossessed and who had got nothing (57).

Shri T. Prakasam, a staunch supporter of Gandhism, criticised the Draft because of its complete departure from Gandhi's ideas and wishes. Shri Prakasam expected that the Drafting Committee would ".....bring out a constitution that will give food and cloth to the millions of our people and also give education and protection to all the people of the land....." (58). He suggested that the members should take particular care to see that the Draft Constitution of Dr. Ambedkar was so amended that it would really become a constitution for the benefit of the masses for whose sake the battles had been fought (59). He could not expect a better constitution from Dr. Ambedkar, since "he (Dr. Ambedkar) had been attacking the whole system and the programme of Gandhi and the Congress all his life time....." (60)

According to Pandit Thakurdas Bhargava, the real soul of India was not represented by this Constitution and this camera (Draft Constitution) could not give a true picture of what many people would like India to be. The Drafting Committee had not the

mind of Gandhi, had not the mind of those who thought that India's teeming millions should be reflected through this camera....." (61)

Shri Himmat Singh K. Meheshwari alleged that the Draft would only encourage litigation. He termed it (Draft) as the lawyer's paradise, and this was because of the fact that the raw materials out of which this Draft had been made were all foreign (62).

Shrimati Dakshayani Velayudhan deplored the Draft on the ground, that there was nothing democratic in it, and decentralisation was also absent. She termed it as a tragedy that a country like India with large population, great culture and teachings of the greatest man of the world could produce such a constitution which was foreign to the people (63).

Prof. Ranga alleged that the Draft Constitution did not appreciate the great services rendered by Gandhi and countless martyrs which virtually made the Constituent Assembly possible (64).

Shri Mahavir Tyagi said that he was highly dissatisfied seeing nothing Gandhian in this Constitution. In his view, the members must examine the Draft from the point of view of Gandhi and should see to it that the Gandhian outlook did not vanish from the country so soon after his death (65).

The above attitudes and sentiments expressed by some members of the Constituent Assembly sufficiently demonstrate

that the impact of Gandhian ideals was very much alive in their minds at that time. The members were quite firm on their stand not to allow things go without due consideration of the legacy left by Gandhi. But as already pointed out, these members constituted only a fractional minority in the Constituent Assembly, and what is more, they did not constitute the so-called 'leadership' in the decision-making process.

Gandhi's arrival on the political scene had not only strengthened India's demand for written civil rights but had also added a new dimension by demanding 'Positive right'. Mrs. Besant's Commonwealth of India Bill of 1925 and Nehru Report of 1928 emphasised the state's negative obligations. But the Karachi Resolution of March 1931, along with political freedom had laid stress on economic freedom and social equality and demanded positive contribution by the state. Pt. Jawaharlal Nehru, while drafting the Resolution, included many of Gandhi's suggestions. Several clauses of the Resolution, for example, safeguarding by suitable legislation the interest of industrial workers, securing for them a living wage, healthy conditions of work, protection from the economic consequences of old age, sickness and unemployment, and special protection to women and children, clearly reflected the Gandhian "eleven points" which, he said, would provide the main essence of swaraj.

The Chapter on Fundamental Rights guaranteed seven categories of rights: Right to Equality, Right to Freedom, Right

against Exploitation, Right to Religion, Cultural and Educational Rights, Right to Constitutional Remedies.

Four articles, namely, articles 9,10,11 and 12 of the Draft Constitution dealt with Right to Equality. Their corresponding Rights in the present Constitution are articles 14 to 18, article 14 being a new incorporation which was absent in the Draft.

Article 14 declares that "the state shall not deny to any person equality before the law or equal protection of the laws within the territory of India". This article stands for the establishment of a situation under which there shall be complete absence of any arbitrary discrimination by the laws themselves or in their administration. In the struggle for social and political freedom Indians, under the leadership of Gandhi, had always tried to move towards the ideal of equality for all. The urge for equality and liberty had been the motive force of our revolution. In the latter stages, our constitutional fathers also felt that real and effective democracy could not be achieved unless equality in all spheres of life was realised in a full measure. This article prevents the legislature and the executive from exercising power in a discriminatory manner. Article 14 lays down an important fundamental right which has to be closely and vigilantly guarded.

Article 9 of the Draft (article 15 of the present Constitution), as modified, states that (1) the state shall not

disciminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. (2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to (a) access to shops, public restaurants, hotels and places of public entertainments; or (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of state funds or dedicated to the use of the general public. (3) Nothing in this article shall prevent the state from making any special provision for women and children.

Not content with a more general declaration of the right to equality, and fully conscious of the types of discrimination prevalent in the country, the framers went a step further in article 15, which is more illustrative in character. The proviso to this article permits the state to make special provision for the benefit of women and children. The special treatment meted out to women and children is in the larger and the long-term interest of the community itself. It also recognises the social customs and background of the country as a whole.

Article 15 Clauses (1) and (2), taken together, seeks to fulfil the desire of Gandhi to remove social evils and discriminations prevalent in India.

During discussions, Prof. K.T.Shah moved an

amendment "that in the end of clause (2) of article 9, the following be added -- or for Scheduled Castes or backward tribes, for their advantage, safeguard or betterment". He argued that "..... this discrimination is in favour of particular classes of our society which, owing to an unfortunate legacy of the past, suffer from disabilities or handicaps....."(66)

Shri S. Nagappa felt that this provision was entirely Gandhian, and as such, he expressed his pleasure and wished that the weaker sections would also be made economically free(67).

Sardar Bhupindar Singh Mann felt that the Fundamental Rights which were conceded would be incomplete, if places of worship were not included in the list. In this connection he also referred to the achievements and expectations of Gandhi in this direction(68).

Article 10 of the Draft Constitution (article 16 of the present constitution) states that (1) there shall be equality of opportunity for all citizens in matters relating to any office under the state. (2) No citizen shall, on grounds only of religion, race, caste, sex, descent place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the state.

Shri P. Kakkan expressed his deep satisfaction at the addition of this article which, in his view, would facilitate

the Harijan people to ascertain their proper station and to receive their due privileges in the society (69).

Shri H. J. Khandekar commended this article because, in his opinion, it gave a great protection to the interests of the Backward Classes and the Harijan community who were hitherto neglected (70).

Article 11 of the Draft Constitution (article 17 of the present constitution) declared that "untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "untouchability" shall be an offence punishable in accordance with law.

This article was incorporated into the Constitution mainly because of the climate of opinion created by Gandhi and the leaders of minority groups for eradicating "untouchability" from the Indian body politic. It was the Gandhi's desire that "untouchability" must be removed by statute without which there could be no real swaraj. It was under this climate that the Draft article 11 was not only welcomed by most of the members as a measure designed to end the great social evil which had been a shame and disgrace to India, but also allowed it an easy passage and adopted the same amidst shouts of "Mahatma Gandhi Ki Jai" (71).

On this article the House was unanimous, forgeeting their various differences.

During the general discussion on the Draft, Shri

V.I. Muniswamy Pillai, as a member of the so called Harijan Community, expressed his pleasure at the inclusion of this provision for the eradication of untouchability which, in his opinion, had eaten into the vitals of the nation (72). Again, during discussion on article 11(17), Shri Pillai expressed his belief that "... by the adoption of this clause, many a Hindu who is a Harijan, who is a scheduled class man, will feel that he has been elevated in society and he has now got a place in society....." (73).

Participating in the debate on the Draft, Dr. Monomohon Das recollected Gandhi's wishes on this issue and expressed his great satisfaction at the inclusion of this provision within the constitution (74).

Shrimati Dakshayani Velayudhan expressed her satisfaction that all the religious teachers were against the practice of untouchability. Coming to a later period, we found a champion in the person of Mahatma Gandhi and one of the items of the Constructive Programme that he placed before the country was the abolition of untouchability. The change of heart that one found in the people was only due to the work that had been done by Mahatma Gandhi and by him alone (75).

Article 12 of the Draft (18 of the present constitution) states that (1) no title not being a military or academic distinction, shall be conferred by the state. (2) No citizen of India shall accept any title from any foreign state. (3) No person who is not a citizen of India shall, while he holds

any office of profit or trust under the state, accept without the consent of the President any title from foreign state.....

This article also bears close resemblance to Gandhi's ideals. Gandhi believed that in the creation of a society, which sought to establish political, social and economic justice, and aspired to become a truly democratic state, there was no room for some individuals to hold titles, thus creating artificial distinction among members of the same society. In India, the practice of the British Government conferring a number of titles every year mostly on their political supporters and government officers, had already created a peculiar class of nobility among the people. It was not desirable that free India would recognise and accept these titles apart from consideration of the merits of those who held them.

The Right to Freedom consists of four articles, 13,14,15 and 15A (of the Draft) corresponding to 19,20,21 and 22 of the present constitution.

Right to Freedom

Article 13 of the Draft (19 of the present constitution) occupies a key position in Part III. It guarantees seven freedoms (a) freedom of speech and expression, (b) to assemble peaceably and without arms, (c) to form associations or unions; (d) to move freely throughout the territory of India; (e) to reside and settle in any part of the territory of India; (f) to acquire, hold and dispose of property; and (g) to practise

any profession, or to carry on any occupation, trade or business.

Gandhi, throughout his struggle for freedom, especially before the Minorities Committee of the Second Round Table Conference, had been campaigning for the cause of personal and civic freedom of speech, pen and press. The restrictions placed on these articles cannot be regarded as going against Gandhian ideology. He valued individual freedom but willing submission to social restraints for the sake of well being of the whole society which enriched the individual and the society of which he was a member.

It is impossible to exaggerate the importance of these freedoms in any democratic society. Indeed, the very test of a democratic society which is based on all-round equality, is the extent to which these freedoms are enjoyed by the citizens in general. These constitute the liberty of the individual which is one of the essentials of happiness and progress.

The right guaranteed to form associations or unions is more or less a charter for all working people in this country. Fully recognising the aspirations of the working people who had so long been kept suppressed, the framers of the constitution have made the workers' right a fundamental one.

The importance of the freedom of movement is immense. In fact, the enjoyment of the freedom guaranteed under other rights depends largely on the freedom of movement unhampered

and uncircumscribed. The two restrictions on this right are the interests of the general public and the interests of the Scheduled Tribes.

A society dominated by caste and religion has little to offer for the building up of a community enlivened by social mobility and dynamism. A constitutional guarantee of the right to take up the profession, calling, trade or business of one's choice, is indeed a significant aid to the building up of a dynamic and democratic society. The framers of the Constitution have done well in incorporating these rights and have thereby helped the evolution of a truly democratic society.

Seth Govind Das, participated in the discussion on clause (f) of the article, and suggested change of heart of the capitalists and the rich people through non-violent methods. In order to introduce socialism in the country, he did not favour the blood-and-iron policy; but the rich should be made to think that the welfare of the society and the people demanded this. He said that "humanity can not achieve its welfare except through non-violence, so also.....there cannot be stable peace, unless and until private property is abolished...." (76). He hoped that "....in time to come the articles concerning property will not find a place in the constitution....." (77)

Shri H. J. Khandekar criticised the restrictions imposed on these rights and reminded the House of the hard days

when Gandhi and other leaders had struggled hard and had introduced Satyagraha to fight out these rights (78).

Article 14 of the Draft (article 20 of the present constitution) provides for protection against arbitrary and excessive punishment to any person who commits an offence. These provisions guard against restrospective application of a punitive law and double punishment for the same offence. These are, indeed, guarantees of great importance which establish the primacy of law over the passions of man.

Shri P. Kakkan took this opportunity to express his deep concern in the jail administration. He complained that the prisoners who belong to the Harijan Community do not get fair dealing. With this object Shri Kakkan also gave notice of an amendment to this article which read as follows: "....that no person convicted for any offence shall be compelled to work in jail in respect of religion, caste, race or class" (79).

Article 15 of the Draft (article 21 of the present Constitution) states that "no person shall be deprived of his life or personal liberty except according to procedure established by law".

This article gives protection to life and personal liberty as against the executive as well as the legislature, for the constitution has conditioned its deprivation by the necessity for a procedure established by law made by the legislature.

Article 15A, corresponding to article 22 of the present Constitution, was not present in the Draft Constitution. It has come into being as a result of a move taken by Dr. Ambedkar on 15th September 1949 for a new article (15A). This article guarantees the right to every person, who is arrested, to be informed of the cause of his arrest, his right to consult and to be defended by a lawyer of his choice. Thirdly, every person arrested and detained in custody shall be produced before the magistrate within a period of twenty four hours. These provisions ensure equality in respect of legal treatment and save the poor and ordinary people from unnecessary harrassment.

But the second restriction of this article, namely, "any person who is arrested or detained under any law providing for preventive detention" could not escape the attention of the members who were not satisfied when Dr. Ambedkar attempted to justify it. Dr. Bakshi Tek Chand went to the extent of saying that ".... similar provisions existed even under the notorious Rowlatt Act passed in 1919, as a protest against which our revered leader, Mahatma Gandhi, started the great movement which ultimately culminated in the liberation of the country from foreign yoke ...." (80).

Articles 17 and 18 of the Draft (articles 23 and 24 of the present Constitution) deal with the Right against exploitation.

Gandhi's advocacy for social equality found vocal

expression among the members of the Assembly. Since, in the eyes of God, he declared, all men are equal, they should also be legally and politically equal. His experience of South Africa instilled in him the desire for racial and social equality. During his leadership of the Indian National Movement, he did enough spadework for crucification of 'untouchability', exploitation in the name of castes, racialism and communalism and exploitation of children and women.

Article 17 of the Draft (article 23 of the present Constitution) prohibits traffic in human beings and beggar and similar forms of forced labour. Though the national freedom movement, since the twenties of this country, had been a rallying force against such practices, there were many areas of the country where the 'untouchables' were being exploited in several ways by the higher castes and richer classes. Evils like the Devadasi system had been prevalent in certain parts of India. Vestiges of such evil customs and practices were still there in many parts of the country. The framers of the Constitution were eager to proclaim a war against them through the constitution, as these practices could have no place in the new political and social concept that was emerging with the advent of independence.

Shri S. Nagappa, while supporting this clause and commending it, placed before the House a very painful picture of the worst negligence and cruelty the Harijan people were subjected to, and he hoped that the evil systems and practices would now be abolished with the inclusion of this article (81).

Shri V. J. Muniswami Pillai expressed his satisfaction on the provision for the abolition of forced labour (beggar). He referred, in this connection, to the wishes cherished by Gandhi for elevating the Harijan community (82).

According to article 18 of the Draft (article 24 of the present Constitution) no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment. This article is intimately related to a Directive Principle of State Policy which calls upon the state to enforce universal compulsory and free primary education to all children in the country upto the age of fourteen years. This comes of the realisation that children should prepare during this period for the task of the future as useful and responsible citizens and employment of children is an uncivilised and inhuman practice. It is exploitation, it stunts their growth, corrupts their morals and often drives them to delinquency.

Right to freedom of religion, and cultural and educational rights may be termed as minority rights. The special significance of these provisions is that while other rights (rights discussed so far) in Part III of the Constitution are meant for the people of India as a whole, irrespective of religion, caste, race or language, these rights on the other hand are meant for the minorities only.

It is a paradox that while almost every religion stands for, and preaches the universal brotherhood of man, it has been a

constant source of conflict in human history. India has been most unfortunate in this respect, particularly during the last thousand years of her history. The British did not desist from exploiting this situation for their own advantage and to continue their rule in India as long as they could. The country was partitioned on a religious basis. Yet the problem of religious minorities in independent India was not solved and remained as difficult as ever.

The right to freedom of speech and expression, and the right to form associations and unions are also rights which guarantee religious speech and expression and the right to form religious associations and unions. But the Constituent Assembly was not satisfied with such provisions alone in its bid to infuse complete confidence in the religious minorities. It went a step further and adopted a separate group of articles dealing solely with the right to freedom of religion. The freedoms provided in articles 19,20,21 and 22 of the Draft Constitution (articles 25,26,27 and 28 of the present constitution) are conceived in most generous terms to the complete satisfaction of religious minorities. They were, in fact, the result of an agreement with the minorities, almost unanimously arrived at in the minorities Committee constituted by the Constituent Assembly. Such unanimity created an atmosphere of harmony and confidence in the majority community. Moreover, these provisions embodied in detail one of the objectives of the Constitution declared in the Preamble: "to secure to all its citizens.....liberty of faith,

belief and worship".

Again, among these four articles, article 19(25 of the present constitution) is most significant. It states that (1) "..... all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion. (2) Nothing in this article shall affect the operation of any existing law or prevent the state from making any law - (a) regulating or restricting any economic, financial, political /or other secular activity which may be associated with religious practice, (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus".

During the proceedings of the Second Round Table Conference, Gandhi circulated a memorandum in the second session of the Conference which, inter alia, demanded that the new Constitution should include a guarantee to the communities concerned, of protection of their culture, language, script, education, profession and practice of religion and religious endowments, personal law, political and other rights, of minority communities.

For Gandhi, the universal element of all religions and creeds was the ethical one, and it was because of the universality of the ethical elements that made all religions one in spirit - so many pathways to the same ultimate reality - the sovereign God of Love and truth - the creator of the universe.

During the general discussion of the Draft, Shri S.V. Krishnamurthy Rao opposed that part of this right which guaranteed freedom to propagate religion. He said that in a secular state, such a provision, especially with the guarantee for the free exercise of religion and freedom of thought, was out of place in our constitution (83).

During the debate on the Right to Religion in the Assembly, Shri H.V.Kamath made a unique demand. He intended to draw attention of the House ".....to the value and importance that all our teachers, from time immemorial.....down to Mahatma Gandhi, Netaji Subhas Chandra Bose have attached to spiritual training and spiritual instruction.." (84) With these words, Shri Kamath shought to impart spiritual instruction and training to the citizens of the union.

Shrimati Renuka Ray suggested that ".... above all things, it is necessary that the instruction that is given to the citizens of the future shall be such that the idea of a secular state in which all citizens are equal, comes into being, and the provisions for this adopted in our constitution become a living reality (85).

Shri M. Anantha Sayanam Ayyangar, while explaining the concept of secularism, said that it was regrettable that we had not been able to evolve a universal religion, a religion where the religious practice need not cloud the issues (86). He further

stated that ".... the only thing, under the circumstances that we can do is to avoid religious instructions in state-aided schools....." (87)

Although Right to Religion involves considerably Right to Education also, nevertheless the framers took another two articles to make it more explicit. These are articles 23 and 23A of the Draft, corresponding to articles 29 and 30 of the present Constitution.

Article 29 (23 of the Draft) (1) guarantees the right of any section of the citizens, residing in any part of the country having a distinct language, script or culture of its own to conserve the same. Section (2) prohibits any discrimination based only on religion, race, caste, language or any of themin the matter of state or state-aided educational institutions. Section (1) of article 30 (23A of the Draft) provides that "all minorities whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. (2) The state shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

In the matter of safeguarding the rights of religious, linguistic and racial minorities, it will become clear that the sole purpose of these provisions is to reassure the minorities that certain special interests of theirs which they cherish as fundamental to their life, are safe under the

Constitution. One special feature of these provisions is that the term 'minority' has been given a wide connotation. Here a minority is recognised not only on the basis of religion, but also on the basis of language, script or culture.

In the opinion of Shri Mihirlal Chattopadhyay, this particular article 23 of the Draft Constitution was a definite guarantee to the minorities that their language, culture and script would be protected in every way. Different kinds of minorities based on language, script and culture would really find a great protection in this article (88).

Article 24 of the Draft Constitution (article 31 of the present constitution) deals with Right to Property. This article experienced a great ordeal in the Constituent Assembly. The Assembly deemed fit to have in addition an altogether separate section to deal with property rights, because it realised that in the absence of such a section it would be impossible to solve the conflicts involved in the right of the individual to own property and the duty of the state to enter the economic field with a view to bringing about badly needed reforms. In fact, this article which states that "no person shall be deprived of his property save by authority of law", attempts to reconcile the competing claims of the right of the individual to acquire private property and public purpose or general welfare.

During the general discussion of the Draft, Shrimati Renuka Ray stated that in regard to the economic rights of the

common man, there was a lacuna. In her opinion, even if compensation was necessary, when property was taken by the state for public purposes, this should be under Directives and not under Rights which are justiciable and enforceable in courts of law (89).

Pandit Jawaharlal Nehru intervened in the discussion and defended the provisions contained in this article. He emphasised the immense need of the time to allow the state to protect the economic interest of the community at large. On the other hand, he also assured the House that complete effect to the policy and pledge of the National Congress would be given (90).

Shri Damodar Swarup Seth moved an amendment, - part (c) of which stated that - private property and private enterprises were guaranteed to the extent they were consistent with the general interests of the Republic and its toiling masses (91).

Shri Seth accused that the Draft constitution had failed miserably to deal properly with the question of the economic rights of the people. He considered article 24 of the Draft as a Magna Charta in the hands of the capitalists of India. It had belied the expectation of the toiling masses for a Ram Rajya which was solemnly promised to them in the Quit India Resolution (92).

Prof. Shibban Lal Saksena opposed this move on the ground that it was a negation of all that Gandhi and the Congress stood for, during all these years, and it had gone against

the various resolutions of the Congress. In order to substantiate his views and to remind the members of the wishes cherished by Gandhi, Prof. Saksena quoted extensively from the speech delivered by Gandhi in the Round Table Conference. He further pointed out that if compensation was to be paid for the acquisition of property for public purposes, then the dream of equalisation by means of legislation would not come into daylight (93).

Shri Kishore Mohan Tripathi expressed the view that compensation for appropriation of property could not be given at the expense of the interests of the common people. He referred to the name of Gandhi and his concept of Ram Rajya which never meant merely political emancipation but also freedom from economic want. He therefore earnestly desired to see that in our Constitution this freedom from economic want was guaranteed to the common man (94).

At this stage, Shri H. V. Kamath referred to Gandhi's doctrine of 'Aparigraha' and 'trusteeship' which, in his opinion, could only solve all those trouble about property (95).

Shrimati Renuka Banerji suggested that this right should be so formed as to avoid hindrance in the way of our economic rights, namely, right to livelihood and earning as embodied in the Directive Principles (96).

Shri Gopinath Singh opposed compensation on the ground that the property claimed by the propertied people as

theirs was, in the true sense, the gift of the labour of the toiling people (97).

Shri Laksminarayan Sahu wanted abolition of capitalism and opposed the provision for compensation (98). He said "..... when many a man accumulates vast wealth, we should scarcely be able to shape India in our way....." (99)

The above discussion amply demonstrates that while some members stood their ground in honouring the wishes and aspirations of Gandhi, and did their best to see in this Chapter a fulfilment of his wishes, others, more numerous, more articulate and more prominent in the decision-making process, left a huge gap between their profession and practice, and permitted significant deviations in several substantive spheres of freedom. It was only in the spheres of equality and religious and cultural freedom that traces of Gandhian ideas could be detected to some extent. Other categories of rights, like freedom, liberty and property, or the right to constitutional remedies, were clear echoes of the classical liberties of Anglo - American vintage, and were inspired more by the legal-constitutional systems of the Western democracies.

NOTES AND REFERENCES.

1. G. Austin, The Indian Constitution: Cornerstone of a nation, O.U.P., 1966, p.50 ante. See also p. 118.

2. Parliamentary Debates, Part II.

3. Cabinet Mission Plan, Para 20, Sir Maurice Gwyer and Appadorai A, Speeches and documents of the Indian Constitution - 1921-47, Vol. II, p. 283.

   Pt. Govind Ballabh Panth on 24th January 1947 stated that "this Assembly resolves that in pursuance of paragraph 20 of the Cabinet Mission's statement of May 16, 1946, an Advisory Committee be constituted - Constituent Assembly Debates, Vol.II, pp.328-29.

4. Minutes of the meeting, Prasad papers, File, 16-P/45-6-7,cited by Austin, op. cit., p. 61.

5. Constituent Assembly Debates, Vol.II, Reprinted by Lok Sabha Secretariat, New Delhi, 1966, pp. 328-29.

6. For details about the creation of the committees and choosing of the members, see- Constituent Assembly Debates, Vol.II, pp. 328-29

7. Therewere three Sub-Committees of the Advisory Committee, one on Fundamental Rights, one on Minorities and a third on tribal and excluded areas.

8. Rau's Constitutional Precedents, first series, Parts 8-12,Third series, Parts II-IV, pages 10-24 on rights in the Third Series appeared in Rau's India's Constitution in the making, as Chapter-13.

9. K.C.Markandan, Directive Principles in the Indian Constitution, Allied Publishers, 1966, Appendices.

10. Interim Report of the Advisory Committee on the subject of Fundamental Rights - Report of Committees, First series, pp. 20-34, cited by Austin, op. cit., p. 63.

11. Constituent Assembly Debates, Reprinted by Lok Sabha Secretariat New Delhi, 1966, Vol. I, p. 57.

12. Ibid., p. 60.

13. Ibid., pp. 65-66.

14. Ibid., p. 93.

15. Ibid., p. 107.

16. Constituent Assembly Debates, Vol. II, p. 279.

17. Constituent Assembly Debates, Vol. I, p. 117.

18. Constituent Assembly Debates, Vol. II, pp. 283-84.

19. Constituent Assembly Debates, Vol. I, p. 138.

20. Ibid., p. 139.

21. Ibid., p. 151.

22. Constituent Assembly Debates, Vol. II, pp. 269-70.

23. Ibid., p. 300.

24. Ibid., p. 324.

25. Constituent Assembly Debates, Vol. I, p. 143.

26. Constitutional Proposals of The Sapru Committee December 1945, pp. 256, 257.

The relevant portion of the Report reads as follows: "When the question of fundamental rights has been settled and a list is prepared of those rights provision will have to be made for dividing them into justiciable and non-justiciable rights..... The real difficulty will be in dividing fundamental rights into classes: (1) Justiciable, and (2) non-Justiciable, but this difficulty must be faced. We are alive to the danger of too much interference with the Executive Government on the part of the Judiciary, but we also realise that in the last resort in a Federal Constitution such as we envisage, the Judiciary is the final protector and guardian of the Constitution. Difficult as the task may seem, it should not be impossible for competent and skilful lawyers to divide the fundamental rights in such a way that the breaches of some of them may form the subject of judicial pronouncement, and the breaches of others may be remedied without resort to courts of law. This task obviously cannot be undertaken by us. It will be for the Constitution-Making Body first to settle the list of fundamental rights and then to undertake the division of fundamental rights into justiciable and non-justiciable and then to provide suitable machinery for the enforcement of both...."

27. Note on Fundamental Rights-by Sir Alladi Krishnaswamy Ayyar, as quoted in Markandan, op. cit., Appendix B(ii) pp. 338-39.

The relevant portion of the Note reads as follows:-

"In formulating a charter of fundamental rights, regard must necessarily had to the following points:

1. A distinction has necessarily to be made between rights which are justiciable and rights which are merely intended as a guide and directive objectives to State Policy. This distinction has been maintained and indicated in the recent Eire Constitution. Under the American Constitution, all the guaranteed rights being legal and constitutional in their nature are justiciable and as such enforceable by courts. The rights however having been formulated in very general and comprehensive terms, the American Supreme Court had to necessarily read into these rights implied reservations and exceptions. The Supreme Court has been discharging the trust of drawing the line between personal liberty and the need for social control, delicate as the task is. In the result, the Supreme Court has created new limitations upon social control and has put new limitations upon personal liberty. The due process clause has been largely availed of in either expanding or narrowing the scope of the clauses guaranteeing personal liberty. This has been illustrated in regard to the provisions relating to the freedom of the press, the freedom from censorship, religious liberty guaranteed by the First Amendment, privilege to bear arms, privileges of assembly and petition, in the interpretation given to slavery and involuntary servitude, searches and seizures, public trial, the equal protection guaranteed by the 14th amendment and generally the elastic interpretation put upon 'due process' from time to time by the Supreme Court. The later constitutions framed on the model of the U.S. have tried to expand the working in the U.S. Constitution by compendiously seeking to incorporate the effects of the American decisions. The question before the Constituent Assembly of India is whether to follow the model of the United States or of the later constitutions...."

28. Constituent Assembly Debates, Vol. III, Reprint '66, Appendix, pp.437-38.

29. Ibid., p. 403.

30. Ibid., p. 404.

31. Ibid., p. 403.

32. Constituent Assembly Debates, Vol. VII, Reprint '66, p. 230.

33. Ibid., p. 225.

34. Ibid., p. 244.

35. Ibid., p. 473.

36. Ibid., p. 476.

37. Ibid.

38. Ibid., p. 474.

39. Ibid., p. 479.

40. Ibid.

41. Ibid., p. 491.

42. Constituent Assembly Debates, Vol. III, Annexure (Justiciable Fundamental Rights) pp. 440-43.

43. Ibid., p. 403.

44. Ibid., p. 413.

45. Ibid.

46. Ibid., p. 414.

47. Ibid., p. 429.

48. Ibid., p. 456.

49. Constituent Assembly Debates, Vol. VII, p. 1.

50. Ibid., p. 45.

51. Ibid., p. 212.

52. Ibid., p. 218.

53. Ibid., p. 224.

54. Ibid., p. 249.

55. Ibid., pp. 251-52.

56. Ibid., p. 255.

57. Ibid.

58. Ibid., p. 258.

59. Ibid., p. 256.

60. Ibid., p. 259.

61. Ibid., p. 275.

62. Ibid., p. 293.
63. Ibid., p. 311.
64. Ibid., p. 349.
65. Ibid., p. 360.
66. Ibid., p. 655.
67. Ibid., p. 657.
68. Ibid., p. 658.
69. Ibid., p. 688.
70. Ibid., pp. 691-92.
71. Ibid., p. 669.
72. Ibid., p. 308.
73. Ibid., p. 665.
74. Ibid., p. 666.
75. Ibid., p. 667.
76. Ibid., p. 751.
77. Ibid., p. 752.
78. Ibid., p. 765.
79. Ibid., p. 795.
80. Constituent Assembly Debates, Vol. IX, Reprint '66, p.1528.
81. Constituent Assembly Debates, Vol. VII, pp. 810-811.
82. Ibid., p. 309.
83. Ibid., 382.
84. Ibid., p. 826.
85. Ibid., p. 879.
86. Ibid., p. 882.
87. Ibid., p. 904.

88. Ibid.,

89. Ibid., p. 357.

90. Constituent Assembly Debates, Vol. IX, Reprint '66, p. 1195.

91. Ibid., p. 1199.

92. Ibid.

93. Ibid., pp. 1204-1205.

94. Ibid., p. 1209.

95. Ibid., p. 1212.

96. Ibid., p. 1238.

97. Ibid., p. 1252.

98. Ibid., p. 1256.

99. Ibid., p. 1255.

CHAPTER - 5

The leaders of India's freedom movement visualized that in the new regime, following political freedom, the people would have the fullest opportunities for advancement in the social and economic spheres, and that the state would make suitable provisions for ensuring such progress. Among the fundamental rights adopted by the All Parties Conference (1928), were provisions entitling every citizen to free elementary education; maintenance of health and fitness for work of all citizens; a living wage for every worker; protection of motherhood; welfare of children; and assistance in old age, infirmity and unemployment[1]. Similar provisions were also contained in the Declaration of Fundamental Rights, adopted by the Indian National Congress in 1931, which, in addition, specifically declared; 'in order to end the exploitation of the masses, political freedom must include real economic freedom of the starving millions, and that the organization of economic life must conform to the principles of justice'[2].

Gandhian principles working behind the Directive Principles of State Policy

It was due to Gandhi's impact that the Karachi Resolution of 1931 stressed that the state should also aim at achieving the welfare of the individual in the social, economic, cultural and moral spheres, since for him 'true democracy lay in achieving village industries, providing primary education through handicrafts, removal of untouchability, communal harmony and prohibition'[3].

Part IV of the Constitution, known as Directive Principles of State Policy embodies, in a somewhat diluted and abstract manner, some of these hopes and ideals cherished by Gandhi.

A preamble to define the position to be accorded to these principles was incorporated in the Draft Report of the Fundamental Rights Sub Committee; which stated that "the principles of policy set forth in this part are intended for the guidance of the state. While these principles are not cognizable by any court, they are nevertheless fundamental in the governance of the country and their application in the making of laws shall be the duty of the state". In addition, the Draft Report contained eleven clauses (4). These clauses give direction to the state to promote international peace and security as well as internal peace, and covered the whole range of the political, economic and social well-being of the state and the citizens.

These clauses, when placed for discussion, were severely criticized. One criticism was that these principles were borrowed from foreign countries and that the Advisory Committee had bodily adopted the provisions of the Irish and some other Constitutions without giving much thought to their usefulness and their relevance to, and practicability in, Indian conditions.

Subsequently, in the course of his tour of the U.S.A., Canada, Ireland and the United Kingdom, B. N. Rau discussed the

position of the Directive Principles in relation to the Fundamental Rights, especially in the light of their working in Ireland. The Charter of the United Nations as well as the Universal Declaration of Human Rights also influenced this part of the Constitution. Yet, it is true that our constitutional fathers presented in it a novelty as regards its scope. They marked it not only for general guidance, but also as 'fundamental in the governance of the country', and the duty of the state was to utilize these principles in framing laws. The chapter on Directive Principles has become the bedrock on which future programmes of social and economic legislations for achieving the objectives of the 'welfare state' would be based.

Commenting on the fanatical borrowing of phraseologies from foreign countries to frame our Directive Principles, Mahavir Tyagi said, during discussions of the Draft Constitution, that there was nothing Gandhian in the Directive Principles (5). Many others pointed out the need for greater emphasis on Gandhian principles. And in order to reframe the Constitution along these lines, some members introduced amendments in the Draft Constitution. They intended to incorporate provisions like 'prohibition', 'swadeshi', 'cottage industries', 'ban on cow slaughter' and 'Panchayati Raj'.

While speaking on the Supplementary Report on Fundamental Rights, Vishwambhar Dayal Tripathy pointed out the need to make adequate arrangements for cow protection (6).

Pointing to the Directive Principles, he welcomed the provision on education (Section-8)[7] but expressed his anxiety over the provisions on economic rights. He expressed his dissatisfaction at the half-hearted and hesitant introduction of the provisions, meant for removing the disparity and inequality to which the poor millions were subjected. He said: 'the need is that the poor may realise and feel that they have also the strength to rise to the highest level and that they also have the same facilities for advancement as others have'[8].

Dr. P. S. Deshmukh expressed his displeasure at the nature of the Constitution which was emerging. He condemned the attitude of large-scale borrowing of phraseologies and provisions from foreign sources[9], especially from the Irish Constitution[10]. He asked: ".....why not take the opportunity of fashioning something original, something that is in keeping with the genius of our people, and something that will be in perfect conformity with the historical background of the ancient civilization of this land.....?" Dr. Deshmukh expressed his dissatisfaction at the inclusion of the economic rights in the non-justiciable list[11]. He also considered the provisions intended for ameliorating the condition of the common masses as inadequate and half hearted[12].

Additions were made subsequently to the final draft when it was discussed by the Constituent Assembly. The Draft Constitution of India contained thirteen articles (28 to 40) in the part relating to 'Directive Principles of State Policy'. But

during its detailed, clause-by-clause discussion, due to the relentless demands and persistent efforts of some members to incorporate more Gandhian ideas, three more articles were added, namely, articles 40,48 and 50. To article 34 of the Draft, corresponding to article 43 of the final version, was added: 'the state's endeavour to promote cottage industries on an individual or co-operative basis on rural areas'; to article 38, corresponding to article 47 of the final, was added: 'the state's endeavour to bring about prohibition of the consumption, except for medicinal purposes, of intoxicating drinks and of drugs which are injurious to health'. Further, article 40 of the Draft, corresponding to article 51 of the Constitution, finally adopted, was redrafted with minor changes and the additional clauses read: 'to encourage settlement of international disputes by arbitration'.

Thus the changes made by the Constituent Assembly, along with the provisions of the Draft Constitution, represent,in some sense the intention of some of the members to honour the wishes and aspirations of the Indians, for the fulfilment of which Gandhi strove.

Special mention may be made of the concept of Democratic Decentralisation and Panchayati Raj which was accepted as a Directive Principle but was rejected as the basis of the political structure. This structure was to be based on decentralisation of power, with the village as the basic unit of adminis-

tration and the Panchayat as the electoral college for electing representatives to the provinces and to the centre.

Article 30 (article 38 of the present Constitution) of the Draft Constitution declared the solemn resolution to introduce a revolution to achieve social, economic and political justice. Article 31 (article 39 of the present Constitution) of the Draft Constitution in its five clauses tried to create a zone of economic freedom for the common man and the labourers and an assurance to them in their various hazards of life. Article 32 (article 41 of the present Constitution) tried to make available the scheme of social security. Article 33 (article 42 of the present Constitution) assured that the state would make provisions for securing just and human conditions of work and for maternity relief. Article 34 (article 43 of the present Constitution) of the Draft ensured a living wage and decent standard of living for the wage-earners. Article 35 (article 44), provided for a uniform civil code throughout the territory, and article 38, (article 47) introduced a caution for public health. These are certainly the issues for which Gandhi had struggled and suffered.

Article 30 of the Draft (article 38 of the present Constitution) states: "the state shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life."

During discussion on the Draft Constitution, Damodar Swarup Seth moved an amendment to this article, and reminded the House that the Indian National Congress, in its election manifesto, promised the transfer of ownership of the means of public utilities, communication, production, credit, exchange to the ownership of the public. The Economic Committee's Report of the Congress also accepted this principle. Without that he said 'a social democratic order securing the real welfare of the masses could not be established'[13]. Naziruddin Ahmed moved an amendment and sought re-wording of this provision so as to make it a positive obligation on the part of the state[14].

According to Mahavir Tyagi, this was a very important article which contained at least a fourth part of the aim which the framers of the constitution had in view. The aim of securing justice, equality and fraternity, as embodied in the Preamble, found expression in this article[15]. He supported the amendment moved by Naziruddin Ahmed and demanded this article to be more strongly worded[16].

Article 31 of the Draft (article 39 of the present Constitution) states: "the state shall, in particular, direct its policy towards securing - (a) that the citizens, men and women equally, have the right to an adequate means of livelihood; (b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good; (c) that

the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment; (d) that there is equal pay for equal work for both men and women; (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens, are not forced by economic necessity to enter avocations unsuited to their age or strength; (f) that childhood and youth are protected against exploitation and against moral and material abandonment".

These provisions can be compared with some of the provisions of the Universal Declaration of Human Rights as well as the International Covenant on Economic, Social and Cultural Rights.

Articles 23, 25 and 27 of the Human Rights Charter deal with-right to work; maternity and child welfare; and protection of the moral and material interests respectively (17). These can be compared with the provisions embodied in article 39(a), (e) and (f) of the Indian Constitution.

Again, articles 7, 10 and 11 of the International Covenant on Economic, Social and Cultural Rights deal with - just and favourable conditions of work; maternity benefit, protection from economic and social exploitation of the children and young persons; and adequate standard of living respectively (18).

K.T. Shah moved an amendment - "that for clause (iii) of article 31, the following be substituted:- 'that there

shall be no private monopolies in any form of production of material wealth, social service, or public utilities nor shall there be any concentration of means of production and distribution in private hands and the state shall adopt every means to prevent such concentration or accumulation" (19).

Jadubana Sahaya supported the spirit of the amendment. He held this article to be the most vital because, in his opinion, the provisions contained in this article constituted the charter of economic democracy. But he failed to understand why the Assembly was not keen to the extent of clearly and boldly incorporating in this article 'that the means of production and the natural or material resources of the country shall belong to the community and through it to the state' (20).

S. Nagappa also held the same view. He preferred these clauses being drafted in more unequivocal terms. Anyway, he requested the framers of the Constitution to see that every word of it was translated into action (21).

A section of the Assembly members wanted to place greater emphasis on certain institutions and principles central to Indian practice, particularly, those glorified by Gandhi's teachings. By November 1948, there were scores of amendments to the principles. The majority of the amendments were directed towards the development of village life and economy and the panchayat

system of village organisation. Some members sought to make the promotion of cottage industry a government responsibility and to make it incumbent upon the government to prevent the slaughter of cattle and to improve the methods of animal husbandry and agriculture. A further provision demanded was the prohibition of harmful drugs and intoxicating drinks - a provision founded largely on Gandhian puritanism and directed primarily towards the socially and physically depressed industrial workers.(22)

A new article, 31A (article 40 of the present Constitution) was included, which previously found no place in the Draft Constitution. This article states : "The state shall take steps to organise Village Panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government".(23)

Article 32 of the Draft (article 41 of the present Constitution) states: "The state shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education, and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want."

This article is analogous in content and phraseology to article 15 of Dr. Lauterpacht's Draft of an International Bill of Rights of Man(24) which states: 'states shall, within the limits of their economic capacity and development make provision for securing effectively the right to work, to education and to

public assistance in case of unemployment, old age, sickness, disablement and other cases of undeserved want'. Similar provisions can also be traced in the Human Rights Charter. Article 25 of this Charter speaks of security in the event of unemployment or other lack of livelihood (25).

This article undoubtedly aims at furthering the welfare of the common men and a coverage at their distress. Hence it was unanimously adopted by the House without much debate.

Another article of the same nature, - article 33 of the Draft (article 42 of the present Constitution) states: "The state shall make provision for securing just and human conditions of work and for maternity relief". This article was added to the Constitution without any debate at all.

The suggestion to include the above rights in the Constitution of India was by no means new. Section (xvii) of article 4 of the Report prepared by the Committee appointed by the All Parties Conference (1928) to determine the principles of the Constitution of India stated: 'Parliament shall make suitable laws for the maintenance of health and fitness for work of all citizens, securing a living wage for every worker, the protection of motherhood, welfare of children and the economic consequences of old age, infirmity and unemployment' (26).

Analogous provisions are found in the Human Rights Charter. Article 23 of the Charter deals with just and favourable

conditions of work (27) and article 25 deals with maternity welfare. (28)

Article 34 of the Draft (article 43 of the present Constitution), as modified, states that "The state shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the state shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas".

The securing of a "living wage" alone instead of a "minimum wage" for the workers had also been the aspiration and the ideal set forth in the Declaration of Rights, in the statement of the second session of the Indian Round Table Conference, and by the Indian National Congress and the representatives of the All Parties Conference.

The Indian National Congress, in its Allahabad session of 1933-34, included, in the Declaration of Fundamental Rights, a clause (clause 2(b)) which stated: 'The state shall safeguard the interests of industrial workers and shall secure for them by suitable legislation and in other ways, a living wage, healthy conditions of work, limited hours of labour, suitable machinery for the settlement of disputes between employers and workers, and protection against the economic consequences of old age, sickness and unemployment'. (29)

The Human Rights Charter embodied similar provisions. Article 23 of the Charter envisages protection against unemployment; right to equal pay for equal work, and right to just and favourable remunerations (30). Article 24 deals with right to rest and leisure, fixation of working hours and periodic holidays (31).

Neither the Sub-Committee on Fundamental Rights, nor the Draft Constitution made any mention of the use of swadeshi and promotion of cottage industries in the rural areas -- the programme which became the heart of the National Movement under Gandhi's leadership.

During the general discussion on the Draft, Mahavir Tyagi reminded the House that Gandhi was very keen on cottage industries to be organised on the basis of self-sufficiency; and as such, this item had a top priority in his 'Constructive Programme' (32).

He (Tyagi) moved an amendment to the effect that "the state shall encourage the use of swadeshi articles and promote cottage industries, especially in the rural areas with a view to making as far as possible those areas self-sufficient" (33).

T.A. Ramalingam Chettiar intended to add to the end of this article - "And in particular the state shall endeavour to promote cottage industries on co-operative lines in rural areas" (34).

H.V.Kamath reminded the House that the concept of economic and social democracy had formed the basis of the content of most

Congress resolutions that had been passed since 1936; he made a special reference to the Meerut session of the Congress, which gave a definite meaning to the concept of economic and social democracy. He hoped that the nation would move towards creating a casteless and classless society as envisaged by Gandhi (35). He (Kamath) further hoped that "the government would act up to this article and see all workers are secured work, a living wage and a decent standard of life' (36).

At this stage, Dr. Ambedkar conceded to the demands of the House and accepted the addition to this article (37). The Constituent Assembly, however, did not support the inclusion of - "use of swadeshi" but agreed to add that the "state shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas".

Gandhi had made cottage industries, particularly home spinning, for psychological, if not for economic reasons, a central part of the independence movement. Gandhi's economic aims were two: to attack village poverty and to provide an alternative supply of textiles to the hated foreign cloth. In the Assembly there was, as even Ambedkar admitted, a considerable amount of feeling (38) in favour of government encouragement for cottage industries, and this sentiment forced him, as the spokesman of the Drafting Committee, to accept the amendment placing the promotion of cottage industries in the Directive Principles (39).

Articles 36 and 37 of the Draft Constitution (articles 45 and 46 of the present Constitution) dealing with the provisions for free and compulsory education for children, and with the promotion of educational and economic interests of scheduled castes, scheduled tribes and other weaker sections respectively, were inspired by Gandhian ideas.

These provisions can be compared with article 26 of the Human Rights Charter (40) and with article 13 of the International Covenant on Economic, Social and Cultural Rights (41).

Article 36 of the Draft states: "The state shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years".

The members of the Constituent Assembly were almost unanimous on this issue; as such, this article failed to produce any storm in the House and was adopted forthwith.

This particular right found favour with many important members of the Constituent Assembly. Provisions to this end were made by B. N. Rau in his Draft Scheme on Fundamental Principles of State Policy and by Sardar Harnam Singh, K.T. Shah and K. M. Munshi in their notes on Fundamental Rights (45).

During general discussion of the Draft, a few members, especially Z.H.Lari, expressed their displeasure in view of this

provision being included in the Directive Principles. He wished that this provision should have been placed in the justiciable Fundamental Rights with much more emphasis on it (43).

This article, read along with articles 29 and 30 in the Chapter on Fundamental Rights, guarantees what is known as the right to education. But these articles, taking together, cannot claim to have established the scheme of education as contemplated by Gandhi. In fact, the Assembly debate manifests clearly that the members did not have much faith in the usefulness of the plan Gandhi devised.

Gandhi said "by education I mean an all round drawing out of the best in child and man -- body, mind and spirit .... I would begin the child's education by teaching it a useful handicraft and enabling it to produce from the moment it begins its training" (44).

He felt that our education needed to be revolutionised. The brain must be educated through the hand. He, therefore, prescribed, for the children in the schools, instruction through handicrafts. This scheme was known as the New or Basic Education or 'Naya Talim'. This education, according to Gandhi, was meant for transforming the village children into model villagers. 'It develops both the body and the mind, and keeps the child rooted to the soil with a glorious vision of the future in the realisation of which he or she begins to take his or her career in school' (45).

However, the Assembly members did not pay much heed to this aspect of Gandhi's wishes, and, as a result, the new Constitution of India failed to incorporate this scheme within its body.

Article 37 of the Draft states that "the state shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation".

This article goes a long way in ameliorating the conditions of the weaker sections, the hitherto oppressed and downtrodden people by ensuring them economic and social justice. It is this social and economic injustice for the elimination of which Gandhi struggled throughout his life.

During general discussion on the Draft Constitution, the members were quite serious about the inequalities the different communities suffered from. Jainarayan Vyas drew the attention of the House at the Harijan communities who were not allowed to enter into the temples, and asked for necessary steps to abolish this evil system (46).

Yudhisthir Mishra demanded more clear manifestation of economic democracy in the constitution. He suggested - nationalisation of wealth and state-ownership and control in the matter of production and distribution (47). Viswambhar Dayal Tripathi also emphasised economic democracy (48).

Dr. P. S. Deshmukh hoped that, although the framers of the Constitution had not been able to frame a constitution more akin to the genius of the Indian people, yet they would be in a position to accommodate, by means of amendments, some such provisions that the ordinary citizen, might feel that their Raj and their Kingdom was going to dawn (49).

Another article, bearing a resemblance to Gandhian ideas, was - article 38 of the Draft (article 47 of the present Constitution). The Draft only stated: "The state shall regard the rising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties".

No provision was made in the Draft Constitution regarding 'prohibition', which has always been considered as the first tenet of Gandhi's 'Constructive Programme'. The ommission was seriously resented by some members of the Assembly.

Mahavir Tyagi was very much displeased in the absence of 'prohibition' within the Draft Constitution. He pointed out that Gandhi had always been keen on total prohibition in the country. He was anxious that in India as a whole there should be complete prohibition but the Constitution did not say a word about it (50). He moved an amendment and reminded the House that Gandhi's foremost plank of 'Constructive Programme' was 'prohibition' and the Congress repeatedly stood pledged to that programme. Therefore, in his opinion, if the idea of 'prohibition' could not be accommodated in the constitution, then that would mean the rejec-

tion of the wishes of Gandhi as well as the people[51].

Kazi Syed Karimuddin insisted that after article 30, the following new article be inserted - 30A: 'The state shall strive to secure the prohibition of manufacture, sale or transportation or consumption of intoxicating liquors for beverage purposes'. He further argued: 'Gandhi was preaching all his life that the use of liquor and the manufacture of liquor should be prohibited in India; and in fact in keeping with that policy, the Provincial Governments in India had been framing laws and were applying those laws'. He pointed out "that thousands of families had been ruined and were miserable on account of this evil'. Therefore, he suggested that 'in the directive principles of the State they ought to have been embodied because the rejection of this would be the rejection of the wishes of Gandhi'[52].

Shibban Lal Saksena[53] and Mohamed Ismail Sahib[54] strongly supported the move taken by Kazi Syed Karimuddin.

Seth Govind Das also supported this move and said: 'It would really not be in accordance with the Indian traditions that when a new Constitution for India was in the making, no mention was made about prohibition'. He expected that 'every community of this land, will agree that the principle of prohibition must be accepted in this country and the Constitution should say something with respect to prohibition'[55].

Biswanath Das extended his support and strongly

demanded a provision to this effect, but he objected its inclusion in the 'Directives' which were characterised by him as the 'Sermon on the Mount'(56).

B. Pocker Sahib Bahadur heartily supported the amendment moved by Kazi Syed Karimuddin and argued that if the Assembly members had any real reverence for the views of Gandhi, they ought to have incorporated prohibition at least in the Directive Principles. Members here should not have allowed it to be said of them that soon after Gandhi's death, his wishes and views were also buried nine fathoms deep(57).

During this discussion, the members almost unanimously desired the revival of this issue at a later stage. When the issue was resumed, Shibban Lal Saksena moved an amendment that at the end of article 38, the following be substituted: ' and shall endeavour to bring about prohibition of the consumption of intoxicating drinks and drugs which are injurious to health except for medicinal purposes'(58). He drew the attention of Dr. Ambedkar to the fact that 'the Harijan and the labour population which earns money by hard labour spends a large portion of that in the toddy shops and the drink-shops', therefore, hehoped that 'the Directive Principle would not remain merely a pious wish'(59).

B. H. Khardekar objected to prohibition on economic grounds and accused the members of misunderstanding Gandhi. He argued that the essence of Gandhism was love, toleration, non-violence, search for truth and all those important

things. The externals of Gandhism or the outward trappings of Gandhism were khaddar and prohibition (60).

At this, V. I. Muniswami Pillai expressed his sorrow and opined that B. H. Khardekar had failed to follow what Gandhi told the people. He argued that of the four constructive programmes, Gandhi had placed prohibition at the head of all the four, because he had found the country was going to rack and ruin, and the poors were spending all their earnings on drink and leaving their children and families in utter poverty and want (61).

B. G. Kher was also offended at the speech made by B. H. Khardekar (62). He reminded the House that Gandhi had said that he would not attach any importance to any other social reform so long as this question of the prevention of consumption of intoxicating liquors and drugs was not taken up by the states. The very first reform that he enjoined upon all the provinces was the stopping of this vicious thing (63).

Laksminarayan Sahu welcomed prohibition in the context of the wishes of Gandhi and the changed situation after independence (64).

After this prolonged discussion, the clause 'the state shall endeavour to bring about prohibition of the consumption, except for medicinal purposes, of intoxicating drinks and of drugs which are injurious to health' was added to article 38 of the Draft.

Inspite of the opposition from the liberal elements in the Assembly, the advocates of prohibition had both social and doctrinal strings to their bow, and they were supported by the decade-old official dedication of the Congress to the cause of prohibition. Further, the Hindus relying on Gandhi's teachings, and the Muslims deriving their authority from the Koran, joined forces against the evil of drink.

Article 48 of the present Constitution (article 38A of the Draft) states: "The state shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle".

The origin of the basic contents of this article could be traced to a resolution moved by Thakur Das Bhargava and Choudhari Ranbir Singh, and was unanimously adopted by the Congress Party (65). However, the Draft Constitution of India did not contain any provision covering these aspects. As such, while Draft Constitution was being discussed in the Constituent Assembly, Seth Govind Das (66), Thakur Das Bhargava (67), Shibban Lal Saksena (68), and Choudhari Ranbir Singh (69), regretting the omission, emphasised the need for such a provision.

Gandhi regarded 'ban on cow slaughter' as indispensable both on moral and economic grounds. The 'ban on cow slaughter' being primarily religious in character, there seems to have been

a lot of controversy on its inclusion. Objection was raised by some of the Muslim members. At this point, Thakurdas Bhargava made an appeal to consider the matter in the light of economic requirements of the country[70]. He also asked for an amendment stating: 'the state shall endeavour to organise agriculture and animal husbandryon modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds of cattle and prohibit the slaughter of cow and other useful cattle, especially milch and draught cattle and their young stock'[71].

Seth Govind Das[72] and Shibban Lal Saksena[73] also emphasised the economic side of the issue, and stated that Swaraj would be futile in the absence of this provision in the Constitution. It was then accepted and the motion took the form of article 48 of the Constitution.

The last article of Part IV of the Constitution -- article 40 of the Draft -- (article 51 of the present Constitution) also represents the wishes of Gandhi. This article embodies the country's pledge for peaceful relations with other nations based on Gandhi's ideas of non-violence and truth, and was enacted after much deliberation. It may, however, be honestly admitted that the adoption of this article, as the guiding principle of future foreign policy of India, of which Nehru was the chief architect, was more a reflection of the national self-interest of the newly emergent nation, than a genuine fulfilment and recognition of

Gandhi's ideas. Notwithstanding the emphasis on non-violence, the real inspiration came from the Preamble and the Purposes and Principles of the UN Charter and other contemporary pronouncements rather than from the Gandhian approach to world peace and international relations.

This article states: "The state shall endeavour to- (a) promote international peace and security; (b) maintain just and honourable relations between nations; (c) foster respect for international law and treaty obligations in the dealings of organised peoples with one another; and (d) encourage settlement of international disputes by arbitration".

The need for including a provision in the Constitution, in respect of the 'world order' was envisaged by the Objective Resolution moved by the Prime Minister in the Constituent Assembly on December 13, 1946.

V.S. Sarwate made an unsuccessful attempt to add the following new clause in the memory of Gandhi: 'foster truthfulness, justice and sense of duty in the citizens'. This he regarded as the provision which characterised Gandhian ideology. He appealed that this should not be rejected either because it was vague or that moral principles have no place in the constitution. However, he was opposed by many and the proposed amendment was rejected (74). H. V. Kamath demanded more attention of the House on international affairs so that the world could really become one

free world[75].

K.T. Shah wanted, first and foremost, the state in India to be pledged to promote international peace and security. He also moved an amendment in this direction[76], and recalled in this connection the categoric declaration of Gandhi at the Round Table Conference: Gandhi declared that if he got swaraj, if the Congress was master in this country, one of the first things he would advise it to do would be to disband the army and the police, and anything else which savoured of violence in the organisation of the Indian State[77]. However, his attempt did not bear fruit.

Another fruitless attempt was made by Damodar Swarup Seth. He wanted to add the following words at the end of this article: 'It shall also promote political and economic emancipation and cultural advancement of the oppressed and backward peoples, and the international regulation of the legal status of workers with a view to ensuring a universal minimum of social rights to the entire working class of the world'[78].

B. H. Khardekar wanted that certain indication should be showed in our foreign policy that we have remembered the principles of peace and non-violence as laid down by Gandhi[79].

Biswanath Das pleaded for honourable and peaceful relations with other states, and, in this connection remembered Gandhi who taught to take honourable and open course of action in the relations between nations[80].

In his speech delivered in the Constituent Assembly on 26th November, 1949, Dr. Rajendra Prasad made a special reference to this article and said: 'while a world torn with conflicts, was still depending on armaments to establish peace and goodwill, India was destined to play a great part, if she proved true to the teachings of Gandhi and gave effect to this directive principle of the Constitution'(81)

So far as the foregoing discussion is concerned, certain characteristic features of this part of the Constitution cannot escape our attention.

The provisions contained in this part reflect the ideas and ideals for the fulfilment of which Gandhi strove and struggled throughout his life. They are lofty and pious, they are non-justiciable; nevertheless, if the administrators and the legislators remain true to their pledge to regard these principles as fundamental in the governance of the country, then there is no shadow of doubt that thereby they will be proceeding a long way in the fulfilment of Gandhi's aspirations. But, in a real sense, because these principles were over-programmatic in nature, and devoid of any enforcement-capability, they could not be proclaimed as a victory or vindication of Gandhian thought.

The Directive Principles are the embodiment of the ideals and aspirations of the people of India and the goal towards which they expected the state to march forward. They are the

ideals of a welfare state. These ideals were incorporated within the body of the constitution possibly to instil confidence in the minds of the people that what they had asked for, the state would strive after.

While the provisions of Part III of the Constitution primarily deal with the political rights, these provisions (Part IV), on the other hand, relate to the social and economic aspects of our life. These are directed towards achieving socio-economic equality in the community and to uplift the common people. As such, though nonjusticiable in nature, these provisions are much more important to the ordinary men than those justiciable rights enumerated in the first part of the Report. These are more important, because they cover the socio-economic hazards of life which should precede the political rights in order to ensure a just and equitable society, a society where each has a share. True to the dominant trend of the time, these principles constitute a new dimension of human freedom in the quest for the Great Society which President Roosevelt had in mind when proclaiming his four freedoms, especially the freedom from want and freedom from fear. These principles encompass the development of creativity or the effective capacity of men to unfold their personalities.

NOTES AND REFERENCES.

1. B. Shiva Rao, (Ed), The Framing of India's Constitution, Vol.V (A Study) p. 320.

2. P. Sitaramayya, The History of the Indian National Congress, Allahabad, The Working Committee, 1935, Vol.I, p. 463.

3. Young India, May, 1940.

4. Constituent Assembly Debates, Vol. V (Appendix-A), Reprint 1966, pp.375-76.

5. Constituent Assembly Debates, Vol. VII, pp. 360-61.

6. Constituent Assembly Debates, Vol. V, p. 347.

7. Ibid., p. 343.

8. Ibid., p. 344.

9. Ibid., pp. 342-43.

10. Ibid., pp. 340-41.

11. Ibid., pp. 341-42.

12. Ibid., pp. 340, 341.

13. Constituent Assembly Debates, Vol. VII, p. 487.

14. Ibid.

15. Ibid., p. 492.

16. Ibid., p. 493.

17. L. M. Singhvi (Ed)., Horizons of Freedom, National, Delhi, 1969, Appendix-VII, pp. 324-25.

18. Ibid., Appendix-II, pp. 267-70.

19. Constituent Assembly Debates, Vol. VII, p. 598.

20. Ibid., p. 517.

21. Ibid., p. 518.

22. Granville Austin, Indian Constitution, Cornerstone of a nation, Oxford, 1966, p. 87

23. A detailed discussion on this subject has been given in a separate chapter.

24. The International Bill of the Rights of Man, Part III, p. 354- International law and Human Rights by H.Laughterpacht (I.L.O.).

25. L.M. Singhvi (Ed.), op. cit., (n.17), p. 325.

26. K.C. Markandan, Directive Principles in the Indian Constitution, Allied, p. 180.

27. L. M. Singhvi (Ed.), op. cit., (n.17), p. 324.

28. Ibid., p. 325.

29. Markandan, op. cit., (n. 26), pp. 187-88.

30. L. M. Singhvi (Ed.), op. cit., (n. 17), pp. 324-25.

31. Ibid., p. 325.

32. Constituent Assembly Debates, Vol. VII, p. 361.

33. Ibid., p. 530.

34. Ibid., p. 532.

35. Ibid., p. 533.

36. Ibid., p. 534.

37. Ibid., p. 535.

38. Ibid., p. 535.

39. Austin, op. cit., (n.22), pp. 81-82.

40. L. M. Singhvi (Ed.), op. cit., (n.17) p. 325.

41. Ibid., p. 270.

42. Markandan, op. cit., (n. 26) p. 189 & Appendices.

43. Constituent Assembly Debates, Vol. VII, p. 299.

44. Harijan, July, 1937.

45. D.G.Tendulkar, Mahatma, Government of India Publication, 1963, Vol. VI, p. 23.

46. Constituent Assembly Debates, Vol. VII, p. 270.

47. Ibid., p.282.
48. Ibid., p. 370.
49. Ibid., p. 252.
50. Ibid., p. 360.
51. Ibid., pp. 498-99.
52. Ibid., p. 496.
53. Ibid.,
54. Ibid., p. 497.
55. Ibid.
56. Ibid.
57. Ibid., pp. 499-500.
58. Ibid., p. 555.
59. Ibid., p. 556.
60. Ibid., p. 557.
61. Ibid., p. 561.
62. Ibid.,
63. Ibid., p. 562.
64. Ibid., p. 566.
65. Ibid., p. 290.
66. Ibid., p. 293.
67. Ibid., p. 278.
68. Ibid., p. 286.
69. Ibid., p. 290.
70. Ibid., p. 570.
71. Ibid., p. 566.
72. Ibid., p. 571.

73. Ibid., pp. 574-75.

74. Ibid., pp. 595-96.

75. Ibid., p. 597.

76. Ibid.

77. Ibid., p. 598.

78. Ibid., p. 599.

79. Ibid., p. 602.

80. Ibid.,

81. Constituent Assembly Debates, Vol. XI, pp. 992-93.

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CHAPTER - 6

In modern times, the term "minority" has been applied to more or less distinct groups, living within a state, which are dominated by other groups[1].

Constitutional safeguard of minority interests and the influence of Gandhi:

This term should normally be applied to groups whose members share a common ethnic origin, language, culture, or religion, and are interested in preserving either their existence as a national community, or their particular distinguishing characteristics[2].

"A fundamental distinction may be drawn between (a) minorities whose members desire equality with dominant groups in the sense of non-discrimination alone, and (b) those whose members desire equality with dominant groups in the sense of non-discrimination plus the recognition of certain special rights and the rendering of certain positive services"[3].

Some States have succeeded in promoting the progressive voluntary assimilation of the minority by arousing in its members a sincere enthusiasm for, and feeling of solidarity with, the destiny and forms of life embodied in the state. Others have achieved contrary results when they tried to assimilate the minority. Generally, it was found that fair treatment to the minorities and granting them liberally the protection they desired could soften their hostility towards the dominant group and establish closer relations with them inspite of differences in traditions, language, culture, etc.[4].

There is practically no State in the world which does not contain racial, linguistic or religious minorities. Throughout history, minorities have been given a back seat in constitutions where majorities govern. But there is an increasing measure of appreciation of the fact that minorities deserve better treatment and more generous recognition as much in the interest of the State concerned and of world peace as in that of the minorities themselves. Therefore, one of the pressing and urgent tasks of democracy to-day is to secure adequate and effective protection for them and to associate them in the work of administration (5).

In India, no problem perhaps taxed the brains of statesmen more than the adjustment of the rights and obligations of divergent religious, racial and linguistic groups of mankind. Dr. P. S. Deshmukh observed: "there is no more monstrous word in the history of Indian politics than the word minority. Ever since India emerged out of its political infancy, the demon of the interests of minorities and their protection stood before us and appeared to bar the progress of the country...." (6).

The history of communal representation, is the history of the counterpoising policy of the British in India, a history of the offsetting of one sectional interest against another, one class against another. Morley, Montagu, and MacDonald, each successively contributed to the history of these struggles. At one time, Moslems were bestowed generous favours with a view to counter the Hindu professional classes; at another time, the Depressed

Classes were favoured to offset the caste Hindus. Morley liked mohammedans. Sydenham liked the non-Brahmins. Montagu liked the Sikhs. MacDonald favoured the Depressed Classes. Their personal likes coincided with the imperial policy of offsetting one class against another (7).

The Moslem, Sikh, Indian Christian, Anglo-Indian, Untouchables, Professional Classes were unequal educationally, politically and economically compared with the Hindu professional classes. The reforms and political ambitions increased this rivalry between these classes. This struggle had taken the name of the problem of minorities or the problem of communal electorates (8). Therefore, a special feature of the political life in India under the British was the existence of communal electorates. Nationalist opinion was always opposed to it. Yet it continued.

Gandhi raised his voice against the British policy of fragmenting India into religious communities under the guise of protection of minorities. In 1932, he opposed Communal Award. But later on, realising that the problem of minorities had bedevilled the Indian politics and was holding up the country's freedom, he suggested protection of minorities. The solution of the communal tension, he wrote, could be made if, in the first place, all minorities were given representation in the elected bodies in an appropriate proportion, and, in the second place, the public employment should be made byacommittee including representatives of minorities also. He wanted reservation of seats

in the elected bodies, only for the transitional period. He suggested that measures should also be taken to reduce the educational, social, political and economic backwardness of various minorities instead of giving artificial protection (9).

Gandhi was of opinion that "the rule of majority has a narrow application, i.e. one should yield to the majority in matters of detail. But it is slavery to be amenable to the majority, no matter what its decisions are. Democracy is not a state in which people act like sheep. Under democracy, individual liberty of opinion and action is jealously guarded" (10).

To Gandhi, non-violence rules out the tyranny of the majority and requires that minorities should be treated with due consideration. Thus, in regard to the Congress, he wrote "I have always held that when a respectable minority objects to any rule of conduct, it would be dignified for the majority to yield to the minority" (11).

He undertook the fast of September 1932 to sting Hindu conscience to right religious action and to pit his own life against the efforts of the British Government to separate the depressed classes from the caste-Hindus by giving the former separate electorates, and thus ensuring their bondage in perpetuity. The Calcutta fast (September 1947) was an appeal to Hindus and Muslims to stop communal violence and live in peace. His last in the series of fasts (January 1948) at Delhi was for the protection

of the Muslim minority in India and the establishment of communal harmony (12).

The last sixteen months of his life were devoted to the eradication of communal violence which broke out in India as a result of the decision to divide the country. Communal violence was, according to him, fatal to freedom and democracy. The majority community should constitute themselves into the guardians of the minority and give to the latter full religious and cultural freedom. The minority should be fearless and should niether migrate in panic nor depend on the police and the military for their protection (13).

Shriman Narayan Agarwal, in his book "Gandhian Constitution For Free India", which found approval of Gandhi, observed - "In fact a non-violent state of Gandhi's conception will not be confronted with the problem of minorities at all because the essence of non-violence is tolerance and respect for one another's rights. There will be absolutely no cause for fear, distrust and insecurity" (14).

This 'Gandhian Constitution' emphasised the following points in the future constitution in order to solve the problem of minorities:-

(a) The Fundamental Rights shall guarantee to all the communities full protection of their cultures, languages, scripts, education, profession and practice of religion, social custom and personal laws.

(b) Each territorial unit shall have the fullest possible local autonomy in economic, political and cultural spheres. With the organisation of self-sufficient and self-governing village communities in the country, the problem of minorities would, in fact, hardly exist as a constitutional difficulty.

(c) Joint electorates with adequate reservation of seats and the right to contest additional seats, shall form the basis of the Constitution. Although under the Gandhian Constitution of non-violent state, it would be unnecessary even to reserve the seats, such provision may however, be made for the period of transition.

(d) Franchise shall be extended to all adults without any distinctions and limitations.

(e) In public services, appointments shall be made by non-party, Public Service Commissions which shall have due regard to the principle of fair share for all communities, consistent with efficiency of administration.

Details relating to Minority rights and representation could be worked out by a Committee of the Constituent Assembly (15).

"With the advent of Swaraj the state will have to concentrate on the question of raising the standard of living of masses. The problem of minorities, would then disappear like the morning mists" observed Gandhi. He said, "I have not a shadow of

doubt that the iceberg of communal differences will melt under the warmth of the Sun of freedom" (16).

In the evolution of the policy which the Congress followed regarding the communal problem, Gandhi's influence played a determinist role. His theory of non-violence, his messages to the Congressmen, all these constituted the background. The policy which ultimately emerged was a policy not only to do full justice to them (minorities) but to go beyond that in order to infuse confidence and goodwill in them.

A brief retrospect will justify the above statement. For a long period, it had been the practice of the Congress, to pass frequent resolutions to allay the misgivings of the minority communities.

In the Nagpur session in 1920, the Congress, assuring the Sikhs, stated in its resolution: "in view of the fact that misunderstandings exist among the Sikhs as to the position of their community in the future policy of India, this Congress assures the Sikhs that their interests will receive the same protection in any scheme of swarajya for India as is provided for Mahomedan and other minorities....." (17).

The Congress resolved in its Madras Session in 1927 that in any future scheme of Constitution, so far as representation in the various legislatures is concerned, joint electorates in all the provinces and in the Central legislature be

constituted.

It also resolved that, with a view to give full assurances to the two great communities that their legitimate interests will be safeguarded in the legislatures, such representation of the communities should be secured for the present, and if desired, by the reservation of seats in joint electorates on the basis of population in every province and in the Central Legislature, provided that reciprocal concessions in favour of minorities may be made by mutual agreement so as to give them representation in excess of the proportion of the number of seats to which they would be entitled on the population basis in any province or provinces, and the proportion so agreed upon for the provinces shall be maintained in the representation of the two communities in the central legislature from the provinces (18).

The Congress session at Lahore in 1929 resolved that "..... as the Sikhs in particular, and the Muslims and the other minorities in general, had expressed dissatisfaction over the solution of communal questions proposed in the Nehru Report, the Congress assures the Sikhs, the Muslims and other minorities, that no solution thereof in any future constitution will be acceptable to the Congress that does not give full satisfaction to the parties concerned" (19).

The Working Committee in 1931 gave assurances to the Anglo-Indian Community. It resolved that "the Congress has always stood for religious and cultural liberty, equality of

opportunity in the matter of education and public employment and freedom to pursue any trade or calling for all children of the motherland, irrespective of whatever creed or community to which they may belong and assures the Anglo-Indian community that a national government will guarantee these rights" (20).

The Karachi Congress assured to the people, inter alia, - (i) freedom of conscience and the free profession and practice of religion, (ii) protection of the culture, language, and scripts of the minorities; (iii) no disability to attach to any citizen by reason of his or her religion, caste or creed or sex, in regard to public employment, office of power or honour or in the exercise of any trade or calling and (iv) equal rights to all citizens in regard to public roads, wells, schools and other place of public resort etc (21).

The Working Committee in 1931 passed the following scheme:-

1(a) The article in Constitution relating to Fundamental Rights shall include a guarantee to the communities concerned of the protection of their cultures, languages, scripts, education, profession and practice of religion and religious endowments;

(b) personal laws should be protected by specific provisions to be embodied in the constitution;

(c) protection of political and other rights of minority communities in the various provinces shall be

the concern, and be within the jurisdiction of, the federal government.

2. The franchise shall be extended to all adult men and women.

3(a) Joint electorates shall form the basis of representation in the future constitution of India;

(b) for the Hindus in Sind, the Muslims in Assam, and the Sikhs in the Punjab and North Western Frontier Provinces, and for Hindus and Muslims in any Province where they are less than 25 per cent of the population, seats shall be reserved in the Federal and Provincial Legislatures on the basis of population with the right to contest additional seats.

4. Appointments shall be made by non-party Public Service Commissions which shall prescribe the minimum qualifications, and which shall have due regard to efficiency of the public service as well as the principle of equal opportunity to all communities for a fair share in the public services of the country.

5. In the formation of federal and provincial cabinets, interests of minority communities should be recognised by convention (22).

The Congress Scheme circulated by Gandhi among the delegates of the Round Table Conference emphasised the need and desirability of joint electorates and adult suffrage for all classes of people irrespective of their class, creed, colour or

economic efficiency. Gandhi added a rider to the Congress electoral scheme and suggested that, whereever possible, the electoral areas should be so determined as to enable every community to secure its proportionate share in the legislature (23).

The Working Committee in 1937 stated that "the objective of the Congress is an independent and united India where no class or group or majority or minority may exploit another to its own advantage, and where all the elements in the nation may co-operate together for the common good and the advancement of the people of India. This objective of unity and mutual co-operation in a common freedom does not mean the suppression in any way of the rich variety and cultural diversity of Indian life, which have to be preserved in order to give freedom and opportunity to the individual as well as to each group to develop unhindered, according to its capacity and inclination". The committee also reiterated the rights assured by the Congress from time to time in its resolutions (24).

The Haripura Congress in 1937 approved of, and confirmed the resolution of the Working Committee on Minority Rights passed in Calcutta in October 1937, and declared afresh that "it regards it as its primary duty and fundamental policy to protect the religious, linguistic, cultural and other rights of the minorities in India so as to ensure for them in any scheme of government to which the Congress is a party, the widest scope for their development and their participation in the fullest measure

in the political, economic and cultural life of the nation"[25].

The A.I.C.C. in 1939 stated that "the Committee desires to declare afresh that Indian freedom must be based on democracy and unity and the full recognition and protection of the right of all minorities to which the Congress has always pledged itself"[26].

The Working Committee, in its election manifesto in 1945, stated that "the Congress has stood for the unity of all communities and religious groups and for tolerance and goodwill between them". The manifesto contained a long list of fundamental rights. The relevant among them were - right of free opinion, expression and association, freedom of conscience and to profess and practice one's religion, protection of the culture, language and script of the minorities, equality before the law, irrespective of religion, caste, creed or sex, public employment, office of power or honour or exercise of any trade or calling shall remain open to all irrespective of religion, caste, creed or sex, equal rights of all citizens in regard to wells, tanks, roads, schools and places of public resort etc.

In 1946, when an elected Constituent Assembly was first set up to draft a Constitution for free India, the Congress Party under Gandhi's leadership readily accepted the commitment it had made in the meeting of the Working Committee in 1937 and which was confirmed by the Haripura Congress in the same year[27].

Therefore, in conformity with these assurances, efforts were made at the time of framing this Constitution to solve the problems relating to minorities by granting rights to various minorities in the Chapter on 'Fundamental Rights' and by providing protection under various other provisions of the Constitution.

Gandhi's suggestions for solving the problem of minorities had been remembered, and his ideas and wishes had found considerable support in some prominent members of the Constituent Assembly. The protection of minorities figured very prominently, and it caused a great controversy in the Constituent Assembly. Many minorities put forward their claim for safeguards. Some among the minorities on the other hand disliked concessions. Members were sharply divided on this issue.

Sardar Ujjal Singh supported the resolution on Aims and Objects mainly because of the fact that the third part of the resolution gives an assurance to the minorities and the backward classes to the effect that their interests will be adequately safeguarded. He wanted that the safeguards should not only be adequate but should also be satisfactory to the Sikhs. In this context he recalled the relevant part of the assurance given to the Sikhs in the Congress Resolution of December 1929, passed at the Lahore Session of the Indian National Congress (28). Sardar Singh also mentioned the resolution of the Congress Working Committee of 9th August, appealing to the Sikhs to reconsider their position; which made them review their position and to lift the ban on participa-

tion in the work of the Constituent Assembly[29].

Jaipal Singh, while supporting the resolution on Aims and Objects, on behalf of the Adibasis said: "we want to be treated like every other Indian"[30]. And he reminded the Assembly what Maulana Azad said at Ramgarh ——— "The Congress does not want to dictate its own terms. It admits the fullest rights of the minorities to formulate their own safeguards. So far as the settlement of their problem is concerned, it would not depend on the word of the majority"[31].

During general discussion on the motion moved by Dr. Ambedkar on the Draft Constitution, Krishna Chandra Sharma[32], Lakshmi Kanta Maitra[33], Ram Narayan Singh[34], N.G.Ranga[35], Renuka Ray[36], Mahavir Tyagi[37] opposed reservation of seats and special advantages to the minorities.

Jainarayan Vyas[38] expressed his dissatisfaction on the grant of special educational advantages to the minorities.

According to B.A. Mandloi, "the minorities would be in a better and stronger position if they could surrender the safeguards"[39].

In the opinion of Thakur Dass Bhargava, "the reservation of seats would encourage separatism"[40].

Choudhary Ranabir Singh stated that "reservation

of seats and safeguards were unnecessary. It would defeat the realisation of our ideal of secularism". He further said that "constitutional safeguards to Harijans would only perpetuate the word 'Harijan' and hinder in the way of forming a classless state"(41).

R. K. Sidhwa, although accepting in principle the reservation, expected that all the groups like the Parsee Community "will refuse with thanks the offer of the majority"(42).

On the other hand, Jawaharlal Nehru, supporting the measures taken in the Report, said that "these were directed towards bringing the backward classes to the level of the rest of the people". He opposed regimented unity and opined that these concessions were in keeping with the Indian ideal of 'unity in diversity'(43).

Sardar Bhopinder Singh Man said: ".... to gain the goodwill of the minorities is to add to the glory of the country and to increase the strength of the nation. When there is no third power and the days of the unreasonable attitude of the minorities has come to an end, the responsibility of the majority has increased. The majority has to gain the confidence of the minority....."(44)

B. Pocker Sahib Bahadur thought that "the only way of protecting the rights of the minorities was by giving separate electorates and if that was not practicable, reservation was absolutely necessary"(45).

What was definite and clear was that, although there were acute differences of opinion among different sections of the people regarding special rights for minorities, they were all agreed that the Constitution should embody a charter of fundamental rights guaranteeing effective protection of life, liberty and religion. The demands put forward by different groups might be broadly and roughly grouped under two main heads, namely, (1) certain general principles of the Constitution guaranteeing fundamental rights to the citizens and providing protection against any possible discrimination in political, economic and religious matters on grounds of race, caste, creed or colour, and (2) certain clauses in the Constitution for the special protection of particular minorities (46).

The Assembly, therefore, formed a Committee, the Advisory Committee on Fundamental Rights and Minorities, with Sardar Patel as its Chairman, to study the different aspects of the problem and make recommendations to the Assembly so that these recommendations could be given due recognition in the provisions of the new Constitution. The Committee took over two years to prepare a detailed report which favoured some form of reservations for the minority communities. The Committee submitted its Report to the Constituent Assembly on 27th August, 1947.

The Minority Report primarily dealt with what may broadly be described as political safeguards and covered the

following points ——

(i) Representation in legislature; joint versus separate electorates and weightage,

(ii) Reservation of seats for minorities in cabinets,

(iii) Reservation for minorities in the Public Services,

(iv) Administrative machinery to ensure protection of minority rights (47).

A large number of the Assembly members expressed their deep pleasure and satisfaction at the preparation and submission of this Report. Many of them considered it a fulfilment of Gandhi's wishes on this issue.

V.I. Muniswami Pillai considered it as the "Magna Charta for the welfare of the Harijans of this land". According to him, it was Gandhi who felt the disabilities of a section of the Hindus, namely depressed classes known by various names, and came to their rescue and took that epoch-making fast which evoked all the Caste Hindus in the whole realm of India to think what was 'untouchables', what was 'Depressed classes', what was 'Scheduled Castes' and what should be done for them; and it was the Poona Pact which produced a great awakening in this country (48).

While presenting the Report on Minority Rights,

Sardar Vallabhbhai Patel made it clear to the House that the chapter on Fundamental Rights "..... cover a very wide range of the rights of the minorities which gave them ample protection, and yet there are certain political safeguards which have got to be specifically considered ...."(49)

In this Report the minorities were classified into three groups according to their population. Group A, consisting of those with a population of less than ½ per cent in the Indian Dominion, excluding the Indian States, included, Anglo Indians, Parsees and Plains' tribesmen in Assam. Group B, consisting of those with a population of more that ½ per cent, but not exceeding 1½ per cent in the Indian Dominion excluding the Indian States, included Indian Christians and Sikhs. Group C, consisting of minorities with a population exceeding 1½ per cent in the Indian Dominion excluding the Indian States, included Muslims and Scheduled Castes. The Committee recommended (a) that there should be no reservation of seats in the Legislatures for the Anglo-Indians and the Parsee communities but the President and the Governors should be given the power to nominate representatives of the Anglo Indian Community to the Lower House of Parliament and to the Lower Houses of the Provincial Legislatures and if, after a period of ten years, it was found that the Parsee Community had not secured proper representation, the position should be reconsidered; (b) that there should be reservation of seats in the Central and Provincial Legislatures for the Muslims and the Scheduled Castes and in the Central Legislature and the Legislatures of Bombay and Madras, seats should be reserved

for the Indian Christians; (c) that a convention should be established for including, as far as practicable, representatives of important minority communities in the Cabinet, and (d) that the Central and the Provincial Governments should, in making appointments to public services, keep in view the claims of the minorities. The Anglo Indian Community used to enjoy certain facilities in the matter of employment in certain services. Certain percentages of the posts were reserved for them. The educational institutions of the Anglo Indian Community also used to get special grants from the governments. The Committee recommended gradual curtailment of these facilities and gradual reduction of the grants (50). It was decided that the question of minority rights for the Sikhs would be considered separately.

At the time of discussion of the Report in the Constituent Assembly, K. M. Munshi pointed out that "..... the Harijans, generally known as Scheduled Castes, are neither a racial minority nor a linguistic minority, nor certainly a religious minority" (51). He further said: "....any safeguard as a minority, so far as the Scheduled Castes are concerned, is illogical and will possibly prevent their complete absorption in the Hindu fold" (52). It was therefore, decided by the Assembly that they should not be regarded as a minority, but that there should be reservation of seats for the Scheduled Castes in the Central and Provincial Legislatures on the basis of their population (53).

The Committee also recommended that provision should

also be made for the setting up of a Statutory Commission to investigate into the conditions of socially and educationally backward classes, to study the difficulties under which they laboured and to recommend to the Union or the Unit Government, as the case may be, the steps that should be taken to eliminate the difficulties, and that an officer should be appointed by the President at the centre and by the Governors in the provinces to report to the Union and the provincial legislatures respectively about the working of the safeguards provided for the minorities (54). The recommendations of the Committee were accepted by the Constituent Assembly on 27th and 28th August, 1947.

These provisions were incorporated in Part XIV of the Draft Constitution. The matter was, however, reconsidered by the Advisory Committee in May 1949. Independence, and the problems created by partition, brought about a new outlook and a substantial change in the attitude of many members who belonged to the various minority communities in the Assembly. H. C. Mukherjee, an Indian Christian leader from Bengal, took the lead and appealed for the abandonment of the proposal for reservations in legislatures. This proposal soon found favourable response from many others (55). Some members of the Committee then felt that "conditions having vastly changed since the Advisory Committee made their recommendation in 1947, it was no longer appropriate in the context of free India and of present conditions that there should be reservation of seats for Muslims, Christians, Sikhs or any othe

religious minority. Although the abolition of separate electorates had removed much of the poison from the body politic, the reservation of seats for religious communities, it was felt, did lead to a certain degree of separatism, and was, to that extent, contrary to the conception of a secular democratic state." Accordingly, the Committee decided that there should not be any reservation of seats for the minorities (56). The Committee, therefore, recommended that the provisions of Part XIV of the Draft Constitution should be amended in the light of the new decision taken by it (57).

The decisions of the Constituent Assembly, arising out of the discussions on the recommendations of the Advisory Committee, opened a new trend in Indian politics. The main features of this new trend were (1) abolition of separate electorates, (2) abolition of reservation of seats in the legislatures and (3) abolition of special safeguards to minorities. The only exceptions made were with regard to the three communities, Scheduled Castes, Scheduled Tribes and Anglo Indians, each of which had a special case. But even in these cases the special provisions were to exist only for a limited period.

The special provisions relating to certain classes came up for discussion in the Constituent Assembly on 23rd August 1949 (58). On the 24th August 1949, the Assembly concluded discussion on article 292 of the Draft Constitution (article 330 of the present Constitution) and it was decided that seats should be reserved in the House of the people for "(a) The Scheduled Castes;

(b) The Scheduled Tribes except the Scheduled Tribes in the Tribal areas of Assam; (c) The Scheduled Tribes in the autonomous districts of Assam"[59].

On the same day, article 294 of the Draft Constitution (article 352 of the present Constitution) was also discussed and the Assembly decided that seats should be reserved for the Scheduled Castes and Scheduled Tribes, except the Scheduled Tribes in the Tribal areas of Assam, in the Legislative Assembly of every state specified in Part A or Part B of the First schedule, and that seats should also be reserved for the autonomous districts in the Legislative Assembly of the state of Assam[60].

On the 25th of August, 1949, the Assembly adopted a new article (article 295A of the Draft Constitution or article 334 of the present Constitution) which provided that "the reservation of seats for the Scheduled Castes and the Scheduled Tribes in the House of the people and the Legislative Assemblies of the states; and the representation of the Anglo-Indian Community in the House of the People and in the Legislative Assemblies of the states by nomination, shall cease to have effect on the expiration of a period of ten years from the commencement of this Constitution[61].

In August 1947, the Constituent Assembly had decided that there should be some special provisions regarding representation of the Angle Indian Community in the House of the People and in the Legislative Assemblies of the states. Those

decisions had been incorporated in articles 293 and 295 of the Draft Constitution (articles 331 and 333 of the present Constitution), which were adopted by the Assembly on 24th August, 1949 (62). Article 293 accordingly empowered the President to nominate not more than 2 members to the House of the People if he was of opinion that the Anglo Indian Community was not adequately represented. And article 295 states that the Governor of a state may, if he is of opinion that the Anglo Indian Community needs representation in the Legislative Assembly of the state and is not adequately represented therein, nominate such number of members of the community to the Assembly as he considers appropriate.

Articles 297 and 298 of the Draft Constitution (articles 336 and 337 of the present Constitution) which were adopted on the 16th June, 1949, incorporated the decisions of the Assembly taken in August 1947, with regard to the special provisions for the Anglo-Indian Community, in certain services and with regard to educational grants for the benefit of that community (63).

On the 14th of October 1949, the Assembly decided that the claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State (64). These provisions were incorporated in article 296 of the Draft Constitution (article 335 of the present Constitution).

On the same day, the Assembly deliberated on article 301 of the Draft Constitution (article 340 of the present Constitution), and decided that "the President may by order appoint a commission consisting of such persons as he thinks fit to investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties...."(67)

This part of the Constitution, containing 'special provisions relating to certain classes' is a vindication of Gandhi. Throughout his life he had struggled hard to establish the backward classes on solid base. Through his innumerable publications and statements he had tried to draw, attention of all on this subject. Under his guidance, the Congress Party attached due importance at the rights and privileges of these classes which had been reflected in its different resolutions. Thus grounds for adequate protection were so well prepared by Gandhi that a climate of opinion in their favour could easily be marked in the Constituent Assembly. A good number of the members were keen on some form of reservations for the Depressed Classes. As a result, the provisions that finally emerged, were to a great extent the fulfilments of Gandhian ideas.

Gandhi had a horror of majority rule. He considered liberty of the minority communities to be utmost important in a

true democracy. The principle of democratic equality could work only if the nation as a whole was brought on the same level, as far as that was practicable.

He utterly disliked protection of minorities on communal or religious point of view; on the contrary, he wanted their protection on the basis of their population. According to Gandhi, communal tension could be solved if all the minorities were given representation in the elected bodies in an appropriate proportion. He wanted reservation of seats in the elected bodies only for the transitional period, and suggested that measures should also be taken to reduce the educational, social, political and economic backwardness of various minorities.

After Gandhi's assassination, as the most practical tribute to His campaign for the emancipation of the Scheduled Castes and Tribes, it was decided by the Constituent Assembly, to embody in the Constitution a number of provisions for their advancement and welfare which had the full support of their own representatives (68).

Accordingly, our Constitution prescribes certain temporary measures to help the backward sections to come up to the same level with the rest of the nation, as well as certain permanent safeguards for the protection of the cultural, linguistic and similar rights of any section of the community who might be said to constitute a 'minority' from the numerical, not communal, point of view, in order to prevent the democratic machine from being used as an engine of oppression by the numerical majority.

NOTES AND REFERENCES.

1. Definition and classification of Minorities —— memorandum submitted by the Secretary General, United Nations - Commission on Human Rights, 1950, p. 2.

2. Ibid., p. 11.

3. Ibid., p. 2.

4. Ibid., p. 12.

5. Dhirendra Nath Sen, The Problem of Minorities, Calcutta University Publication, 1940, pp.XXV-XXVI.

6. Constituent Assembly Debates, Reprint 1966, Vol. V, p. 201.

7. K.B.Krishna - The Problem of Minorities or Communal Representation in India, London, George Allen & Unwin,1939, p. 221.

8. Ibid., p. 296.

9. O. P. Minocha, "The Impact of Gandhian Ideology on The Indian Constitution" in The Indian Political Science Review, Vol. IV, No.1, p. 132.

10. Young India, March 1922, p. 129.

11. Harijan, August 1940, p. 244.

12. His statement to the press, dated September 21, 1932, Harijan, September 14, 1947, p. 324; January 18, 1948, p. 314, cited by Gopinath Dhawan - "The Political Philosophy of Mahatma Gandhi", Navajiban, Ahmedabad, 1946, p. 149.

13. Dhawan, (n. 12) p. 204.

14. S. N. Agarwal, Gandhian Constitution for free India, Kitabisthan, p. 117.

15. Ibid., pp. 117-119.

16. The Case of Swaraj, p. 103, cited by S. N. Agarwal, (n.14) p. 120.

17. Congress Session, 1920, Nagpur, Resolution No. XIX.

18. Congress Session, 1927, Madras, Resolution No. XIV.

19. Congress Session, 1929, Lahore, Resolution No. VIII.

20. Congress Working Committee, January 21, 1931, Allahabad.

21. Congress Session, 1931, Karachi, Resolution No. XV.

22. Congress Working Committee, July 7 to 12, 1931, Bombay.

23. D. N. Sen, op.cit., (n.5) p. 345.

24. Congress Working Committee, October 26 to November 1, 1937, Calcutta, Resolution No. XV.

25. Congress Session, 1937, Haripura, Resolution No. XVI.

26. A.I.C.C., October 9 & 10, 1939, Wardha.

27. B. Shiva Rao, "Elimination of all forms of racial discrimination and India" in L.M. Singhvi Ed., Horizons of Freedom, National, Delhi, 1969, p. 191 and also see n. 25.

28. Constituent Assembly Debates, Reprint 1966, Vol. I, p. 105.

29. Ibid., p. 106.

30. Ibid., p. 143.

31. Ibid., p. 145.

32. Constituent Assembly Debates, Vol. VII, p. 231.

33. Ibid., p. 248.

34. Ibid., p. 250.

35. Ibid., p. 351.

36. Ibid., p. 357.

37. Ibid., pp. 361-62.

38. Ibid., p. 270.

39. Ibid., p. 272.

40. Ibid., pp. 276-77.

41. Ibid., p. 289.

42. Ibid., p. 267.

43. Ibid., p. 323.

44. Ibid., p. 226.

45. Ibid., p. 364.

46. D. N. Sen, op. cit., (n.5) p. 346.

47. Constituent Assembly Debates, Vol. V, p. 243.

48. Ibid., p. 202.

49. Ibid., p. 198.

50. Ibid., pp. 243-51.

51. Ibid., p. 227.

52. Ibid., p. 228.

53. Ibid., pp. 235, 238-39.

54. Ibid., p. 249.

55. Constituent Assembly Debates, Vol. VIII, pp. 269-72.

56. Reports of Committees of the Constituent Assembly, Third Series, pp. 240-45 (cited by Pratap Kumar Ghosh in his book "The Constitution of India, how it has been framed", Calcutta, World Press, p. 312.

57. Pratap Kumar Ghosh, p. 313.

58. Constituent Assembly Debates, Vol. IX, p. 632.

59. Ibid., p. 659.

60. Ibid., pp. 663, 674.

61. Ibid., pp. 674,698.

62. Ibid., pp. 659,662,674.

63. Constituent Assembly Debates, Vol. VIII, pp. 937, 941.

64. Constituent Assembly Debates, Vol. X, p. 251.

65. Ibid., pp. 251, 264.

66. Constituent Assembly Debates, Vol. VIII, p. 943.

67. Ibid., pp. 943, 948.

68. B. Shiva Rao, op. cit., (n. 27), p. 192.

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CHAPTER - 7

Democratic Decentralisation and Panchayati Raj : Gandhian influences -

A major Gandhian principle which produced the most protracted discussion before being incorporated within the Constitution was Panchayati Raj.

Gandhi said "in a free India we will have Panchayat Raj"[1]. In his opinion, there was no law which could stop a panchayat from functioning wherever the people wanted it. He regarded the village as the unit in the true democracy of India; and as such he opined that "....even if one village wants Panchayat Raj.... no one can stop it...."[2] It was Gandhi's firm conviction that India lives in her seven lakhs of villages. To him, that was real India for which he lived[3]. His picture of independence was that it must begin at the bottom. Thus, every village has to be self-sustained and capable of managing its affairs even to the extent of defending itself against the whole world. In this structure, composed of innumerable villages, "there will be ever-widening, never-ascending circles. Life will not be a pyramid with the apex sustained by the bottom. But it will be a oceanic circle whose centre will be the individual"[4].

Gandhi's well-known principle was that "violence logically leads to centralisation, the essence of non-violence is decentralisation"[5]. In his view, complex centralized system involves chances of exploitation, sacrifices non-violent values. The non-violent life, i.e. the life of service, he held, must, of necessity, be simple, self supporting and close to the soil. This

implies a rural culture of decentralized satyagrahi communities and a new conscious life, simple and free and rich in opportunities (6). Therefore, the need for decentralization arises from the fact that centralization means concentration of power in the hands of a few people with the likelihood of its abuse. Centralization adds to the complexity of life which is a distraction in all creative moral endeavour. It damages initiative, resourcefulness, courage, and creativeness, and diminishes opportunities of self-government and of resisting injustice. So, said Gandhi, the more of centralization, the less of democracy (7).

It was his conviction that centralization cannot be sustained and defended without adequate force, and as such, he suggested that if India was to evolve along non-violent lines, it will have to decentralize many things (8). Hence, he had always been advocating decentralization of economic and political power in the form of more or less self-sufficient and self-governing village communities. He regarded such communities as the models of non-violent organisation. He, of course, did not mean that the ancient Indian village republics should be revived exactly in the old form, that was neither possible nor desirable. Necessary changes would have to be introduced in view of modern changed circumstances and needs (9). He desired that these self-sufficient and self-governing villages should be the basic units of public administration in free India. These primary political units should elect, by adult suffrage, a panchayat, ordinarily of five persons, for the period of three years. The formation of the

panchayats should be wide and comprehensive, covering almost all the aspects of social, economic and political life of village community, so that villages can enjoy large measure of local autonomy. To co-ordinate, guide, advise and to supervise the socio-economic and political activities of lower panchayats, and to perform functions of local nature, there shall be Taluka, District, Provincial and All India Panchayats connected with one another by the Presidents of the respective lower panchayats. The President of All-India Panchayat should be the head of the state (10). Thus, Gandhi envisaged complete political and administrative decentralization at the village level with an indirectly elected government at the top.

Till 1936, Gandhi had not made up his mind about the character of such a structer of Indian polity. At the Faizpur Congress in 1936, Gandhi said that India must have a polity suited to her genius, but he added, "what that can be is more than I can tell ...." In 1946 Gandhi presented a clearly articulated image of a non-violent decentralized society structured in "concentric circles". And it was during 1946-47 that Gandhi, in the last phase of his life, fitted his "concentric circles" with the structural content of peoples' democracy and sovereignty at the grass roots, which he described as Panchayati Raj -- a kind of co-operative common-wealth of reformed and reconstructed village communities (11).

These ideas did not make much impression on the framers of the Constitution. The fact was that the politically

conscious class in India had always admired the British parliamentary system. To most Indian politicians, whether of the right or the left, the Gandhian model seemed neither practical politics nor practical economics. The Experts Committee formed by the Congress Working Committee in July 1946 recommended a federal and parliamentary form of government. A number of the Committees of the Constituent Assembly deliberated on various aspects of the Constitution, but did not seem to have given thought to the Gandhian approach. The Draft Committee, borrowed freely from American and British Constitutions, and from the Government of India Act of 1935, did not even mention the word Panchayat.

During the freedom movement, it was often conceived that the panchayats would serve as substitutes for bureaucratic authoritarianism. Gandhi, explaining the Swadeshi movement, advocated that "village panchayats should be a living force.... (i) to restrict us to the use and service of our immediate surroundings .... (ii) for a correspondence between the representatives and the represented..... (iii) for self-government suited to the requirements."(12)

Therefore, during the freedom struggle, it was taken for granted that Gram Raj would be the foundation of Swaraj. In other words, the concept of political and economic decentralization was axiomatic to the fighters for freedom. But when the Constitution came actually to be constructed, that concept was remembered only as an after-thought.(13)

In December 1947, when the new Constitution of India was being drafted, Principal S. N. Agarwal had drawn the attention of Gandhi to the fact that there was till then no mention of village panchayats in the future administrative set up as visualised in the Draft Constitution. Commenting on this point, Gandhi observed in the Harijan (December 21, 1947): "It is certainly an omission calling for immediate attention if our independence is to reflect the people's voice. The greater the power of the panchayats, the better for the people"(14)

Several members of the Constituent Assembly took note of these observations of Gandhi, and pressed for the provision of village Panchayats in the new Constitution.

During the general discussions, the Draft Constitution was largely criticised on the grounds that no part of it represents the ancient Hindu model of a state, and that instead of incorporating western theories, the new constitution should have been built upon village panchayats. There were others who took a more extreme view. They did not want any Central or Provincial Governments. They just wanted India to contain so many village governments.

There is little doubt that decentralization was not the dominant theme of the national elite's thinking when our Constitution was being drafted, although the leading and articulate members of the Constituent Assembly were not oblivious of the strong Gandhian predilection for a decentralized democracy

based on village communities. The debates in the Constituent Assembly on this issue provide an instructive insight into the dilemmas and problems of constitution-making and the mechanics of compromise which were adopted.

The attitude of the Drafting Committee and especially of Dr. Ambedkar as regards village panchayats was that they could not be the basis of new democracy. The issue came to a head in the course of the second reading of the Draft Constitution in the Constitutent Assembly in November, 1948. Dr. Ambedkar, the Chairman of the Drafting Committee, while attempting to answer these charges, said that the love of the intellectual Indians for the village community was blind and baseless. It was not backed by reason. It was largely due to the fulsome praise bestowed upon the village republics by Metcalfe, who described them as "little republics having nearly everything that they wanted within themselves and almost independent of any foreign relations." The existence of these village communities, each one forming a separate little state in itself, had, according to Metcalfe, contributed more than any other cause to the preservation of the people of India, through all the revolutions and changes, which they had suffered, and was in a high degree conducive to their happiness and to the enjoyment of a great portion of the freedom and independence. But Dr. Ambedkar pointed out that the principal aim of the village communities was somehow to ensure their existence, and as such they had played a very little

part in the affairs and the destiny of their country. He therefore concluded that "village republics have been the ruination of India". In his opinion a village was nothing but a "sink of localism, a den of ignorance, narrow mindedness and communalism". He expressed his pleasure that the Draft Constitution had discarded the village as its unit (15).

Now, if we try to weigh the import of Dr. Ambedkar's remark, we find that he had opposed the introduction of panchayati raj on the ground that rural society being so conservative and so dominated by traditionally privileged class, village democracy could not but be exceedingly conservative and illiberal. It was feared accordingly that the traditionally dominant class would use the political institutions of panchayati raj to perpetuate their privileged position.

Dr. Ambedkar was a lifelong fighter for the cause of the untouchables, the depressed classes. Their upliftment was his only dream. Naturally, he used to judge each and every issue from that standpoint i.e., to what extent that would benefit or harm the interests of his community.

Dr. Ambedkar's opposition to village republics or panchayats was rooted largely in his belief that a national panchayat system would ensure continued oppression of the Harijans. His argument was that decentralization may also produce violence in the Gandhian sense, by enabling local majorities or dominant castes to oppress other groups with the power gained through

decentralization. He believed that panchayat government would surely entrench caste at the village level, keeping power in the hands of the traditional upper caste or some economically ascendant minority. Besides, panchayats, if India had a Gandhian constitution, would perforce become involved in party politics. Rival political parties will be used by the factions for their local ends.

Dr. Ambedkar's apprehensions were not without foundation. In the Hindu society, the caste system was the dominant social institution, and even though it is undergoing many changes, it is still the most pervasive influence in Hindu life and behaviour. At any level, especially at the rural and local levels, those most directly affecting the vast majority of the people of India, caste is obviously a most important factor in Indian politics, and will probably remain so for the foreseeable future.(16) Caste considerations are given great weight in the selection of candidates and in the appeals to voters during election campaigns.

Political parties were also formed on the basis of caste. The injustices meted out by Hindu society to the untouchables led them to organize themselves politically. In the 1920's Dr. Ambedkar organized an Independent Labour Party consisting mainly of the untouchables from Bombay. The name of this party was changed to Scheduled Castes Federation after the untouchables came to be known as "scheduled castes" under the Government of

India Act, 1935. Dr. Ambedkar remained the leader of this Federation till his death in 1957. The movement of the depressed classes led by Ambedkar represented, in politics, a protest against the institution of caste.

Much of the story of Indian politics, particularly at state levels and below, could be told in terms of caste. The power and activity of caste had increased in proportion as political power passed increasingly to the people from the rulers. (17)

In the words of Dr. Ambedkar, the Hindu social system which places communities one above the other is a factor which is bound to have its effect on the result of voting. By the Hindu social system the communities are placed in an ascending scale of reverence and a descending scale of contempt. No caste Hindu will cast a vote in favour of an untouchable candidate, for to him he is too contemptible a person to go to the legislature. On the other hand, there will be found many voters among the untouchables who would willingly cast their votes for a Hindu candidate in preference to an untouchable candidate. That is because he is taught to rever the former more than himself or his untouchable kinsmen. Besides, there are other means which are often resorted to for catching the votes of the poor, illiterate, unconscious, unorganized body of voters which the untouchables are. A combination of all these circumstances is bound to work in the direction of augmenting the representation of the Hindus. (18)

Ambedkar observed: "(1) The voting is always

communal. (2) The majority community carries the seat by sheer communal majority. (3) The minority community is forced to vote the candidate of the majority community. (4) Minority voters are insufficient. (5) A voter of the majority community never condescends to vote the candidate of the minority community. (6) A voter of the minority community takes pride in giving votes to the candidates of the majority community.(19) Therefore, given the socio-economic and cultural level of our people, if power is decentralized, there is every possibility of its being misused unscrupulously by the upper-caste village leadership.

Dr. Ambedkar considered that unless power did not concentrate in the hands of the socially suppressed section of the Indian society, it was not possible to completely wipe out all social, legal and cultural disabilities, from which that section suffered. He said, "we must have a government in which men in power will not be afraid to amend the social and economic code of life which the dictates of justice and expediency so urgently call for."(20) Ambedkar's contribution to Indian political thinking was to focus the relevance of social democracy to political democracy. And political democracy in India can not operate without education, enlightenment and elevation of depressed classes.

Ambedkar was not sure whether Swaraj would bring in any perceptible improvement in the life of his community. He was, on the other hand, afraid, that Swaraj might mean total capture of power and position by the Hindus which would aggravate the

sufferings of the untouchables. In his opinion, Swaraj, instead of putting an end to untouchability, might extend its life. The untouchables would get no privileges but the perpetuation of slavery.(21) His stress was on the true freedom of the people. Without that, nationalism becomes a means of internal slavery, forced labour and organised tyranny for the poor and servile classes. According to Dr. Ambedkar, Indian nationalism has developed a new doctrine which he called the divine right of the majority to rule the minorities according to wishes of the majority. He remarked, "Any claim for the sharing of power by the minority is called communalism, while monopolising the whole power by the majority is called nationalism."(22)

His apprehension was that the Congress Party would always put up candidates who belonged to castes which were in the majority in the constituencies. Minority communities might be tyrannised and oppressed. They were sure to be discriminated against and denied equality before law and equal opportunity in public life.(23)

To Ambedkar, Gandhism was a paradox. It sought to maintain intact a social structure which permitted the domination of one class by another on a hereditary basis which meant a perpetual domination of one class by another.(24) He remarked that Gandhism meant return to the village and making the village self-sufficient and as such, it made Gandhism, a mere matter of regionalism. In his opinion it was not a revolutionary but a reactionary creed. Gandhism was the philosophy of the well-to-do

and the leisured class.(25)

Ambedkar's psychology can further be assessed from his concluding speech in the Constituent Assembly on 25th November, 1949. He said, "..... we must make our political democracy a social democracy as well. Political democracy can not last unless there lies at the base of it social democracy ..... we must begin by acknowledging the fact that there is complete absence of equality in Indian society ..... we have in India a society based on the principle of graded inequality which means elevation for some and degradation for others....."(26) He further said that monopoly of political power by a few had not merely deprived many of their chance of betterment, it has sapped them of the significance of life. These down-trodden classes were tired of being governed. Therefore, he cautioned, the sooner room is made for the realization of their aspiration, the better for the continuance of the democratic structure of the country.(27)

Therefore, it was natural that Ambedkar always looked to the central government to act as a powerful curb on the local majority to save the minorities from the tyranny of the majority. He wanted to have a strong centre to cope with eventualities-social, economic and political. In fact, attempt to provide for the protection of local minorities through central government power was an aim of the non-Gandhian leaders of the Assembly.

Dr. Ambedkar's remarks on India's village republics

provoked strong reactions and retorts in the debate, but the controversy which started with a bang ended in a whimper. Dr. Ambedkar's categorical rejection of the panchayats as the basis of the Constitution helped to crystalize the issue and brought it into focus.

A stimulating debate ensued. Speaker after speaker was at pains to voice his disagreement with, and resentment over Dr. Ambedkar's disparaging observations.

Shri H. V. Kamath said "....with all deference to Dr. Ambedkar, I differ from him in this regard. His attitude ..... was typical of urban highbrow; and if that is going to be our attitude towards the village folk, I can only say, 'God save us'...." According to Shri Kamath, Mahatma Gandhi taught us, in almost the last mantra that he gave in the best days of his life, to strive for Panchayati Raj. If Dr. Ambedkar could not see his way to accept this, he did not see what remedy or Panacea he had got for uplifting our villages. It was with considerable pain that he heard Dr. Ambedkar refer to our villages in that fashion, with dislike if not with contempt.(28)

According to Shri T. Prakasam, Dr. Ambedkar had not been able to put himself in the position of those who had been fighting for the freedom of this country for thirty long years. In one stroke, he condemned the village panchayats system. It was not a matter which should have been treated by Dr. Ambedkar in that

manner (29).

He made an appeal to the House, not to disobey the teaching of Gandhi and the scheme he had given for the construction of the future government of India. He advocated such type of village panchayats which was up-to-date, and gave real power to rule and to get money and expend it, in the hands of the villagers.

Professor N.G.Ranga was most unhappy that Dr. Ambedkar should have said what he had said about the village panchayats and remarked: 'All the democratic tradition of our country has been lost on him."

Professor Ranga liked decentralization, and in this context he reminded the House that Gandhi had pleaded over a period of thirty years for decentralization, and that Congressmen were also committed to decentralization. In his view, without the foundation-stone of village panchayats in our country, it would not be possible for the masses to play their rightful part in democracy.(30)

Shri Mahavir Tyagi stated "..... unless I raise my voice against the remarks which Dr. Ambedkar has made against villages, I cannot face my village people. Dr. Ambedkar does not know what amount of sacrifice the villagers have undergone in the struggle for freedom..."(31)

He reminded the House of the contribution made and

the part played by the villages in the freedom struggle and demanded that villages should be given their due share in the governance of the country. If they were not given their due share, they were bound to react to this.

Shri Damodar Swarup Seth expressed his displeasure in the absence of local self-government in the constitution. He said "this Constitution as a whole, instead of being evolved from our life, and reared from the bottom upwards, is being imported from outside and built above downwards". According to Shri Seth, the constitution of a free country should be based on local self-government. Where the voice of the units is not heard, and their due participation is denied, there the Constitution cannot last long. In this connection he remembered the ideas of Gandhi and pointed out the dangers of centralization and pleaded for an Indian Republic, composed of small autonomous republics (32).

Shri Arun Chandra Guha requested the House to incorporate some provisions so that the village panchayats might be allowed to play an effective part in the future administration of India. He said that "we have been taught to think of the village panchayats as the future basis of administrative machinery. The Gandhian and the Congress outlook has been that the future Constitution of India would be a pyramidal structure and its basis would be the village panchayats". He further opined that if the whole structure could be built on the village panchayats on the willing co-operation of the people, then the centre would automatically become strong (33).

Shri R. K. Sidhwa considered that the very idea of democracy was negatived by ignoring the local authorities and villages. He said that local authorities were the pivots of the social and economic life of the country, and if there was no place for local authorities in this Constitution, the Constitution was not worth considering (34).

According to Pandit Thakur Das Bhargava, the real soul of India was not represented by this Constitution and the autonomy of the villages was not fully delineated here (35). He wanted the fulfilment of Gandhi's wishes and suggested that the industries should be decentralized as much as the administration should be decentralised, and that the disparity between the mode of living of the rural people and the urban people must be abolished (36).

Prof. Shibban Lal Saksena suggested the inclusion of village panchayats and local self-government within the emerging Constitution (37). In his opinion, if all the light and the knowledge that India and the world had gathered could be brought about to the village panchayats, then they would have become the most potent forces for holding the country together and for its progress towards the ideal of Ram Rajya. He wanted more responsibility to be given to the villages. In this connection, Prof. Saksena quoted Gandhi's speech in the 1931 Round Table Conference in London where, speaking about the method of election to the Federal Legislature, Gandhi recommended that the villages should be the electoral units (38).

Shri Sarangdhar Das remembered the advice of Gandhi to

the intelligentsia to go back to the villages (39) and requested that this matter be reconsidered so that the villagers might get their due and expected that the villages would come into their own in the near future (40).

Chaudhari Ranbir Singh referred, in this connection, to the scheme of decentralization as envisaged by Gandhi, and wanted that in building the country the villagers should have been given their due share, and they should have their influence in every sphere (41).

Shri V.I. Muniswami Pillai expressed his dissatisfaction in the absence of any provision in the Draft to consider the village as a unit. He said that it was the highest duty of any constitution making body to see that the village was set right. In his opinion, it would be unwise to deny the wish of Gandhi that the village must be made a self-governing unit. Shri Pillai expected that the Assembly would reconsider what had been presented to the House and see that proper amendment had been made so that the village or a group of villages could come under the category of self-governing institutions (42).

Shri Gokulbhai Daulatram Bhatt lodged his protest against discarding the village from the Draft, and said that "... where there is no such provision, it can never be the Constitution of India..." (43)

Shrimati Renuka Ray felt that, freed from the shackles of ingonrance and superstition, the panchayat of the

Gandhian village would certainly be the backbone of the structure of this country's Constitution.(44)

According to Shri H. V. Kamath, it was Gandhi, not Metcalfe, who taught us to love the villages and to strive for Panchayati Raj. In his (Kamath) opinion, only by means of decentralization and establishment of village republics, lasting peace all over the world could be secured. "The utility of a state has to be judged from its effect on the common man's welfare." Shri Kamath remembered that Gandhi had tried to strike a happy balance between the conflicting claims of the state and the individual and arrived at the conception of the Panchayati Raj(45). Shri Kamath insisted on inserting a new article to the effect that "the state shall endeavour to promote the healthy development of Gram Panchayats with a view to ultimately constituting them as basic units of administration"(46).

Begum Aizaz Rasul and Dr. Monomohan Das were two notable exceptions.

Begum Aizaz Rasul said, "A lot of criticism has been made about Dr. Ambedkar's remark regarding village polity. Sir, I entirely agree with him. Modern tendency is towards the right of the citizen as against any corporate body and village panchayats can be very autocratic."(47)

Dr. Monomohan Das sounded a note of caution to the 'enthusiastic protagonists of the village panchayat system.' He

said:

'Unless and until our village people are educated, unless and until they become politically conscious, unless they become conscious of their rights and privileges, this village panchayat system will do more harm than good.'(48)

Shri Alladi Krishnaswami Ayyar tried to mitigate the tension by saying:

'With the large powers vested in the provincial or state legislatures in regard to local self government and other matters, there is nothing to prevent the provincial legislatures from constituting the villages as administrative units for the discharge of various functions vested in the State Governments.'(49)

It was, however, Prof. N.G.Ranga and Shri N.Anantha-sayanam Ayyanger who, while speaking about village panchayats, suggested that in the Chapter on Directives provision be made for the establishment of village panchayats.

Prof. Ranga wanted to make it perfectly clear in one of the Directives that it was the duty of the state to establish village panchayats in every village or for every group of villages in order to help the villagers to gain training in self-government and also to attain village autonomy in social, economic and political matters.(50)

Shri M. Ananthasayanam Ayyanger suggested the inclusion of the objective of panchayati raj as a directive principle

of state policy. He said:

'As we are situated to-day, is it at all possible immediately to base our constitution on village republics? I agree this ought to be our objective. But where are these republics? They have to be brought into existence ..... Therefore, I would advise that in the directives, a clause must be added, which would insist upon the various governments that may come into existence in future to establish village panchayats, give them political autonomy and also economic independence in their own way to manage their own affairs' (51).

Shri K. Santhanam struck the middle path and said:

'I am sorry that Dr. Ambedkar went out of his way to speak about village panchayats and say that they did not provide the proper background for a modern constitution. To some extent I agree, but at the same time I don't agree with his condemnation of the village panchayats and his statement that they were responsible for all the national disasters. I think that inspite of revolution and changes, they have preserved Indian life and but for them India will be a chaos. I wish that some statutory provision had been inserted regarding village autonomy within proper limits. Of course there are difficulties, because there are villages which are very small, and there are big villages, and many of them have to be grouped for establishing panchayats, but I do not think that at some stage or other, when all

the provinces have set up panchayats, their existence may have to be recognised in the Constitution, for in the long run local autonomy for each village must constitute the basic framework for the future freedom of this country'.(52)

On 22nd. November, 1948, K. Santhanam moved an amendment(53) for the adoption of a new article as a directive principle, and this was accepted by Dr. Ambedkar(54). After a brief debate the amendment was adopted. Dr. Ambedkar refrained from replying to the debate and to the criticisms levelled against him. Somewhat uneventfully, after a transient breeze, the confrontation ended in a concession which is now embodied in Article 40 of the Constitution.

Shri T. Prakasam expressed his pleasure at the acceptance of this provision. He remembered Gandhi's ideas on this issue and reminded the House that Dr. Rajendra Prasad had expressed his view in favour of making the village republic as the basis of the whole constitution and had taken initiative to the extent of requesting Sir B. N. Rau, the Constitutional Adviser, to redraft the Constitution accordingly. The latter had politely rejected the suggestion on the ground that it was too late to make any attempt to change the basis of the Constitution which had gone so far.(55)

Seth Govind Das recollected Gandhi's revolutionary tasks for the villages and the importance he had attached to the village life, and requested the members to recall Gandhi's speech

to the delegates of the Asiatic Conference in Delhi; where he had said, pointing to the city of Delhi:- "this is not India, go to villages, that is India, there in lives the soul of India" (56).

Dr. V. Subramaniam described the village panchayat amendment as the only living cell in the Constitution and congratulate Mr. Santhanam for his amendment (57).

Shri L. Krishnaswami Bharati quoted extensively from Gandhi's views on village swaraj, panchayati raj and decentralisation. He quoted Gandhi as saying: "my idea of village swaraj is that it is a complete republic, independent of its neighbours for its vital wants, and yet interdependent for many others in which dependence is a necessity" (58).

Shri Bharati expressed his thanks at the acceptance of the fundamental tenet of Gandhi and requested the House to make it more explicit. Since, according to Gandhi, "India dies if the villages die, India can live only if the villages live." (59)

From the foregoing analysis, it becomes clear that during the deliberations of the Constituent Assembly the members had almost forgotten what we call Panchayati Raj. When it was brought to the notice of Gandhi, he was surprised, and made certain comments. Then, at one stage, there was an idea of re-drafting the Constitution on the basis of Panchayati Raj but the members thought it was going to be a stupendous task, and they also thought that the

exigencies of the political situation then prevailing in the country deserved an early implementation of the Constitution as it was. It was because of this conflict between the two points of view that Panchayati Raj was included not as Panchayati Raj but as an obligation under the Directive Principles of the Constitution. It did not mention Panchayati Raj as such, nor did it mention the various levels at which Panchayati Raj has to exist. The Gandhian idea of 'villages as self-governing units' could not take a complete shape.

Article 40 which figures in the chapter on the non-justiciable Directive Principles of State Policy provides:

'The State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.' Since this provision has been accommodated in Part IV of the Constitution, merely as one of the many non-justiciable directives, it has been placed under the mercy and sweet will of the future legislators and the administrators, and hence has lost much of its significance. However, it was realized and agreed that this much only was possible under those circumstances.

This provision of the Constitution seeks prospectively to accommodate the village panchayats in the structure of the Indian State, but the philosophy of decentralization does not inform or pervade the Constitution as a whole and is not woven into its fabric. Article 40 is essentially devolutionary and con-

ceives the village panchayats as recipients of power granted to them by the State Government and not as fountain-heads of popular authority.(60)

In the debate that followed Dr. Ambedkar's comments on the role of village communities, there was an emotive outpouring of outraged and eloquent sentiment but there was little coherent intellectual challenge to the premises of Dr. Ambedkar's statement. Moreover, the proponents of the idea did not take pains to conceptualize it in depth or to work out a model. The leading members of the Drafting Committee and the highest echelons of political leadership in the Constituent Assembly appear to have been indifferent to the idea of village panchayats as a base for the constitutional apparatus.

The Indian power-elite did not share the Gandhian belief in the saliency and urgency of restructuring the Indian polity from the village upwards. That India would have a centralized parliamentary constitution was nearly certain from the start. The Objectives Resolution said that the new constitution would be dedicated to the goal of social revolution, but it did not specify how these aims were to be achieved. Neither panchayat nor indirect government were mentioned in the resolution. And in the debate on the resolution, there was no criticism of the omission of panchayat government. The debate in the Constituent Assembly on the Draft Constitution confirmed the popularity of panchayats but the speeches did not constitute a rejection of

parliamentary government in favour of a Gandhian constitution.

However, the incorporation of Article 40 in the Constitution has proved to have been less a gesture to romantic sentiment than a bow to realistic insight. And the aim of the article has long been generally accepted: if India is to progress, it must do so through reawakened village life. Panchayat development under the Constitution has had three main aims: to foster the involvement of individuals throughout the nation in the processes of democratic government, to gain the villager's participation in national development from the village-level upwards and to lessen the burden of state administration through decentralization. (61)

Ambedkar's criticism has been largely justified in the light of the performance of village panchayats wherever they have been established in the country. The supporters of panchayati raj had visualized that the stability and security of Indian democracy depend largely on the successful functioning of the village panchayats which have to become its real backbone. But the fact is that the village panchayats, to-day, are nowhere near that position. And it is doubtful whether they would in the near future develop themselves to assume such a role. This is distressing but hardly surprising.

The Balwantrai Mehta Study Team brought the philosophy of panchayati raj to the fore in the middle fifties and gave a blueprint for elective democratic institutions at the

levels of the district, the taluka and the village.

Two decades of panchayati raj institutions promised on the philosophy and the institutional approach of the Mehta Committee has not brought about a political or psychological revolution. There is an air of disillusionment with these institutions and there is an erosion in the commitment to the philosophy of panchayati raj'(62).

Such diffusion has not led to any fulfilment of the idyllic vision of a self-contained village community. Both in terms of political sufficiency and as a unit of administration and citizen - participation, the village is fast ceasing to be a focal point of attention.(63)

The dimensions of the crisis of democratic decentralization in India are manifold and wide-ranging.

Jaya Prakash Narayan believes that decentralization cannot be effected by handing down power from above to people who have been politically emasculated and whose capacity for self-rule has been thwarted, by the party system and concentration of power at the top. Today village panchayats are being established according to laws made in the Vidhan Sabhas. These are not true panchayats. The process must be started from the bottom. A programme of self-rule and self-management must be placed before the people, and by a constructive, non-partisan approach they must be helped to translate it into practice.(64)

It is true that viewed in the context of the complexities of rural problems in our country, two decades is a short period to bring about appreciable positive change in the socio-economic conditions of rural people and to break the traditional bonds that have always perpetuated backwardness in rural India. But in the light of experience gained in the last two decades an objective assessment of the new experiment of democratic decentralization in the institutional form of panchayati raj can be attempted.

There is no area where Panchayat Samitis and Zilla Parishads are free to take decisions and implement them without hindrance. The programmes that these bodies administer, are not decided upon at the block level but at a much higher level. All that they have to do is to implement the programmes which are, by and large, governed by the schematic budget and as such cannot be changed. For the guidance of the Panchayat Samitis detailed rules and regulations under the authority vested in the state government have been framed (65). Therefore, behind the formal acceptance of the idea of local autonomy, there exists a well-entrenched resistance to any radical change of balance of power in favour of local self-government institutions (66).

Besides, the administrative system remains what it was in good old days. Basically it has not changed. It has not been responsive to the requirements of the situation in the country. Now with that system, however much we may exert and toil, and however

much the bureaucracy works for the people, there is not going to be genuine response in the hearts of the people (67). How far such a system of administration can strengthen and broadbase democracy is open to question. There has been no effective participation on the part of the people. The persons who are in seats of authority today in these institutions are the same persons belonging to the higher classes of the rural society who were the leaders of the community earlier and dominated it with all their likes and dislikes, whims and prejudices (68). As such, the benefits of development appear to have accrued to the politically dominant who are also in most cases the economically and socially dominant (69).

We find that on the one hand, Panchayati Raj has introduced the possibility of emergence of a new leadership and, to that extent, helped redistribution of power and social positions; it has, on the other hand, displayed tendencies to perpetuate the existing caste differences and caste domination and to increase factions and conflicts (70). Traditional moorings of caste, family, social status and religion still dominate. It is a sad commentary on panchayati raj system that it has given a political shape to old caste labels. There are now the problems of the dominant castes and the subservient castes and the victimization of the latter by the former (71).

To the rural elite, however, panchayati raj provides a welcome opportunity for their increasing association with the village government and a distinct method for attaining posi-

tions of political stability for their own parties and factions. But to the weaker sections, panchayati raj is yet to develop a distinctive image of its own as different from the old system of local or feudal governments, which had existed under the British. This is so in view of the fact that the relationship of the weaker sections with the officials or the village hierarchy has not yet changed to any great extent.(72)

And since caste plays a dominant role in the rural social system, the strata that provide the leadership still continue to be the same that provided the leadership in a traditional society, namely, the upper-caste. Therefore, development and change would be meaningless if they do not mean the upliftment of the weaker sections of the community. Local self-government institutions have put the people to test with regard to the promotion of the welfare of the weaker sections and unless the higher castes perform their part of the duty, viz., to allow the weaker sections to come up, it will not bear any fruit.

So long as the bulk of the population is moved by appeals to local and traditional ties, there is no surer way of winning the election than by emphasizing their ties. The introduction of a popularly elected representative system based on universal adult suffrage has therefore led not to national integration but to the reverse —— increased linguistic, racial, regional and religious divisions.(73) With a predominantly illiterate population, political issues are solved, not in the light of policy, but of caste, religion and region. The greater the proli-

feration of elected bodies, the greater will be the inefficiency, the maladministration and the corruption.(74) And this was what Ambedkar had feared. He believed: 'what the Harijans had to fear about was bad administration ... (which) was due to absence of men belonging to the Scheduled Castes in the administration.' And, Ambedkar charged, 'the administration was unsympathetic to the Scheduled Castes because it was manned wholly by Caste Hindu officers who were partial to the Caste Hindus' and who 'practised tyranny and oppression' on the Harijans.(75)

In many places, says one authority, the system is not achieving the desired results. Often it is due to greed on the part of elected representatives, place seeking on the part of the officers and almost everywhere a failure to realise, against the broad canvas of India's programme of social and economic development that is being attempted.(76)

It would however be wrong to expect much from panchayati raj with regard to boosting up egalitarian trends in society in isolation from such allied phenomena as land policy, agrarian reforms, rural indebtedness, the hold of the economically dominant on the co-operatives and so on.(77)

Under these circumstances, it is natural that 'there are many states in which we have not yet succeeded in giving to the weaker sections of the community the Harijans, tribals and others, the economic benefit of our plans ..... Econo-

mic assistance has continued to flow, on a preferential basis to the people who are more powerful, who least need economic assistance from government.'(78)

But the welfare of the weaker sections must form an important part of the planning for economic development of the country. There have been repeated assertions of these ends in the aims and objectives of various plans,(a) community development programmes(b) and the panchayati raj institutions(c).

[(a) "The benefits of economic development must accrue more and more to the relatively less privileged classes of society and there should be progressive reduction of the concentration of income, wealth and economic power."(79)

(b) "Development programmes should be so devised and organised that the under-privileged are enabled to improve their conditions progressively so that inequalities are reduced and sense of solidarity and partnership in a great endeavour is created in the community."(80)

(c) "The primary objective of panchayati raj is to enable the people of each area to achieve intensive and continuous development in the interest of the entire population."(81)]

But it has been observed in various evaluation reports and reports of study and observation teams(82) that the weaker sections of the community have not been much benefited by these programmes.

A two day conference on "Adaptation of Administration to Rural Development" ended in Delhi on 19th August, 1978. The conference noted that "violence exercised by the rich against the poor" was one of the major obstacles that would have to be eliminated if the poor were to be organised and involved in the task of development. The conference noted that plans to decentralize the administration would not succeed without "institutional devices to strengthen the political and material base of the poor."(83)

Therefore, a satisfactory decentralization programme, envisaged by Mehta team, is yet to be implemented in our country. Power has nowhere been really transferred to the people. A careful observer of panchayati raj writes: 'after all when one talks of power to the people, one cannot help asking as to who the people are, what one often finds is a traditional leader, a wealthy person or a leader of a socially powerful group wielding authority in the name of the people.'(84)

Experience has shown that even when backward section of the village has captured a panchayat, defeating the traditionally dominant section, they have failed to achieve anything because of the non-co-operation and opposition of the defeated interest.

Therefore, the dream of the farmer becoming his own, and consequently, that of the country's Destiny Man, is yet to be realized. Much headway is yet to be made in regard to attitude-

orientation towards social change. Rural people, by and large, continue to be both fatalists and defeatists in their psychology. Evil social customs like dowry, child marriage, untouchability, etc., have still obsessed their outlook.(85)

Jaya Prakash Narayan believes that panchayati raj might become the base of a true participatory democracy, if certain conditions were fulfilled, namely, education of the people, understood in the widest sense of the term, is an essential condition for the success of the experiment; its success would depend upon the extent to which organised political parties refrained from interfering with it and trying to convert it into their handmaid, and using it as a jumping ground to climb to power; and there should be a real devolution of power to the local authorities and not a make-belief. The local authorities should be provided with the necessary resources and given real control over the civil servants under their charge.(86)

However, considering thus from different angles, it may be concluded that the introduction or the operation of the institution of panchayati raj has not resulted in directing the society towards a Gandhian ideal. It has merely become the symbol of a half-hearted and grudging attempt of political and economic decentralisation in the country.

NOTES AND REFERENCES.

1. Harijan, June 8, 1947.
2. Harijan, January 18, 1948.
3. Harijan, April 7, 1946.
4. Harijan, July 28, 1946.
5. S. N. Agarwal, Gandhian Constitution for free India, Kitabisthan, Allahabad, p. 38.
6. G. Dhawan, The Political Philosophy of Mahatma Gandhi, Navajiban, Ahmedabad, 1946, p. 117.
7. Ibid., p. 284.
8. Harijan, December 30, 1939 as quoted in Nirmal Kumar Bose, Selections from Gandhi, Navajivan, 1957, pp. 71-72.
9. S. N. Agarwal, op. cit., (note. 5), p. 38.
10. Ibid., pp. 80-95.
11. B. N. Ganguli, Gandhi's Social Philosophy, Vikas Publishing House Pvt. Ltd., Delhi 1973, pp. 175-176.
12. Zia Uddin Khan, Mathur and Iqbal Narain Ed., Panchayati Raj, Planning and Democracy, Asia, 1969, p. 265.
13. Jaya Prakash Narayan in the foreword to Panchayati Raj as the Basis of Indian Polity, Published by AVARD, Delhi, 1962, p.9.
14. S. N. Agarwal, "Village Panchayats in the Indian Constitution" in Modern Review, Vol. 89, 1951 and also see Selected Works of Mahatma Gandhi, Navajivan, Vol. V, p. 331.
15. Constituent Assembly Debates, Govt. of India Publication Reprint, 1966, Vol. VII, P. 39.
16. Norman D. Palmer - The Indian Political System, Houghton Mifflin Co., Boston, 1971, p. 13.
17. Ibid., p. 14.
18. Appadorai - Documents on Political Thought in Modern India, Vol.II, O.U.P., 1973, p. 289.
19. B.R. Ambedkar, Thoughts on Linguistic States, Delhi, 1955, p.34.

20. A. R. Desai - Social Background of Indian Nationalism, Popular Prakashan, Bombay, 5th Ed., 1976, p. 268.

21. B. R. Ambedkar, What Congress and Gandhi have done to the Untouchables, Thacker & Co., Bombay, 1945, p. 198.

22. B. R. Ambedkar - States and Minorities, what are their rights and how to secure them in the Constitution of Free India, Thacker & Co., Ltd., Bombay, 1947, p. 52.

23. Ibid.

24. B. R. Ambedkar, What Congress and Gandhi have done to the Untouchables? Thacker & Co. Ltd., Bombay, 1945, pp. 290-91.

25. Ibid.

26. Constituent Assembly Debates, Vol. XI, p. 979.

27. Ibid., p. 980.

28. Constituent Assembly Debates - Government of India Publication, Vol. VII, p. 504.

29. Ibid., p. 58.

30. Ibid., p. 350.

31. Ibid., p. 362.

32. Ibid., p. 212.

33. Ibid., p. 256.

34. Ibid., p. 265.

35. Ibid., p. 275.

36. Ibid., p. 278.

37. Ibid., p. 216.

38. Ibid., p. 285.

39. Ibid., p. 286.

40. Ibid., p. 287.

41. Ibid., p. 289.

42. Ibid., pp. 309-310.

43. Ibid., p. 316.

44. Ibid., pp. 357-58.

45. Ibid., p. 219.

46. Ibid., p. 504.

47. C.A.D., Vol. VII, p. 305.

48. Ibid., p. 308.

49. Ibid., p. 336.

50. Ibid., p. 351.

51. Ibid., p. 352.

52. Ibid., p. 264.

53. Ibid., p. 520.

54. Ibid.

55. Ibid., p. 521.

56. Ibid., p. 524.

57. Ibid., p. 525.

58. Ibid., p. 526.

59. Ibid., p. 527.

60. L.M. Singhvi, "The Dilemmas", in 'SEMINAR' (156) On Decentralization, August, 1972, p. 33.

61. Austin, op. cit., p. 38.

62. L. M. Singhvi, op. cit., pp. 33-34.

63. Rajni Kothari, Politics in India, Orient Longman, 1970, p.129.

64. Jaya Prakash Narayan, "Voluntary Socialism" in K.P.Misra & Rajendra Avasthi ed., Politics of Persuation, Manaktala, Bombay 1967, p. 149.

65. Vraj Mohan Sinha, Democratic Decentralization or Administrative Decentralization in Mathur & Iqbal Narain ed., Panchayati Raj, Planning and Democracy, Asia, 1969, p.68.

66. Iqbal Narain, P. C. Mathur, Sushil Kumar and associates, Panchayati Raj Administration, Indian Institute of Public Administration, New Delhi, 1970, p. 10.

67. Balwantry Mehta, op. cit., (note 12), p. 86.

68. Vraj Mohan Sinha, op. cit., (note 65) pp. 70-71.

69. Iqbal Narain, Introduction, op. cit., (note 12), p.XXVI.

70. T. K. Unnithan, op. cit. (note 12), p. 48.

71. Iqbal Narain, op.cit., p. 29.

72. Sugata Das Gupta, "The concept of Panchayati Raj and their institutional implications", Mathur & Narain ed.,op. cit., p. 39.

73. Madan Lal Goel, Political Participation in a developing Nation — India, Asia, 1973, p. 204.

74. As quoted in Maddick, Panchayati Raj, A Study of Local Government in India, Longman, 1970, p.318.

75. Austin, op. cit., p. 20.

76. Maddick, op. cit., pp. 318-19.

77. Iqbal Narain, op. cit., p. XXVI.

78. S. K. Dey, "Some Issues" — Mathur & Narain ed. op. cit., p.16.

79. Second Five Year Plan., Planning Commission, p. 22.

80. U. T. Krishnamachari, Community Development in India, '58, pp. 64-65.

81. Third Five Year Plan, Planning Commission, p. 338.

82. Report of the Study Group on the Welfare of the Weaker Sections of the Village Community, Govt. of India, pp. 6-10. Also Report of the Study Team on Panchayati Raj, 1964, p. 151.

83. The Statesman, August 21, 1978.

84. Haldipur R. N., "On Remodelling Panchayati Raj" Indian Journal of Public Administration, Vol. XVII, No. 3, July-September 1971, p. 529.

85. Iqbal Narain, op. cit., pp. XXIV-XXV.

86. Jaya Prakash Narayan, Socialism, Sarvodaya and Democracy, ed. by Bimla Prasad, Asia, 1964, pp. 247-49.

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CHAPTER - 8

Relevance of Gandhi in the present stage of India's political and constitutional history:

Gandhi brought to Indian politics what it had long lacked, namely, depth and an indigenous base. He realized clearly that the urbanized middle class alone did not provide a sufficient basis for national awakening. The task was to penetrate the masses, to arouse them from their state of apathy and isolation, to provide them with self-confidence.(1) Gandhi, himself driven by uncommon moral energy, proved remarkably successful in giving to the Congress a new direction, a powerful organizational base, and a mass following.

Gandhi took over the leadership of the national movement and, for over twenty five years, shaped not only the course of India's history, but left an indelible imprint on the thinking of India. The political and social heritage of India bears the stamp of his thinking and leadership. It goes to his credit that he endowed the Indian nationalism with a positive bias for social justice, with a passion for equality, and aroused the conscience of India to the condition of the depressed classes and other underprivileged sections of the community. The emphasis on rural India, and the moral fervour which he imparted to the national movement in respect of the uplift of the untouchables, were also important aspects of the Gandhian movement.(2)

Nevertheless, it has alomst become a fashion to lament over the disloyalty of the Congress and free India to Gandhi. It is said every now and then that the 'Mahatma' is being "worshipped but not followed, exalted but betrayed, idolized but

ignored" and that he has become a "Mahatma without disciples or a Father without children"(3).

It is often asked whether in the political life of India today, during about thirtyone years of independence, Gandhi exercises any considerable influence; whether such influence as he still exercises is a dominating one. The question however, is not the influence that Gandhi exercised in his life time, but how far it is a continuing process in the life of Independent India.

Ever since Gandhi had launched his non-co-operation movement in India, he had also elaborated, side by side, a 'constructive programme' consisting of hand-spinning, khadi, promotion of village industries and crafts, swadeshi, prohibition, promotion of communal harmony, removal of untouchability, basic education, etc. Gandhi attached great importance to this programme. As a matter of fact, social reconstruction on the basis of the principles of truth and non-violence to be brought about through the constructive programme was the primary mission of Gandhi's life. His aim was the building of a new social order in India based on social justice and equality and freedom from all forms of exploitation - what he called "Ramrajya"(4). Gandhi was intensely interested in the struggle for a more just human society. He believed that man has not merely a class essence, but also a human essence(5).

We have already seen in Chapter I that Sarvodaya

of Gandhi's
ideal/concept would always remain an ideal which is practically impossible to realize owing to the imperfections of man. But Gandhi's near-ideal, that is, his contemplated predominantly non-violent state, is realizable. While the former sets the destination, the latter is a direction towards the destination. Taking into consideration this clear difference between the ideal and the real, between the unattainable (sarvodaya society) and attainable (ideal state) we can try to assess the aims and objectives of free India as embodied in the Constitution.

I

Article 38 of the Constitution of India states: "the state shall strive to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of the national life". This declaration, and certain principles of policy to be followed by the state, stated in article 39, taken together, can be said to have made an attempt to lay a foundation or basis for the welfare state in India. The aims and objectives of welfare state are to a certain extent-identical with those of the ideal state of Gandhi's conception.

Sarvodaya:

Again one could say that the socialistic pattern of society as enunciated in the Second Five Year Plan is a more concretised expression of the Directive Principles of State Policy embodied in the Constitution. Essentially, this means

that the primary criterion for determining the lines of advance must not be private profit but social gain, and that the pattern of development and the structure of socio-economic relations should be so planned that they result not only in appreciable increases in national income and employment, but also in greater equality in incomes and wealth. The benefits of economic development must accrue more and more to the relatively less privileged classes of society, and a milieu should be created in which the small man has chances of rising in life. In short, it means the raising of living standards, the enlargement of opportunities for all, the promotion of enterprise among the disadvantaged classes, and the creation of a sense of partnership among all sections of the community (6). In that case, it can be said that the objectives and ideals of a socialistic pattern of society can not be different from the aims and objectives of Gandhi's ideal State.

When Gandhi was still alive, it had been decided, in view of the rapidly deteriorating situation in the country and the prevailing confusion in Government policy, that the constructive workers should meet at Wardha towards the end of February, 1948, and prepare a programme embodying the Gandhian principles of national reconstruction to be placed before the country and the Government. The meeting was held later after the death of Gandhi. The programme was published in 1950 as the Sarvodaya Plan (7).

The Sarvodaya movement, based on Gandhi's principles, aims at bringing about a moral regeneration of society which,

according to Gandhi, was even more important than the adoption of democratic institutions[8]. In fact, Sarvodaya is an extension and an application of the Gandhian ideology to the solution of social, political and economic problems facing modern societies. In more precise terms, it is the art and science of mobilising the physical, economic and spiritual resources at the disposal of society in the service of the general good[9].

Gandhi would have very much liked free India to become a decentralized state and gradually to advance towards his social ideal to the best of her capacity. He would have liked the functions of the state in India gradually to be transferred to voluntary organizations. He would also have liked the sanctions which maintain social cohesion increasingly to become non-coercive. But that did not happen, mainly because the Indian National Congress which had led the resistance movements against the British has failed to evolve genuine non-violence.[10]

In the Constituent Assembly too, the Gandhians recognized that to write a constitution, to create a state, was to sacrifice some of Gandhi's ideal. To keep this sacrifice to the minimum, thereby preserving as much of the ideal as possible, they compromised by advocating as minimal a state as possible. 'The state that governs best, governs least', they preached; 'keep government to the minimum, and what you must have, decentralize.'[11]

However, after his death, Vinoba and other followers of Gandhi have been working to complete the master's work.

Vinoba Bhave made significant contributions both to the theory and practice of Sarvodaya, particularly through his Bhoodan Movement. Today, Sarvodaya stands for a philosophy of life and a programme of action which embraces many aspects of life including the social, economic and political. It aims at a complete transformation of the present social structure through quiet, constructive social work carried on primarily at the village level, with a view to initiating a non-violent revolution and establishing a just social order.

Immediately after Gandhi's death, Sarvodaya Samaj was formed by those who believed in the Gandhian ideas. Akhil Bharat Sarva Seva Sangh is another small organisation that came into existence. In it were merged some of the old Gandhian institutions for constructive work. With the inauguration, however, of the Bhoodan Movement by Vinoba in 1951, Sarvodaya not only consolidated for itself the gains of the Gandhian era, but ventured forth into a new and more extensive field of social work, which had deep economic and political significance too (12).

To Jaya Prakash Narayan, 'Sarvodaya is a higher and truer form of democratic socialism (13) and Bhoodan is a great mass movement of conversion and the creation of a new climate of thought and immediate revolution in the minds of men and their

mutual relationships. It attacks and corrects, here and now, the system of exploitation and inequality. It teaches men to share what they have with their fellowmen'[14].

By its own dynamics, the Bhoodan Movement, between 1952 to 1958, flowered into a Gramdan Movement. Vinoba's appeal for voluntary renunciation of individual ownership of land and for vesting it in the village community, was a radical extension of Gandhi's theory of Trusteeship to landed property.

The next step in the Gramdan Movement is the establishment of Gram Swaraj, that is, complete village self-government. Under this scheme, the villagers are expected to learn to shoulder the responsibility of village administration and village development in every sphere. This, in fact, would be democracy at the grass roots. It is thus obvious that the whole programme of Bhoodan and Gramdan is an attempt to devise ways and means to establish an ideal non-violent social order[15].

Vinoba's movement thus supplied an answer to the question that Jaya Prakash Narayan had long been asking: Could Gandhi's philosophy offer a practical method to accomplish the social revolution? In a brilliant extension and development of Gandhi's work, Vinoba demonstrated that there was such a method[16]. Then, ultimately, at the Bodh Gaya Sarvodaya Conference (1954) Jaya Prakash Narayan also dedicated his life to the work of Bhoodan and the reconstruction of society on Gandhian lines[17].

Now, in the context of the foregoing facts, it may be concluded that, in this sphere, Gandhi's wishes had not been abandoned. On the contrary, the constructive workers, under the leadership of Vinoba Bhave and Jaya Prakash Narayan, had been endeavouring to live up to the Gandhian message. Through the Akhil Bharat Serva Seva Sangh, they have been trying to materialise Gandhi's wishes and to co-ordinate the work of all the institutions which had been inspired by him. The Bhoodan movement launched by Vinoba Bhave was considered by many, as a new phase in the development of the Gandhian movement. Though its success was limited, nevertheless, through this, Vinoba had taken up the burden which Gandhi had left unfinished —— to make the people self-reliant and self-sufficient in the essential needs of life (18).

Some state governments, have, in recent years, passed legislation, with a view to facilitating the smooth transfer of ownership of land to the Gramsabha in Gramdan villages (19). It has also been the policy of the Central, as well as the State Governments to help reconstruction work in Gramdan villages by making suitable grants and loans (20). In this connection mention may be made of the recent Urban Land (Ceiling and Regulation) Act (21), 1976.

Mention may also be made of the 20-point economic programme (22) announced by the then Congress Government of Smt. Indira Gandhi on July 1, 1975; which was regarded by its sponsor as another "step forward in the unceasing quest for a dynamic and

just society (23). The then Prime Minister observed, on 13th July, 1975, that the economic programme had three objectives: the establishment of a more egalitarian social order, deterrent action against economic offences of all types, and removal of various constraints on production so as to strengthen the nation's resource-base and enlarge opportunities for employment. For the purpose of certain agricultural reforms and enlargement of social justice, the Government also thought of enacting some new legislations. These programmes remained, by and large, unfulfilled and unrealised, and the change of Government at the Centre, after the Sixth Lok Sabha elections of March, 1977, has thrown these programmes into the backwaters of history. Their impact on the economic life of the nation could not be ascertained, because most of them were not, and could not be, implemented.

Although, from time to time, the Government of India had been declaring that the goal was to build a Socialist State, until the 42nd Amendment Act, there was no mention of the word 'socialist' within the Constitution. Section 2 of this Amendment Act amends the Preamble to the Constitution in such a way that for the words "Sovereign Democratic Republic", the words "Sovereign Socialist Secular Democratic Republic are substituted.

Moreover, it was admitted that the establishment of a Socialist State necessitates the supremacy of the Directive Principles over the Fundamental Rights. So long it had been accepted in principle only that the Directive Principles were more

important because they incorporate the socio-economic rights of the people. Section 4 of the 42nd Amendment Act amends Article 31C and provides that a law enacted on the basis of the Directive Principles of State Policy could not be invalidated even if it violated the Fundamental Rights. The Directive Principles continued, however, to be non-justiciable and non-enforceable, and the anomaly in their character and status was not really resolved.

II

Panchayati Raj:

Gandhi, and those who followed his economic preferences, had insisted that the salvation, economic or otherwise, of the country, must be effected at the very base. This seemed to mean the encouragement and protection of cottage and small-scale industries. The political corollary of such a policy might be an attempt to instil new life into bodies of local self-government (24). India's emphasis on the village and on what has been called Panchayati Raj is a part of the inheritance of Gandhi.

After parsistent efforts made by the lovers of Gandhian ideas, Article 40 of the Constitution had emerged; this is a poor attempt to vindicate Gandhi's concept of village-swaraj or Panchayati Raj (discussed in an earlier chapter).

Gandhi realised that only one freedom had been secured in 1947, that is freedom from colonial rule. The other three freedoms, from hunger, disease and ignorance, still remained

to be tackled. If India was to be a true democracy, the target of development would have to be the village where the majority of the population resided.

It was Gandhi who, for the first time, accepted the full validity of the rural community, and placed it at the very centre of his Constructive Programme. The whole basis of his Constructive Programme was village reconstruction. It was Gandhi's unassailable thesis that the rural community must remain at the very centre of all national planning.

All his life, Gandhi had insisted that real swaraj could only be swaraj for the villages. Cities were anathema to him. Significantly enough, a new programme of rural reconstruction christened "Community Development" was born on October 2, 1952, the birth anniversay of Gandhi (25).

The Community Development Projects and the National Extension Service which had begun to cover the country in a sense represented, the continuity of the forces released by Gandhi in and through the Constructive Programme.

Panchayati Raj was born out of the experience in the working of Community Development Programme for about 6-7 years. Community Development was the object, the purpose; Panchayati Raj was the instrument through which the implementation of the Community Development Programme was visualised.

After Independence, though the political parties which came to power were equally vehement about giving more powers to local bodies, very little was done in practice. The village panchayat institutions were in no position to paly any significant role in matters of development and planning which assumed the greatest importance in the life of the citizen after 1947, and therefore, continued their existence more or less under the same laws and conditions as obtained in pre-Indepencence days till the acceptance of the proposals for 'Democratic Decentralization' made by the Balwantray Mehta Committee in its Report published on 24th November 1957 (26).

The general idea, taken from the Mehta Committee Report, was for three levels of representative bodies: Gram Panchayat (village), Panchayat Samiti (block) and Zilla Parishad (district). While the Gram Panchayat was to be directly elected, the higher two levels were to consist of members indirectly elected from the tier below, together with co-opted parliamentarians, co-operative movement officials and others (27).

The recommendations of the Mehta Committee were generally endorsed by the National Development Council and the Central Government requested all the State Governments to consider their implementation. All the State Governments have accepted the policy. Every state is free to have its own legislation and to set up Panchayati Raj institutions of its choice suited to the local genius, conditions, environment and requirements, since it

is a growing concept and there is no finality or rigidity about the pattern or system evolved at any time[28].

Since Independence, the State Governments have passed numerous legislations[29] to vindicate in a way the Panchayati Raj system. Specially, in the year 1959-62, a widespread enthusiasm on the part of the states all over India was marked to set about a reconstruction of local government.

Panchayati Raj as an agency of the state is closely allied with planned development. The aims and goals of Panchayati Raj are identical with our plans. Panchayati Raj is visualised as an improvement in the process of economic development to utilise local institutions for the execution of plans[30]. The First Five Year Plan appreciated that 'Panchayats have an indispensable role to play in the rural areas. As representing the best interests of all sections of the community, their status is unique; emphasis in due proportion should be placed on panchayats'[31]. And it was hoped that the Second Plan would reach out to millions of people through the net work of Community Projects and National Extension Service[32]. One of the principal tasks in the Third Plan was to ensure the growth and working of Panchayati Raj institutions so as to enable each area to realise its maximum development - potential on the basis of local man-power and other resources, co-operative self-help and community efforts, and effective use of the available resources and personnel.

The total outlay on Community Development in the

first two Plans had been about Rs. 240 crores. The Third Plan had provided for a total outlay of Rs. 294 crores, in addition to about Rs. 23 crores for panchayats (33). During the Fourth Plan, some significant developments had taken place with respect to enactment and implementation of Panchayati Raj Acts in different states (34). It is proposed in the Draft Fifth Plan that the Community Development and Panchayati Raj institutions would be suitably reoriented and strengthened to become instruments of social and economic changes. It is tentatively visualised that the total public sector outlay for the programmes of Community Development and Panchayats during the Fifth Plan will be Rs. 128 crores (35).

While it is undeniably true that India's great and fundamental reform of Panchayati Raj can be directly traced to the teaching of Gandhi, and is perhaps the most abiding of all the lessons that she has learnt from him, the significant differences between what India has adopted and what he taught are illustrative of the character of Gandhi's influence (36).

In the contents or functions, the Panchayati Raj, as it exists today, appears very different both from the traditional and from the Gandhian points of view.

From the Gandhian point of view, Panchayati Raj will truly come into existence only on the basis of complete decentralization of power, abolition of old forms of inequalities, and establishment of a peaceful social system through mutual understanding and service. The Panchayati Raj as it exists today, will

not perhaps lead us to the Gandhian path. It is mainly used as a political device or as a mechanism through which developmental activities would be implemented.

The Government has found Panchayati Raj a convenient machinery through which it can endeavour to get the ideas transmitted to the villagers to get the Plans, drawn up for them, properly executed. In a Gandhian system, Panchayati Raj would have been used probably in the opposite direction, that is, to inform the political leaders of the country of the direction of politics which they ought to follow, or to inform them of the real requirements and priorities of the village population so that national assessment of real resources and consequent planning could be done from below, rather than imposing them from above, which is the present practice (37).

It can not be said that the panchayat system is everywhere running smoothly and in a truly democratic fashion. But it is true that the officials - both regular and Community Development —— are now confronted, for the first time, with a co-ordinated network of popular bodies endowed with considerable powers, and protected by political support. This will not at once end administrative tensions, nor will a single body of local government 'servants' be born over night. But already the Panchayat Samitis, where (in most states) power is concentrated —— Village Panchayats are mainly agents and Zila Parishads mainly co-ordinaters —— are feeling this power and exercising it (38).

Besides, we should also remember that the Five Year Plans and the panchayati system are still not understood by many sections of the people. How can a whole people co-operate in national reconstruction without a clear knowledge of the aims and methods involved? Something must be done, and done quickly, to make the people understand what is being planned and done. This is the work of mass education or of social education in the widest sense. Such education must precede or at least go hand in hand with actual work being done. It is at this point that our actions are the weakest. Whatever we have done so far, has hardly touched the life of the vast rural community (39).

III

Social Welfare

With the modern concept of a welfare state, social-welfare presupposes a minimum standard of economic wherewithal for maintaining man's physical well-being and a comprehensive net work of protective and constructive services in the social field, such as public health and medical care, labour welfare, social welfare and social education. The underlying concept of such a policy of social security is to build up the resistance of the community against sudden mishaps, and the inevitable hazards and complexities of modern industrial life, and ensure its optimum economic and social well-being (40).

Some of the important social problems like poverty,

ignorance, over-population and rural backwardness, are of a general nature, and in varying degree, they are influenced by factors like squalor and bad housing, mal-nutrition and physical and mental ill health, neglected childhood, family disorganisation and a low standard of living. For a long time, society remained apathetic to these conditions (41).

Side by side with the struggle against the imperial rulers, Gandhi attached no less importance to these social ills. It was he who made the greatest impact on social reform and social service by incorporating them as an integral part of the national movement for freedom. The resolution on this subject at the Karachi Congress (1931), which stated unequivocally that opportunities must be equal for all citizens irrespective of caste, community, sex or any other considerations, was a pointer to the fact that India was rapidly aligning herself with modern thinking, and its emphasis was on social justice. When popular ministries were set up in a large number of provinces in 1937, for the first time, there was the recognition that the state had a significant and specific role to play in establishing social services and encouraging social reform (42). Gandhi emphasized that political work should not be dissociated from social work, that they were not alternatives but were parts of the same programme (43).

Under article 38 of the Indian Constitution, the state shall strive to secure social, economic and political justice. Article 41 assures to make effective provision

securing the right to work, to education, and to public assistance in cases of unemployment, old age, sickness and disablement and in other cases of undeserved want. Article 42 is an assurance for securing just and humane conditions of work and for maternity relief. Article 43 aims at securing to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life, and full employment of leisure and social and cultural opportunities.

All these provisions, taken together, can be said to have approximated to the Gandhian ideal in respect of making a comprehensive arrangement of social welfare within the body of the Indian Constitution.

The First Five Year Plan stated that "..... maternity and child health is a service that is kept in the forefront in the planning of health programmes....." The provision made by the various States for maternity and child health work was Rs. 1.35 crores and by the Centre Rs. 53.48 crores (44). The Plan felt the need for setting up in each state, and at the centre, permanent wage boards with a tripartite composition to deal comprehensively with all aspects of the questions of wages (45). In India, some of the risks to which a worker is exposed have been covered by the Workmen's Compensation Act and the Maternity Benefit Acts of the various State Governments. The Employees' State Insurance Act is a more comprehensive piece of legislation. The scheme framed under this Act was expected to be implemented

throughout the country by July 1954. The Central Legislature also passed the Employees' Provident Fund Act in 1952. Among other Acts, the Factories Act, 1948, the Indian Mines Act, the Plantation Labour Act, 1951, may be mentioned here (46). The First Five Year Plan further declared that ".... one of the objects of the Plan is to increase employment opportunities and to raise the standard of living ....." (47)

The achievement of a socialist pattern of society had been accepted as the objective and economic policy of the Second Plan. This means that the benefits of economic development must accrue more and more to the relatively less privileged classes of society, and there should be a progressive reduction of the concentration of income, wealth and economic power (48). With this end in view, the Constitution (Twenty Fifth Amendment) Act, 1971, had inserted a new Article 31C which sought to save laws giving effect to the Directive Principles of State Policy specified in Cl. (b) and Cl. (c) of Article 39 from attack on the ground of infringement of Fundamental Rights contained in Articles 14, 19 and 31. But a more sweeping and far-reaching step in this direction was taken by the Constitution (Forty Second Amendment) Act, 1976, which seeks to widen the scope of the Article 31C so as to cover all the Directive Principles of State Policy. The proviso now reads as follows:- "Notwithstanding anything contained in Article 13, no law giving effect to the policy of the State towards securing (all or any of the principles laid down in Part IV) shall be deemed to be void on the ground that it is inconsistent with, or

takes away or abridges any of the Rights conferred by Article 14, Article 19 or Article 31, and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such a policy...."

As part of the First Five Year Plan, the Central Government set up a Central Social Welfare Board with the object, especially, of assisting voluntary agencies in organising welfare programmes for women and children and handicapped groups. This Board has, in turn, in collaboration with State Governments, organised State Social Welfare Boards throughout the country. The building up of this organisational network made it possible to embark upon larger programmes of social welfare in the Second Plan.(49) At the end of the Second Plan, there were nearly 4500 maternity and child welfare centres, each serving a population varying between 10,000 and 25,000; one third of these centres were located in urban areas.(50)

It was felt that steps need to be taken to organise a wage census, and also to place the various working class cost-of-living indices on a uniform basis. The Employees' Provident Fund Scheme was proposed to be extended to cover industries and commercial establishments. The Second Plan allotted about Rs. 26 crores for implementing schemes relating to labour.(51) The Planning Commission, on the basis of a study, indicated that "..... the Second Plan will not have any significant impact on the carry-over of unemployment of the earlier period; it will provide

employment opportunities for the new entrants to the labour force and relieve under-employment in agriculture and in village and small industries....."[52]

In the Third Plan, provisions had been made for welfare programmes involving a total outlay of Rs. 28 crores - Rs. 16 crores at the Centre and Rs. 12 crores in the States. The programmes of the Central Social Welfare Board, including assistance to voluntary organisations and welfare extension projects, envisaged a total outlay of Rs. 12 crores[53]. During the Third Plan period, the Employees' State Insurance Scheme was proposed to be extended to all centres where there was concentration of five hundred or more industrial workers. Medical care and treatment would be extended to the families of insured persons in all centres where the Scheme was in operation. The Employees' Provident Fund Scheme would be extended to such industries, which were able to bear the financial burden[54]. During this Plan, it was proposed to link up the maternity and child-health services associated with primary health units with extended facilities[55]. It was assumed that this Plan could yield about 14 million additional jobs, about 10.5 million being outside agriculture and about 3.5 million in agriculture.[56]

In December, 1966, the Government of India had set up a National Commission on Labour to study and make recommendations on various aspects of labour including wages, working conditions, welfare, trade union development and labour - management

relations. The Commission submitted its report in August, 1969. The report was under consideration of the Union Government in consultation with the State Governments and the Employees' and the Workers' Organisations (57).

The Fourth Plan laid considerable emphasis on labour-intensive schemes. The Planning Commission had suggested to the governments of all levels to take effective steps to remove any restrictive policies which inhibit the faster growth of employment and to give employment orientation to the programmes to be taken up under this Plan (58).

The Draft Fifth Plan had proposed a direct attack on poverty and the need to raise the standard of living of over 22 crore of people, who are below the poverty line, to at least the subsistence level, by providing the basic minimum needs (59).

The Fifth Plan decided to maximise all avenues of productive employment besides the question of employment-generation in an expanded programme of social services (60). Special emphasis has been placed in raising the living conditions of the depressed sections through provisions for the National Programme on Minimum Needs which includes a wide spectrum of programmes (61). In June '74, the All India Congress Committee and the Central Government announced their intention to establish a National Wage Board to decide a National Wage Policy.

But unfortunately, most of the proposed schemes are

still confined within theory, and are pious wishes only. In practice, we find that even after twenty eight years since the Constitution started operating, the condition of ordinary men, especially the poor men of the villages, has not changed. The schemes and measures meant for the industrial labourers proved shockingly inadequate, and the experience in the Plans shows that employment targets could not be achieved because of short-falls in performance in various sectors of the Plan.

Nevertheless, it may be said that although the progress has been slow, the nation has not forsaken the path, nor has it abandoned the Gandhian teachings.

IV

To Gandhi, Khadi represented an ideal of civilisation, a symbol of human necessities being satisfied by men and women individually in villages (62). One of the important items of his Constructive Programme was revival and spread of Khadi and Cottage Industry. It was intended to make the villages self-sufficient.

Khadi and Cottage Industry:

It is stated in article 43 of the Indian Constitution that "... the state shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas".

Today, the All India Spinners' Association has workers in every state and district who live and work among the

people. Whereever Khadi has spread, the spirit and technique of village service has also spread. In the wake of the Khadi movement came the All India Village Industries movement. This was one step deeper into the village soil.

Thanks to this movement, the organisation and improvement of village industries have now come to stay and are part of the permanent pattern of national planning. The recent setting-up of the All India Khadi and Village Industries Commission by the Government of India shows that the claims of the charka and of village industries are no longer ignored (63).

In the First Plan, an attempt had been made to set out the lines along which development programmes for village and small industries could be undertaken as part of the national Plan.

For carrying out the positive programmes for the promotion of village and small industries, a network of organisations has been brought into existence by the Central Government. These are - (1) The All India Khadi and Village Industries Board, (2) the All India Handi-crafts Board, (3) the Small Scale Industires Board, (4) the Coir Board and (5) the Silk Board (64).

Expenditure on the development of small industries increased during the First Plan through these Boards was Rs.31.2 crores (65).

The Village and Small Scale Industries Committee recommended for the Second Plan period a total outlay of about

Rs. 260 crores. The financial provision actually made was Rs. 200 crores (66).

In the Third Plan, they were expected to make still more rapid progress, and to extend, in larger measure, to small towns and rural areas. A total provision of Rs. 264 crores was made in the public sector. Investment in private sector was estimated at about Rs. 275 crores. It was also proposed to offer Government guarantees for bank loans to small industrialists (67).

A total outlay of Rs. 850 crores (including public and private sectors) was estimated to be available for the development of small industries under the Fourth Plan (68).

The broad strategy proposed to be followed in the Fifth Plan envisages a considerable enlargement of the development programmes for providing assistance and facilities in various forms to these industries. For this purpose, a total outlay of about Rs. 611 crores in the public sector is envisaged in the Fifth Plan (69). The Central and the State Governments at different times passed several legislations (70) in favour of this programme.

Now, so far as Khadi is concerned, it is true that most Congress leaders and important persons even now wear khadi; on formal occasions they even spin. The central and the local governments also give considerable financial and other support for the production and sale of khadi. But all these are 'demonstrative allegiance' to this doctrine of Gandhi. Very few would today like to see any influence of this teaching of Gandhi on India's

pplicy[71].

About cottage industry, it can be said that the improvements made so far are not sufficient in view, especially, of the growing unemployment problem of the country. This industry deserves much more attention without further delay so as to arrest the intensity of the said problem.

V

As a means for building up a non-violent, non-exploiting social order, Gandhi gave us his system of education,

Education: known as the Basic or, more popularly, Wardha, system of education. Its technique consists in developing not only the intellectual but also the physical and spiritual faculties of the child through the teaching and practice of a socially useful manual craft[72].

Article 45 of the Indian Constitution states: "the state shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years".

The policy followed immediately after Independence, was to start providing five years' primary education for all children of 6 to 11 age group and it was hoped to extend it by one further year when more resources became available[73].

"Our experience of basic education", said the First Plan, "is very limited". Even so, as the recent enquiry conducted in regard to its productive aspect by the Ministry of Education shows, wherever the scheme has been given a fair trial, it has yielded encouraging results inspite of serious handicaps. The stage has arrived for a thorough investigation of the obstacles in the way of the full development of the productive capacity of basic education (74).

For elementary education, the outlays in the First, Second and Third Plans were Rs. 85, 95 and 209 crores, respectively (75).

During the Third Plan, it was proposed to convert about 57,760 schools into basic schools, to orient the remaining schools to the basic pattern, to remodel all training institutions along basic lines, to establish basic schools in urban areas, and to link up basic education with the development activities of each local community.

By way of preparation for conversion into basic schools, a programme for orienting all existing schools to the basic pattern was initiated during the Second Plan. With a view to completing the process necessary arrangements were proposed to be made during the Third Plan (76).

Elementary education has been given a very high priority in the Draft Fifth Plan, and the outlays for it are

being stepped up from Rs. 239 crores in the Fourth Plan to Rs.743 crores in the Fifth Plan (77).

The Parliament and the State Legislatures have passed different acts (78) to implement this scheme.

Inspite of all these "..... a more realistic rather than a bookish tendency in school programmes has not been promoted to as great an extent as was initially hoped for....." (79)

However, the limitations in the way of implementation of this craft-centred education through mother tongue (Wardha-Scheme) must be borne in mind, in view of the rapid industrial advancement of the country. In this context, the efforts made by the Government may be considered as indications towards the fulfilment of Gandhi's wishes as far as practicable.

VI

Welfare of the Weaker Sections — Scheduled Castes and Tribes:

In India, Harijans and Scheduled Castes and Tribes call the attention of the social workers. This class of Indian citizens has received such unfair treatment throughout the ages in the past that social work must give them the highest place of priority in its programme. The inferior position of these citizens is the result of religious, social and economic subordination to which they had been subjected in the past, and it must be the earnest endeavour of all social workers in India to meet the challenge of this problem

quickly and efficiently (80).

The Preamble to the Constitution lays down the high ideals of social, economic and political justice, equality of status and of opportunity, and the promotion of fraternity among all sections of society. Under article 46, the Constitution has adopted a twin formula —— development with "special care" of the educational and economic interests of the Scheduled Castes and Tribes on the one hand, and protection from social injustice and all forms of exploitation on the other. The main object of the Government is to bring these less fortunate sections of society to the level of the rest of the population. Financial assistance to the states for attaining these objectives is assured under article 275.

To afford protection against exploitation, the Constitution arms Governments of States with powers to make special laws for controlling, inter alia, transfers of land and money-lending in the scheduled areas. One of the most important functions of a special department of Social Welfare set up by the Government of India in 1966, is to safeguard the interest and promote the progress of all backward classes in the country. The Director-General of Backward Classes is charged with the duty of looking after all the interests - economic, social, educational and cultural - of the Scheduled Castes, the Scheduled Tribes and other Backward Classes. Under article 338, a Special Officer for Scheduled Castes and Scheduled Tribes is required to investigate and report periodically to the President on the working of

the safeguards, such as reservation of seats in Parliament and State Legislatures, and reservation of posts in public services. The office of the Special Officer (Commissioner) was recently re-organised in order to render his functions more effective.

Again, according to article 340, the President may, by order, appoint a Commission to investigate the conditions of socially and educationally backward classes, and to make recommendations as to the steps that should be taken to remove such difficulties, and as to the grants that should be made for the purpose by the Union or any State.

Several fact-finding and evaluative bodies were constituted so far by the Government of India. Some of them are: (1) Study Team on Social Welfare and Welfare of Backward Classes appointed by the Committee on Plan Projects (1958-59); (2) Committee on Special Multipurpose Tribal Blocks appointed by the Ministry of Home Affairs (1959-60); (3) Scheduled Areas and Scheduled Tribes Commission appointed under article 339 of the Constitution (1960-61); and (4) Special Working Group on co-operation for Backward Classes (1961-62) (81).

In persuance of the provisions of articles 46 and 275 of the Constitution, funds were provided in the Five Year Plans for schemes for the welfare of Backward classes with a view to helping them to improve their conditions, and with this end in view, the Government of India and the various State Governments have also been implementing special programmes for the welfare of

backward classes during the successive Five Year Plans.

In the programme included in the First Plan, efforts were made to provide for the special needs of the Scheduled Tribes and Scheduled Castes and other Backward Classes. A provision of Rs. 39 crores was made in the Plan. Of this, a sum of Rs. 20 crores was provided in the Plans of States, and the balance consisted of central grants amounting to Rs.15 crores for the welfare of Scheduled Tribes and Rs. 4 crores for the removal of untouchability, and allied schemes for Scheduled Castes and for the rehabilitation and welfare of communities formerly known as Criminal and other Backward Classes (82).

The problems were proposed to be tackled on a considerably expanded scale during the period of the Second Plan, in which a total provision of Rs. 90 crores had been made for the welfare of Backward Classes. Of this, nearly two thirds would be devoted to programmes for the welfare of Scheduled Tribes and the development of scheduled areas.

As regards the removal of untouchability, besides providing tube wells, mixed dwellings, community centres and measures for publicity and propaganda, special emphasis would be laid on the economic uplift of members of Scheduled Castes. They were to be assisted with allotment of land, training in remunerative arts and crafts, and extension of educational facilities by the grant of scholarships and stipends (83).

The Third Plan provided an outlay of Rs. 114 crores

for the welfare of Backward Classes. Of this, Rs. 42 crores were intended for schemes of educational development, Rs. 47 crores for economic uplift schemes, and Rs. 25 crores for health, housing and other schemes.(84)

The major programmes for the development of Backward Classes in the Fourth Plan have been in the centrally sponsored sector, and have consisted of post-matric scholarships, girls' hostels, tribal development blocks, co-operation, research and training, improvement in the living and working conditions of those engaged in unclean occupations, coaching and allied schemes, and aid to voluntary agencies(85). Expenditure on important programmes relating to the welfare of Backward Classes in the Fourth Plan was estimated at Rs. 142.38 crores(86).

The schemes for the development of Backward Classes in the Fifth Plan will aim at improving the quality of life of these people, and at narrowing the gap between the levels of development of these people and general population. It will be essential to formulate time-bound programmes for the elimination of exploitation of the Backward Classes, and to speed up the process for their economic and social development(87). A provision of Rs. 255 crores - Rs. 170 crores in the state sector, and Rs. 85 crores in the central sector has been made for programmes in the Fifth Plan(88). A few acts have also been passed with the aim of removing hindrances in the way of implementing the programme meant for the welfare of the weaker sections(89).

The major disabilities of the Scheduled Castes stem from the practice of untouchability. Since this practice is the product of deeprooted prejudices handed down through the centuries, it is likely to take some time and call for sustained effort before this eveil is totally eradicated. With the raising of the educational and economic standards of these classes, and the improvement of their living and working conditions, the present indications are that it is fast disappearing in the urban areas, and diminishing perceptibly in rural areas (90).

Article 17 is a great step forward in this direction. The country has now passed the stage of discussing the problem of the origin and sanctity of the institution of untouchability. That the stigma of untouchability should be totally and unreservedly eradicated has now been accepted by the whole country. According to article 17, "untouchability is abolished and its practice in any form is forbidden". But this being an age-old social vice, has taken roots in the psychology and social structure of certain communities. Its eradication is incomplete so long as it receives a mental recognition, and persists indirectly in some form in the social structure (91).

In this connection, mention may be made of the recent Protection of Civil Rights Act, 1976, which provides for more severe punishment including mandatory jail sentences for "untouchability offences". The new penal measures are considered necessary because of the ineffectiveness of the existing Untouchability Offences Act of 1955 (92).

Sustained efforts are being made all the time to bring the Scheduled Castes and Tribes to the level of the rest of the people in various other fields (93). The Government of India, both at the Centre and at the States, have demonstrated their goodwill for these classes, and striven hard to fulfil all the obligations imposed on them by the Constitution for their welfare and progress.

India does not claim today that the elimination of discrimination, whether racial or of any other kind, from her diversified, multi-racial, plural society is complete. Many disabilities and harsh practices continue to exist, especially in the rural areas and in pockets of entrenched orthodoxy. But the disapproval of such disabilities by progressive opinion is daily growing sharper and becoming increasingly effective (94).

VII

Prohibition:

Gandhi and the Congress took up the question of prohibition seriously. In 1920, Congress declared itself in favour of total prohibition. Picketing of liquor shops became one of the important items in the various movements launched by Gandhi from time to time. Prohibition became a part of his 18-point programme for the betterment of living conditions of the people in general (95). In his lifetime, the elimination of alcoholic drinks was an important plank in all Congress programmes.

Article 47 of the Indian Constitution states that

"..... the state shall endeavour to bring about prohibition of the consumption, except for medicinal purposes, of intoxicating drinks and of drugs which are injurious to health."

In March 1956, the Lok Sabha passed the following resolution: "this is of opinion that prohibition should be regarded as an integral part of the Second Five Year Plan, and recommends that the Planning Commission should formulate the necessary programme to bring about nation-wide prohibition speedily and effectively".(96)

The Planning Commission set up a special committee to examine the experience gained regarding measures adopted by State Governments, and to make recommendations for a programme of prohibition on a national basis. The Planning Commission accepted the committee's proposals, and commended to the State Governments a six-point measure to be taken as a first step.(97) The Parliament and the State Legislatures also passed several legislations to implement this programme.(98)

It is, however, recognised that the objective can not be achieved all at once; and that, taking into consideration - human limitations, social atmosphere of the country, economic condition, public opinion, and so on, it is yet to be considered whether prohibition is practicable, and how and in which manner it can be introduced.(99)

In this respect, Gandhi's teaching virtually has come under eclipse. Prohibition was an idea very dear to him.

So deep was the Congress committed to this policy that its impetus continued for a time even after India became independent. But what is the position now? With some difficulty, the states, in which prohibition was introduced in the first enthusiasm, are carrying on with it even now. There is however no talk now of enforcing it on an all-India scale (100).

VIII

Prevention of Cow Slaughter and preservation of animals:

Gandhi was quite unhappy at the cruelty with which people used to treat the animals, more specially the cow. It was one of the items which arrested his thought and attention and about which he talked and wrote much.

It has found expression in article 48 of the Indian Constitution which states that "the State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle."

The total Plan outlay on animal husbandry in the First Plan was Rs. 8 crores, and in the Second Plan about Rs. 21 crores. The Third Plan provided about Rs. 54 crores (101) and the outlays included in the Fourth Plan were Rs. 94.06 crores (102).

The Central and the State Legislatures also enacted many legislations (103) to give this programme a real shape.

So far as prevention of cow-slaughter is concerned, it can be said that Gandhian teaching has failed to produce any significant impact on the public mind. It requires a thorough change in outlook which only legislations can not bring. Formulation of favourable public opinion through proper education can only put an end to this evil practice.

IX

Social justice and minority provisions

In 1946, when an elected Constituent Assembly was first set up to draft a Constitution for free India, the Congress Party, under Gandhi's leadership, readily accepted the commitment that "its primary duty and fundamental policy was to protect the religious, linguistic, cultural and other rights of the minorities in India so as to ensure for them, in any scheme or government to which the Congress was a party, the widest scope for their development and their participation in the fullest measure in the political, economic and cultural life of the nation".(104)

Besides, the framers were committed to a democratic state, which implies recognition of the rights of the minorities. Democracy stands for a peaceful method of political change, and as such it stands for the right of the majority, to rule, as well as the right of the minority to try, to convert them. It should be borne in mind that "every case of rule of a minority is a case of undemocratic rules; but not all cases of rule of the majority

are cases of democracy" (105).

Social justice and equality have been assured to all the citizens of India in and through the Preamble and other operative provisions of the Constitution. These provisions are of great help in bringing the minority and the weaker sections of the community at par with the rest of the population.

The Preamble declares justice, social, economic and political; liberty of thought, expression, belief, faith and worship, equality of status and of opportunity, as the objectives of the Democratic Republic of India.

Again, article 38 of the Directive Principles of State Policy assures that "the state shall strive to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of the national life."

Taken together, these provisions set the tune and pattern of justice and equality in the Constitution.

Under article 15(1) the state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them."

Article 15(2) further states that no citizen shall, on grounds mentioned above, be subjected to any disability, liability, restriction or condition with regard to - (a) access to shops

public restaurants, hotels and places of public entertainment; or (b) the use of well, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of state funds.

Article 16 also prevents the state in the matter of public employment from discriminating between citizens on any one of those grounds.

The state has made attempts to abridge the said fundamental rights of citizen by a process of enlarging the field of reservation to the backward communities. Under article 15(3) 'nothing in this article shall prevent the state from making any special provision for women and children; and under article 15 (4), 'nothing in this article shall prevent the state from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes'. So, too, under article 16(4), 'nothing in that article shall prevent the state from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the state, is not adequately represented in the service under the state'. These provisions are conceived to give equal opportunities to all persons in the matter of public employment and generally in all matters connected with the state. At the same time, as there are backward classes of citizens and Scheduled Castes and tribes who can not compete with the more advanced communities in the struggle for existence, power is conferred on the State to give them adventitious aids, so that the chances are equalised between the advan-

ced communities and the backward ones. Otherwise, though our Constitution promises to give equal opportunities to all our citizens, in fact, it will be denying them to the backward communities (106).

Sometimes, these provisions have been implemented in such a way that communities who are not really backward, have secured all the adventitious aids even at the expense of really backward communities. The Supreme Court in that situation stepped in to correct the imbalance between the fundamental rights and the principles of social justice embodied in the exceptions (107).

Article 16 of the Constitution provides for equality of opportunity in matters of public employment. But clause 4 preserves the rights of the state to make any provision for the reservation of appointments or posts in favour of any backward class of citizens. This clause has been utilised by some states in such a way that the fundamental right of the citizens to equality of opportunity is in practice abrogated, and also in such a way that the really backward communities were not protected. The Supreme Court, in a series of decisions, struck a right balance between the fundamental right of equality of opportunity to employment and the claims of really backward communities to preferential treatment. Decided cases have laid down certain tests for ascertaining whether a particular class is a backward class or not (108). It was held that it was necessary to satisfy two conditions to attract clause 4 of article 16, namely, (1) a class of citizens

must be backward socially and educationally, and (2) the said class must not be adequately represented in the service under the state (109).

The Supreme Court, again in another case, tried to reconcile the individual right of the citizen and the claim of the backward classes to preferential treatment in such a way that the former is not abrogated. In T. Devadasan Vs. Union of India and another, the facts were: A Government of India Resolution reserved certain percentage of vacancies for Scheduled Tribes and Scheduled Castes and adopted the principle of carrying forward into the second and the third year, if all or some of the said vacancies so reserved were not filled up (110).

The result of such "carrying power" was that, in a particular year, sixty percent of the vacancies were reserved for Scheduled Tribes. The Court set aside that order on the ground that under article 16, each individual citizen has a right to employment, and that, in order to effectuate that right, each year of recruitment must be separately considered (111).

Religious and Educational equality

If a minority in India, minority on the score of its religious profession, was made to feel small on that account, Gandhi could only say that this India was not the India of his dream. In the India for whose fashioning he had worked all his life, every man enjoyed equality of status whatever his religion was. The state was bound to be

wholly secular. He went so far as to say that no denominational educational institution should enjoy state patronage. All subjects would thus be equal in the eye of law. What he wished India to do was to assure liberty of religious profession to every single individual (112).

Religious freedom and educational freedom are the very soul of the civil liberties in a state. Liberty of conscience, mind and thought is directly involved in these two freedoms. They are the acid tests (113).

Secularism in common parlance means that the state is not identified with any religion, but remains neutral, and only intervenes as an umpire in limited spheres of tension where there is threat to public health, order or morality, and where religion involves social reform. India is secular not in the sense that it is an irreligious state or anti-religious state. It is not a denominational state (114).

In this connection, we can also refer to the 42nd Amendment Act. The concept of secularism was implicit in the Constitution. The fathers of the Indian Constitution had taken care to base the Indian state on secular principles, even though the word 'secular' did not appear at all in the Constitution. This has been clearly spelt out in the amendments to the Preamble. It was therefore one of the objectives behind amending the Constitution, to spell out expressly the high ideal of secularism.

The Indian state has no official religion and

maintains a benevolent neutrality towards all religions. But at the same time, it reserves to itself the right of legislating about all secular activity associated with religion, as also the right to legislate for social welfare and reform, even though such legislation may interfere with religious beliefs and practices (115).

Article 25(1) of the Constitution proclaims that subject to public order, morality and health, "all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion". Freedom of conscience, therefore, is expressly recognised as a fundamental right under the Constitution.

Article 25(2) protects existing law or prospective law regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice or providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

In addition, the Constitution also provides, subject to the same three limitations, that every religious denomination, or any section thereof, shall have the right to establish and maintain religious and charitable institutions, to manage its own affairs in matters of religion, to own and acquire movable and immovable property, and to administer such property in accordance with law (article 26).

What is considered to be the new constitutional doctrine of secularism of the political state in India, will appear in certain provisions such as in articles 27 and 28 of the Constitution. They provide that no person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment for expenses for the promotion or maintenance of any particular religion or religious denomination. This may be called the state's tax-neutrality in religion. They also provided that no religious instruction should be provided in any educational institution wholly maintained out of state funds, with this exception that an educational institution which is administered by the state but has been established under any endowment or trust requiring that religious instruction shall be imparted in such institution. This represents ideological neutrality in religion combined with respect for any endowment or trust. At the same time, the Constitution insists that no person, attending any educational institution recognised by the state or receiving aid out of the state funds, shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached there to unless such person or, if such person is a minor, his guardian has given his consent thereto. This represents the state's non-participation in religious instruction in education (116).

In addition to these provisions of the Freedom of Religion, certain Cultural and Educational Rights, recognised as

'Fundamental Rights' under the Constitution, also bear on this question.

Under article 29(2) 'no citizen shall be denied admission into any educational institution maintained by the state or receiving aid out of state funds on grounds only of religion, race, caste, language or any of them'. The state has also made an attempt to abridge the fundamental right of a citizen to admission to educational institutions by a process of enlarging the field of reservation for the advancement of socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes (article 15(4)[117].

The case of Balaji v. State of Mysore may be referred to here. The Mysore Government, on the basis of the report of a committee, issued an order making certain reservations for backward classes in the Engineering and Medical Colleges. On the basis of the formula adopted by the committee, the Mysore Government issued an order classifying castes or communities as Backward or More Backward. This order led to two results: (1) The so-called backward castes exhausted sixty nine percent of the seats available for students. (2) Members of a particular caste, though socially, politically and economically acquiring high standard in the state, by reason of their numbers and their adequate representation in the schools, secured a higher quota of admission. (3) A really backward caste, though the members of the entire caste are socially, economically and politically in a backward state, secured only comparatively small proportion of seats.

Brilliant students of other castes, not considered to be Backward Castes, were denied adequate number of seats, as 69% of the seats were reserved for the so-called backward castes. The result was that both the brilliant young students of the higher castes, and many of the students of the really backward castes were denied seats, and students belonging to castes with numerical strength, though they were not really backward, got seats. This result was a travesty of the constitutional provisions designed in the interests of the backward communities. The Supreme Court held that the said Government order was void (118).

This was a leading judgement on the subject, which made an attempt to give some guidance to the authorities concerned for making reservations for backward classes in our country, in the matter of admission.

Again, article 30 provides that all minorities based on religion or language shall have the right to establish and administer educational institutions of their choice and that the state shall not, in granting aid to any educational institutions, discriminate on the ground that it is under the management of the minority based on religion or language. Besides, there are other provisions (article 330 to 342) in the Constitution (discussed in the earlier chapters) which also help in the way of safeguarding the interests of the backward communities.

A few years ago, the Gagendragadkar Commission of Enquiry, in their findings, stated that 'unless the socially and

economically weaker sections of the Indian community, including the Scheduled Castes and the Backward Classes, as well as the members of linguistic and religious minorities residing in all parts of India, feel that the concept of equality of opportunity and justice - political, social and economic - has become a reality in their lives, the tensions and irritations are likely to continue (119).

However, it can not be denied that the irritations and tensions are waning day by day. It is a matter of great relief that in this sphere of national life Gandhi's teachings continue to inspire the shaping of the national policy.

Passionate revolt against the crying injustice was perhaps the most important aspect of his political life and this, he had been able to transmit not only to his followers, but to the people of India as a whole. The sense of social injustice which is one of the characteristics of India even today is undoubtedly a part of what India has inherited from Gandhi (120).

Independent India has made no secret of the fact that its policy, as far as possible, is to eliminate glaring inequalities in wealth, through exclusion of private interests from many important spheres of economic activity, by abolishing zamindaries and other forms of landlordism, by placing a ceiling on land holding, etc. This idea of levelling economic differences is, undoubtedly, a part of Gandhian teaching. What India has inherited from Gandhi is thus important and is undoubtedly a

(121)

continuing factor .

Therefore, we see that though the Government and the Indian people have often stayed away from Gandhi's message, they are very much alive to the great heritage which they have come to acquire. Gandhi's spirit still lives and perhaps will continue to live in India because it is so much in tune with the thoughts and feelings of the Indian masses, the traditions of this ancient land, and the political culture of this vast country.

NOTES AND REFERENCES.

1. Rajni Kothari, Politics in India, Orient Longman, 1970, pp. 50-51.

2. K. M. Panikkar, The Foundations of New India, George Allen and Unwin, London, 1963, pp. 179-80.

3. Keith Austin, Gandhism - A boon or A Menace to India: The Modern Review, October 1952, Vol. LXXXXII, p. 414 as quoted in P.D. Kaushik, The Congress Ideology and programme, Allied, 1964, p. 367.

4. A. K. Ghosal, "A glimpse of the political philosophy of Mahatma Gandhi and its relevance to the present age" - in the Indian Journal of Political Science, July-September 1968, pp.299-300.

5. Amlan Datta, Socialism, Democracy and Industrialization, London, 1962, p. 62.

6. Second Five Year Plan, Government of India, Planning Commission, 1966, pp. 9-10.

7. Jaya Prakash Narayan, Socialism, sarvodaya and democracy, Bimla Prasad Ed. Asia, 1964, pp. 91-92.

8. B. S. Sarma - "Ideology and Programme" in Seminar, October 1969, p. 33.

9. Adi H. Doctor, Sarvodaya, Asia, 1967, p. 3.

10. G. N. Dhawan's Paper - "Decentralization - Individual and Society", in Politics of Persuation, ed. by Misra & Avasthi, p. 296.

11. Austin, The Indian Constitution, Oxford, 1966, p. 31.

12. Encyclopaedia of Social Work in India, Publications Division, Issued on behalf of the Planning Commission, 1968, Vol. II, pp. 158-59.

13. Jaya Prakash Narayan, op. cit., p. XXXI.

14. Ibid., p. 125.

15. Encyclopaedia of Social Work in India, op. cit., pp. 159-60.

16. Jaya Prakash Narayan, op. cit., p. 168.

17. Ibid., p. 223.

18. P. D. Kaushik, op. cit., p. 374.

19. Rajasthan Bhoodan Yagna (Amendment and Extending) Act 1961.

    Assam Gramdan Act 1961
    Orissa Bhoodan Yagna Amendment Act 1962
    Assam Gramdan Amendment Act 1962.
    Rajasthan Gramdan Amendment Act 1963.
    West Bengal Bhoodan Yagna Act, 1962.
    Mysore Bhoodan Yagna Act, 1963.

20. Encyclopaedia of Social Work in India, op. cit., (n. 12) p.162.

21. A. I. R., April, 1976.

22. The following constitute the Twenty-Point Programme announced by the Government in July, 1975:-

    (i) Continuance of steps to bring down prices of essential commodities. Streamlined production, procurement and distribution of essential commodities. Strict economy in government expenditure.

    (ii) Implementation of agricultural land ceilinge and speedier distribution of surplus land and compilation of land records.

    (iii) Stepping up of provision of house sites for landless and weaker sections.

(iv) Bonded labour, wherever it exists, will be declared illegal.

(v) Plan for liquidation of rural indebtedness. Legislation for moratorium on recovery of debt from landless labourers, small farmers and artisans.

(vi) Review of laws on minimum agricultural wages.

(vii) Five million more hectares to be brought under irrigation. National programme for use of ground water.

(viii) An accelerated power programme. Super thermal stations under Central Control.

(ix) New development plan for development of handloom sector.

(x) Improvement in quality and supply of people's cloth.

(xi) Socialisation of urban and urbanisable land. Ceiling on ownership and possession of vacant land and on plinth area of new dwelling units.

(xii) Special squads for valuation of conspicuous construction and prevention of tax evasion. Summary trials and deterrent punishment of economic offenders.

(xiii) Special legislation for confiscation of smuggler's properties.

(xiv) Liberalisation of investment procedures. Action against misuse of import licences.

(xv) New schemes for workers' association in industry.

(xvi) National permit scheme for road transport.

(xvii) Income-Tax relief to middle class-exemption limit placed at Rs. 8,000.

(xviii) Essential commodities at controlled prices to students in hostels.

(xix) Books and stationery at controlled prices.

(xx) New apprenticeship scheme to enlarge employment and training, especially of weaker sections.

23. Finance Minister's speech in the Rajya Sabha on July 23, 1975.

24. W. H. Morris-Jones, The Government and Politics of India, London, Hutchinson & Co. 1967, p.45.

25. Encyclopaedia of Social Work in India, op. cit., Vol.I, p.123.

26. R.V. Jathar, Evolution of Panchayati Raj in India, J.S.S. Institute of Economic Research, Dharwar, 1964, pp. 44-45.

27. W. H. Morris-Jones, op. cit., p. 158.

28. R. V. Jather, op. cit., pp. 54-55.

29. The Madras Village Panchayats Act, 1950.
Hyderabad Village Panchayats Act, 1951.
PEPSU Panchayati Raj Act, 1951.
The J & K. Village Panchayats Act, 1951.
Punjab Gram Panchayats Act, 1952.
Rajasthan Panchayat Act, 1953.
Himachal Pradesh Panchayat Raj Act, 1952.
Ajmer State Panchayat Act, 1954.
The Delhi Panchayat Raj Act, 1955.
Coorg Panchayat Raj Act, 1956.
West Bengal Panchayat Act, 1956.
Madras Panchayat Act, 1958.
Assam Panchayat Act, 1958.
J & K. Panchayat Act, 1958.
Kerala Panchayat Act, 1958.
Assam Panchayat Act, 1959.
Orissa Zilla Parishad Act, 1959.
Rajasthan Panchayat Samiti's and Zilla Parishad's Act, 1959.
Mysore Village Panchayats and District Boards Act, 1952.
Bhopal State Panchayat Raj Act, 1952.
Delhi Panchayat Raj (Amendment) Act, 1959.
The West Bengal Panchayat Raj (Amendment) Act, 1960.
The Orissa Zilla Parishads Act, 1960.
Assam Panchayat (Amendment) Act, 1960.
Bombay Village Panchayat Act, 1961.
Madhya Pradesh Panchayat Laws (Amending and validating) Act, 1961.
Punjab Panchayat Samities and Zilla Parishad Act, 1961.
Rajasthan Panchayat (Amendment) Act, 1961.
Rajasthan Panchayat Samiti's and Zilla Parishad's (Amendment) Act, 1961.
Uttar Pradesh Panchayat Raj (Amendment) Act, 1961.
Andhra Pradesh Panchayat Samities and Zilla Parishads (Amendment Act, 1961.
Andhra Pradesh Village Panchayats (Amendment) Act, 1962.
Bihar Panchayat Samities and Zilla Parishads Act, 1961.
Bihar Panchayat Raj (Amendment and Validating) Act, 1961.
Gujrat Panchayat Act, 1961.
Gujrat Panchayat (Amendment) Act, 1962.
Kerala Panchayats (Amendment) Act, 1962.
Madhya Pradesh Panchayats Act, 1962.
Madras Panchayats (Amendment) Act, 1961.

Maharastra Zilla Parishads and Panchayat Samities Act, 1961.
Maharasthra Zilla Parishads and Panchayat Samities (Amendment) Act, 1962.
Mysore Village Panchayats and Local Boards (Amendment) Act, 1961.
Orissa Zilla Parishad (Amendment) Act, 1961.
Rajasthan Panchayat Samities and Zilla Parishads (Second Amendment) Act, 1961.
Rajasthan Panchayat Samities and Zilla Parishads (Amendment) Act, 1962.
Andhra Pradesh Panchayat Samities and Zilla Parishads (Amendment) Act, 1963.
Assam Panchayat (Amendment) Act, 1962.
Gujrat Panchayats (Amendment) Act, 1962.
Bombay Village Panchayats (Gujrat Amendment) Act, 1962.
Gujrat Panchayat laws (Amendment) Act, 1963.
M.P. Panchayat (Amending and validation) Act, 1963.
Maharashtra Zilla Parishad and Panchayat Samities (Second Amendment) Act, 1962.
Orissa Panchayat Samiti and Zilla Parishad (Amendment and validation) Act, 1962.
Punjab Gram Panchayat (Amendment) Act, 1962.
Punjab Gram Panchayat (Amendment) Act, 1963.
Punjab Panchayat Samiti and Zilla Parishad (Amendment) Act, 1963.
Uttar Pradesh Panchayat Raj (Amendment) Act, 1962.
Bengal Local Self Government (Amendment) Act, 1963.
Andhra Pradesh Gram Panchayats Act, 1964.
Andhra Pradesh Panchayat Samiti and Zilla Parishad (Amendment) Act 1964.
Assam Panchayat (Amendment) Act, 1964.
Bihar Panchayat Raj (Amendment) Act, 1963.
Bihar Panchayat Samity and Zilla Parishad (Amendment) Act, 1964.
Gujrat Panchayat (Second Amendment) Act, 1963.
Gujrat Panchayat (Third Amendment) Act, 1963.
Madhya Pradesh Panchayats (Amendment and Supplementary) Act, 1963.
Madras Panchayats (Amendment and Miscellaneous Provisions) Act, 1964.
Maharashtra Zilla Parishad and Panchayat Samity (Amendment) Act. 1963.
Maharashtra Zilla Parishad and Panchayat Samity (Amendment) Act, 1964.
Orissa Panchayat Samity and Zilla Parishad (Amendment) Act, 1963.
Punjab Gram Panchayat (Amendment) Act, 1964.
Punjab Panchayat Samiti and Zilla Parishad (Amendment) Act, 1964.
Rajasthan Panchayat Samity and Zilla Parishad (Amendment) Act, 1964.
Rajasthan Panchayat Samity and Zilla Parishad (Second Amendment) Act, 1964.

West Bengal Zilla Parishad Act, 1963.

30. Zia Uddin Khan, in Panchayati Raj, Planning and Democracy, M.V. Mathur and Iqbal Narain Ed. Aisa, 1969, p. 262.

31. First Five Year Plan, Government of India, Planning Commission, p. 165.

32. Second Five Year Plan, A Draft Outline, Government of India, Planning Commission, 1956, p. 86.

33. Third Five Year Plan, Planning Commission, p. 332.

34. Draft Fifth Five Year Plan, 1974-79, Planning Commission, Vol. II, pp. 85-87.
This Draft remained abortive for a long time and recently it has undergone some changes. Therefore, in future the planning programmes will be in accordance with the changed and finalised Draft, which is yet to be published.

35. Ibid.

36. K. M. Panikkar, op. cit., p. 185.

37. T. K. N. Unnithan, in Panchayati Raj, Planning and Democracy, op. cit., p. 44-46.

38. W. H. Morris-Jones, op. cit., pp. 158-59.

39. G. Ramachandran in Social Welfare in India, Govt. of India, 1960, p. 91.

40. J. F. Balsara in Social Welfare in India, op. cit., p. 303.

41. First Five Year Plan, op. cit., p. 613.

42. Encyclopaedia of Social Work in India, op. cit., p. 400.

43. Rajni Kothari, op. cit., p. 52.

44. First Plan, op. cit., pp. 509-11.

45. Ibid., pp. 583-85.

46. Ibid., pp. 585-86.

47. Ibid., p. 651.

48. Second Plan, op. cit., p. 9.

49. Ibid., pp. 168-69.

50. Third Plan, op. cit., p. 666.

51. Second Plan, op. cit., pp. 173-74.

52. Ibid., p. 8.

53. Third Plan, op. cit., p. 718.

54. Ibid., pp. 256-58.

55. Ibid., p. 666.

56. Ibid., p. 753.

57. The Fourth Five Year Plan, 1969-74, Government of India, Planning Commission, p. 423.

58. Ibid., p. 430.

59. Yojana, Vol. XVI, No. 12, July 1, 1972 (Introduction).

60. Ibid., pp. 471-73 & 486.

61. Draft Fifth Plan, op. cit., Vol. I, pp. 83-84.

62. K. M. Panikkar, op. cit., p. 181.

63. G. Ramachandran in Social Welfare in India, op. cit., p. 90.

64. Second Plan, op. cit., pp. 130-31.

65. Ibid., p. 37.

66. Ibid., p. 132.

67. Third Plan, op. cit., pp. 67-68 & 437-38.

68. Fourth Plan, op. cit., pp. 289-90.

69. Draft Fifth Plan, op. cit., p. 164.

70. Khadi and other handloom Industries Development (Additional excise duty on cloth) Act, 1953.

Saurashtra Khadi and Village Industries Board Act, 1953.
Bombay Village Industries Board Act, 1955.
Assam aid to industries (small and cottage industries) Act, 1953.
Hyderabad Khadi and village industries board act, 1956
Madhya Bharat Khadi and village industries act, 1955.
Madras state aid to industries (amendment) act, 1956.
Rajasthan Khadi and village industries board act, 1955.
Saurashtra Khadi and village industries board (amendment) act, 1955.

Khadi and village industries Commission Act, 1956.
Assam aid to industries (small and cottage industries) (amendment) Act, 1956.
Assam Khadi and village industries board (amendment) act, 1956.
Bihar state aid to Industries Act, 1956.
Bihar Khadi and village industries Board Act, 1956.
Saurashtra Khadi and village industries board (amending and validating) Act, 1956.
Madhya Bharat Khadi and Village industries Board Act, 1956.
Orissa Khadi and village Industries Board Act, 1956.
Punjab Khadi and village industries Board Act, 1956.
Kerala khadi and village Industries Board Act, 1957.
Mysore khadi and village industries Board Act, 1956.
Mysore khadi and village Industries Board (amendment) Act, 1958.
Assam khadi and village industries Board (amendment) Act, 1960.
Bombay khadi and village industries act, 1960.
Kerala khadi and village industries Board (amendment) act, 1959.
Rajasthan khadi and village industries board (amendment) act, 1960.
U.P. khadi and village industries board act, 1960.
Andhra Pradesh khadi and village industries board act, 1958.
J & K. khadi and village industries board act, 1960.
Madras state aid to industries (Andhra amendment) act, 1956.
Hyderabad state aid to (small and cottage) industries act, 1956.
Punjab khadi and village Industries Board (amendment) Act, 1961.
Rajasthan khadi and village Industries Board (amendment) Act, 1960.
Khadi and village Industries Commission Act, 1961.
Andhra Pradesh Khadi and Village Industries Board (amendment) Act, 1962.
Bombay khadi and village industries (amendment) act, 1962
Punjab khadi and village industries Board (amendment) Act, 1963.
Assam khadi and village industries Board (amendment) Act, 1964.
Bihar khadi and village industries (amendment) Act, 1964.
The Khadi and other Handloom Industries Development (Amendment) Act, 1972.

71. K. M. Panikkar, op. cit., p. 181.

72. Pyarelal, Gandhian techniques in the modern world, Navajivan, pp. 40-41.

73. Encyclopaedia of Social Work in India, op. cit., Vol. I, p. 271.

74. First Plan, op. cit., p. 534.

75. Encyclopaedia of Social Work in India, op. cit., pp. 307-308.

76. Third Plan, op. cit., p. 582.

77. Draft Fifth Plan, op. cit., p. 194.

78. The Bengal (rural) Primary Education (West Bengal) Act, 1950.

The Bengal (rural) Primary Education (W.B.) (amendment) Act, 1950.
Hyderabad compulsory Primary Education Act, 1952.
Ajmer Primary Education Act, 1952.
Vindhya Pradesh Primary Education Act, 1952.
PEPSU Compulsory Primary Education Act, 1954.
Madhya Bharat Compulsory Primary Education (First amendment) Act, 1954.
Bombay Primary Education (amendment) Act, 1954.
Himachal Pradesh Compulsory Primary Education Act, 1953.
Mysore elementary education (amendment) act, 1955.
Saurashtra Compulsory Primary Education Act, 1958.
Madhya Pradesh Primary Education Act, 1956.
Bhopal State Compulsory Primary Education Act, 1956.
Punjab Primary Education (Delhi amendment) Act, 1956.
Delhi Primary Education Act, 1960.
Punjab Primary Education Act, 1960.
Mysore Compulsory Primary Education Act, 1961.
Punjab Primary Education Act, 1960.
Gujrat Compulsory Primary Education Act, 1961.
Bombay Primary Education Act, 1962.
Assam Elementary Education Act, 1962.
Bombay Primary Education (Gujrat Extension and amendment) Act, 1963.
Bombay Primary Education (Gujrat second amendment) Act, 1963.

79. Encyclopaedia of Social Work in India, op. cit., Vol. I, p. 272.

80. Ibid., p. 155.

81. Ibid., Vol. II, pp. 183-84.

82. Second Plan, op. cit., p. 150.

83. Ibid., pp. 165-66.

84. Third Plan, op. cit., pp. 701-702.

85. Draft Fifth Plan, op. cit., p. 274.

86. Fourth Plan, op. cit., pp. 415-16.

87. Draft Fifth Plan, op. cit., p. 275.

88. Ibid., p. 277.

89. The Madhya Bharat Harijan disability removal (amendment) act, 1950.
Travancore-Cochin Temple Entry (removal of disability) act, 1950.
The Bihar Harijan (removal of social disabilities) (amendment) act, 1951.

Untouchability (offences) act, 1952.
U.P. Temple entry (declaration of right) act, 1956.
Madhya Pradesh Scheduled Tribes Debt Relief Regulations, 1962.

90. B. Shiva Rao - "Elimination of all forms of racial discrimination and India", in L.M. Singhvi Ed. Horizons of Freedom, National, Delhi, 1969, p. 198.

91. First Plan, op. cit., pp. 634-5.

92. Statesman, Nov. 18, 1976.

93. B. Shiva Rao, op. cit., p. 193.

94. Ibid., pp. 193-94.

95. Encyclopaedia of Social Work in India, op. cit., p. 97.

96. Third Plan, op. cit., p. 722.

97. Second Plan, op. cit., pp. 180-82.

98. The Madras Prohibition (amendment) act, 1950.
Trivancore Cochin prohibition act, 1950.
Assam liquor prohibition act, 1952.
Bhopal state prohibition of drinking of liquor at public places and public functions act, 1956.
The Coorg prohibition act, 1956.
The Punjab Excise (Delhi amendment) act, 1956.
The Orissa prohibition act, 1957.
The Madras prohibition (amendment) act, 1958.
The Bombay prohibition (amendment) act, 1960.
The Trivancore Cochin prohibition (amendment) act, 1960.
Madhya Pradesh prohibition (amendment) act, 1961.
Mysore prohibition act, 1961.
Assam liquor prohibition (amendment) act, 1963.
Bombay prohibition (Gujrat amendment) act, 1963.

99. Encyclopaedia of Social Work in India, op. cit., p. 98.

100. K. M. Panikkar, op. cit., p. 183.

101. Third Plan, op. cit., p. 345.

102. Fourth Plan, op. cit., p. 191.

103. Hyderabad slaughter of animals act, 1950.

Hyderabad slaughter of animals act, 1950.
Rajasthan preservation of certain animals act, 1950.
Coorg live stock improvement act, 1950.
Mysore live stock improvement act, 1951.
Assam cattle preservation act, 1951.
Punjab live stock improvement act, 1953.
PEPSU Live stock improvement act, 1954.
Trivancore Cochin live stock improvement act, 1954.
Ajmer live stock improvement act, 1954.
Himachal Pradesh live stock improvement act, 1955.
Orissa live stock improvement act, 1957.
Rajasthan live stock improvement act, 1958.
Punjab prohibition of cow slaughter act, 1956.
U.P. prevention of cow slaughter act, 1956.
Rajasthan Gaushala act, 1960.
Madhya Pradesh Animal preservation (amendment) act, 1951.
Madhya Pradesh Live Stock improvement act, 1950.
Bombay animal preservation act, 1954.
The West Bengal live stock improvement act, 1940 extended with suitable modification under the provisions of the union territories (laws) act, 1950 to Manipur.
Madras live stock improvement act, 1961.
Bombay animal preservation act, 1961.
Kerala live stock improvement act, 1961.
Madhya Pradesh agricultural cattle preservation (amendment) act, 1961.
Orissa preservation of cow slaughter (amendment) act, 1961.
Mysore live stock improvement act, 1961.
Bihar preservation and improvement of animals (amendment) act, 1962.
Bombay live stock improvement (Extension and amendment) act, 1962.

104. L.M. Singhvi (Ed.) Horizons of Freedom, op. cit., p. 191.

105. Amlan Datta, op. cit., p. 32.

106. K. Subba Rao - Some Constitutional problems, University of Bombay, 1970, pp. 107-8.

107. (i) Balaji V. State of Mysore, A.I.R. 1963, S.C. 649.

(ii) Chitralekha v. State of Mysore, A.I.R. 1964, S.C. 1823.

(iii) Devadasan v. Union of India and another, A.I.R. 1964, S.C. 179.

108. Ibid.

109. Ibid.

110. A.I.R. 1964, S.C. 179.

111. Ibid.

112. T. K. Mahadevan, "Gandhi and Secularism" in Gandhi Marg, July, 1971, p. 217.

113. P. B. Mukherjee, Civil Liberties, Bombay, 1968, p. 68.

114. Ibid., p. 73.

115. Jaya Prakash Narayan, Nation Building in India, Navachetna Prakashan, Varanashi, p. 424.

116. P. B. Mukherjee, op. cit., pp. 69-70.

117. K. Subba Rao, op. cit., pp. 107-8.

118. A.I.R. 1963, S.C. 649.

119. Badr-Ud-Din Tyabji, The self in secularism, Orient Longman, 1971, p. 161.

120. K. M. Panikkar, op. cit., p. 184.

121. Ibid., p. 188.

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C O N C L U S I O N.

It is now evident that multifarious forces and factors had operatdd in favour of the final choice for a Euro-American type of constitution in clear preference to a Gandhian one. In outlining the structure of the Indian political system, the Constitution of India followed the familiar pattern and merely consolidated the prevailing political-administrative arrangement emerging from Indian constitutional history. A half-hearted and positively unsatisfactory compromise had been achieved by incorporating some of the Gandhian ideas and principles ——— which were themselves not of major significance ——— within the framework of the Western type of parliamentary government. These ideas and principles found prominent expression mostly in the Part III and Part IV of the Indian Constitution ---- more in the non-justiciable, non-enforceable Directive Principles of State Policy than in the justiciable and legally enforceable Fundamental Rights. It has been conclusively established that the Gandhian concept of Rights, implying corresponding Duties, for the purpose of self-realization and universal total upliftment of the individuals, had never influenced the making of the Part III, nor could Gandhi 's concepts of Sarvodaya, Trusteeship and economic order, political self-government and democratic decentralisation find their way into the provisions of this Part. Not that Gandhi and his thoughts and ideals lacked supporters. As the proceedings of the Constituent Assembly have revealed, there were a good many members who were really inspired by Gandhian ideology, who fought

tooth and nail against Dr. B. R. Ambedkar and the other decision-making personalities for incorporating Gandhian principles, who suggested repeated amendments to the Draft Constitution to give practical shape to Gandhian principles and ideals, and who bitterly lamented the exclusion of his thoughts and ideas from the final text of the Constitution. Although Gandhi was dramatically proclaimed as the "architect of the Assembly" and of "India's political destiny", leader of the people and the father of the nation, and since the Objectives Resolution, tabled by Jawaharlal Nehru, had so faithfully reflected Gandhi's constitutional philosophy, the classificatory scheme of the Rights and the dichotomy introduced in the final stage of Constitution-making between justiciable Fundamental Rights and non-justiciable Directive Principles may be looked upon as a subtle device to transfer the major Gandhian concepts like democratic decentralisation, Sarvodaya and economic order to the Part IV containing 'over-programmatic' and immediately unrealisable ideals. There have been significant deviations in several substantive spheres of freedom, namely, in Articles 19, 21 and 31 as they finally emerged as a result of compromise among conflicting pulls, pressures and interests. The provisions in the non-justiciable Part IV bear by contrast, more direct and immediate impact of Gandhian ideas. The principles contained in this Part can be directly traced to Gandhi's "Constructive Programme", and reflect the best part of Gandhian ideas and ideals. Special mention may be made of social justice and

and removal of social and economic exploitation, social order for the promotion of the welfare of the people, organisation of village panchayats, free and compulsory education for children, promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections, prohibition of consumption of intoxicating drinks and drugs, ban on cow slaughter, promotion of cottage industries, settlement of international disputes by peaceful means, and similar other provisions, which were inspired by the Gandhian ideals. In these spheres, Gandhi's concepts exerted influence on the formation of such provisions in the body of the Indian Constitution. Nevertheless, here too, one notices only superficial attempts and not comprehensive efforts at incorporating all that Gandhi stood for. For example, it has been shown how the concept of democratic decentralisation and Panchayati Raj was accepted as a Directive Principle, but was rejected as the fundamental basis of the political structure based on decentralisation of power, with the village as the basic unit of administration and the Panchayat as the electoral college for electing representatives to provinces and the centre. The inclusion of Article 40 is indeed a poor attempt towards implementing Gandhian ideas on this vital subject.

In tracing and identifying the major causes of deviation from Gandhian principles, the differences between Gandhi and the Indian National Congress, especially the younger generation of intellectuals and the socialists, have been noted, and it has been shown that only a minority in the Congress shared Gandhi's

convictions. While Gandhi remained the undisputed leader and the centre of gravity during the 1920's, his influence on Indian leaders and statesmen gradually declined, and the roots of departure lay as much in the whirlpool of political events and the emerging reality of the political process as in the clash of personalities and ideologies. The character of the Congress had already changed, with a new type of leadership, a new psychology and a new programme. The non-Gandhian influences of leaders like C.R. Das, Motilal Nehru, Subhas Chandra Bose, the impact of the Congress Socialist Party, and the contradiction between profession and practice among the followers of Gandhi, acted as very prominent factors working behind the gradual decline of Gandhian influence. One of the most significant contributory factors has been the relation between Gandhi and such architects of the Indian Constitution as B. R. Ambedkar, Sir B. N. Rau, Sardar Vallavbhai Patel, K.M.Munshi, and even Jawaharlal Nehru, Maulana Azad, and Dr. Rajendra Prasad, who unceremoniously rejected the basic tenets of Gandhi in building the superstructure of the Constitution and opted for a Western type of political system. Ambedkar's antipathy to Gandhi had been well-known. But one cannot so easily explain the transformations in the attitudes of Nehru, Azad, Patel and Prasad, the four men who really decided policy on the floor of the Constituent Assembly. All of them played vital roles as Chairmen of major Committees, and with Sir B. N. Rau, a Europeanised intellectual trained in Euro-American constitutional precedents, as the

Constitutional Adviser, and B. R. Ambedkar, as the Chairman of the Drafting Committee, it was no surprise that the emerging Constitution should represent such a wide departure from Gandhi's ideas. Other immediate causes, and circumstances immediately after Independence, had also played their part in this process of disowning Gandhi.

Finally, on the question whether Gandhian ideas and ideals have been a continuing process in the nation's life and the constitutional history of the country during the last thirty years, attention has been focussed on such concepts as Sarvodaya, Panchayati Raj, Social Welfare, Khadi and Cottage Industry, Education, Welfare of the Weaker sections, Prohibition, Prevention of Cow Slaughter, Social Justice and Minority Provisions, Religious and Educational Equality etc., and it has been seen that although the heritage and the message have not been forgotten, there has been a big gap, constitutional amendments notwithstanding, between the ideals proclaimed in a 'programmatic' Constitution and their actual translation into concrete governmental implementation.

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B I B L I O G R A P H Y

Government of India publications - Books, Reports Documents, Periodicals, etc.

1. Collected Works of Mahatma Gandhi.

2. Constituent Assembly Debates - 12 Vols. Lok Sabha Secretariat, Government of India.

3. Encyclopaedia of Social Work in India - Publications Division, issued on behalf of the Planning Commission, 1968 (Vols. I & II).

4. Finance Minister's speech in the Rajya Sabha, July 28, 1973.

5. Five Year Plans : Reports and Drafts issued by the Planning Commission -

   First Five Year Plan
   Second Five Year Plan
   Third Five Year Plan
   Fourth Five Year Plan
   Fifth Five Year Plan (Draft) Vol. II.

6. Rolland, Romain - Mahatma Gandhi, 1968.

7. Social Welfare in India - Publications Division, issued on behalf of the Planning Commission.

8. Tendulkar, D.G. - 'Mahatma' Rev. Edn. 1963, 8 Vols.

9. Yojana - Vol. XVI, No.12, July 1, 1972, published by the Planning Commission.

Other Source materials

1. Agarwal, S.N. - Gandhian Constitution for free India, Kitabistan, Allahabad, 1946.

2. Ambedkar, B.R. - What Gandhi and the Congress have done to the Untouchables, Thacker & Co. Ltd., Bombay, 1945.

3. _____ Thoughts on Linguistic States, Delhi, 1955.

4. _____ States and what are their rights, Thacker, Bombay, 1947.

5. Andrews, C.F. - Mahatma Gandhi's Ideas, George Allen & Unwin, 1949.

6. Appadorai, A - Documents on Political Thought in Modern India, Vol. I, O.U.P. 1973.

7. ----------Indian Political Thinking from Naoroji to Nehru, O.U.P. 1971.

8. Ashe, Geoffrey - Gandhi, A study in revolution Asia, 1968.

9. Austin, Granville - The Indian Constitution- Cornerstone of a nation, Clarendon Press, Oxford, 1966.

10. Azad, Maulana Abul Kalam - India Wins freedom, Orient Longmans, 1959.

11. Banerjee, D. N. - Our Fundamental Rights, World Press, Calcutta, Second Rev. Edn., 1968.

12. Barker, Ernest - Principles of Social and Political Theory, O.U.P. 1967.

13. Bhattacharyya Buddhadeva - Evolution of the Political Philosophy of Gandhi, Calcutta, 1969.

14. Biswas, S. C. (Ed.)- Gandhi-theory and practice, social impact and contemporary relevance, Indian Institute of Advanced Study, Simla, 1968.

15. Bose, N. K. - Studies in Gandhism, Calcutta, 1940.

16. ---------- Selections from Gandhi, Navajivan Publishing House, Ahmedabad, 2nd Edn. 1957.

17. Bose, S.C. - The Indian Struggle, 1935-42, Calcutta, 1952.

18. Brailsford, H.N. - Subject India, Bombay, 1946.

19. Brecher, Michael - Nehru - a political biography, oxford, 1959.

20. Bright, J.S. (Ed.)- Important speeches and writings of Subhas Bose, Lahore, 1947.

21. Congress Presidential Address - Second series - Vol. II, 1911-1934, Madras, Natesan, 1933-34.

22. Dantwala, M.L. - Gandhism Reconsidered, Bombay, 1945.

23. Das, Durga (Ed.)- Sardar Patel's correspondence, Navajivan, 1971, Vol. VI.

24. Datta Amlan - Socialism, Democracy and Industrialization, London, 1962.

25. ---------- For Democracy, Prachi Prakashan, Calcutta, 1953.

26. Desai, A.R. - Social Background of Indian Nationalism, Popular Prakashan, Bombay, 1976.

27. Dhawan, Gopinath - The Political Philosophy of Mahatma Gandhi, Navajivan, 1946.

28. Doctor Adi H. - Sarvodaya, Asia, 1967.

29. Erikson, Erik H - Gandhi's truth, on the origin of militant non-violence, Faber & Faber, London, 1970.

30. Fischer, Louis - The life of Mahatma Gandhi, Bharatiya Vidya Bhavan, Bombay, 1970.

31. Gandhi, M.K. - Hind Swaraj or Indian Home Rule, Madras, Natesan, 1947.

32. - My non-violence, Ahmedabad, Navajivan Publishing House, 1960.

33. - An Autobiography or the story of my experiments with truth, Navajivan, 1963.

34. - Basic Education, Navajivan, 1962.

35. - Constructive programme, its meaning and place, Navajivan, 1961.

36. - Correspondence with the government, 1942-44, Navajivan, 1957.

37. - Correspondence with the government, 1944-47, 1959.

38. - Economic and industrial life and relations, Navajivan, 1959.

39. - From yeravda Mandir: Ashram observances, Navajivan, 1957.

40. - My religion, Navajivan, 1958.

41. - Non-violence in peace and war, Navajivan, 1960.

42. - Removal of Untouchability, Navajivan, 1959.

43. - Sarvodaya : the welfare of all, Navajivan, 1958.

44. - Satyagraha ; non-violent resistance, Navajivan, 1958.

45. Gandhi, M. K. - Women and Social Injustice, Navajivan, 1958.

46. - - India of my dream, Navajivan, 1947.

47. Ganguly, B.N. - Gandhi's social philosophy, Vikash Publishing House, 1973.

48. Gene Sharp, - Gandhi faces the storm, Navajivan, 1961.

49. Gettell, R.G. - History of Political Thought, George Allen & Unwin, 2nd Edn. 1953.

50. Ghosh, Prafulla - From Nagpur to Lahore - A short history of the Indian National Congress, Abhay Ashram, Coomilla, p. 6.

51. Ghosh, Pratap Kumar - The Constitution of India, how it has been framed, World Press, Calcutta, 1966.

52. Ghosh, Shankar - Socialism, democracy and nationalism in India, Allied Publishers, 1973.

53. Goel, Madan Lal - Political participation in a developing nation - India, Asia, 1973.

54. Gwyer, Sir Maurice & Appadorai, A - Speeches and Documents of the Indian Constitution, 1921-47, Vol. II.

55. Hegde, K.S. - Directive Principles of State Policy in the Constitution of India, National, Delhi, 1972.

56. Indian National Congress, March 1940 to September 1946, Published by the General Secretary, A.I.C.C., Allahabad.

57. Jathar, R.V. - Evolution of Panchayati Raj in India, J.S.S. Institute of Economic research, Dharwar, 1964.

58. Joad, C.E.M. - Liberty today, London, Rev. Edn. 1938.

59. Kaushik, P.D. - The Congress Ideology and Programme, Allied Publishers, 1964.

60. Keer, Dhananjay - Dr. Ambedkar - life and mission, Popular Prakashan, Bombay, 3rd Edn. 1971.

61. Kothari, Rajni : Politics in India, Orient Longman, 1970.

62. Kripalani, J.B. - The Gandhian way, Bombay, 1938.

63. Krishna, K.B. - Minority Problem or Communal representation in India, George Allen & Unwin, London, 1939.

64. Laski, H.J. - The Rights of Man, Macmillan & Co., London, 1940.

65. ---------- - Liberty in the Modern State, George Allen & Unwin, 1951.

66. Maddick, H. - Panchayati Raj, A Study of Local Government in India, Longman, 1970.

67. Markandan, K.C.- Directive Principles in the Indian Constitution, Allied, 1966.

68. Mashruwala, K.G.- Gandhi and Marx, Navajivan, 1951.

69. Mathur, M. V. and Narain Iqbal Ed. - Panchayati Raj, Planning and Democracy, Asia, 1969.

70. Mill, J.S. - On Liberty, O.U.P., 1954.

71. Misra, K.P. and Avasthi, Rajendra Ed. - Politics of Persuation, Manaktala, Bombay, 1967.

72. Moon, Penderel - Gandhi and Modern India, The English University Press Ltd.

73. Morris Johns, W.H. - The Government and Politics in India, London, Hutchinson & Co. 1967.

74. Mukherjee, P.B. - Civil Liberties, Bombay, 1968.

75. Munshi, K.M. - Indian Constitutional Documents, Vol. I, Pilgrimage to freedom, (1902-50), Bharatiya Vidya Bhavan, Bombay, 1967.

76. Myrdal, Gunner - Asian Drama : An Enquiry into the poverty of Nations, Vol. II Penguin Books, 1969.

77. Narain Iqbal-Twilight or Dawn: Political Change in India, 1967-71, Agra, 1971.

78. Narain Iqbal, Mathur P.C. Kumar Sushil and associates - Panchayati Raj Administration, Indian Institute of Public Administration, New Delhi, 1970.

79. Narayan, Jaya Prakash - Socialism, sarvodaya and democracy, Bimla Prasad Ed., Asia, 1964.

80. ---------- - Nation Building in India, Navachetana Prakashan, Varanashi.

81. Nehru, Jawaharlal - The Discovery of India, Asia, 1969.

82. ---------- - A bunch of old letters, Asia, 2nd Edn., 1960.

83. ---------- - An Autobiography, London, 1958.

84. ---------- - Whither India, Allahabad, 1933.

85. Palmer, Norman D. - The Indian Political System, Boston, 1971.

86. Panikkar, K.M. - The Foundations of New India, George Allen & Unwin, London, 1963.

87. Polak, Brailsford and Pethick Lawrence - Mahatma Gandhi, Jaico Publishing House, Bombay, 1962.

88. Pyarelal - Gandhian techniques in the modern world, Navajivan, 1953.

89. -------- Mahatma Gandhi : The Last Phase, Vol. II. Navajivan, Ahmedabad, 1958.

90. Radhakrishnan, S Ed. - Mahatma Gandhi - life and reflections, Jaico Publishing house, Bombay, 3rd Edn., 1964.

91. Rao, B. N. - India's Constitution in the making - B.Shiva Rau Ed. Orient Longmans, Calcutta, 1960.

92. ---------- - Constitutional Precedents.

93. Rao, K. Subba - Some Constitutional Problems, University of Bombay, 1970.

94. Rau, B. Shiva Ed. - The Framing of India's Constitution, 5 Vols. 1967.

95. Ray, S. N. - Judicial Review and Fundamental Rights, Eastern Law House, Calcutta, 1974.

96. Report of the Nehru Committee, 1928.

97. Reports and resolutions relating to the Indian National Congress:-

Report of the 35th session of the Indian National Congress Nagpur, 1920.

Report of the 37th session of the Indian National Congress, Gaya, 1922.

97. Contd.....

Report of the 39th session ... Belgaum, December, 19 24.

Report of the 40th session ... Cawnpur, December, 1925.

Report of the 43rd session ... Calcutta, December, 1928.

Report of the 49th session ... Lucknow, April, 1936.

Report of the 51st session ... Haripura, 1938.

Report of the annual session of the Indian National Congress, March, 1939.

Report of the Congress Working Committee, January 21, 1931.

Report of the Congress Working Committee, July 7 to 12, 1931.

Report of the A.I.C.C. October 9 & 10, 1939, Wardha.

Resolution of the Congress session 1920, Nagpur.

Resolution of the Congress session 1927, Madras.

Resolution of the Congress session, 1929, Lahore.

Resolution of the Congress session, 1931, Karachi.

Resolution of the A.I.C.C. & the Indian National Congress (1931-33).

Resolution of the Congress Working Committee, October 26 to November 1, 1937, Calcutta.

Resolution of the Congress session, 1937, Haripura.

98. Ruiker, R.S. (Issued by) - Ideology of Netaji, Calcutta, 1949.

99. Sabine, George H - A History of Political Theory, Harrap, London, 3rd Edn. 1963.

100. Secretary General - United Nations, Definition and classification of minorities.

101. Selected Works of Mahatma Gandhi - Sriman Narayan Ed. Navajivan Publishing House, Ahmedabad. 6 Vols.

102. Sen, Dhirendra Nath - The Problem of Minorities, Calcutta University Publication, 1940.

103. Sen, Sirdar D. K. - A Comparative Study of the Indian Constitution, Vol. II, Orient Longmans, 1966.

104. Sen, S.P. - Dictionary of National Biography, Institute of Historical Studies, Calcutta, 1972.

105. Singhvi, L.M. (Ed.) - Horizons of Freedom, National, Delhi, 1969.

106. Sitaramayya, P - Gandhi and Gandhism, 1942.

107. ---------- - History of the Indian National Congress, 2 Vols. S. Chand & Co. 1969.

108. Tyabji, Badr-Ud-din - The self in secularism, Orient Longman, 1971.

109. Vasudevan, K - Gandhian Economics, Bharatiya Vidya Bhawan, Bombay, 1967.

P E R I O D I C A L S.

1. All India Reporter - 1950 to date.

2. Gandhi Marg, January 1971 - Nelson, William Stuart - "Non-violence and India's Independence".

3. Gandhi Marg, July 1971- Mahadevan, T. K. - "Gandhi and Secularism".

4. Gandhi Marg, January 1974 - Chatterjee, Dilip K - "Gandhi and the directive principles of State policy."

5. Harijan - February 16, 1934.

September 14, 1934.

May 11, 1935.

June 27, 1936.

January 2, 1937.

January 30, 1937.

March 13, 1937.

July 1937.

5. Contd.....

November 12, 1938.

March 11, 1939.

March 18, 1939.

March 25, 1939.

May 27, 1939.

August 1940.

September 1, 1940.

January 25, 1942.

March 31, 1946.

April 7, 1946.

May 25, 1946.

July 28, 1946.

September 22, 1946.

March 6, 1947.

June 8, 1947.

January 18, 1948.

November 9, 1949.

6. Indian Annual Register - 1930, 1934, 1938.

7. Indian Journal of Political Science, Vol. II, No. 4 - Banerjee, D.N. - "Some aspects of our fundamental rights."

8. Indian Journal of Political Science, July-September 1968, Ghosal, A.K. - "A glimpse of the political philosophy of Mahatma Gandhi and its relevence to the present age".

9. Indian Journal of Public Administration, July - Sept. 1976, Haldipur, R. N- "On Remodelling Panchayati Raj".

10. Indian Political Science Review, Vol. IV, No. 1 (October 1969 - March 1970)

(i) Gene Sharp - "Non-violence, moral principle of political technique?"

(ii) Minocha, O.P.- "The Impact of Gandhian Ideology on the Indian Constitution."

(iii) Varma, V.P. - "Philosophical foundations of Gandhi's Political thought".

11. Modern Review, Vol. 89, 1951 - Agarwal, S.N - "Village Panchayats in the Indian Constitution".

12. Modern Review, December 1973 - Chatterjee, Dilip Kumar - "Origin of the concept of fundamental rights in India".

13. Seminar, October 1969 - (i) Das Gupta, Sugata - "The Central Theme".
(ii) Sharma, B.S. -"Ideology and Programme."

14. Seminar, Agust 1972 - Singhvi, L.M., "The Dilemmas".

15. Young India - May 12, 1920.

August 11, 1920.

April 6, 1921.

March 1922.

April 13, 1924.

July 17, 1924.

September 25, 1924.

December 11, 1924.

December 26, 1924.

January 8, 1925.

January 29, 1925.

August 6, 1925.

August 16, 1926.

15. Contd.....

December 9, 1926.

July 26, 1928.

November 15, 1928.

October 17, 1929.

March 19, 1931.

March 26, 1931.

September 10, 1931.

November 26, 1931.

***

