



THE BANARAS LAW JOURNAL

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NEHRU AND THE INDIAN CONSTITUTION; THE SEMINAR PAPERS

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NEHRU AND THE INDIAN CONSTITUTION*

H. R. BHARDWAJ**

Both Nehru and the Indian Constitution are of great importance to our country, for both continue to influence the movement of our country from the colonial and outdated era to a socialist, secular and democratic order.

It is generally known that the Nehru Family starting from Motilal Nehru has had close association with the constitutional developments in India. During our freedom struggle, Pandit Jawaharlal Nehru articulated the need for the independence, the establishment of a democratic state within free India and the convening of a Constituent Assembly to frame the Constitution of free India without outside interference.

A number of concepts in the Constitution owe their inspiration to the historic objectives Resolution introduced by Pandit Nehru in the Constituent Assembly. This Resolution called for the framing of a Constitution which, among other things, shall guarantee to all the people of India justice, liberty and equality, and also provide adequate safeguards for minorities, backward and tribal areas, and backward classes. Nehru played a historic role in building the Constitution on sound foundations. As pointed out by Mrs. Indira Gandhi, "The spirit of our Constitution bears the imprint of his inspiration even though the forms might have been devised by professional lawyers."

If there is one principle which runs through the entire Constitution, it is the Rule of Law. Throughout his life, Panditji dedicated himself to the support and advancement of those ideals of freedom and justice which constitute the basis of the Rule of Law. He was totally opposed to absolute and autocratic authority and upheld Parliamentary democracy and the highest ideals of administration of justice. Pandit Nehru said, "It is clear that unless a community lives under a Rule of Law, it will tend to be lawless,.... Also if there is to be a Rule of Law there should be independent judges to administer that law." At a time

*Address delivered at the Valedictory Session of the National Seminar on 'Nehru and the Indian Constitution' organised by the Law School, Banaras Hindu University, Varanasi

**Union Minister of State for Law and Justice.

when in several parts of the world dictatorships of varying shades have been, or are being, imposed in the name of quicker development and efficient government, we have succeeded, thanks largely to leaders like Nehru, in reaffirming that democracy and development are not incompatible with each other. This is by no means a main achievement.

While Nehru realised the need for safeguarding the civil and political rights of the individual in a free society, he was also equally concerned with the establishment by the State of social, economic, educational and cultural conditions under which man's legitimate aspirations and dignity may be realised and vested interests are not allowed to stifle social progress. In any welfare State, government has to bear a special responsibility for social and economic progress of the country as a whole. Our Constitution seeks to maintain a balance between the rights of an individual and social control. However, as Panditji said, "If any kind of an appeal to individual liberty and freedom is construed to mean as an appeal to the continuation of the existing inequality, then you get into difficulties. Then you become static, unprogressive and cannot change and you cannot realise that ideal of an egalitarian society which I hope most of us aim at... The Constitution lays down certain Directive Principles of State Policy and after long discussion we agreed to them and they point out the way we have got to travel."

Panditji was endowed with a many-splendoured personality and a keen sense of historical trends and perspectives. He stoutly opposed communalism and casteism as he saw them to be effective barriers to the development of true democracy and equality. He warned us about disruptive tendencies which come under the name of communalism—politics under some religious garb, one religious group being incited to hate another religious group etc. He taught us to take pride in our tradition of religious tolerance and contributed to the incorporation of secular conceptions and ideals in our Constitution. Unlike several other countries, we have declared our State a secular one. Different religious communities are given freedom of religion and conscience on a footing of equality. It is unfortunate that communal troubles still take place. We often tend to forget Panditji's warning that, "In a country like India, which has many faiths and religions, no real nationalism can be built except on the basis of secularity. That, I repeat, does not mean absence of religion, but putting religion on a different plane from that of normal political and social life. Any other

approach in India would mean the breaking up of India" While Pandit Nehru opposed superstitious practices and dogmatic beliefs often associated with religion, he maintained that we must face life with the temper and approach of science and technology, allied to philosophy and spiritual values.

Nehru's deep commitment to the cause of woman and backward sections of our people is well-known. "If our nation is to rise", he asked, "how can it do so if half of our nation, if our womankind, lag behind and remain ignorant and uneducated"?, and added that the greatest revolution in a country is the one that affects the status and living conditions of its women and that women should be given opportunities to participate in national activities. Similarly, he saw the historic need to help backward classes towards educational social and economic advance. It is again thanks to the wisdom of great leaders like Pandit Nehru that the Constitution permits extension of preferential treatment for women, children and weaker sections of our population.

On Centre-State relations, Panditji considered that the Constitution should be a federal structure with a strong Centre. In a letter to the President of the Constituent Assembly, he wrote, "We are unanimously of the view that it would be injurious to the interests of the country to provide for a weak central authority which would be incapable of ensuring peace or coordinating vital matters of common concern and of speaking for the whole country in the international sphere,....We have accordingly come to the conclusion that the soundest framework for our Constitution is a federation with a strong centre." Our Constitution makers had kept in mind the larger interests of India in prescribing a strong central bias in our federal scheme. I believe that we should not do any thing to weaken the authority of the Union.

Panditji gave an international dimension to our Constitution. He had a truly international vision and considered that the nationalism we build in India should have its doors and windows open to internationalism. In keeping with his philosophy, the Constitution directs the State to promote international peace and security, maintain just and honourable relations between nations, and foster respect for international law in inter-State dealings. Addressing the American Congress in 1949, Pandit Nehru proclaimed, "Throughout her long history India has stood for peace and every prayer that an Indian raises, ends with an invocation to peace." This is a precious heritage for all of us.

It is in pursuit of the larger causes of humanity, international peace and cooperation that Nehru had evolved the policy of non-alignment.

We must guard ourselves against being swept away by separatist and disruptive forces which are still at work in our country. We have to deal with forces of communalism, provincialism, separatism and casteism which tend to weaken our unity and growth. Our guide in facing these problems must be our own Constitution. The Constitution is only a document. We need the social sense to make it work. Equally, no legal instrument which regulates human life, however important it may be, is immutable. This is so whether the document is the Charter of the United Nations or the Constitution of a State. It cannot go off at a tangent from life's problems. Panditji was never tired of stating and restating this historical truth for our benefit. Panditji said, "The Constitution may be excellent, but it is the measure in which the Constitution reflects not only the thinking, but the charter of the people that will make for its successful working. We have seen very excellent Constitutions going to pieces after a few years because of people not acting up to their own Constitution or because the Constitution does not fit in with their thinking or solve their problems."

Both our Constitution and Nehru have shown us the path to right action and the road on which we should travel by. The philosophy of force, hatred and exploitation will not pay. Our mandate is to fight economic backwardness and ignorance, to build up a prosperous, democratic and progressive nation, and to defend social, economic and political institutions which will ensure justice, liberty and equality to every man and woman.

NEHRU AND CONSTITUTIONAL DEVELOPMENT PERSPECTIVES ON LAW AND SOCIAL CHANGE IN INDIA

Prof. G. S. SHARMA*

Almost the entire set of aspirations and goal-values of post-independence India relating to modernization and social change owe their existence to the constant and untiring efforts of Nehru over a quarter of a century. Ever since their tentative formulation in Karachi Resolution (1931), of which he was the main draftsman, the perspectives of future Indian society were being redefined and clarified through successive congress sessions and were finally embodied in the Constitution of India in the Directive Principles of State Policy. The Directive Principles, were largely the result of Nehru's imagination, persistence and persuasion. They contain all the social change objectives purporting to transform Indian society from a traditional to a modern one, emphasising the socialist outlook of a fairer distribution of community's wealth through democratic means. Nehru was greatly impressed by Marxist thought and the Russian experiments of securing a vast degree of social change over a short period of time, but his English training and experience, his constant contact with the liberal humanism of the Fabian socialists and his basic hatred of violence and bloodshed largely acquired and influenced through Gandhi's contact, made him reject entirely the dictatorial and coercive aspects of the Russian and later the Chinese experiments.

Planning and Social change in Retrospect

Nehru considered planning as essential for securing social change even after the objectives had been outlined. He fully realised that in a society like India, no results in the direction desired, could be secured by leaving the social process to a *deus exmachina* or to the vague and underfined initiative of a cadre of morally trained and even committed band of social workers without political power and effective administrative control. He was well aware of the authoritarian tradition of Indian

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society and as a pragmatist took that into account in outlining his programmes of action. It was in this strong belief that Nehru disagreed with Gandhi's plan of dissolving the Congress party as a political party after independence was secured, and organising it only as a group of social workers and reformers armed only with personal example and voluntary persuasion. Such a scheme in Nehru's view, would be too weak, dispersed and ineffective in a multi-religious, illiterate and heterogeneous society where identification and security would for a long time continue to be sought in traditional institutions. Nehru therefore stood for a strong parliamentary government, which could plan changes effectively and create suitable administrative media and machinery to transmit the message of planning to the people. Once the effective government and political set-up was secured, Nehru advocated decentralisation for local selfgovernment and himself saw to the implementation of Panchayat and Zila Parishad Schemes. He thus conceived the role of Congress party with its countrywide organisation as the main 'conveyor belt' of the ideas and schemes clearly outlined as programmes of action by governmental wings of the party. Social change was therefore sought to be secured through a combination of coercive and voluntary techniques. Coercive technique of a democratic political organisation was to be used to secure well-defined policies and effective implementation machinery and the voluntary technique of moral persuasion and self-government through decentralised organisations to secure the people's participation and acceptance of change.

It is in this context of effective and total planning for quick political, economic and social change through open and accommodative patterns of parliamentary democracy that law and social change perspectives of Nehru acquire meaning and significance. Nehru's observations about law are few, and may be brief, and not always very encouraging. His career at the Allahabad bar was short lived and his early experiences there were not very happy. Nehru never seriously intended to go to law practice because from his student days in England he became concerned with India's political and social future and took keen interest in politics. His return to India after completing his education coincided with the emergence of Gandhi on the Indian political scene and Nehru plunged into it with earnestness after a halfhearted attempt at law practice. The history of early years at law practice, or many great lawyers in the whole common law world are full of temporary disappointments and failures. If basic equipment and qualities are available early failures get crowned with great success. Nehru had

perseverance, eloquence, integrity and love of precision in thought and expression and if he had shown interest in law practice there is no doubt that he would have succeeded much like his father Motilal Nehru.

Nehru's reaction to law should, therefore, not be judged by his scanty pronouncements about it and by occasional statements favouring the ultimacy of the political process over the judicial process. Law, whatever its meaning, is in modern societies an expression of the political process and the judicial process is itself existentially and jurisdictionally included in it. In democratic societies, perhaps in such of them as have indigeneous legal systems, the manner of operation of the legislative and judicial processes over a long period gives to the legal system a quality or morality of its own which tends to get in the eyes of society a little higher respect and regard and reliance than the political process. The 'internal morality of law', acquired by the legal process through long term operation in democratic societies, if properly understood helps to soften tensions and conflicts of interests inherent in pluralistic communities and equilibrates change. Professor Fuller of Harvard Law School outlines the following elements of this internal morality :

"(1) generality; (2) promulgation, (3) prospective legal operation, i. e., generally prohibition of retroactive laws; (4) intelligibility and clarity; (5) avoidance of contradictions; (6) avoidance of impossible demands; (7) constancy of the law through time, i. e., avoidance of frequent changes; (8) congruence between official action and declared rule"¹.

This 'internal morality of law' generated what Judith N. Shklar² calls a culture of legalism which she defines as the ethical attitude that holds moral conduct to be a matter of rule following and moral relationship to consist of duties and rights determined by rules.. It is in short, a complex of human qualities, not a quantity to be measured or labelled.

This ethical attitude of legalism was developed in England over a period of years through the secularisation of the political and legal institutions which followed the separation of the Church and the State and the growth of commerce and industry. This secularised morality based on contract and agreement and on rule of secular laws in the sense of absence of arbitrary power was the political and cultural inheritance of the English society when Nehru went to England for

1. Quoted by W. Friedmann : *Legal Theory*, V ed. (1967) p. 18,

2. Judith N. Shklar : *Legalism* pp. 3 & 4.

his education. Nehru's total personality, conscious and subconscious, discloses a moral quality of tolerance based on openness of mind and rational appraisal of differing and discordant views before belief and action. This personality trait which continuously sustained Nehru against all kinds of exposures and provocations in a basically authoritarian society was a trait shaped and nurtured in the the twentieth century social ethics of western culture which in turn was the result of the operation of secular legal systems based on legalism and rule of Law.

Social change is a normal social process and is a continuing phenomena in all organised societies. History is a descriptive and often evaluative record of social change. In more homogeneous, politically free societies of the West social change occurred over a period of more than two centuries under the influence of forces released by the growth of science and commerce. In some collectivist societies like Russia, in more recent times, social change has been consciously and coercively brought about over a comparatively shorter period of time.

Many scientific theories for the study of social change have emerged in the west and these and their adaptation is currently the concern of Indian social scientists. As Dr. Yogendra Singh points out in his recent book,³ "the study of social change, in view of the nebulous nature of its theory is a difficult task, and it is more difficult in the case of society like India which has not only a fathomless historical depth and plurality of traditions but is also engulfed in a movement of nationalistic aspirations under which concepts of change and modernisation are loaded with ideological meanings. In this form, change ceases to be viewed as a normal social process. It is transformed into an ideology, viz that change in itself is desirable and must be sought for. This introduces non-scientific elements in the evaluation of social change in India..."

Dr. Singh prefers to call the process of social change as 'modernisation' rather than 'Westernisation' because of the capacity of this term to include Russian and some American influences as well as some rational indigeneous adaptations that emerge as the process goes on influenced consciously by modernising elites through modern institutions and unconsciously under the direct and indirect influences of the spread of industry and new technology.

Nehru was the main architect of the ideology of social change which he conceived over a period of years to be fusion of secularism

3. Yogendra Singh: *Modernisation of Indian Traditions*, 1973.

and democracy in the climate of a foreign policy of international peace and cooperation. If we add to these two components of Nehru's ideology of social change a concern for rapid economic growth and egalitarian distribution of the wealth so produced the ideology of India's modernisation is complete. Nehru studied the Indian historical process carefully and came to the conclusion that the Indian society had a cultural and spiritual vitality which was not incompatible with his ideology of social change even though the fundamentals of this ideology were drawn from the study of Western history and experience.

Nehru's commitment to social change in Indian society was so deep that he did not rest satisfied after getting the ideology of social change embodied in Parts III and IV of the constitution relating to Fundamental Rights and the Directive Principles of State Policy but he continued all his life to create the machinery and the climate for their implementation. His speeches in the annual meetings of the Congress party and in the Parliament bear ample testimony to his continuing and untiring concern.

Post-Constitutional Prospectives

1. Social Justice

The Post-Constitutional evolution till Nehru's death, in 1964 the ideology of change through governmental, legislative and judicial methods in the social, economic and political fields covered almost the entire fabric of the Indian society.

In the social field Nehru stood for securing dignity to the individual by creating opportunities to free him from the shackles of traditional habits and practices and from ignorance and illiteracy generated by centuries of slavery, poverty and fatalistic sloth. Illiteracy was to be removed by compulsory primary education, evil of the practice of untouchability was to be abolished and human dignity was to be secured by creating a casteless society. Education is an item in the State list in the Constitution and Nehru kept on exhorting the State Governments to take steps to increase literacy and develop ways and means to introduce compulsory primary education.

In 1955 the Untouchability (Offences) Act was passed in pursuance of the provisions of Article 17. To remove the obstacle resulting from the interpretation of the Supreme Court in *Champakam Dorairajan*⁴ and

4, *State of Madras v. Champakam Dorairajan*, AIR 1951 S. C. 226,

*Venkataramana*⁵ cases, the Constitution (First Amendment) Act, 1951, was passed adding a new clause (4) to Article 15 and making sundary other changes to make it possible for the government to create a climate in which special assistance to Schedule Castes and Schedule Tribes could be made possible. This protective discrimination was necessary to help this underprivileged class to emerge as full and responsible citizens of a secular democracy. In defending this part of the First Constitutional Amendment, Nehru denied that it strengthened communal approach and said that ;

“...such measure would be necessary in removing certain approaches to this question which have prevented us, sometimes, from going ahead with measures of social reform and the like.”⁶

In 1953 Nehru saw to the establishment of the Backward Classes Commission to inquire and report on the condition of backward classes and keep a watch on their progress and report to Parliament. While guaranteeing religious freedom in Art. 25, sub-clause 2 (b) of that Article protected social reform laws and Hindu temple entry laws. It was with reference to 25 (2) (b) intending to provide social welfare by rationalising Hindu personal laws and also to partially implement the directive of uniform civil code that the Hindu Code Bill was introduced in 1951 and after a great deal of personal influence and persuasion Nehru succeeded in getting some Hindu Law reform Acts to be passed in 1955 and 1956. In spite of his charisma and power Nehru was fully conscious of the necessity of securing people's acceptance. He said—

“through legislation on the one hand and through education of society on the other, we can bring about change.”⁷

The performance of the judiciary in the social field can be said to be generally in consonance with the spirit of Nehru's ideology. Except for a brief and early appearance of statutory construction in the *Champakam Dorairajan* and *Venkataramana* cases, the Supreme Court announced itself in favour of harmonious construction of Directive Principles of State Policy and the Fundamental Rights beginning with *Kameshwar Singh* case⁸ and finally arriving on the doctrine in clear terms in *Kerala Education Bill* reference case.⁹ During Nehru's life-

5. *Venkataramana v. State of Madras*, AIR 1951 S. C. 229.

6. *Parliamentary Debates*, 1951 Vol. II, Part II, Col. 8817.

7. Nehru : *Socialism by Consent* p. 12.

8. *State of Bihar v. Kameshwar Singh*, AIR 1952 S. C. 252.

9. *In re Kerala Education Bill*, 1957, AIR 1957 S. C. 956,

time this approach of the Supreme Court prevailed in the area of social legislation. The passing of the First Amendment Act and introduction of Article 15 (4) facilitated this task of the Court in reconciling the ideal of egalitarian society with the existence of special provisions for the Schedule Caste and backward classes. Whenever this special provision clause was used as a cover to further the undue demands of a particular community the Court came out heavily upon it as it did in the *M. R. Balaji* case.¹⁰ Here the court struck down a complex Mysore scheme, framed purportedly to assist citizens belonging to backward classes, and found in its working a fraud on the Constitutional provisions meant for the protection of the backward classes only. In the *Dora*¹¹ case, the Supreme Court found itself unable to give a lead towards the ideal of casteless society when the majority judgment was not prepared to say that a person born as a scheduled caste but for more than a quarter of century behaving as upper caste Kshatriya and accepted by the new group as such through marriage and other social relations, could no longer be considered as belonging to the schedule caste, particularly when that privilege was being asserted to secure special representation in a reserved constituency for election to Parliament. The conservatism inherent in the judicial process made the Court hesitate to announce the doctrine of caste mobility on its own and made it to say that such changes should be left to the operation of social forces. The dissent was willing to give this lead.

In the cases relating to the guarantee of religious freedom, the Supreme Court, while zealously maintaining the substance of the freedom, allowed measures by the government to regulate financial and secular aspects related to religious activities. Wasteful expenditure in many religious and charitable endowments attached to Hindu temples was permitted by the courts to be checked by legislative and executive measures. In all these series of cases, the decision in *Saifuddin Kichlus* case¹² relating to the power of excommunication of the religious head of the Daodi Bohra community accepting the pronouncement of the religious head as to what constitutes religious activity as final, stands out as exception to the trend in which the court on the evidence led before it decided for itself what constituted religious activity. Perhaps here also the Court was in line with Nehru's cautious approach relating to the sensitive area of the minority community. The Court has given

10. *M. R. Balaji v. State of Mysore* AIR 1963 S. C. 649,

11. *V. V. Giri v. Dippala Suri Dora* AIR 1959 S. C. 1318.

12. *Saifuddin Sahib v. State of Bombay*, AIR 1962 S. C. 353,

special protective attention in line with Nehru's philosophy, again, to the establishment and communities through establishing and administering educational institutions of their choice. It may some time appear that the courts' interpretation of these guarantees of articles. 29 and 30 as 'absolute' has prevented effective regulation for proper educational standards by the government, but the Court perhaps rightly feels that if the ideal of secularism has to emerge as a social culture and habit it can only be done by giving a sense of security to the minority community. It is evident from Nehru's reaction to his criticism in the Parliament at the time of the passage of the Hindu Code Bill that changes in the minority's beliefs and culture, language and institutions should be brought about only through persuasion.

The Court not only generally supported welfare legislation relating to labour but with the advent of Justice Gajendragadkar on the Supreme Court announced a progressive policy of social justice in this area which was one of the basic tenet of Nehru's philosophy.

The Courts concern for the rights and status of the common man, again in line with the spirit of the approach of Nehru, is disclosed when the majority opinion in *Bheshwar Nath's case*¹³ held that the fundamental rights cannot be waived by agreement with the executive or government against whom these rights are available, thus taking care of the situation where the interests of illiterate and poor citizens of India may get directly or indirectly compromised.

2. Economic Justice

In the economic field Nehru stood and worked for removal of economic inequalities quicker and better production and equitable distribution of wealth. These ideas are embodied in the Constitution but the agrarian reform was set in motion under his active leadership through legislative measures in the Congress majority provinces even before independence and the adoption of the Constitution. Zamindari abolition bills were introduced in many provincial legislatures.

The first Industrial Policy Resolution, 1948 announced the acceptance of 'mixed economy' and the Planning Commission set up in 1950 under the Chairmanship of Nehru announced the First Five Year Plan in 1951. In December, 1954 Nehru urged the Parliament to adopt a resolution on the socialistic pattern of society as the objective of economic policy. The Parliament passed the resolution, in 1955 Avadi

13. *Bheshwar Nath v. C. I. T. Delhi and Rajasthan*, AIR 1959 S. C. 149.

Congress adopted the socialistic pattern of Society. The adoption of the socialistic pattern of society required changes in the economic policy and so Nehru announced in Parliament the second official policy resolution in April 1956 declaring that all basic and important industries requiring large scale investment were to be in public sector and so the State was to assume direct responsibility for the future development of industries over a wider area. In January 1959 the Nagpur Congress adopted a far reaching resolution on cooperatives. It said,

"The future agrarian pattern should be that of the joint cooperative farming in which the land shall be pooled for joint cultivation, the farmers continuing to retain their property rights. As a first step prior to the institution of joint farming service cooperatives should be completed within a period of three years"¹⁴.

The Avadi resolution on socialist State and joint farming resolution of Nagpur between them give a fuller picture of Nehru's economic policy. 1960 and 1961 Congress Sessions gave only a passing reference to joint farming cooperatives and in spite of Nehru's advocacy and defence the objective of joint farming cooperatives remains unfulfilled. At the Jaipur Congress meeting in November, 1963 Nehru said that if the socialistic programme was not evolved and implemented early then ten to fifteen years hence our people may lose faith in peaceful means and the problem may get more complicated¹⁵. The Bhuwaneshwar Congress on the insistence of Nehru in January 1964 declared the objective of the "socialist state" and laid stress on the attainment of 'socialism based on democracy, dignity of the human individual and social justice'¹⁶. He intended to secure the ideal of a socialist State through planning which to him is essentially a process whereby we stop those cumulative forces at work which make the poor poorer, and start a new series of cumulative forces which make them get over that difficulty.¹⁷

The beginning of Nehru's Land Reform policies and programmes can be traced as early as 1926 when U. P. Provincial Congress Committee declared the abolition of intermediaries in Land.¹⁸ The Zamindari system was to be abolished and the land distributed to the tenants.

14. Democratic Research Service Cooperative Farming *The Great Debate*, Bombay 1959, p. 3.

15. *Congress Bulletin* No. 9-11, Sept. Nov. 1963, p. 54.

16. Mukherji; *The Gentle Colossus*, p. 173.

17. *Speeches*: Vol. VI, Bombay Speeches etc. 3, (1958) p. 112.

18. Nehru: *Autobiography*, p. 183.

Compensation was to be given but in no case could it be full compensation. On Sept. 10, 1949 Nehru moved an amendment to Art. 24 of the Draft Constitution which finally became Art. 31 of the Constitution. It related to the question of compensation. Land Legislation being state subject the agrarian reform measures were being implemented through State legislatures. When Bihar Government's land legislation was declared void by the Bihar High Court¹⁹ under Article 14, Nehru was disturbed and he said—

“if the Constitution is interpreted by the Court in a manner which comes in the way of the wishes of the legislature in regard to basic social matters, then it is for legislatures to consider how to amend the constitution, so that the will of the people as represented in the legislature should prevail”²⁰.

The Constitution, first amendment was then passed and Article 31A and 31B was inserted in the Constitution to meet the situation. This was another attempt to save land reform legislation from judicial obstruction, the first being the original article 31. Nehru said in Parliament during the passage of the amendment referring to landlordism—

“That system cannot continue, it does not matter what your Fundamental Rights might say; what your Constitution might say or what your Courts might say”²¹.

Still further, interpretations by the courts, created problems in implementation of policy objectives and Article 31(2) was further amended in 1965. Nehru felt that ultimately,

“the quantum of compensation will be determined by the legislature it is the legislatures' will that is bound to prevail in such matters”²².

It is in the property area particularly that the reform legislation, which was the first step towards equal distribution in the rural areas, that successive interpretations of the constitutional provisions even when amended to meet court's interpretation, that divergence is seen between Nehru's policies and the court's approach. The continued invalidation by the Court from 1950 to 1964 of the will of the Legislature as disclosed

19. *Kameshwar Singh v. State of Bihar*, AIR 1951 Pat. 91.

20. Nehru: Press Conference, 1951, March 13, p. 16.

21. *Speeches* Vol. II, Lok Sabha 29th May, 1951, pp. 529-530;

22. *Speeches*, Lok Sabha, April 11, 1955, p. 129,

through successive amendments of article 31 perturbed Nehru and led him to make some remarks about the judiciary which often get quoted in the recent literature relating to the relationship of the Courts and the legislature. It could be said that the invalidation in 1950 of the Bihar land legislation under Article 14 by the Bihar High Court could be expected as an exercise in statutory interpretation. The High Court and perhaps the early Supreme Court had neither the experience nor training in interpreting a higher law which has to be 'expounded' and not 'construed' like a Statute. The result was that Article 31A and 31B were added to the Constitution by first amendment which introduced a blanket technique by which any legislation enumerated in the IXth Schedule was to be free from judicial scrutiny. The decision of the Supreme Court in *Bela Banerji* case²³ insisting that compensation meant just equivalent and in *Subodh Gopal* case²⁴ requiring payment of compensation irrespective of acquisition being a transfer of title or possession to the State, created a situation in which the land reform programme received another set-back. The fourth Amendment in 1955 came as a result of these decisions limiting land reform to strictly agrarian land and insisting on Payment of full value as on the date of acquisition even for deprivation of property. The definition of 'estate' was widened. Even this widened definition was found inadequate by the Supreme Court to cover Ryotwari interest in some States. The *Kunhikoman* case²⁵ decided on December 5, 1961 is a surer evidence of the use of strict construction to oppose legislative will in land reform measures. The acquisitions of land that were not part of "agrarian reform" schemes were not protected by Art. 31A. They could still be tested with reference to the provisions of Articles 31(2), 19 and 14. Article 14 was now used to strike down laws that compensated land-owners at varying rates more for small holdings and less for slabs in excess of the first one. This was held invalid by the Supreme Court in *Kunhikoman* case²⁶ which cited with approval the reasoning of the Patna High Court in *Kameshwar Singh* case²⁷. The *Kunhikoman* judgment was given on the same day as the *Purushothaman's* case²⁸ (this case too was from Kerala) but the decision was different

23. *State of West Bengal v. Bela Banerjee* AIR 1954 S. C. 170.

24. *State of West Bengal v. Subodh Gopal Bose*, AIR 1954 S. C. 90.

25. *Karimil Kunhikoman v. State of Kerala*, AIR 1962 S. C. 723

26. *Karimil Kunhikoman v. State of Kerala*, AIR 1962 S. C. 723.

27. *Kameshwar Singh v. State of Bihar*, AIR 1951 Pat. 91.

28. *Purushothaman Nambudari v. State of Kerala*, AIR 1962 S. C. 691.

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in *Purushotaman* case. The Kerala Agrarian Relations Act, of 1961 had provided for a ceiling, that an individual or family which had holding in excess of ceiling was to vest in the State. Gajendragadkar J. found them to be 'estate' within the meaning of the Constitution and upheld the law. Wanchoo J. however in *Kuhhikoman* case, approving the definition of the basic concept of 'estate' by Gajendragadkar J. in *Purushotaman* case, did not find the land in this case to be 'estate' because to arrive at its meaning he had to refer to the old Madras Estate Land Act, 1908 which contained the definition of the estate and this Act applied to this part of territory which had now come to be situated in Kerala State. He held that ryot was not really a proprietor because whatever may be the real rights amenable to the owner's right, in theory the ryot holds his land on a lease from the State and the ryot can relinquish or abandon the land in favour of the Government. In this case while adequacy of compensation provided by the Kerala Act was protected from judicial scrutiny by the provisions of Art. 31 (2) the law was held unconstitutional under Art. 14 as discriminatory against certain kinds of plantations, and against certain types of 'natural' families and against the requirement of payment of compensation to all with no distinction of large or small holdings. Another judgment by Wanchoo J. in *Krishnaswami v. Madras*²⁹ held that Madras Land Reform (Fixation of Ceiling on Land Act, 1961) fixing 30 acres as ceiling for a family of not more than five was bad as projecting an artificial conception of family unit and bore no relation to customary notions of family that prevailed in the Indian society. The fixation of the size of the family for the specific purpose of land reform policy was an administrative device to frustrate efforts of individual land-owners to defeat the ceiling law by dividing his lands among family members and obtaining as many ceiling holding for the family as there were members.

The Constitution was again amended to overcome the effects of the *Kuhhikoman*³⁰ and *Krishnaswami*³¹ decisions. The Seventeenth Amendment Act introduced a comprehensive definition of 'estate' which would also include ryotwari holdings and added 44 State Acts to the IXth Schedule thus placing them beyond the court's scrutiny. It also provided for full market value in compensation to persons whose lands within the current ceiling fixed by States were acquired.

29. *Krishnaswami v. State of Madras*, AIR 1964 S. C. 1515.

30. *Karimbil Kuhhikoman v. State of Kerala*, AIR 1962 S. C. 723.

31. *Krishnaswami v. State of Madras*, AIR 1964 S. C. 1515.

Another important feature after the fourth Amendment Act, 1955 was that all state laws whether affecting 'estate' or other kinds of property acquired by the State were to have the approval of central government to escape scrutiny in terms of fundamental rights. This was done under the guidance of Nehru to reduce the waywardness and uncertainties of State laws in this major economic policy area and to give to the central policy planning authorities a power to see to the proper and effective implementation of economic reform laws in the field which was exclusively a state subject³². A certain degree of uniformity in policy implementation could thus be secured even though the matter was not a union subject. Nehru distinguished between 'ordinary' acquisition for which full compensation would be given and broader programmes of 'social engineering' where legislatures might provide some lesser compensation.

It was generally felt after the Fourth Amendment Act that the courts had been effectively ousted from jurisdiction to look into compensation unless authorised by specific law, for instance, the Land Acquisition Act, 1894. But within four years of the amendment, Court began to intrude and by the Middle of 1960 the requirement of full compensation except in land reform law and other laws covered by 31A and 31B was restored. This was done through a series of cases³³. Chief Justice Subba Rao did so on the basis that word "compensation", which was explained and given juristic meaning in *Bela Banerjee*³⁴ earlier than the fourth Amendment, was retained and that what was prevented was looking into the 'adequacy' of the compensation fixed by the legislature. Where principles were set out by the legislature, incoherent in the meaning of principles is a 'concept' of rationality, which could be looked into by the the court against the well settled common law formulae of 'fraud on a power' and 'colourable legislation'. Both were used interchangeably by Subba Rao J. It may be noted that Nehru had himself said—

"Parliament fixes either the compensation itself or the principles governing that compensation and they should not be challenged

32. *Lok Sabha Debates* (1955) Vol. II Part 21953, 1997-98.

33. *Bela Banerjee v. State of West Bengal*, AIR 1954 S. C. 170, *State of Madras v. Mamaswaya Mudaliar*, AIR 1965 S. C. 190 (Madras High Court reason approved and adopted by Shah J.) *Vajravelu v. State of Madras*, AIR 1965 S. C. 1017; *Jeejibhoy v. Addl Collector Thona*, AIR 1965 S. C. 1096.

34. *Bela Banerjee v. State of West Bengal*, AIR 1954 S. C. 170.

except for one reason, where, in fact there has been a fraud on the Constitution"³⁵.

Thus in effect, ever since the Fourth Amendment, the protection provided by the changed article 31 was limited by the court to 'agrarian reform'.

With regard to the effect of these changes in the Constitution on the urban and rural planning the Supreme Court's views appeared only after Nehru's death. Even though the statement of objects and reasons accompanying the Fourth Amendment Bill had said that—

"the proper planning of urban and rural areas require the beneficial utilisation of vacant and waste lands and the clearance of slum areas."

The implementation of these objectives was carried out after Nehru's death. The report of the Committee on Urban Land Policy of the Ministry of Health, Government of India came only in 1965. Chapter XIV of the Draft Outline of the Fourth Five Year Plan dealing with the subject of Regional and Urban Development and Housing referred to the need of comprehensive legislation for town and country planning in 1966. This planning in view of Government's policy committee in 1965 could only be done effectively by acquiring the land needed. The cases of such acquisitions of land came before the Court both under the old and amended land Acquisition Act of 1894. Ultimately the court upheld the 1967 amendment of the land Acquisition Act finding its formula of treating different owners of land differently as consistent with both Articles 31 and 14.

3. Political Justice

In the political field Nehru was not only consciously working for planting democracy firmly in the Indian soil, his whole subconscious personality was moulded by democratic values. In spite of many occasions on which he could have forced his will on the people he waited patiently for public opinion to change to accept the values of secularism, modernisation and economic equality. The postponement of Hindu Code Bill under pressure of public opinion and the gradual introduction of Hindu law reform through some Acts only passed four or five years later, marked constant effort to persuade party workers and others to implement socialistic pattern of society including cooperative farming:

35. CAD IX 31, 1192.

the States reorganisation; the handling of language problem, issues of nationalisation of utility industries, all reveal what Moris Jones calls, Nehru's empirical gradualism, Nehru has himself commented in his speeches and writings of his rather keen and unusual insight of gauging the opinion of the masses, particularly of rural India, in whose presence he felt inspired. In 1963 he said—

"The system we have evolved was consciously directed towards the welfare of the common man rather than to the enrichment of the few, it is democratic because its processes are ultimately controlled by public discussion and by Parliament elected on the basis of universal adult franchise, and not by the secret purpose of a privileged minority"³⁶.

As stated earlier in this paper all through the period of framing of the Constitution Nehru's efforts were to forge a strong central government for effective and all India planning of social change and maintain the democratic mechanism of constantly sounding public opinion both through political party processes and instruments of governmental organisation. If Nehru had been given two more decades healthful life he may have succeeded in his vision of educating public opinion to accept cooperative farming, community projects, self-government through panchayats and a well-functioning socialist economy.

Nehru's views of a democratic government with strong central bias to tackle India's many social, economic and political problems got a support in the judgment of the Supreme Court in *West Bengal v. Union of India*³⁷ delivered towards the end of 1962 holding that the legal sovereignty of the Indian nation vested in the people of India and Parliament as their representative could by legislation acquire the property, owned by a State for governmental purposes. Mr. Stelavad calls this decision as a landmark in the Constitutional History of India legitimising in legal theory a powerful central government so essential to the unity and integrity of India³⁸.

As early as 1955 the Supreme Court in *Ram Javaya v. State of Punjab*³⁹, commented on the form of government and said that—

36. *Nehru Speeches* Vol. IV, 'Changing India's Foreign Affairs, New York, April 1963 p, 405,

37. AIR 1963 S. C. 1241.

38. Stelavad : *My Life*, 1972 p. 402.

39. AIR 1955 S. C. 549.

"In the Indian Constitution, therefore, we have the same system of parliamentary executive as in England and the Council of Ministers, consisting as it does of the members of the Legislature is like the British Cabinet .."

Thus it declared the Indian system of government as a parliamentary democracy based on Cabinet responsibility.

The Supreme Court maintained the well tried, age old federal constitutional principle of a constitutional amendment not being an ordinary legislative Act both in *Shankari Prasad*⁴⁰ and *Sajjan Singh*⁴¹ cases thus upholding the right of the representatives of the people by a special majority to adjust the constitution document to the needs of the people of which they alone in a real democracy should be the assessors. The momentous decision in *Golaknath case*⁴² came after Nehru's death. As discussed earlier Nehru showed due obedience to the other basic principle of democratic process, that of the independence of the judiciary by continuing to adjust with the interpretation of the Court even though it meant delays in implementing the oft announced and outstanding commitment of the national movement to 'agrarian reform'.

The controversy generated in the legislative privileges issue during the last days of Nehru was unfortunate, and the precedent value of the opinion of the Supreme Court on the *Presidential reference*⁴³ in 1965 can be a matter of doubt and discussion. It embodies in the legal literature of India a situation of tension between the two important wings of a democratic government whose relationship must be based and sustained on the principle of auto-limitation and coordination which are marks of wisdom and maturity. The political implications of the opinion for India's functioning democracy will not be very grave and meaningful in the future as the episode, it is hoped, will have taught the participants a lesson in self-control and learning to live in a community guided by rule of law. The incident relates to a period when Nehru was too ill to be watchful and effective. He would never have allowed it to grow to the proportions it did. As the 1963 incident of the proposal of the Union Government to merge the offices of the Law Minister and Attorney General of India shows Nehru's basic respect

40. *Shankari Prasad Singh Deo v. Union of India*, AIR 1951 S, C. 458.

41. *Sajjan Singh v. State of Rajasthan*, AIR 1965 S, C. 845.

42. *Golak Nath v. State of Punjab*, AIR 1967 S. C. 1643.

43. *In re Power, Privileges and Immunities of State Legislatures*, AIR 1965 S. C. 745.

for democracy and rule of law led him to withdraw the proposal in the face of strong public opinion expressed through the profession of law and the legislators.

Nehru's secular and social ideas and his use of the instrument of law and administration to plan and secure social change throw a tremendous responsibility on the profession of law and also on the administrative agencies which rest on law and its rules. Perhaps by oversight or being too busy, Nehru was unable to perceive that the system of education which equips and nurtures lawyers and administrators needed to be completely reorganised and reformed. Mature democratic societies give continuous thought to gear legal education to their needs. A purposeful legal education would not only impart training in the rules of law and familiarise the students with the techniques of arriving at social consequence choices of varying interpretations of rules but would also impress upon them the necessity of reform of the system as a whole to suit the ends and values of their own society.

III

Summing UP

The perspectives of social change of Nehru and thus also of the constitution present an integrating view in which rational humanism of the West has been reconciled with non-acquisitive and tolerant spiritualism of the East. The two may appear incompatible at first sight but as Nehru's whole personality discloses, a functional fusion is possible in the life style of individuals. Men like Nehru, Maulana Azad and Acharya Narendra Deo represented this fusion of rationalism and simplicity. They were secular to the core and secularism flourishes and develops in societies where rule of law reigns. Rule of law or the ethics of legalism does not obstruct changes but constantly extends a moral reminder to the planners and decision makers to avoid discrimination and equilibrate cataclysmic changes.

Mr. Setalvad speaking about law and culture at *Bhartiya Vidya Bhawan* in 1964 said—

"Rarely has a democratic country made so bold an attempt as we in India after the Constitution to harness society, as it were, to law and speed it along at a rapid pace"⁴⁴.

44. Setalvad : *My Life*, 1972, p. 536.

It is our hope that the legally trained personnel in India will equip themselves fully to assist this change and help to prepare society to understand and tolerate the inconvenience inherent in this pace of change.

Indian society faced and is continuously facing crises, Nehru's faith in the integrated view, represented as a universal humanist, never flinched and under his leadership India tided over crisis after crisis. After Nehru's death, while the great stabilising factor of a personality like his is absent, his efforts have not gone in vain. In spite of contemporary agitations, stresses, and strains, perhaps what Taylor and Enrminger said in 1965 may still be true about India. They said—

“India is painfully but steadily becoming a more democratic society”⁴⁵.

The legacy of Nehru persists and will continue to persist. In his last will and testament he desired that part of his ashes be immersed in the Ganges and the remaining part scattered by aeroplane over rural India. This was his homage to the continuity of Indian historical tradition which Ganges represents and to the core of Indian society which villages represent. Both these sources of his inspiration and power have caught on his message which will stand as beacan light through many storms which future may have in store for us. In the vitality of the Indian historical tradition and in India's masses lies the society's future hope.

NEHRU AND THE JUDICIARY

ALICE JACOB*

I

In the many-slendoured personality of Jawaharlal Nehru, a fair appraisal of his role vis-a-vis the judiciary of India will have to take into account the various influences at work in his early life.

Nehru's early aristocratic upbringing under the influence of the strong personality of his father, his general education at Harrow and Cambridge, legal education in England and his short experience at the Bar in Allahabad are factors which could not but have impressed him about the merits of the British judicial system and the respect the British had for their judges and the pride they took in the impartial administration of justice. These factors along with the tradition of independence of the judiciary and fearless administration of justice built up by the British judges in India considerably moulded Nehru's view on the role of the judiciary in a liberal democracy, which India became after it achieved independence. He realized that a strong and independent judiciary is the pillar for upholding the rule of law in a democratic form of government, and that the supremacy of law is the only guarantee for the maintenance of justice between man and man and man and state and the only security for a disciplined and ordered liberty. “[R]ule of law seems to be synonymous with the maintenance of civilised existence. And if there is to be a rule of law, there should be independent judges to administer the law”.¹ A true democrat that Nehru was, he felt that an independent judiciary, was among other things, a method which democracy devised to regulate executive power. He observed :

Power, it has been said, tends corrupt and the greater that power, the greater that risk. A Prime Minister faces this risk most. So do other Ministers or officials of Government... In each case the individual has the great power of Government behind it and he has to be careful not to misuse this power. For this reason, demo-

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1. Law and the Changing Values—Inaugural Address at the Plenary Session of the International Congress of Jurists, New Deihi, January 5, 1959 in *Jawaharlal Nehru's Speeches 1957-63*, 425 at 426.

45. Taylor and Enrminger : *Indias Roots of Democracy*, 1965, p. 683.

cracy has devised many methods to control individual power and authority and to spread it out as far as possible².

II

Consistent with his ideas on judiciary, after independence, one of his first acts as the Prime Minister was to raise the status of the Federal Court to bring it on par with the House of Lords and the Privy Council. The Federal Court had been functioning since 1937 but with restricted jurisdiction. In 1948 the Central Legislature enacted the Federal Court (Enlargement of Jurisdiction) Act which enlarged the appellate jurisdiction of the Federal Court in civil cases and, correspondingly restricted appeals to the Privy Council. Finally in 1949, the Abolition of Privy Council Jurisdiction Act abolished the jurisdiction of the Privy Council in respect of appeals from India and, as an interim measure, invested the Federal Court with the same jurisdiction and powers as the Privy Council had.

Nehru, among others, was instrumental in giving the judiciary a responsible position under the Constitution. There is the Supreme Court at the apex. The State High Courts are entrusted with the administration of justice in their respective states and powers of superintendence and appeal over subordinate courts. Furthermore, the supreme Court and the High Courts have been made guardians of the fundamental rights. A wide jurisdiction has been conferred on them under various articles to prevent miscarriage of justice. These courts have jurisdiction not only to adjudicate upon controversies between private individuals, but also to review executive and legislative action. The conferment of such a wide Jurisdiction showed the trust Nehru had reposed in the judiciary³.

Nehru also played a significant role in the Constituent Assembly in getting his concepts on the independence of the judiciary incorporated in the Constitution of India. The discussions in the Constituent Assembly reveal that the main purpose of the members in framing the provisions relating to the union and state judiciary was that judges should be free from political or executive pressure and should be really independent, incorruptible and efficient. Under the Constitution, the President

2. Nehru's Message to the All-India Police Sports Meet held at Gwalior in January, 1956, 11 *Indian Police Journal* 203 (1964-65).

3. The Constitution (Forty-second Amendment) Act, 1976 had considerably changed the scheme of judicial review by restricting it. However, the Constitution (Forty-fourth Amendment) Act, 1978 restored the status quo ante,

appoints judges of the Supreme Court in consultation with such of the judges of the Supreme Court and the High Court as he may deem necessary, except that for the appointment of a judge other than the Chief Justice, the Chief Justice of India must always be consulted. Judges of the High Court are appointed by the President in consultation with the Chief Justice of India, the Chief Justice of the state high court (for the appointment of a judge other than the Chief Justice) and the Governor of the State. judges are made irremovable by the executive. Their emoluments are guaranteed by the Constitution and charged on the Consolidated Fund and consequently made non-votable by the legislatures. Further, discussion in the legislatures on anything done by a judge in the discharge of his judicial duties is prohibited. As regards the age limit for the Supreme Court judges, the Drafting Committee had fixed it at 65. During the discussions in Constituent Assembly on this matter, while some members suggested reducing it to 60 and others increasing it to 68, Nehru defended the Drafting Committee's proposal in these words :

But at the same time it is highly responsible work, and in all countries, so far as I know, age-limits for judges are far higher... if an old man has experience and is thoroughly fit, mentally and otherwise. then it is unfortunate and it is a waste from the State's point of view to push him aside...and put in some one in his place who has neither the experience nor the talent, perhaps. We are going to require a fairly large number of High Court Judges and Supreme Court Judges. It is important that these judges should be not only first-rate but should be acknowledged to be first-rate in the country, and of the highest integrity, if necessary, people who can stand up against the executive government, and whoever may come in their way. Now, taking all these into consideration I feel that the suggestion made by the Drafting Committee with regard to...(Supreme) Court Judges, that the age-limit should be sixty-five, is by no means unfair for it does not go beyond any reasonable age-limit that might be suggested.⁴

The significance of the freedom of the judiciary from the executive control was fully appreciated by the framers of the Constitution and consequently, a constitutional directive was provided in article 50 to effect separation of the judiciary from the executive. When this article was being debated in the Constituent Assembly, there was a preponde-

4. VIII C. A. D. 246-7.

rant body of opinion that a time-limit should be fixed for carrying out the separation. The time-limit, it seems, was not fixed on the assurance of Nehru in these words :

/S/o far as the Government is concerned, it is entirely in favour of the separation of judicial and executive functions. I may further say that the sooner it is brought about the better and I am told that some of our Provincial Governments are actually taking steps to that end now. If anyone asked me, if anyone suggested the period of three years or some other period, my first reaction would have been that this period is too long. Why should we wait so long for this? It might be brought about, if not all over India, in a large part of India much sooner than that. In any such directive, there should not be any detail or time-limit etc. It is a directive of what the State wants, and your putting in any kind of timelimit therefore rather lowers it from high status of a State policy and brings it down to the level of a legislative measure, which it is not in that sense. I would have preferred no time-limit to be there ..⁵.

The hopes of Nehru and other framers of the Constitution on this salutary reform were realised earlier in the regions south of the Vindhyas than the north. With the coming into force of the Code of Criminal Procedure, 1973, on April 1, 1974, the separation has been effected for the first time in the country by a statute.

The prestige and dignity of the courts also depend upon the buildings they function in; they should be built up in such a style that they inspire respect among the people. Consequently, from the beginning Nehru was of the view that the Supreme Court should be housed in a building befitting the prestige and dignity of the highest judiciary in the country. In fact he wanted the Supreme Court building to be a magnificent structure so as to attract the attention of people visiting New Delhi. Therefore, he rejected all proposals for housing the Supreme Court in any one of the State Houses in New Delhi and personally chose in consultation with the judges of the Supreme Court the present site of the court and got constructed a beautiful building modelled on the European architectural style tempered with ideas of Indian conception of justice. Traditionally we consider justice as a pair of scales each of which has to be held evenly without allowing the beam from which they hang to tilt to one side or the other. The

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building looks like a pair of scales; there are two wings on the two sides which accommodate the offices and the records. At the end of each wing is a semicircular structure representing the pair which are attached to the beam at the top. This beam accommodates the court rooms wherein the judges administer justice without fear or favour. Similarly Nehru took great interest in the building of the Punjab High Court at Chandigarh and personally declared it open. Further, he made it a point to be present at all judicial functions and was always courteous to judges. He always showed utmost respect for the judiciary, and added proof of which may be seen in the incident stated below. At a press conference Nehru seemed to have made certain casual remarks about the findings of the Commission of Inquiry under the chairmanship of Justice Vivian Bose that perhaps the loans given to Mundhra by the Life Insurance Corporation of India were influenced by the former's donations to Congress party funds. These remarks were criticised because it was thought that they affected the prestige of the judiciary adversely. Possibly Nehru must have made these remarks in a fit of anger since the allegations were made against the party of which he was the leader. But Nehru, in keeping with his ideas on the prestige and dignity of the judiciary, unequivocally apologized not only to Justice Bose but also to the Chief Justice of India for his remarks.

In the matter of precedence at official functions, however, Nehru did not give the judges the place they deserved. This again might not have been due to lack of respect for them on his part but, presumably, he had to appease certain political influences. This did cause resentment among the judges but they did not protest in an overt manner.

III

For Nehru as the first Prime Minister of free India the supreme task was to lift Indian people from their age-old state of bare subsistence to a social level which provided security, material plenty and above all the opportunities for fulfilment and a higher life for all. Nehru's aim was to achieve economic and social equality along with political equality which became a reality on the attainment of freedom. He said, "Socialism is the inevitable outcome of democracy. Political democracy has no meaning if it does not embrace economic democracy. And economic democracy is nothing but socialism"⁶. With that end in view along with the fundamental rights, directive principles of state

6. Speech at the Jaipur Session of the All India Congress Committee, 1963.

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policy were embodied in the Constitution and they were made fundamental in the governance of the country. However, the Supreme Court's interpretation of the scope of directive principles vis-a-vis fundamental rights in the *Champakam Dorairajan* case,⁷ relating the former to a subsidiary role must have disappointed Nehru. For him the legislative and administrative measures undertaken in pursuance of these directive principles were meant to usher in an era of welfare state based on the rule of law. He remarked, "The rule of law must run close to the rule of life. It cannot go off at a tangent from life's problems...It has to deal with today's problems"⁸. The judiciary's attitude on the question of relationship between the fundamental rights and directive principles did undergo change subsequently. For instance, the court considered the directives as constituting a guide, post in formulating the concept of public purpose, and in interpreting the scope of reasonable restrictions on the exercise of fundamental right in article 17.⁹ In 1971 Parliament enacted the Constitution (Twenty-fifth Amendment) Act which, inter alia, gave primacy to the directives intended to achieve economic equality over some fundamental rights. Article 31C inserted by the Twenty-fifth amendment provides that a law giving effect to the policy contained in clauses (b) or (c) of article 39 (which deals with concentration of wealth and economic power) shall not be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by articles 14, 19 and 31. The latter portion of this article which sought to eliminate judicial review to examine the nexus between the directives referred to above and the impugned legislation was declared void by the majority judgement of the Supreme Court in the *Kesavananda Bharati* case¹⁰. If a legislation, however, has nexus with implementation of these directives, then it will be regarded as valid by the courts.

The poverty of the Indian masses of which Nehru got first hand experience during his participation in the agrarian movement of Uttar Pradesh filled him with sorrow and disgust. He had resolved early in his political career that free India should embark upon programmes of land reforms which would improve the condition of the kisan and make him the owner of the land he tills. For him :

7. *State of Madras v. Champakam Dosairajan*, A. I. R. 1951 S. C. 226.
8. *Suyra* note 1 at 428.
9. See for instance, *State of Bihar v. Kameshwar*, A. I. R. 1952 S. C. 252; *Mohammed Hanif Quesshi v. State of Bihar*, A. I. R. 1958 S. C. 731.
10. *Kesavananda Bharati v. State of Kerala*, A. I. R. 1973 S. C. 1461.

Land reforms have a peculiar significance because without them more especially in a highly congested country like India, there can be no radical improvement in productivity in agriculture. But the main object of land reforms is a deeper one. They are meant to break up the old class structure of a society that is stagnant¹¹.

His views on the role of the courts in dealing with the question of land reforms were definite. While presenting in the Constituent Assembly draft article 24 corresponding to article 31 of the constitution, he observed :

Within limits no judge and no Supreme Court can make itself a third chamber. No Supreme Court and no judiciary can stand in judgment over the sovereign will of Parliament representing the will of the entire community. If we go wrong there and here it can point it out, but in the ultimate analysis, where the future of the community is concerned, no judiciary can come in the way. And if it comes in the way, ultimately, the whole Constitution is a creature of Parliament. But we must respect the judiciary, the Supreme Court and the other High Courts in the land. As wise people, their duty is to see that in a moment of passion, in a moment of excitement, even the representatives of the people do not go wrong; they might. In the detached atmosphere of the courts, they should see to it that nothing is done that may be against the Constitution, that may be against the good of the country, that may be against the community in the larger sense of the term. Therefore, if such a thing occurs, they should draw attention to that fact, but it is obvious that no court, no system of judiciary can function in the nature of a third House, as a kind of third House, of correction. So it is important that with this limitation the judiciary should function. /U/ltimately ...the legislature must be supreme and must not be interfered with by the courts of law in such measures of social reform/abolition of Zamindaries¹².

When the state legislation on abolition of zamindaries were challenged in the High Courts, the Patna High Court declared the Bihar Land Reforms Act, 1950 unconstitutional under article 14 because the classification of zamindars for the purpose of payment of compensation was found to be discriminatory¹³. Similar other state laws were under

11. *The Basic Approach*, a note published in A. I. C. C. *Economic Review* Aug 15, 1958. See also *Supra* note 1 at 122.
12. IX C, A. D. 1195-96.
13. *Kameshwar Singh v. State of Bihar*, A. I. R. 1951 Pat. 91.

challenge in the High Courts and there was apprehension that the implementation of the programme of abolition of zamindaries would be delayed. Hence, Parliament enacted the Constitution (First Amendment) Act in 1951 which added two new articles 31A and 31B and the Ninth Schedule to the Constitution in order to make laws acquiring zamindaries immune from challenge in the courts. The judiciary's interpretation of the scope of the right to equality to invalidate the urgently needed social reform of abolition of zamindaries prompted Nehru to remark :

The question of zamindari and land reforms . was deliberately excluded from the jurisdiction of the Courts. Now, how does it come under their jurisdiction...The/Patna/High Court brings in Article 14, of all articles, to apply it to a question of land reforms. Article 14 says Here I am reminded that one has to respect the majesty of the law. The majesty of the law is such that it looks with an even eye on the millionaire and the beggar. Whether it is a millionaire or a beggar who steals a loaf of bread the sentence is the same. It is all very well to talk about the equality of the law for the millionaire and the beggar, but the millionaire had not much incentive to steal a loaf of bread, while the starving beggar has. This business of the equality may very well mean, as it has come to mean often enough, the making of existing inequalities rigid by law. This is a dangerous thing and it is still more dangerous in a changing society. It is completely opposed to the whole structure and method of this Constitution and what is laid down in the Directive Principles¹⁴.

Since the commencement of the Constitution two crucial questions have arisen with regard to acquisition of private property by the state. One is as regards the quantum of compensation—should it be a “just equivalent” of the property acquired or something less than that. The other is as regards the role of the courts in reviewing the adequacy of compensation. On the question of compensation Nehru stated, “there is no question of any expropriation without compensation so far as this Constitution is concerned”¹⁵. At the same time, he made a distinction between the acquisition of small or relatively larger bits of property

14. Reply to the debate on the reference to a Select Committee of the Bill to amend the Constitution of India (Constitution First Amendment Bill), New Delhi May 18, 1951, see *Jawaharlal Nehru's Speeches*, vol. I, p. 511-12.
15. IX C. A. D. 1192.

and largescale acquisition for major schemes of social reform and social engineering. As for the former, he observed that the law was clear, by which he meant that compensation was payable at the market value of the property acquired. In respect of the latter, however, he said :

If we have to take the property...we have to see that fair and equitable compensation is given, because we proceed on the basis of fair and equitable compensation. But when we consider the equity of it we have always to remember that the equity does not apply only to the individual but to the community¹⁶.

In the Constituent Assembly Nehru understood clause 2 of draft article 24 (present article 31 (2)) to mean that once the law provides for compensation and either fixes the amount of compensation or specifies the principles under which and the manner in which the compensation is to be determined, the scope of judicial review was only marginal. He stated :

Parliament fixes either the compensation itself or the principles governing that compensation and they should not be challenged except for one reason, where it is thought that there has been a gross abuse of the law, where in fact there has been a fraud on the Constitution¹⁷.

Nehru's hopes on the role of the Courts as regards the question of compensation were belied by the Supreme Court's interpretation of article 31 (2). The court in the *Bella Banerjee* case¹⁸ construed the word “compensation” to mean “just” and “equivalent” compensation for the property acquired. Applying that yardstick the court held the statutory provision on compensation unconstitutional on the basis that it was arbitrary and had no relation to the market value of the land on the date of acquisition which might be much more than on the earlier date prescribed. The judicial insistence on the payment of full market value for the property acquired was considered as placing a great burden on the resources of the state which were required for carrying out the various socio-economic programmes of the infant Republic. Hence, in 1955, the Constitution was amended by the Constitution (Fourth Amendment) Act with a view to making the question of “adequacy” of compensation non-justiciable. While introducing the Constitution (Fourth Amendment) Bill, Nehru stated that the purpose of the amend-

16. *Ibid*,

17. *Id.* at 1193.

18. *State of West Bengal v. Bella Banerjee*, A. I. R. 1954 S. C. 170.

ment was to clarify and bring the Constitution in line with what its makers had intended :

The sole major change proposed is to make clear one thing which was clear to us at the time this Constitution was framed. That is to say, according to the Constitution as it emerged from the Constituent Assembly, the quantum of compensation or the principles governing compensation would be decided by the legislature. This was made perfectly clear. It is obvious that those who framed the Constitution failed in giving expression to their wishes accurately and precisely and thereby, the Supreme Court and some other courts have interpreted it in a different way. The Supreme Court is the final authority for interpreting the Constitution. All I can say is that the Constitution was not worded as precisely as the framers of the Constitution intended¹⁹. Nehru in fact reiterated the very limited role of the courts in examining the adequacy of compensation ;

If anything is done by the legislature which is considered a fraud on the Constitution then the courts may come in but otherwise it should not be open to the courts to challenge the decision of the legislature on this point.²⁰

Despite the Fourth Amendment, the Supreme Court in a series of judicial decisions²¹ (except *State of Gujarat v. Shantilal*)²² culminating in *R. C. Cooper v. Union of India*²³ popularly known as the *Bank Nationalisation* case, interpreted "compensation" to mean "just equivalent" and invalidated the impugned statutes. Though the court conceded that it could not examine the adequacy of compensation, it asserted that it would ensure that what was offered was "just equivalent" of what the owner was deprived of on account of state acquisition of his property. The court's attitude on the issues of compensation, it was felt, would thwart the implementation of the socio-economic programme of the government. Therefore, Parliament enacted the Constitution

19. Speech in the Lok Sab. a on the Bill to amend article 31 (2) of the Constitution, April 11, 1955 : *Jawaharlal Nehru's Speeches*, vol. III. p. 124 at 126.

20. *Ibid.*

21. See Justice Subba Rao's *obiter dicta* in *Vajravelu v. Sp. Dy. Collector*, A. I. R. 1965 S. C. 1017 and *Union of India v. Metal Corporation of India*, A. I. R. 1967 S. C. 637.

22. A. I. R. 1969 S. C. 634.

23. A. I. R. 1970 S. C. 564.

(Twenty-fifth Amendment) Act, 1971, which curtailed the scope of property rights and substantially restricted the scope of judicial review. The amendment has substituted the word "amount" for "compensation" in article 31 (2) and had added "or that the whole or any part of such amount is to be given otherwise than in cash" to article 31 (2).

The judicial interpretation of "compensation" subsequent to the fourth amendment to the Constitution in a manner as to give protection to private property at the expense of community good must have led Nehru to ponder whether the judiciary had been vested with too much powers of judicial review. While upholding the importance of the rule of law and individual freedom in a democratic society, Nehru was conscious of the economic and social reconstruction of the country and the role judiciary should play in bringing about such reconstruction. When confronted with judicial decisions not favourable to the process of implementation of socio-economic programmes, Nehru proceeded constitutionally and got the Constitution amended.

IV

Though Nehru himself belonged to the profession of law for a short period, he, however, did not take kindly to the profession. In the debate on the Preventive Detention Bill, referring to the demand for availability of legal advice to the detenus under preventive detention, he stated :

My reputation in that large and very estimable community of lawyers in India is not the best possible because, estimable as they are, I am afraid, I do not admire their profession. It is not their fault, of course. The defect really lies with the judicial structure that we have inherited from the British which entails in-ordinate delay and expense. However, efficacious the system may be, it really proves to be unjust in the end because of the excessive delay and expense it involves.²⁴

In another context, Nehru reiterated his views on the cumbersome and tardy legal procedure followed by the courts in the administration of justice ;

I remember reading once a famous British author. He said "If I am stopped by a stranger on the road who demands my gold watch and chain I refuse to part with it. If he goes on insistently

24. Nehru's speech in Parliament on the Preventive Detention Bill on August 2, 1952, *Jawaharlal Nehru's Speeches*, Vol I. p, 578 at 584.

demanding, I will get very angry. If he wants to fight me on the road, I will fight him, but if he says 'I will take you to the court', 'I will hand over my watch and chain and go away....' 'It would thus appear that to an average citizen the idea of going to a court to fight a long suit is distasteful. If that distrust of the law courts is removed, they can function much more effectively.'²⁵

Thus, Nehru was acutely aware of the cumbersome legal procedure and the excessive expenses attendant on the system of administration of justice inherited from the British. With a view to eliminating those evils, he set up the Law Commission of India in 1955. The Law Commission in its report submitted to the union government in 1958, while commending the basic judicial structure to be sound, recommended far-reaching reforms in the judicial administration. Soon thereafter, the Law Commission was reconstituted and the question of revision of the Criminal Procedure Code was entrusted to it. The detailed examination of the Code was completed by the commission on the basis of which the Code has been amended incorporating several important changes in the procedural law relating to the administration of Criminal justice in the country. The Code of Criminal Procedure Code, 1973, came into force on April 1, 1974.

Under the new code, the institution of presidency magistrates has been continued but these magistrates have been redesignated as metropolitan magistrates. They are to function in Calcutta, Madras, Bombay and Delhi and in other metropolitan cities with a population exceeding one million. The institution of honorary magistrates has been abolished. The remand of the accused in custody during an investigation should not exceed fifteen days at a time and sixty days on the whole. Committal proceedings in sessions cases have been abolished. As regards petty offences punishable only with a fine not exceeding Rs. 100/- an accused may plead guilty to the charge without appearing before the magistrate and remit by post the fine specified in the summons, provided the fine so specified does not exceed Rs. 100/-. In order to expedite the disposal of cases, the scope of summary trials has been enlarged to include offences punishable with imprisonment upto two years instead of six months. The provision for mandatory stay of all proceedings in the subordinate courts on the mere intimation by a party that he intends to move the High Court for transfer had led to gross abuse and, consequently, was repealed. Instead, power is given to the court hearing

25. Nehru's Talks to the Police, *Indian Police Journal*, 1964 197,

26. See Mohan Kumaramangalam, *Judicial Appointments*, 1973.

the transfer application to stay the proceedings in the lower court pending the disposal of the application. The provision for legal aid is recognised in the new Code in that at least in all sessions cases counsel should be provided to the indigent accused at state expense. These are some of the substantial reforms aimed at minimising delay and costs in the administration of criminal justice.

Similarly the Law Commission in its report submitted to the union government on the Civil Procedure Code in 1973 made far reaching recommendations with a view to streamlining the procedure relating to civil litigation. They relate to simplification of the doctrine of res judicata and the requirement to file the written statement within a specified time; improvement and expansion of the provisions for the suits relating to public nuisances and public trusts, abolition of the High Court's power of revision; restricting the right of second appeal only to substantial questions of law; amendment requiring disposal of the case on all issues, except in special cases as the jurisdiction or bar of suits. The purpose of the last mentioned amendment is to make the procedure speedy and effective and to avoid frequent remands. Similarly the elimination of revision by the High Court would expedite the disposal of suits because often the cause of delay in the trial of suits has been the entertainment of petitions for revision against interlocutory orders. An attempt has been made to enlarge the scope of summary procedure by extending it to all courts and to eliminate the delay caused by stay orders and interim injunctions. A substantial reduction in the number of orders appealable under order 43 has been recommended. Legal aid has been made compulsory for all persons permitted to sue as indigent persons. Provisions have been made to ensure that execution proceedings are not unduly delayed. One of the significant recommendations relates to the training of judicial officers and the establishment of a National Academy of Judicial Training. The purpose of training should be not only to impart professional skill and knowledge to junior judicial officers but also to widen the mental outlook, values and attitudes of those administering justice. Most of the recommendations have been incorporated into the Civil Procedure Code by the Amendment Act of 1976.

The radical reforms in the administration of criminal and civil justice surveyed above mark the culmination of the efforts of Nehru who initiated the process. True, during his life time, a thorough revision of the procedural laws could not be undertaken; but the process

of revision had begun. It must be pointed out that rationalisation and simplification of certain laws particularly with a view to cutting down the scope of litigation, were achieved during the Nehru era. Significant among such laws are the Indian Limitation Act, 1963, and the Indian Oaths Act, 1963, enacted in pursuance of the recommendations of the Law Commission. Subject to limitations of time and resources, Nehru started the process of rationalisation and simplification of laws to suit the changing conditions of independent India and of minimising the law's proverbial delays and costs attendant on the system of administration of justice.

Presumably Nehru's negative attitude to the legal profession was responsible for his non-involvement of lawyers in the planning process in the country. He did not give them a chance to act as the initiators of economic and social change in the society. That was a serious drawback. The presence of legal talent in the machinery of planning could have contributed to taking a balanced perspective of the planning process in a society wedded to the rule of law,

V

During the post-Nehru era, consequent on the decisions of the Supreme Court in the *Golak Nath*, *R. C. Cooper*, *Privy Purses* and *Kesavananda Bharati* cases, an attitude of confrontation between the executive and the judiciary developed which led to the search of "committed" judges. The late Mohan Kumaramangalam, a Minister in Indira Gandhi's government articulated the theory of "committed judges" in the appointment of judges to the higher judiciary. He claimed that judicial appointments could not be made oblivious of the social philosophy of the judges which affect their decision-making. He put forward a very controversial point of view that judges must be committed to the social and economic philosophy of the government. This thesis resulted in the supersession of three senior judges, namely Justices Shelat, Hegde and Grover and the appointment of Justice A. N. Ray as the Chief Justice of India in 1973. The principle of "seniority" was given the go-by. Again in 1977 Justice M. H. Beg was made the Chief Justice of India in preference to the senior-most judge, Justice H. R. Khanna. These supersessions sparked off vehement protests from all sections of the legal community, namely judges, lawyers and legal academics as onslaught on the cardinal principle of independence of judiciary.

During the Emergency, sixteen High Court judges were transferred presumably on the ground that they did not toe the line of government, though the ostensible purpose was to promote the idea of national integration.

The practice of appointment of additional judges to the High Court for a maximum period of two years to deal with the backlog of cases and temporary increase in the institution of cases came to be misused and distorted. Almost every judge was appointed first as an additional judge and they confirmed as a permanent judge. Added to this was the shocking practice of appointment of additional judges for only a few months at a time leaving them guessing till the last moment whether their term would be extended or not. This practice came in for severe criticism in the *Judges* case which held that additional judges should not be appointed for "ridiculously short terms" such as three or six months. Almost all judges insisted on a minimum of one year term. Justice Bhagwati (as he then was) stipulated a minimum ten-year term.

The period also saw the decline in the primacy of the Chief Justice of India in the consultative process in the appointment of judges as a sequel to the majority view in *Judges* case.

In violation of constitutional prohibition the judges have been the target of criticism in the legislatures for their decisions (on a Union Minister's criticism of Former Chief Justice Chandrachud in the *Shah Bano* case in Parliament).

The courts at all levels, trial and district courts, High Courts and the Supreme Court are groaning under the weight of arrears which ultimately will shake the credibility of the justice-delivery system in the eyes of the common litigant. Delay in the appointment of judges, cumbersome and tardy procedures despite changes in the criminal and civil procedures and the vested interest of the Bar in maintaining the status quo by resisting any change in the procedures have aggravated the problem of court arrears. Drastic remedies are needed to solve it. So a search is on for alternative forum for dispute resolution at the grass root levels in the form of Lok Adalats, People's courts or Nyaya Panchayats.

VI

A bright silver lining in the otherwise depressing scenario has been the emergence of public interest litigation (PIL) or Social Action Litigation (SAL) in India, to provide access to justice to the millions of

poor and disadvantaged. The Supreme Court under the leadership of Chief Justice Bhagwati has opened its doors to the poor for making the fundamental and other legal rights meaningful to them. The aim is to ensure that the benefits of the socio-economic welfare legislation and administrative measures reach the poor. The judicial strategy adopted has many facets. First in a series of decisions, the Supreme Court through Chief Justice Bhagwati has broadened the scope of the traditional fundamental rights and given them new content. In particular the right to personal liberty in article 21 has received a dynamic interpretation in that it included not just the right to physical existence but also the right to live with human dignity. Similarly Chief Justice Bhagwati broadened the scope of judicial review of procedure in article 21 by laying down in *Maneka Gandhi's* case that the procedure laid down must be reasonable, fair and just and not arbitrary, whimsical or fanciful. These decisions have enabled the court to take up new types of cases and confer new kinds of rights on groups or classes as bonded labourer's, under-trial prisoners, pavement dwellers, women in protective homes, protection of the socio-economic rights of the tribals, etc.

Second strategy is the widening of the concept of *locus standi* to confer the right to file cases on public-spirited individuals or voluntary agencies on behalf of the disadvantaged class for the protection of rights which pertain to them as a class.

Thirdly, the introduction of "epistolary" jurisdiction cutting across the procedural formalities added a new dimension to access to justice. Letters and telegrams were entertained as writ petitions. Further, collection of evidence through court-appointed commissions rather than placing the burden of proof on the public-spirited individuals or social service organisations, has aided the progress of PIL/SAL considerably.

The new brand of judicial activism reflected in PIL/SAL may not find favour with the executive and may be looked upon as an encroachment in the sphere of executive action. But what the higher judiciary is doing is to enforce the fundamental and other rights conferred on the citizens by the Constitution and legislation and ensure accountability of the executive to the people of India.

NEHRU AND SOCIALISM

VIRENDRA KUMAR*

Jawaharlal Nehru's profound understanding of Indian social history enabled him to identify the cause which had produced the plethora of problems for the millions of our people. He proclaimed it perceptively in his Presidential Address to the Indian National Congress at Lahore in 1929. He said :¹

"Great as was the success of India in evolving a stable society she failed in a vital particular and because she failed in this she fell and remains fallen. No solution was found for the problem of equality. India deliberately ignored this and built up her social structure on inequality and we have the tragic consequences of this policy in the millions of our people who till yesterday were suppressed and had little opportunity for growth."

For building up the new social structure based on equality and social justice, Nehru sought to develop a philosophy which would suit the genius of our people enabling them to bring about a peaceful transformation resulting eventually in the creation of a classless society. This would be the society "with equal economic justice and opportunity for all; a society organized on a planned basis for the raising of mankind to higher material and cultural levels, to a cultivation of the spiritual values of co-operation, unselfishness, the spirit of service, the desire to do right, goodwill and love, and ultimately a world order."² Realization of this ultimate goal Nehru perceived the philosophy supported by socialistic programme. He frankly confessed and called himself "a socialist and a republican...no believer in kings and princes, or in the order which produce the modern kings of industry, who have greater power over the lives and fortunes of men than even the kings of old, and whose methods are as predatory as those of the old feudal aristocracy."³

Nehru was gently pushing this philosophy to be explored and accepted, in the first instance, by the Indian National Congress itself. The main plank of his argument was that the philosophy of socialism had

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1 See, *Selected Works of Jawaharlal Nehru*, Vol. IV, at pp, 184-198.

2 See, *Jawaharlal Nehru, An Autobiography*, 1936.

3 See, *Supra* note 1,

gradually permeated the entire structure of society the world over and almost the only points in dispute were the pace and the methods of advance to its full realization.⁴

For example, until about the first half of the nineteenth century the notion of private property in the western jurisprudential thought is typified by the definition of Austin which describes *ownership* as "a right-indefinite in point of user—unrestricted in point of disposition—and unlimited in point of duration—over a determinate thing."⁵ This exposition merely validates the then prevailing capitalist-industrialist order.⁶ No doubt there were certain limitations, but those were treated as "exceptions" and "restrictively."⁷ The 'due process' clause limited by the doctrine of 'police power' in the United States of America exhibited this attitude.

However, from about the middle of nineteenth century onwards the emphasis began to shift from the individual to the society. The right to property came to be exercised subject to the proviso that it did not come in conflict with the larger social interest. Here the ownership became as "the ultimate right to the enjoyment of a thing, as fully as the state permits, when all prior rights in that thing vested in persons other than the one entitled to the ultimate use, by way of encumbrance, have been exhausted."⁸ The limitations that were imposed became an integral part of the concept of ownership rather than mere exceptions to an otherwise unlimited right.⁹ Acquisition or expropriation of private property by the State for public purpose on payment of "just compensation" is a cogent example of the individual interest and the social interest in equilibrium. In the working of this constitutional guarantee we find that the social interest is fulfilled without nullifying the individual's right to property. This is the social limit of the capitalist concept of ownership subscribed to in many contemporary constitutions.¹⁰

4. *Ibid.*

5. See R. W. M. Dias, *Jurisprudence*, 1970, at 477.

6. See, V. R. Krishna Iyer, J., "A Theme Introduced, National Jurisprudence: Foreward to the Future," A. I. R. 1976 Journal, 65, at 66.

7. *Supra*, note 5, at p. 372.

8. G. W. Keton, *The Elementary Principles of Jurisprudence*, 1961, at 172.

9. See, *supra* note 5, at p. 37.

10. For example, see the United States Bill of Rights (1791)—Article 5; Constitutions of Australia (1900)—Article 51; Japan (1947)—Article 29; West Germany (1949)—Article 14; Venezuela (1961) Article 65. All these constitutions guarantee the payment of "just" or "fair" or "adequate" compensation for the acquisition of private property.

The socialist concept of ownership is marked when the pre-eminence of the social interest is recognised over the private interest. That is, the right of the individual is not merely regulated so that it does not come in conflict with the larger social interest, but is dealt with in a manner so that the maximum social interest is effected. Here, unlike the capitalist concept of ownership, ownership right of the individual in a given property may be completely effaced even without a provision of compensation, much less than the "just" compensation. An extreme version of this approach is found, for example, in the Soviet Constitution.¹¹ There the socialist system of economy was established after the October Revolution (1917), when all private properties were acquired by the State without redemption.¹² The property exists there either in the form of State property or in the form of cooperative and collective farm property. *The purpose of law is mainly to regulate relations between men, and not to link a person and a thing, the owner and the object of ownership.*¹³ Nehru admitted the end result of this approach, but not the entire method of its achieving. He said:¹⁴

"...Much has happened there which has pained me greatly and with which I disagree, but I look upon that great and fascinating unfolding of a new order and a new civilization as the most promising feature of our dismal age. If the future is full of hope it is largely because of Soviet Russia and what it has done, and I am convinced that, if some world catastrophe does not intervene, this new civilization will spread to other lands and put an end to the wars and conflicts which capitalism feeds."

In the light of this revealing trend towards socialism the world over, Nehru could not help stipulating that if India sought to end her poverty and inequality, she would have to go to that way too, but by evolving her own appropriate strategy.¹⁵ In his Presidential Address at the Lucknow Congress (1936) he declaimed:¹⁶

11. As amended by the Sixth Session of the Seventh Supreme Soviet of the U. S. S. R. (1936)

12. See the First Decree on Land passed by the Second All-Russia Congress of Soviets after the October Revolution (1917)

13. See Article 19 of the Constitution of the U. S. S. R.

14. See the Presidential Address at Lucknow Congress, April, 1936, reprinted in *Selected Works of Jawaharlal Nehru*, Vol VII, at pp. 170-195.

15. See, *supra* note 1.

16. See, *supra* note 14.

"I am convinced that the only key to the solution of the world's problems and of India's Problems lies in Socialism...I see no way of ending poverty, the vast unemployment, the degradation, and the subjection of the Indian people except through Socialism.."

In the formulation of the Constitution for free India, Nehru played the key role. It is no wonder that his philosophy of socialism permeated the spirit of the Constitution. Basic ideas were his, but expressed in the language of others. The Socialistic approach is visualised in the securing of a "social order" in which "justice, social, economic and political, shall inform all the institutions of the national life."¹⁷ This concept is amplified when it is urged that the State shall "in particular" direct its policy towards securing, *inter alia*, "that the ownership and control of material resources of the community are so distributed as best to subserve the common good,"¹⁸ and "that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment."¹⁹ The direction for the realisation of this ideal was shown in Article 31 of the Constitution. (This Article has now been repealed by the 44th Amendment of the Constitution). Clause (2) of that Article, as originally drafted,²⁰ made room for social ownership by providing that the private property could be acquired for public purposes through a law which "either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined and given." In the working of this clause, however, the term "compensation" became the subject of acute judicial controversy. For example, it had been held by the Supreme Court that the legislative power to lay down principles of compensation did not include the power to provide virtually no compensation, nor could it violate the principles of equality in assessing the compensation; that is, one assessment in the case of poor-owner of property, and another in the case of rich-owner of property. The compensation simply meant, the court said, "a just equivalent" of the acquired property, that is, its full and fair money equivalent.

This exposition frustrated the attempt to bring about the much needed land reforms because neither the scanty resources permitted the State to pay the huge sums of money by way of "just" compensation,

17 Article 38 of the Constitution of India.

18. Article 39 (b).

19. Article 39 (c)

nor was it politic indeed to equate her poor land-owners with the rich-landlords to avoid the concentration of wealth and means of production to the common detriment. For correcting these deviations, there followed the chequered history of constitutional amendments²¹. However, if the underlying socio-economic philosophy—the philosophy of socialism—which is so explicitly pronounced in Nehru's writings, which I believe should form a part of our legislative history, were the guide in the interpretation of our Constitution, particularly the then Article 31, much of the conflict and confusion, which had delayed and deferred the socio-economic reconstruction through the process of law could have been easily averted and so also the necessity of resorting to the repeated amendments of the Constitution. After all, we have now through the 42nd Amendment of the Constitution (1976) included the term "socialist" in the very preamble of the Constitution. Isn't a manifest realisation on our part of what Nehru perceived much earlier—forty years earlier (1936)—fifty years earlier (1929)—or perhaps even still earlier.

Nehru did not define "socialism". He merely said that he did not use it "in a vague humanitarian way but in the scientific, economic sense"²¹. To him it was "something even more than an economic doctrine"²². It appealed to him most "as a philosophy of life"²³, which enables man to bring about "a profound transformation of deeper habits of opinion and character"²⁴. For him, it was a "vital creed" which he held with all his "head and heart"²⁵. Nehru encouraged others to explore the content of socialism in the light of the accepted broad contours, such as the social and economic policy in terms of benefiting the underdog—the poor peasants²⁶. But he did not favour any final definition because the whole concept was dynamic

20. For the analysis, see author's "Legislative and Judicial Response to Property as an Institution of Social Control", 1979 *Panjab University Law Review*, at pp. 111-118; "Jurisprudence of Ownership and Socialism," 1978 *Indian Journal of Comparative Law*, Vol. 1

21. See, Presidential Address at Lucknow Session, *supra* note 14.

22. *Ibid.*

23. *Ibid.*

24. See, *A Bunch of Old Letters*, at p. 139 (From a letter to Lord Lothian, dated January 17, 1936)

25. See, Presidential Address at Lucknow Session, *supra* note 14.

26. See the text of the signed article in *Souvenir* brought out on the occasion of the 68th Session of the Indian National Congress held at Bhubaneswar in January, 1964, reprinted in V. B. Singh, *Nehru on Socialism*, (Publication Division, Government of India, 1977) at pp. 123-135 (Appendix II).

and would go on changing with the needs of the changing society²⁷. As a partical man, what he wanted was that some idea of the picture of the future society we aim at must be kept in our minds so that the steps we take, held in realising"²⁸.

Having reached thus far, it only remains to be emphasized that Nehru categorically conditioned that the change to socialism "has to be achieved by peaceful means and with the consent of the people"²⁹. This means that, the socialism which Nehru envisaged was not divorced from democracy. It encompassed at every stage "a large and irreducible measure of civil liberty"³⁰. Nehru was dead against making the individual totally subservient to the state, denying him the basic freedoms and liberty so essential for the development of human personality and raising the quality of human life.

The whole ideology of socialism as envisioned by Jawaharlal Nehru may be summed up as follows :—

- (a) Nehru's approach to socialism is innovative, and not imitative, although by synthesis, he derived inspiration from the Marxist model as from the Capitalist model.
- (b) In his approach, he was very consciously pragmatic, not dogmatic. Perhaps it is for this reason, Nehru never attempted to define precisely what socialism meant. For him, life was too complicated to be confined within the four corners of a fixed doctrine. In this manner, he was able to avoid any rigid or doctrinaire definition.
- (c) Nehru passionately pleaded for the full realization of socialism, because that alone would bring 'freedom of conscience and mind' and also that freedom which comes from economic security, which only a small number possess today"³¹.
- (d) To cap it all, in terms of substance as well as strategy for *Sarvothan सर्वोत्थान* Nehru called the new social order by the name of 'Democratic Socialism'³² a conception of socialism based on the cardinal principles of democracy, dignity of human individual and justice.

27. *Id.*, at p. 126.

28. *Ibid.*

29. *Id.*, at p. 128.

30. S. Gopal, *The Mind of Jawaharlal Nehru*, 1980 at p. 18.

31. See *supra* note 26, at p. 128.

32. *Unity of India*, p. 118. See also author's "Nehru's Socialism in Legal Literature", *Nehru and Indian Literature*, V. N. Tewari, Ed., 1982 at 41-47.

FUNCTIONAL DIALECTICS IN INDIAN CONSTITUTION—A JAWAHARLAL'S EXPERIMENT

N. L. MITRA*

1. Prologue

Perhaps the best summing up of the role of Jawaharlal in the making of our Constitution was made by his own daughter, Indira Gandhi¹, when she said, "the spirit of our Constituion bears the imprint of his inspiration even though the forms might have been devised by professional lawyers". While we know about his contribution primarily from deliberations in the Constituent Assembly (*hereinafter* CA), she must have seen him burning the midnight candle in homework. If we make an effort to calculate the basic equation between the philosophy and attitude to life of Jawaharlal and also the underlying basic principles and linking philosophy of our Constitution, we can immediately find out the high lineal ratio between the two. If an attempt is made to say what Jawaharlal was or was not, in the light of what our Constitution is or is not, perhaps a gross ratio may be worked upon and that may lead us to deeper analysis. Jawaharlal *was not* communal and was secular in the truest sense of the term; *was not* dogmatic but was idealist par excellence as Madhu Limaye² puts it; *was not* small-minded but was having an adjustable personality with aspiration of all ages, as Bidhan Ray³ used to explain him. He was a true nationalist but made of international fibre. A true Indian having seen the plights of all Indians, rural and urban, Jawaharlal was truly a humanist and very accomodative. All these character-ingredients, negative and positive, that were recipes of his personality, are to be examined of *contemporanea expositio*.

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1. Kashyap, S. C.: *Jawaharlal Nehru and the Constitution*, quotation given in the Inner Cover said on November 17, 1976.

2. Madhu Limaye was a contemporary socialist leader and a freedom fighter. He was also a great Parliamentarian.

3. Chief Minsiter of West Bengal from 1948 to 1962. He is regarded as the architect of modern West Bengal.

2. Accomodative Jawaharlal : A dialectic Constitution

Had Nehru been only an idealist, as Madhu Limaye puts it, the CA would have taken many more months to give birth to its child, or, our Constitution would have been written in fewer but firmer but words keeping less scope for executive and judicial interpretation. Nehru was accomodative to the maximum participants of CA. Dietmar Rothermund did notice this special quality of Nehru, "to adopt strange face-saving devices in order to have his say without breaking the party discipline"⁴. A few examples may be cited by way of showing Nehru's accomodative attitude to life. While moving the first resolution containing the objectives of our Constitution as 'an Independent Sovereign Republic', Nehru at first [tried to urge for why the word 'democratic' was not included in the objective-criteria. He observed, "the house will notice that in this resolution although we have not used the word 'democratic' because we thought it is obvious that the word 'republic' contains the word and did not want to use unnecessary words and redundant words, but we have done something much more than using the word". But finally he accepted to include the word 'democratic'⁵.

He was, on the other hand, accomodative in the negative sense in not including the word 'socialist' in the objective-criteria. In his own words he explained, "Well, I stand for socialism and, I hope, India will stand for socialism and that India will go towards the constitution of socialist State and I do believe that the whole world will have to go that way. What form of socialism again is another matter of your consideration. But the main thing is that in such a Resolution, if in accordance with my own desire, I had put in, that we want a Socialist State, we would have put in something which may be agreeable to many and may not be agreeable to some and we wanted the Resolution not to be controversial in regard to such matters. Therefore, we have laid down, not theoretical words and formulae but rather the content of the thing we desire"⁶. Yet Nehru succeeded in the inclusion of his thought of welfare State expressed in the Karachi resolution of 1931 in the chapter of directive principles of state policies and remained satisfied with that 'one step forward' tactics. In his life-time, Nehru did not see the inclusion of 'socialist' in the objective-

4. Dietmar Rothermund : Nehru and early Indian Socialism, *St Antony's papers*, No. 18 *South Asian Affairs*, No. 2 (Ed. by S N Mukherjee) 105.

5. *C. A. D.* vol. 1 pp 55-65.

6. *Ibid.*

criteria of our Constitution, yet in his lifetime he was the architect and laid the foundation of the growth of Indian socialism through an accomodative experimentation in Indian economy.

How much accomodative was Panditji in the making of the Constitution can be seen when he said, "..... we are here not to function of one party or one group, but always to think of India as a whole and always to think of the welfare of the four hundred millions that comprise India. We are now, in our respective spheres, partymen, belonging to this or that group and presumably we shall continue to act in our respective parties. Nevertheless, the time comes when we have to rise above party and think of the Nation...."⁷.

As a true dialectician Jawaharlal could bring out all matters of cross-interests while covering the area of 'fundamental freedom' both subjectively and objectively. Perhaps here the Indian Constitution has become distinctly different from the Constitution of the other major countries of the World. Here the functioning of Indian Constitution has crossed the border of the 'secondary rule' concept. It has transcended into a functional cosmos through the process of dialectics. It might seem to Iver Jennings that each provision of freedom was made restricted and obscured in the maze of many negative provisions, but the course, perhaps, was the best a course of interaction between positive and negative approaches to highlight an issue-based equilibrium-point in the context of social dynamics. Jawaharlal was a strong believer of such a dialectic process of arriving at the maximum benefit through constitutional functioning. At that historic moment when a crisis of confidence used to reign over the nation, nothing could have been more appropriate than such a dialectic approach in each micro-issues to arrive at an agreement between individual ideas and social ideals in interaction. Let us for example understand how was he conscious about minute problems connected with each matter of fundamental freedom. He brought out the 'moral problem' of "poisoning the mind of the younger generation degrading their mental integrity and moral standard" due to ".....news-sheets which are full of vulgarity and indecency and falsehood....."⁸. He therefore, advocated freedom with responsibilities and obligations and certain disciplines. Naturally, he welcomed 'wonderful amendments' comprising restrictions due to 'friendly relations with foreign states, public order and incitement to an offence.....'⁹.

7. *Ibid.*

8. *L. S. D.* Vol XII-XIII Pt. II pp 8823-88 (May 16, 1951).

9. *Ibid.*

One of the primary achievement of Jawaharlal was to bring to focus all *macro* and *micro* issues of social, group and sometimes, individual interest in order to cross-fertilize the same in the best common interest through dialectic manipulation of constitutional provisions. Perhaps left to him, he would have given more ratio-value to directive principles in comparison with fundamental freedom. But since the value-structure and social aspiration of the people is bound to change from time to time, it was, perhaps, best to leave the matter there in the process of dialectic functioning. The very basic philosophy behind the dialectic growth of constitutional functioning is to provide animative dynamism of development potential keeping in tune with social aspiration of the time. Nehru said in the CA, "If you make anything rigid and permanent, you stop Nation's growth, the growth of a living vital organic people. Therefore, it has to be flexible.....and for a period we should be in a position to change it with relative facility.....nevertheless, one should think of it as something which is going to last, which is not transitory Constitution, a provisional Constitution, something which has provisions for the next year or year after next and so on and so forth."¹⁰

Yet Nehru was not a mere functionalist. He was an idealist amongst realists and a realist amongst idealists. That was why, he could warn the CA against making a 'sacred and a sacrosanct' Constitution. He said, "...if you wish to kill this Constitution make it sacred and sacrosanct—certainly. But if you want it to be a dead thing not a growing thing, a static, unwieldy unchanging thing, then by all means do so. realising that is the best way of stabbing it in the front and in the back. Because, whatever the ideas of the 18th century philosophers, or philosophers of the early 19th century—and many of those ideas may be very good—nevertheless the World has changed mightily We have seen most perfect Constitutions upset, not because they lacked perfection, but because they lacked reality, because they lacked dealing with the real problems of the day."¹¹ As a true elite, Nehru always wanted to keep the debate open. But often for functionality and understanding he did not sacrifice ideals. That was why when some of the Princely states objected to 'Sovereignty belongs to the people and rests with the people', he ridiculed them saying "people lived in an atmosphere of mediaevalism, do not give up their cherished illu-

10. *C. A. D.* Vol VII pp 318, 322-23.

11. *Parliamentary Debate* (May 16, 1951) & (May 29, 1951): Vol XII-XIII Part II Cols 8817, 9074.

sions...."¹² But for debate and reconciliation he was even ready accepting a position of princely units within republic India. He did perceive that 'a great country is sure to have a lot of controversial issues....'¹³ Thus it was Jawaharlal who played a key role in introducing a dialectic functioning of the Indian Constitution.

3. Permanent Structure with flexibility for tomorrow

Coming to the Nehruvian approach in the field of amendability of the constitution. Nehru himself said "...remember this, that while we want this Constitution to be as solid and as permanent a structure as we can make it, nevertheless there is no permanence in Constitution.we should not make a Constitution such as some other great countries have, which are so rigid that they do not and cannot be adopted easily. Today especially, when the world is in turmoil and we are passing through a very swift period of transition, what we may do today may not be wholly applicable tomorrow. Therefore, while we make a Constitution which is as sound and as basic as we can, it should also be flexible and for a period we should be in a position to change it with relative facility."¹⁴ While emphasising the fundamentals and its extent of reasoning, he said, "...so far as the basic nature of the Constitution is concerned, it must deal with the fundamental aspects of the political, the social, the economic and other spheres, and not with details which are matters for legislation. You will find that if you go into too great detail and mix up the really basic and fundamental things with the important but nevertheless secondary things you bring the basic things to the level of the secondary things. You lose them in a forest of detail...."¹⁵

Nehru did not, therefore, envisage basic issues to be issues of non-changeable character. To him there was no basic structure which a sovereign Parliament cannot alter. In fact, Nehruvians were all brought up in the Parliamentary culture of Great Britain. Naturally to them Parliament was the supreme body. Constitution to them was a document to decipher fundamental issues of political, social, economic and other sphere from the details of such issues. Here also Nehru did not want to have the last say. He always wanted to give maximum power to the Houses of representatives.

12. *C. A. D.* Vol VII pp 316-23 (Jan. 22, 1947).

13. *Ibid.*

14. *Supra* Note 9.

15. *C. A. D.* Vol VII pp 588-89.

4. Nehru's Sense of Equality and Dialectic Process

Equality is not a matter of the world of death. Equality true, in its dispassionate negative sense means 'maintain *status quo*'. There is equality between '2' and '2' and here equality may mean maintaining '*status quo*'. But in order to bring equality between '2' and '4' we will require an action-packed positive interpretation of equality. The idea of positive task of equality is always a matter of dialectic interaction and has to be decided in each individual variation. Nehru's idea of equality is reflected in his speech when he said, "....we cannot make a fool a wise-man or make a wise-man a fool, (perhaps, by this he wanted to mean the wisdom quality to be *a posteriori* and is acquired by birth), individuals are tall or short, thin or fat and nobody tries to have similar rotundity either in the mind or body but we do wish to give the same opportunity to everyone so that he can take full advantage of those opportunities and grow to the full stature as far as that stature allows it and if anything comes in the way of achieving this we should remove that. It is not an easy matter, it is not a thing to be done quickly and suddenly when we have a vast population."¹⁶ Unfortunately, our judiciary could not appreciate the mind of the founding fathers of our Constitution. But recently the Supreme Court has realised the mistakes and started proacting.

The dialectic functioning of equality in the area of reservation also attracted Nehru's attention. He was really bewildered at the attitude of an interpretation of the Constitution by the Supreme Court. While moving the first amendment of the Constitution, he said, ".....Now in doing that we have been told that we come up against some provisions in the Constitution which rather lay down some principles of equality. This is a very peculiar position. We cannot have equality because we cannot have discrimination because if you think in terms of giving a lift up to those who are down, you are somehow affecting the present *status quo* undoubtedly. Therefore, you are said to be discriminating because you are affecting the present *status quo*. Therefore, if this argument is correct, then we cannot make any major change in that respect because every change means a change in the *status quo*, whether economic or in any sphere of public and private activity....."¹⁷ In fact that was the moment Indian Parliament started coining means to circumvent this headmaster's attitude of the Supreme Court of India.

16. *Par. Deb.* Vol XII-XIII Pt. II Cols 9515-21 (May 18, 1951).

17. *Ibid.*

The result was on minor pretext and insignificant remark, amendments started flowing sometimes not without injuring the principles for which Nehruians used to fight for. And many amendments have stiffened the course changing totally or substantially, the dialectic process that the founding fathers, and specially, Panditji had laid down.

Reservation is a technic to bring a backward section of the people to the level of other comparatively advanced section of the population so that thereafter with 'equality of opportunity' a balance growth is possible. It is a 'lever' for taking every section of the people to a 'take-off' stage. Jawaharlal had a clear vision about the task. ".....and the fundamental aims of our policy, that we must encourage and help those whose are backward to come up and give them proper training and proper opportunities of social and economic advance" said, Jawaharlal in the CA.¹⁸

5. Jawaharlal's diagnostic socialism : a new experiment in National Economy

Jawaharlal was deadly against *bania* civilization of capitalists. Dietmar Rothermund has very rightly observed that to Jawaharlal, socialism was more of a sentiment and attitude than a system. Nurtured in a true Indian culture and life-style, Jawaharlal was a representative of brāhminical culture. His idea of socialism was formed and blended with saucers of Vedanta philosophy and Swami Vivekananda's thoughts. Rothermund has observed the blending process of the brāhminical culture of socialism as a method of diagnosis and therapy with the immediate fight of freedom struggle. He said, "the Vedantic concept of self-realisation which was used by an earlier generation of militant nationalists in order to equate the quest for *moksha* with national liberation, now suffused the new message of socialism so as to add a peculiarly Indian flavour to it".¹⁹ Dietmar continued, "the dilemma of Marxist revolutionary doctrine, the definition and realisation of class-consciousness, which led many of Marx's ideological heirs to a re-Hegelianization of their master's system, was obviated by the Vedantic element in Indian socialism, since the system of Vedantic culture was attuned to all subtle problems of consciousness".²⁰

It was keeping with this tradition that Nehru used socialism

18. *Supra* Note 16 Cols. 8821-22 (May 16, 1951).

19. Dietmar Rothermund : *Nehru & Early Socialism in India St. Antony's Papers, No. 18, South Asian affairs No. 2 p. 100.* (Edited by S. N. Mukherjee)

20. *Ibid.*

mainly as a means of analysis, hoping that this analysis itself would clear the fog of false consciousness and thus contribute to social and political progress. Nehru, concept of socialism was thus a process of analysis, realisation and correctives. He was not a doctrinaire in the sense, he was a programmer, a therapist. This attitude of Jawaharlal was reflected in the Karachi Resolution of 1931. The resolution regarding the economic programme of the Indian National Congress, include, *inter alia*, right of a living wage, introduction of an inheritance tax, graduated income tax, rent reduction and the state ownership or control of basic industries. Inclusion of these economic programming in the Indian Constitution is the main contribution of Indian nationalism to the Indian Constitution. Otherwise, this SECONDARY RULE CODE remains merely an instrument of administration with most of the paraphrasy of the Government of India Act, 1935 in tact. Jawaharlal himself characterised this as functional socialism distinguishing the same with the concept of socialist state. He said, "the socialist state may be a dream of the distant future, but socialism is a beacon light of the present, lighting up the path which we have to tread".²¹

The inclusion of Karachi resolution of 1931 in the Indian Constitution was not Nehru's best achievement, though in that moment that too, required a tremendous effort. The best achievement of Jawaharlal was his experiment in functionalizing the constitutional provision in building up a new India. Jawaharlal did not start with the process of State take-over or nationalisation or with abrupt change in the economic modalities of state functioning. Not that he did not want it, but that he could not do it democratically. He did evolve a concept of new formula of mixed economy in a transitory phase and framed an industrial policy of free India to introduce the State ownership and control in areas where private sector had least capability and hence, least resistance. Yet that was the dawn of the new era of progressive social control and a modern welfare State. Jawaharlal was not a theorist but his object was clear and his conviction was firm. His effort of balancing the provisions in Chapter III and IV of the Indian Constitution and functionalizing the state policies with direction, was a piece of wonderful quality of analysis, diagnosis and therapeutics. He was, therefore, the mechanic of the constitutional structure of Indian Constitution. With an ordinary Constitution, Jawaharlal did an extraordinary job and made an extraordinary document. It is unfortunate that the judiciary

21. Nehru; *Eighteen Months in India* p, 41.

very lately appreciated the functional growth process of our constitutional functioning through a constant dialectic modality within the socio-economic and political phenomena.

6. A secular attempt : a non-secular Constitution

Jawaharlal was perhaps one of the most secular statesman of his time in India, why, of the whole World ! To him Hindu and Muslim communalism were products of middle-class infighting utterly divorced from the consciousness of Hindu and Muslim masses. Jawaharlal himself tried to uncover the act of communalism. He said, "But you have to distinguish between backward classes which are specially mentioned in the Constitution that have to be helped to be made to grow and not think of them in terms of community or that. Only if you think of them in terms of the community, you bring in communalism. But if you deal with backward classes as such, whatever religion or anything else they happen to belong to, then, it becomes our duty to help them towards educational, social and economic advance."²²

Dietmar observed, "this was also the line of reasoning which led him in later years to the equation; anti-communal = secular = egalitarian. An egalitarian society would serve as a stable foundation for a secular State and only the secular national state could transcend the claims of communalism and prepare the ground for an egalitarian society."²³ That stand was enough. But accommodative Jawaharlal had to accept many 'strange face saving devices'. Let us examine his stand through the Code of Secondary Rule.

The provision for making a uniform Civil Code for all Indians has been silently included in an obscure corner of the directive principles. Of course, we have to understand the historical crisis of confidence of the time and appreciate the constraints of framing a secular Constitution. Nehru was conscious of 'separatist existence and tendencies' of the time. He, therefore, like a gentleman, urged upon the majority people to protect the interest of the minority interest. Had that been enough, perhaps, the heirs would have been saved from unnecessary religious feuds. But Jawaharlal accepted a situation of concession and compromise in all future actions on matters not really connected with religion. An objective declaration that there would be no State religion would have been enough act of secularism. But Nehruians acceded to some more minority claims and necessarily then accepted a majority

22. *Supra* Note 16, Cols. 8821-22,

23. *Supra* Note 27,

situation. Thus in the name of minority, India continued to be involved in the majority-minority life processes. Thus on account of Nehru's becoming too much accomodative, perhaps, the Constitution has been stretched too far.

A secular state is one where there is no recognition of religious majority and minority. Once you have granted a minority religion any absolute right to manage its own religious institutions, the Constitution to that extent becomes non-secular. Religion covers an unidentified area of life and in a country where minority classes of the people remain in a social and economic exploitation area, they can easily be further exploited in the name of religion. If you allow any group to maintain their own system, how can you make a Uniform Civil Code? Too much of accomodation has obstructed operation of free dialectic process and our present discriminative structure continues as anti-thesis to secular ideals. In short it may be submitted that though Nehru's secular attitude to life was unique and unblemish but perhaps, here also he adopted a strange face-saving device.

7. Dilemma in the proprietorial interest

Jawaharlal did understand the real issue between the approach of individual's right to property and the community's interest in the property. He did understand that "there is no conflict necessarily between the two, sometimes the two may overlap, sometimes there might be if you like, some petty conflict."²⁴ To him the solution through the dialectic functioning was very clear. He said, "but when we consider the equity of it we have always to remember that the equity does not apply to the individual but to the community. No community should injure and invade the right of the individual unless it be for the most urgent and important reasons."²⁵

How is it going to balance all this? Jawaharlal had the answer. He added "you may balance it to some extent by legal means, but ultimately the balancing authority can only be the sovereign legislature of the country."²⁶ That shows that the original prescription in the Constitution about the right to property in Chapter III was not to the liking of Jawaharlal. Or he didnot envisage that Judiciary would exercise its guardianship over the sovereign legislature on the issue of

24. C. A. D. Vol IX pp. 1191-96 (Sept. 10, 1949).

25. *Ibid.*

26. *Ibid.*

property. Yet like a true democrat, Jawaharlal piloted the affair, often urging upon that Indian Constitution must not be interpreted in the light of the case law of USA. Nehru didnot like immediately to go with the issue to a wider conflicting range. Instead, he collected all his might to incorporate the welfare and social targets and functionalised these issues with 'by-pass' economic policies administered with delicate wisdom.

8. Concluding remarks

Nehru's accomodative nature was responsible for stipulating a course of dialectic process between the positive and negative value interactions. Nehruji provided a new path of nation-building and socialism which was based upon his own Vedantic conception and Brahminical perception of diagnosis and therapy. His unique achievement was perhaps reflected in functionalising the code of directive principles with a bit more stretch in building new industrial base, stronger social holding and State control on the National Economy and in experimenting with a new idea of Mixed economy. Might be that Jawaharlal did understand that in the process of land dialectics in India at that moment, there were huge pressure and interest-blocks of the vested sector. He did experience a rugged climate while abolishing Zamindari system. He, perhaps, for the time being, wanted to play a low profile in the land sector and preferred an area of industrial movement where private sector was incapable and hence less hostile, so that in course of time a stronger State, an egalitarian State could handle the land dialectics better. If that is so, that was a fine handling of middle class bourgeois of his time, indeed.

NEHRU'S EGALITARIANISM, SOCIAL RECONSTRUCTION AND THE INDIAN CONSTITUTION

PARMANAND SINGH*

I. INTRODUCTION: NEHRU PROVIDED THE PHILOSOPHY OF INDIA'S CONSTITUTION WITH A PREDOMINANT EMPHASIS ON EGALITARIANISM, SECULARISM AND EQUALITY.

Jawahar Lal Nehru must be owned to have been one of the greatest egalitarians of our age. As early as in 1938 he wrote that the political freedom was not an end in itself but was a means to an end "the end being the raising of the people...to higher levels and hence general advancement of humanity."¹ He said that the "service of India means the service of the millions who suffer. It means the ending of poverty and ignorance and disease and inequality of opportunity. The ambition of the greatest man of our generation has been to *wipe every tear from every eye*. ... That may be beyond us, *but as long as there are tears and suffering, so long our work will not be over.*"²

Nehru was acknowledged in the Congress as its leading constitutional thinker, well read in political theory. He was unanimously elected as the chairman of the Congress Expert Committee on July, 8, 1946 to prepare the materials for the Constituent Assembly and "it was the Congress Expert Committee that set India on the road to her present Constitution."³ In the Constituent Assembly Nehru told the members that the first task of the Assembly was to free India through a new Constitution, to feed the starving millions and to clothe the naked masses and to give every Indian the fullest opportunity to develop himself according to his capacity."⁴ He said that if the Socio-

economic inequalities were not eliminated through the instrumentality of the Constitution, then :

"(A)ll our paper constitutions will become useless and purposeless...If India goes down all will go down, If India thrives, all will thrive."⁵

The Objective Resolution moved by Nehru on December 13, 1946 provided the blue print for the future Constitution which was to be dedicated to the goals of social revolution. He believed that the political revolution ended with India's independence, but it was the social revolution and the social reconstruction on which depended the survival of India. The social reconstruction meant the disestablishment of India's traditional social structure and the creation of a new society based on the foundation of egalitarianism and individual achievement regardless of one's caste or religion. Nehru firmly believed that the social inequalities created by the Indian Caste System was opposed to the ideal of equality. Caste system was anti-model to an egalitarian social order. He wanted the Indian Constitution to embrace equality as the cardinal value against the background of a social structure in which the social inequality was sustained by religious and ritual conceptions of purity and pollution. That the presence of caste system constituted a barrier to the attainment of 'real' equality was described by him in the following words :

The conception and practice of caste embodied the aristocratic ideal and was obviously opposed to democratic conceptions. It had its strong sense of *noblesso oblige*, provided people kept to their hereditary stations and did not challenge the established order. India's success and achievements were on the whole confined to the upper classes; those lower down in scale had very few chances and their opportunities were strictly limited. These upper classes were not small limited groups but large in numbers and there was a diffusion of power, authority and influence. Hence they carried on successfully for a very long period. But the ultimate weakness and failing of the caste system and the Indian Social Structure were that they degraded a mass of human beings and gave them no opportunities to get out of that condition, educationally, culturally and economically. That degradation brought deterioration, all along the line including in its scope even the

5. *Id.* 317-78.

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1. Jawahar Lal Nehru : *The Unity of India*, 1938, p. 11.

2. This quotation is referred in Granville Austin : *The Indian Constitution : The Cornerstone of a Nation* 26 (1966).

3. Austin at p. 33, Other members of the committee elected by the Congress Working Committee were K. M. Munshi, Asaf Ali, Humayun Kabir, Dr. R. Gadgil, K. I. Shah, N. K. Ayyanger.

4. 2, *Constituent Assembly Debates* 3, 316.

upper classes. It led to the petrification which became a dominant feature of India's economy and life."⁶

Nehru continued that in the context of contemporary society, the caste system was "incompatible, reactionary, restrictive and barrier to progress"⁷ and there could be no equality in status and opportunity within the framework of the caste system, nor could there be political democracy, much less economic democracy.⁸ There was an inherent conflict between caste and equality and only one of them could survive. It is a great tribute to Nehru, that in the recent decision of the Supreme Court in *K. C. Vasanth v. State of Karnataka*⁹ Justice Venkataramiah relies heavily upon the above quoted passage for the proposition that the aim of the Constitution is to overcome the inequalities created by caste system¹⁰ and only then the constitutional goal of a casteless and classless society, as desired by Nehru could be realized. Justice Desai,¹¹ after referring to Nehru's futuristic vision of the Indian society observed that the goal of a casteless and classless society could be achieved only by taking steps to "weaken and progressively eliminate caste structure."¹²

According to Austin the debate on Nehru's Objective Resolution clearly established that the Constitution must be dedicated to some form of socialism and to the social regeneration of India,¹³ Nehru was the Assembly's idealist and the intellectual atmosphere in the Assembly was greatly influenced by Nehru's ideas on Indian social thought.¹⁴ but of the four members of the Oligarchy¹⁵ within the Constituent Assembly, Nehru always predominated because he felt an emotional and intellectual obligation to attack India's social problems. Nehru and Patel were the focus of power. Patel was interested in princely states, public services and the working of the Home Ministry and Nehru on Funda-

6. Jawahar Lal Nehru *The Discovery of India*, Ch. VI, pp 256-57 (19 4)

7. *Ibid.*

8. *Ibid.*

9. (1985) Supp. SCC 710

10. *Id.* at 781.

11. *Id.* 731-732

12. *Id.* 732.

13. *Supra* n. 2 at 41.

14. *Id.* at 42.

15. *Id.* at 19. The other three members of the Oligarchy who had dominating influence in the making of the Constitution were, Rajendra Prasad, Patel and Azad.

mental Rights, problem of minority rights and social reform aspect of the Constitution.

Clauses 5 and 6 of the Objective Resolution constituted the bedrock on which the provisions relating to preamble, fundamental right, rights of the minorities and compensatory treatment for the backward classes were based, Clause (5) provided :

Wherein shall be guaranteed and secured 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; subject to law and public morality.

Clause (6) provided :

Wherein adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes.

While commending the Resolution for acceptance Nehru delivered an eloquent speech and described the Resolution as a declaration, a firm resolve, a pledge, and undertaking and, for all, dedication. He urged the members to rise above the party and think of the nation and of the service of the masses, Nehru's speech gave a thrill and resolution was adopted by the Assembly in a solemn manner, all the members standing.

Nehru strove for ideals of Secularism, egalitarianism and equality in a less doctrinaire, in a more empirical fashion. He once said, that the real problems for him were "problems of individual and social life; he had no time for the fine points of doctrine."¹⁶ Nehru was dedicated to ideas of democracy and economic betterment of the masses but he never adhered to any particular ideology or philosophy. Acharya Narendra Dev, writing about Nehru's socialism has this to say :

"He (Nehru) is not wedded to any particular "ism" nor is he temperamentally fit to be the leader of a group. He believes in some of the fundamental principles of scientific socialism. Yet he is not prepared to swear by everything taught by Marx or Lenin. He does not subscribe to any, rigid ideology. He considers himself free to examine the claim of every system of ideas which professes to serve

16. Nehru said this in his *Discovery of India*, 27 (1956 Edn.) cited by Austin at p. 42.

the social purposes and he is always revising his ideas in the light of new experiences gained.¹⁷

According to Brecher, Nehru was greatly influenced by Marx and Fabianism in the early days of his life but at the time of the making of India's Constitution he changed "from Marxist or a Laski style socialist to an empirical gradualist"¹⁸ Any ideology that was conducive to the economic betterment of the masses was favourable to Nehru. In his speech on the Objective Resolution he proclaimed that the Constitution "will lead us to the real freedom that we have clamoured and the real freedom in turn will bring food to our starving people, clothing for them, housing for them and all manners of opportunities and progress"¹⁹ Nehru, thus assigned primacy to law as an instrument of social change. And it is Nehru who nurtured the pre-independence "political culture" of dedication to the service of the masses as an essential attribute of political leadership and politics.

II. NEHRU WAS THE PRECURSOR OF THE DIRECTIVE PRINCIPLES AND OF THE CONCEPT OF AFFIRMATIVE STATE ACTION.

It is very little known that it was none else but Jawahar Lal Nehru who laid the foundation of community oriented concept of social and economic rights in the Indian constitutional jurisprudence, now reflected in the chapter of the Directive Principles of State Policy. He was the author of the Resolution on Fundamental Rights and Economic and Social change adopted at the Karachi session of Congress in March 1931.²⁰ The Karachi Resolution's main stance was to emphasise the affirmative obligation of the State to provide the necessary social and economic conditions to the weaker sections of the society so that the fundamental rights could more meaningfully and affectively be realised.

The Karachi Resolution stated that "in order to end the exploitation of the masses, political freedom must include the *real economic*

17. Acharya Narendra Dev : *Socialism and the National Revolution*, 205-206 (1946).

18. Michael Brechevor : *Nehru : A Political Biography*, 48 (1959).

19. 1, *Constituent Assembly Debates* 57-65.

20. See Michael Brecher *Supra* n. 18 at 175. Brecher writes that Nehru himself had said that he drafted the Karachi Resolution and he himself had given the general background of the Resolution.

freedom of the starving millions."²¹ The State was to safeguard the the interest of the industrial workers, ensuring that "suitable legislation" should secure them a living wage, healthy conditions, limited hours of work and protection from "economic consequences" of old age, sickness and unemployment.²² Women and children were to be protected by ameliorative legislations. Franchise was to be based on adult suffrage, titles were to be abolished and there was to be no capital punishment in India.²³ The Resolution also called for social reform and the reform of the systems of land tenure, revenue and rent. The state was to own or control key industries, mineral resources, railways, waterways, shipping and other means of public transport.²⁴

Recalling the contribution of the Nehru in creating the doctrine of positive State obligation to achieve socialism, Austin writes :

The humanitarian cast of the provisions concerning the welfare of the workers and of the people generally, the *placing of the primary responsibility of social reform on the State and the emphasis on the legislative approach*...reflect Nehru's ideas and read as if he had written them.²⁵

The Karachi Resolution did not separate fundamental rights and the directive principles because during the freedom struggle no distinction was drawn between positive and negative rights and both "types of rights had developed as a common demand; products of the national and social revolutions."²⁶ The rights and the directives were separated later by the Sapru Committee report, 1945. Nehru, therefore, must be given the credit for developing the concept of affirmative State action to equal up the conditions of the unequals. Through the Karachi Resolution he expressed the people's demand that the State had the positive obligation to provide its people with economic and social conditions in which the negative fundamental rights would become meaningful.

As a Prime Minister he advocated the view that the Directive Principles represented a dynamic move towards the socialistic goals

21. The text of the Karachi Resolution is to be found in the Report of the 45th Indian National Congress, 1931, pp. 139-141. The Resolution is reprinted in D, Chakrabarty and C, Bhattacharya : *Congress in Evolution* 28 (1940).

22. *Ibid.*

23. *Ibid.*

24. *Id* at 29.

25. Austin *Supra* n. 2 at 57.

26. *Id.* at 52.

whereas the fundamental rights represented something static, preserving certain rights which already exist. During the debate on the Fourth Amendment Bill 1955 Nehru observed :

“There is an inherent contradiction in the Constitution between the fundamental rights and the Directive Principles of State Policy. Therefore, again it is upto this Parliament to remove the contradiction and make fundamental rights subserve the Directive Principles.”²⁷

Nehru was aware of the inherent tension between the justiciable fundamental rights and the non-enforceable directive principles :

We come up against the difficulty, that on the one hand, in our Directive Principles of State Policy we talk of removing inequalities in raising people up in every way, socially, educationally and economically, reducing the distances which separate the groups or classes of individuals from each other, on the other hand, we find ourselves handicapped in this task by certain other provisions in the Constitution.²⁸

When in 1976 Parliament amended Article 31C by 42nd amendment to make the “fundamental rights subserve the Directive Principles” it fulfilled the desire of Pandit Jawaharlal Nehru expressed by him in his speech on the Fourth Amendment Bill 1955. Although in *Minerva Mills case*²⁹ the majority of the Supreme Court struck down the decision of the Parliament to give primacy to directive principles over the fundamental rights, both the majority and minority opinions referred to Karachi Resolution, Nehru’s Objective Resolution and his speeches in Lok Sabha for the proposition that the genesis of both the fundamental rights and the directive principles was to be found in the freedom struggle. Justice Bhagwati in his dissenting opinion referred to the history of the directive principles which never rendered these principles as non-fundamental. He referred to Nehru’s speech in which he had said that if the obligation to feed the hungry and clothe the naked was not discharged “all our paper constitutions will become useless and purposeless.”³⁰ Nehru had also said that the directive principles represented a dynamic movement while the fundamental rights represented

27. *Parliamentary Debates* Vol. II, part II, cols. 1949-57, 4833-46, (March 14, 1959 and April 11, 1955 respectively).

28. *Parliamentary Debates*, Vol. XII-XIII, Part II, (pp. 8820-22 May 16, 1951).

29. *Minerva Mills Ltd v. Union of India*, A. I. R. 1980 S. C. 1789.

30. *Id* at 1844. (Justice Bhagwati).

something static and sometime, somehow the dynamic movement might not fit into the static standstill. The entire planning process, geared to the attainment of the ends contained in the directive principles, was Nehru’s alternative to class struggle.

It may be submitted that in *Kesavananda*,³¹ Chief Justice, Chandrachud, simply reiterated Nehru’s ideas when he observed :

The freedom of a few have then to be abridged in order to ensure freedom of all...If the State fails to create conditions in which the fundamental freedoms could be enjoyed by all, the freedom of the few will be at the mercy of the many and then all freedoms will vanish.³²

The Chief Justice deviated from this view in *Minerva Mills* which Justice Bhagwati followed in his dissent and concluded that the dynamic principle of egalitarianism fertilized the concept of social and economic justice and it was one of its essential elements and there could be no real social and economic justice where there was a breach of egalitarian principle. This holding was nothing but the reaffirmation of Nehru’s views on egalitarianism and social justice.

III. NEHRU WAS THE FIRST TO PROPOUND THE CONCEPT OF COMPENSATORY DISCRIMINATION AS A MEANS TO PROMOTE SUBSTANTIVE EQUALITY.

Let us now consider the contribution of Nehru on the meaning of compensatory discrimination and its compatibility with the idea of equality. Nehru believed that the unequal characteristics of human beings were not the result of innate inferiority or superiority but of unequal circumstances into which they were born and must live. Therefore there was an imperative need to level up the conditions. He said:

Not only must equal opportunity be given to all, but special opportunities for educational, economic and cultural growth must be given to backward groups, so as to enable them to catch up to those who are ahead of them.³³

Nehru realized that India’s compartmental group structure could be destroyed only by reducing disparities derived from position in social

31. *Kesavananda v. State of Kerala*, A. I. R. 1973, S. C. 1461.

32. *Id* at 2050.

33. Jawahar Lal Nehru, *Discovery of India*, 553 (1948).

hierarchy. And the communal and caste disparities could be reduced by compensatory measures which took into account the fact of backwardness of castes and communities. His ideas about equality and society nearly echoed by him in his speech during the debate on the First Amendment adding Article 15 (4) as a result of *State Madras v. Champakam Dorairajan*.³⁴ The entire debate on Article 15 (4) centred round the meaning of "backward classes" and the idea underlying the reservation clause. Nehru told the members that the need for prompt addition of Articles 15 (4) arose "because the Government of State of Madras issued a G. O.,...by making certain reservation etc. for certain classes or certain communities rather for all communities—and the High Court of Madras said that the G. O. was not in order, was against the spirit of letter of constitution."³⁵ The need of the amendment arose because of *Champakam* which had caused a furore in Madras, Nehru told the house.³⁶

To the suggestion that the words "for the educational economic and social advancement of any backward classes of citizen" should be added to Article 15 (3) which authorizes any special provisions for women and children, Nehru explained that the Select Committee chose the words "for the advancement of any socially and educationally backward classes of citizens" because these words occurred in Article 340.³⁷ When Professor K. T. Shah asserted³⁸ on economic backwardness as the sole determinant of backwardness of the classes entitled to preferential treatment, Nehru expressing his unwillingness to accept exclusive economic test of backwardness asserted :

But my difficulty is that when we chose those particular words, we chose them because they occur in Article 340 and we wanted to bring them bodily from there. Otherwise I would have had not the slightest objection to add "economically." But if I added "economically" I would at the same time not make it a kind of cumulative thing but would say that a person who is lacking in any of these, things should be helped. 'Socially' is much wider word including many things and certainly including economically.³⁹

34. A. I. R. 1951 S. C. 26.

35. *Parliamentary Debates*, Vol. XII-XIII Part-II, Col. 9615.

36. *Ibid.*

37. *Ibid.*

38. *Supra* n. 37 at Col. 9815.

39. *Id.* at Col. 9830.

It is clear that in rejecting the K. T. Shah's proposal to add "economically" in Article 15 (4), Nehru vehemently asserted that the aim of compensatory discrimination was not to assist every economically poor classes but to help only those who were both socially and educationally backward due to the discriminatory social structure. And in *Balaji v. State of Mysore*,⁴⁰ the Supreme Court very rightly insisted on a conjunctive reading of "socially and educationally" backward classes and in holding that the term "Socially" included many things and certainly economic backwardness.

That the aim of the policy of reservation was to overcome historic inequalities was most forcefully asserted by Nehru in the following words:

We have to deal with the situation where for a variety of causes for which the present generation is not to blame; the past has the responsibility; there are groups, classes, individuals, communities, you like, who are backward. They are backward in many ways—economically, socially and educationally, sometimes they are not backward in one of these respect and yet backward in another. The fact is, therefore, that if we wish to encourage them in regard to these matters, we have to do something for them.... We want to put an end to... all these infinite divisions that have grown in our social life.⁴¹

Nehru was aware that the guarantee of equality and authorization of compensatory discrimination reflected a deep conflict between different views of equality and divergent goals of preferential treatment. But he was clear in his mind that equality was in fact promoted by measures to offset historically accumulated inequalities. The tension between equality and non-discrimination was poignantly expressed by him during the debate on the First Amendment :

We arrive at a peculiar tangle. We cannot have equality because in trying to attain equality we come up against same principles of equality laid down in the Constitution. That is a very peculiar position. We cannot have equality because we cannot have non-discrimination for if you think in terms of raising those who are down, you are somehow affecting the status quo undoubtedly. You are thus said to be discriminating because you are affecting the status quo.⁴²

40. A. I. R. 1963 S. C. 649.

41. *Supra* n. 37 at Col. 9616.

42. *Supra* n. 37, at Col. 961 (May 29, 1951).

Overall tenor of Nehru's ideas about equality and society suggests that the term "classes" under Article 15 (4) were not restricted to economic classes familiar to modern social science but included those classifications otherwise forbidden by non-discrimination provisions contained in Article 15 (1). To him the constitutional commitment to create a casteless and classless society could be achieved only by measures aiming at the overcoming of transmitted inequalities of past social distinctions.

It is heartening to note that in the recent decision of the Supreme Court in *K. C. Vasanth Kumar v. State of Karnataka*,⁴³ at least two out of five Justices have interpreted the reservation clauses by relying on Nehru's ideas about equality and compensatory discrimination. Justice Desai refers to Nehru's observations for the proposition that the aim of the Constitution was to reconstruct the Indian society on egalitarian model by reducing caste and communal disparities. Justice Desai says that Pandit Nehru, the first Prime Minister of India, observed that Mahatma Gandhi had shaken the foundations of caste and the masses have been powerfully affected. But "an even greater power than Gandhi is at work—the conditions of modern life—and it seems at last this hoary and tenacious relic of the past must die."⁴⁴ Justice Desai referred to the aim of Gandhi and Nehru to set up a casteless and classless society by taking measures to progressively eliminate caste structure.⁴⁵

Justice Venkataramiah also quotes a full passage from Nehru's *Discovery of India*⁴⁶ where he has described the social problems created by caste system and the incompatibility of the principle of equality to caste system. The learned Justice, relying upon Nehru concludes that :

An examination of the question in the background of Indian social conditions shows that the expression "backward classes" used in the Constitution referred only to those who were born in particular castes or who belonged to particular races or tribes or religious minorities which were backward.⁴⁷

43. (1985) Supp. S. C. C. 710.

44. *Id.* at 731. The quotation is from Nehru's *Discovery of India*, Ch. VI, p. 234 (1974).

45. *Id.* at 732.

46. *Id.* at 787, The quotation again, is from Nehru's *Discovery of India*, Ch. VI, p. 256-57 (1974).

47. *Ibid.*

Justice Venkataramiah then referred to clause (6) of Nehru's objective Resolution, through which the Assembly pledged to make adequate safeguards in the Constitution for "minorities, backward and tribal areas and depressed and other backward classes". According to the learned Justice, the Resolution and the history of Articles 15 (4) and 16 (4) made it abundantly clear that the 'backward classes' were only those castes, races, tribes and communities which were backward due to historical reasons. Merely economically backward groups were outside the purview of Articles 15 (4) and 16 (4). He further held that Clause (6) of Nehru's Objective Resolution confirmed that socially and educationally backward classes should, in the matter of their backwardness, comparable to the Scheduled Castes and Scheduled Tribes.

Nehru's vision of the Indian Constitution as an instrument of social reconstruction and social revolution is writ large in the "populist" rhetoric of the proactive Justices of the Indian Supreme Court who repeatedly invoked the egalitarian and socialistic goals of the Constitution in the aid of the dispossessed and the deprived. Such populist rhetorics which abound after *Meneka Gandhi*, are reminiscent of Nehru's speech in the first session of the Constituent Assembly. Few instances will bring home the point. In *Kesavananda, Chandrachud J.*, observed :

(L)aw cannot be permitted to be transformed into weapons for defeating the hopes and aspirations of our teeming millions, half clad, half-starved, half-educated. Those hopes and aspirations representing the will of the people can only become articulate through the voice of their elected representatives. *If they fail, the people, the nation must face death and destruction. Then neither, the Court nor the Constitution will save the country.*⁴⁸

And Justice Krishna Iyer said in *Azad Rikshaw Puller Union* :

The judicial activism gets its highest bonus when its order wipes some tears from some eyes.⁴⁹

Like a colossus Nehru dominated not only the Assembly, the Parliament and the Congress but also the minds of millions of Indians. On every occasion he prevailed because the Parliament, the party and the country accepting his leadership approved all the policies and actions advocated by him. Perhaps one cannot make a better assessment

48. *Kesavananda v. State of Kerala* (1973) 4 SCC 225, at 968.

49. *Azad Rikshaw Puller Union v. State of Punjab*, AIR 1981 SC 14 at 15.

of Nehru's contribution than done by a foreign biographer who writing in 1959 observed :

For Nehru is a giant both as man and Statesman. His political greatness be measured by the capacity to direct events, to rise above the crest of the waves, to guide his people and to serve as a catalyst of progress, then Nehru surely qualifies for greatness. Almost single handed he has endeavoured to lift his people into the twentieth century. He is indeed India's national builder... He provided the philosophy for India's new Constitution with its emphasis on individual rights. He has succeeded in securing wide acceptance of the ideal of a secular and equalitarian society... And he began the task of social reform."⁵⁰

Nehru "a giant both as man and statesman" has left us. A nation cannot always have a Nehru to lead it. But Nehru's crusading tradition has to be carried by his successor. Only then India can survive.

NEHRU'S SHAPING AND RE-SHAPING OF THE CONSTITUTION : THE ROLE OF THE PARLIAMENT AND THE JUDICIARY

BALRAM K. GUPTA*

(I)f you wish to kill this Constitution, make it sacred and sacrosanct. If you want it to be a dead thing, not a growing thing, a static, unwieldy, unchanging thing, then by all means do so, realising that it is the best way of destroying it.¹ This is what Pandit Jawahar Lal Nehru said in the Lok Sabha in reply to those who advanced the theory of 'untouchability' and alterability or unamendability of the Constitution. This argument of Pandit Nehru goes to the very root of Constitutionalism. A constitution grows like a child. It passes through the roughs and toughs of life. Sometimes it over-grows. It needs pruning. Sometimes it under-grows. It needs additioning. The balancing of the Constitution is a constant exercise. Once again, if you ignore caring the Constitution, like a child, it will not grow as it ought to. With the passage of time, everything changes. Constitution is no exception. Therefore, the stream of constitutionalism must continue to flow. Dry streams cannot irrigate the lands. If the stream of Constitution is allowed to dry, it will fail miserably in its purpose and object, to run and regulate the country not by old out-dated constitutional rules but by the latest and the newest.

Our Constitution has just entered its 36th year. But it is has already completed its half a century of amendments. This is understandable. During these years, the country has marched ahead. So has the Constitution. Nehru in the Constituent Assembly had said :

Some people imagine, that what we do now may not be touched for 10 years or 20 years.... That seems to me a complete misapprehension. I am not placing before the House what I do not want to be done, but I should like the House to consider that we are on the eve of revolutionary changes, revolutionary in every sense of the word, because when the spirit of a nation breaks its bonds, it functions in peculiar ways. It may be that the Constitu-

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¹ LSD, May 29, 1957

50. Michael Brecher *Supra* n. 20 at 62.

tion this House may frame may not satisfy that free India. This House cannot bind down the next generation or the people who will duly succeed, us in this task.²

Nehru was right in recording this. In the first ten years of constitutional experience, we had nine amendments to the Constitution. In the next four years (till 1964—the year Pandit Nehru died), we had touched the score of seventeen amendments. If change is needed, one has not to be shy of it. This is applicable to the Constitution also. Nehru has justified this on a sound basis. He says :

The Constitution if it is out of touch with the People's life, aims and aspirations become rather empty. If it falls behind those aims, it lets the people down. It should be something ahead to keep people's eyes and minds upto a certain high mark.³

One looks to the Constitution. It embodies what the nation stands for. It lays down the path of marching forward. This path may have to be modified now and then, depending upon the experience and problems encountered. Nehru had understood the role of the Constitution in its true perspective. In the constituent Assembly, he said :

A Constitution is something which should last a long time, which is built on a strong foundation, and which may of course be varied from time to time—it should not be rigid—nevertheless, one should think of it as something which is going to last, which is not a transitory constitution, a provisional constitution, something which you are going to change from day to day, something which has provisions for the next year or the year after next and so on and so forth.⁴

Constitutions are not meant to be changed like the telephone directories. They are not meant to be replaced like the toys. They serve for decades and even for centuries. Men and women, come and go. But the Constitution goes on. The Constitution is not for a specific or fixed term. In fact, it has no term.

2. Quoted in Dinesh Chander Goswami, 'The Recent Statute Changes and Pandit Jawahar Lal Nehru', *JCPS*, Vol. XI, No. 3 (July-Sept. 1977), p. 50 at 51.

3. *Ibid.*

4. *C. A. D.* Vol. VII No. 13, p. 588-589 (Nov. 25, 1948).

The Judiciary and the Constitution

The Judiciary plays a big role in moulding the Constitution. In India, it has been assigned the position of final arbiter of the Constitution. In playing this role, the law declared by the Supreme Court is binding on all the courts in India. It is now well accepted that judges do not merely apply the law, they make law also (including Constitutional law). This position was well accepted by Nehru. While participating in the debate on the Constitution (First Amendment) Bill, he said :

So far as the interpretation of the Constitution is concerned, it is the right and privilege of the highest court of the land to do it, and it is not for us as individuals or even as a Government to challenge that right...They have to interpret it in the light of the law with such light as they can give to it. We respect that and we must obey that.⁵

The courts while interpreting the constitution, give meaning and explain the scope of different provisions. In applying the Constitutional law to real situations (and not imaginary), they provide flesh to the dry provisions of the fundamental law of the land. It is often alleged that the Judiciary may mis-use this power and that it may stand in Judgment over the sovereign will of the Parliament. Replying to this, Nehru in the Constituent Assembly observed :

As wise people, their duty it is to see that in a moment of passion, in a moment of excitement, even the representatives of the people do not go wrong they might. In the detached atmosphere of the courts, they should see to it that nothing is done that may be against the good of the country, that may be against the community in the larger sense of the term. Therefore, if such a thing occurs, they should draw attention to that fact, but it is obvious that no court, no system of Judiciary can function in the nature of a Third House, as a kind of Third House of correction. So, it is important that with this limitation the Judiciary should function.⁶

On another occasion, Nehru cristalised the position further. He said that, "you may say that there is no assurance that the Judges will interpret the mores of their day more wisely and truly than other men. I am not disposed to deny this, but in my view it is quite beside the

5. *P. Deb.* Vol. XII, Part II, 1951, CC 8815-16.

6. Quoted in H. M. Seervai, *The Position of the Judiciary under the Constitution of India*, p. 58 (1970).

point. The point is rather that this *power of interpretation must be lodged somewhere, and the custom of the Constitution has lodged it in the Judges. If they are to fulfil their functions as Judges, it could hardly be lodged elsewhere.* Their conclusions must, indeed, be subject to constant testing and retesting, revision and adjustment; but if they act with conscience and intelligence, they ought to attain in their conclusions a fair average of truth and wisdom".⁷ Nehru's perception of Judiciary was well balanced. He never conceded that the Judiciary enjoys absolute power, that it can act in any manner it so likes and that it can assume to itself the role of a Third House. But at the same time, it cannot be denied that the Judiciary in a system governed by a written Constitution is to over-see as to whether the Parliament and the Executive are acting in accordance with the Constitution or not. The Constitution has circumscribed the power of each organ. The Judiciary is to ensure that they remain within those limitations. Lord Denning has dealt with this matter in Question-Answer form in one of his recent writings. He asks: who is to control the exercise of power? He answers: only the judges. Some one must be trusted. Let it be the Judges.⁸ This is exactly and precisely what Nehru has explained and held in the Constituent Assembly and the Parliament. The responsibility of the Judges is that of the highest order. They can pronounce upon the validity of the actions of the Executive and the Parliament. Even the Constitutional Amendments made by the Parliament are subject to the scrutiny and screening of the courts. Therefore, what quality of Judges we have is an important matter. Nehru had said in the Constituent Assembly that Judges must be "...of the highest integrity, if necessary people who can stand up against the executive government and whoever come in their way".⁹

Nehru never tried to clipp the wings of the Judiciary. He never undermined the Judicial process. He was an advocate of respecting what the Courts had laid down.¹⁰ At the same time, he was not a blind upholder of Judicial interpretations. He has said that "nevertheless it becomes our duty to see whether the Constitution so interpreted

7. Quoted in M. Hidayatullah, *A Judge's Miscellany* (Second Series), p. 20 (Emphasis added).

8. Lord Denning, 'Judges and the Judiciary Power' in Rajeev Dhavan and others (Ed.), *Judges and the Judicial Power: Essays in Honour of Justice V. R. Krishna Iyer*, 4 (1985).

9. Quoted in H. M. Seervai, *Constitutional Law of India*, Vol. III, 1582, (1979-2nd Ed.).

10. *Supra* note 6.

was rightly framed and whether it is desirable to change it *here and there* so as to give effect to what really in our opinion was intended or should be intended."¹¹ This once again exhibits his balanced approach. The Judiciary in its own sphere is free and independent to give meaning and interpretation according to its Judgement. If the interpretation given by the Judiciary is found to be in conflict with what was intended, in such an event, it would be appropriate to amend the Constitution to make the intention clear. This is how the Constitution grows through the Judicial process.

The Parliament and the Constitution

Article 368 makes a specific provision vesting the Parliament with the Constituent power to amend the Constitution. The moot point is, in exercise of this power, can the Parliament amend the Constitution in any manner? Can the very symmetry of the Constitution be altered?

It would be relevant to cull out from the Constituent Assembly Debates what Nehru had said:

(S)o far as the *basic nature* of the Constitution is concerned, it must deal with the *fundamental aspects* of the political, the social, the economic and other spheres, and not with the details which are matters for legislation.¹²

He added:

You will find that if you go into too great detail and mix up the really basic and *fundamental things* with the important but nevertheless secondary things, you bring the *basic things* to the level of secondary things too. You lose them in a forest of detail. The great trees that you should like to plant and wait for them to grow and to be seen are hidden in a forest of detail and smaller trees.¹³

In relation to a Constitution, Nehru spoke of two aspects: *Basic Things and Secondary Things*. He was in favour of including *only* the basic things in the Constitution. Otherwise if the basic things are mixed up with secondary, even the basic are reduced to the level of secondary. The Supreme Court spoke of the 'basic structure' theory

11. *Ibid.* (Emphasis added).

12. *C. A. D.* Vol. VII No. 13, p. 589 (Nov. 25, 1948), (Emphasis added).

13. *Ibid.*, (Emphasis added)

of the Constitution as late as 1973 in *Kesvananda Bharati case*.¹⁴ Nehru had not spoken of the 'basic structure' theory. But he certainly distinguished between the basic and the secondary provisions of the Constitution. Now, the point is, would he have even liked and desired to change the basic features of the Constitution through amendment process? It seems very doubtful. At the time of the First amendment to the Constitution in 1951, Nehru participating in the Debate explained :

(I)n the principal amendments that we seek to put forward, there is not an attempt at *real change* of the Constitution. We have only sought to bring out *what is implicit* and what we knew should be there and what everybody, I think, if he considers it carefully and dispassionately must recognise should be there.¹⁵

The main emphasis of Nehru was that there was no attempt to introduce serious and far reaching changes in the Constitution. What was implicit in the Constitution, was being made explicit by amending the Constitution. This is understandable. The basics of the Constitution were not being touched. Speaking about the role of the Parliament, Nehru said that, "it becomes our business as Parliament to see whether the purpose we aimed at is fulfilled, because if it is not fulfilled, then the will of the community does not take effect. And if the will of the community ultimately does not take effect, then serious difficulties might arise at any time."¹⁶ Wherever any practical difficulties are encountered, the Parliament is expected to remove them. Nehru would not have contemplated to change the fundamental features of the Constitution. He would not have liked to replace the Parliamentary System by any other System or to delete the very part of the Constitution dealing with Fundamental rights.

To Sum up

It needs to be understood that both the Parliament and the Judiciary help in the development of Constitutional law. The role of both is equally important. It cannot be assigned either to the Parliament or to the Judiciary. Both arms are necessary. Like in case of a human being. If one is removed, you render him handicapped. So also is the

14. *Kesvananda Bharati v. State of Kerala*, AIR 1973 SC 1461.

15. *Supra* note 6, CC 9074.

16. *Id.*, CC 8815

case of the Constitution. In playing their respective roles, both must adhere to the basic discipline. If one over-steps its jurisdiction, the other would endeavour to block its way. It would result in head-on clash and such clashes are never healthy. All efforts must be made to avoid them. This is possible if both understand their limitations. If both operate within their limitations, they will be able to play their roles more effectively and more efficiently. In the ultimate, the Constitution will bear a healthy look. This is exactly what Nehru would have wished at the turn of the century.

NEHRU'S FEDERALISM : RETROSPECT & PROSPECT

PROF. C. M. JARIWALA*

INTRODUCTION

Nehru was on the Indian political scene for nearly forty six years. He started with the membership of the Indian National Congress and in 1929 became its President and he was also elected to this position in the subsequent years. In 1946-47 he was the Vice-President of the Interim Government of India. He was also Chairman of many important committees which prepared drafts for framing the Constitution of India. And he remained the Prime Minister of India from 1947 till his last breath.

This paper evaluates Nehru's contribution to the development of the concept of federalism in India. Nehru did not start with a clean slate. There were already many developments and their study is necessary to examine as to how far they influenced Nehru. The field of distribution of legislative powers was one of the matters which attracted Nehru's attention most. This paper mainly deals with this area and only wherever necessary, a reference is made to administrative and financial relations as well. During the Prime Ministership, Nehru tried to develop a federal concept. A resumé of the working of the Parliament, the constituent power and the judiciary during Nehru's period may throw some light on the emerging trends of Nehruvian federalism.

FEDERATION IN RETROSPECT

In the pro-Nehru period there were some developments with respect to the emergence of the Indian federalism. The study of these developments becomes necessary to get an insight into what was written on the slate on which Nehru started his philosophy of federalism.

The seeds of Indian federal structure were sown as far back as 1861 when the vastness of the country required the legislative problems to be shared not by the Central authority alone but also by initially two provinces and gradually by other provinces as well. The Indian Councils Act, 1861 empowered the provincial council to legislate on limited matters for the good government of the province, whereas, the

Central Legislative Council could legislate on all subjects. However, no Provincial Bill could become a law without the assent of the Governor-General.

The memorandum of nineteen non-official elected members of the Imperial Legislative Council in 1916 suggested a clear cut demarcation of powers between Centre and Provinces and that, "the Provincial Governments should be made autonomous"¹ Similarly the Montagu-Chelmsford Reforms advocated for the "Federal Union" with a note of warning that "(W)e should be slow in adopting such a structure".² The Devolution Rules under the 1919 Act distributed the legislative powers on the lines of the above recommendation with the overall control of the Centre.

The National Convention in 1925 drafted the Commonwealth of India Bill suggesting a clear cut demarcation of legislative powers with the supreme authority of Parliament in matters common to both and that the residuary power should be vested in the Parliament.³ The Simmon Commission, in order to begin "the process which may lead to the Federation of Greater India", suggested a "Council for greater India" where the representative of the States and the British India could deal with matters of common interest.⁴ It pointed out that, "the ultimate constitution of India must be Federal", "for it is only in a federal constitution that units differing so widely...can be brought together."⁵ In spite of these recommendations the Simmon and also the Bulter Commissions visualised that Federal Union for India was a "distant ideal".⁶

The Nehru Report, 1928 put the legislative powers in entirely "separate compartments with no overlapping" and that, "we have not provided for concurrent powers (which) is likely to lead to friction".⁶ However the rigid tone changed in the supplementary Report of the Nehru Committee which advocated a "compromise between the federal and unitary models on "the political experiences in other parts of the world."⁶ The three Round Table Conferences focused the attention on

1. Memorandum on Post-War Reforms, 1916 See B. Shiva Rao. *The Framing of India's Constitution*, 1966, Vol 1,23. (Hereinafter referred as *Shiva Rao*).
2. *The Report on Indian Constitutional Reforms*, 1918, Para 120.
3. *B. Shiva Rao*, Vol, 1,43.
4. *The Report of the Indian Statutory Commission*, 1930, Vol. II, para 21.
5. *Ibid*.
6. Subash Kashyap, *Nehru and the Constitution*, 1981, 97.

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setting up an All India federation "as the immediate solution to the Indian Constitutional Problems". During this period there was an interesting development in the St. James Palace, London where it was voiced that the Indian delegates to the Round Table Conferences were ignorant about the concept of federalism. About Nehru it has been said elsewhere⁷ that during this period Nehru did not formulate any specific view on the question of...Indian Federalism". But this should not be interpreted to mean that the concept of federalism was new to the Indians. Sir Shafa'at Ahmed rightly pointed out that, "the Indians were well informed about the authority on federalism-Bryce, Freeman, Sobei Mogi; George Jellinck, Serdol and others. They were also familiar with the developments in the Constitutions of Canada, South Africa" etc.⁸ The Indian Constitutional Reforms of 1934 initiated the discussion of the inclusion of "a Concurrent List."⁹

The Commencement of the Federation of India

The next important development was the establishment of the Federation of India "from the day therein appointed" consisting of the provinces and the Indian States which acceded or might accede to the Federation. The legislative powers were clearly demarcated with certain exceptions in favour of the Federal Legislature. There was a concurrent legislative list and the residuary power was with the Governor-General.¹⁰ In the administrative and financial relations the overall control of the federal authority did not give much independence to the provinces; whereas the Indian States were promised unproportionately greater freedom. The Indian States were given a period of twenty years to join the Federation but they apprehended a serious danger to their autonomy and the idea of the All-India Federation remained merely a paper work.

Thus at the dawn of Nehru's political career, the Britishers followed a double standard of federalism in India. They advocated almost unitary structure for British India and a dogmatic view point for the Indian States.

Initial Philosophy of the Party Leader

In 1929 Jawaharlal Nehru occupied the important position of the

7. M. P. Jain, *Nehru and Indian Federalism*, *J. I. L. I.*, 1977, 398.

8. Sir S. A. Khan, *The Indian Federation*, 1937, 25.

9. *The Report of the Joint Committee on Indian Constitutional Reforms*, (1934), Vol. 1, Para 31.

10. See the Government of India Act, 1935, sections-5, 99-110.

President of the National Indian Congress, a position which was occupied till then by his father. He was also elected President in the years 1936 and 1937. The atmosphere in the country was that "all sections of Indian opinion" "bitterly opposed" the All India Federation. Nehru also in this atmosphere denounced the federal structure as an "unholy structure". Chairing the Lucknow Congress in April, 1936, Nehru raised the voice against the Federation.¹¹ In the same frequency he announced in the Faizpur Congress in December, 1936 that "we must exert ourselves to the utmost to break the Federation".¹² When there was an apprehension that the British Government would inaugurate the Federation, Nehru called the countrymen in the Haripura Congress on 21st February, 1938 "to prevent its inauguration".¹² He reiterated the demand that the Indians should be left with a "clean slate" to write "afresh".¹³ In spite of the above thinking, Nehru had to accept the Federation, because Mahatama Gandhi had assented to the Cabinet Mission Plan.¹⁴

The above discussion should not give an impression that Nehru was allergic to the Federal structure. He only attacked the "Federation in bondage". This is clear from his speech when he said, "we are not against the conception of a Federation". In the Haripura Session he even forecasted that, "(I) t is likely that a free India may be a federal India".¹³ In this conference for the first time Nehru's concept of "real federation" emerged. According to him for "a real federation" it should "consists of free units enjoying more freedom", and in absence of such freedom the federation "will instead of building up Indian unity encourage separatist tendencies".¹⁴ He advocated "a great autonomy" for the Indian States but he warned that, "they will have to remain integral parts of India and the major matters of common concern must be controlled by the Centre".¹⁵

Aftermath of the All India Federation

The post-1935 developments almost confined Nehru's attention to the immediate problem of "Quit India" and appeasing the Muslim League to give up the idea of an "Independent muslim majority State".

11. Nehru, *Towards Freedom*, 1961, 409. Nehru's disapproval of the 1935 Federation can be seen in his *The Discovery of India*, 1961, 387-88.

12. *Id.* at 423-425.

13. *Shtva Rao*, Vol. 1, 102-103.

14. *Sitaramayya*, *History of the National Congress*, (1885-1935), 1947, 437-442.

15. Presidential Address of the All India States Conference, *The Indian Annual Register*, 1939, Vol. 1, 437-44.

During this period a tug of war was going on between the Muslim League and the Indian National leaders. The former wanted "a weak centre" and the latter advocated "a strong centre". There was another problem of linguistic units which was also taking its shape but to Nehru, "the language was not a difficult problem"¹⁶ and he gave "low priority" to this problem.¹⁷

In this crisis situation, Nehru did not completely lose sight of the federal structure. The Allahabad Conference in May 1942 reiterated its view point that it would not yield to the demand of "disintegrating India by giving complete independence to units".¹⁸ The Congress Working Committee in 1942 declared that, "India is wedded to Indian Unity" and warned that "any break in that unity would be injurious to all concerned". As regards the Indian States, they were given an option to decide their fate, however, they should "develop a common and cooperative national life". There was "an apprehension"¹⁸ in the minds of some relating to the future Constitution of India and in order to clear the doubt the Congress Working Committee in September, 1945 resolved that "(T) his Constitution should be a federal one, with the residuary powers vesting in the Units".¹⁸

In January 1946, Nehru put his view point on the Indian federalism before the All India States People's Conference at Udaipur where he categorically stated that Congress would not force any state to join federation "against its will" but Congress was not prepared "to make concession to fissiparous tendencies and to demand which would disintegrate and ruin India".¹⁹

On 16th May, 1946 the Imperial Government came with the Cabinet Mission Plan to break the tug of war suggesting a federation with Centre having limited powers and the provinces should not get the residuary powers. But Nehru put forward his reforms to the Commission's plan in the Bombay session on July 6-7, 1946. The defence and external affairs powers according to Nehru, should be expanded and financial powers in these matters be allocated to the Centre.¹⁹ How far the power may be expansive according to Nehru "must be left to

16. Nehru, *Discovery of India*, 21.

17. S. Gopal, *Jawaharlal Nehru: A Biography*, 1984 (Third Impression) Vol 11, 257.

18. Shiva Rao, Vol. 1, 147.

19. Banerjee and Bose, *Cabinet Mission in India*, 1946, 90-107.

the Constituent Assembly",²⁰ With respect to the suggestion of limited financial resources with the centre, he immediately reacted and in a firm tone argued that the survival of the Centre on the "provincial contribution or doles" was "bunkum" and that the centre should be given important tax measures²¹. Nehru in his Press Conference on 10th July, 1946 pointed out that, the past few years experiences had shown that, if there was no strong centre, "the conditions would have been worse in India"²².

The Muslim League was not in a mood to give any cooperation to the leaders of the Indian National Congress. However, Nehru in his broadcast, adopting a generous view, pronounced that, "inspite of all that has happened and the hard words that have been said", "we invite even those who differ from us to enter the Constituent Assembly, as equals and partners with us"²³. In spite of the obstruction and difficulty, Nehru had the hope to "achieve and realise the dream that we have dreamt so long"²⁴.

Meanwhile the Expert Committee for the purpose of preparing material for the Constituent Assembly under the Chairmanship of Nehru drafted the outline of the main objectives before the Constituent Assembly adopting the structure of the Mission Plan²⁵. The materials so prepared included copies of the constitutions of Canada, Australia, South Africa, Ireland, Switzerland, U. S. A., U. S. S. R., etc. Nehru "read most of them" and "found them very helpful" and he suggested that these materials "should be sent to all the members" so that "they will study before the meeting of the Constituent Assembly"²⁶. These materials thus enriched Nehru's knowledge about the working of other federal constitutions. And that is why at a later stage Nehru advocated that we have "to learn from their success and avoid their failures"²⁷. This shows that Nehru paid due attention to cooperative federalism also.

The afterpiece of the All India Federation continued with the

20. *Id.* at 318-320.

21. Gwyer & Appadorai, *Speeches & Documents on the Indian Constitution*, 1957, Vol. 11, 614.

22. *The Indian Annual Register*, Vol. 11, 1946, 145-147.

23. *Shiva Rao*, Vol. 1, 317.

24. *Shiva Rao*, Vol. II, 7.

25. *Shiva Rao*, Vol. 1, 3-9.

26. *Shiva Rao*, Vol. 1, 383. See also Granville Austin 215-Nehru's Speech in the American Congress,

27. *Shiva Rao*, Vol. 11, 7.

dominance of the units but not to the extent of disintegration of the country.

FEDERATION IN PROSPECT

The commencement of the Constituent Assembly

13th December, 1946 was a historic day in the constitutional history of India when Nehru moved in the Constituent Assembly "the basic objectives and guiding principles to be kept in view in the process of constitution-making". It was the blue print on which later on the whole constitution was built. The Nehru's resolution provided for the federal structures on the lines of Mission Plan. But what form of government would be adopted, according to Nehru, "rest with the members"²⁸. This resolution attracted three different views, Shyama Prasad Mookerjee wanted Centre to be stronger than the 1935 Act,²⁹ Sidhwa opposed the provincial autonomy³⁰ and the third extreme view³¹ was for more provincial autonomy and Maulana Hasrat Mohani even threatened the Constituent Assembly that if his demand was not accepted then he would "adopt other course"³¹. But on 22nd January, 1947 Nehru's resolution "was adopted unamimonsly".

One of the important feature of a federal constitution is the distribution of legislating powers between the Centre and province. Nehru, as the chairman of the Union Powers Committee, made important contributions in this area. The subject-wise distribution according to Nehru should be "brief and not lengthy" and "loose phrases might give rise to disputations so they should be avoided "with definitions to each item"³². And the final report conferred specific power with respect the defence, foreign affairs, communications, finance and implied power also went to the Centre. Some subjects could go to the Union and could be treated as concurrent subjects by agreement. The report gave the provinces the residuary power³³.

Immediately after the first report when it was realised that "partition was a settled fact", Nehru, while submitting the second report of

28. C. A. D., 1946, Vol. 1, 57.

29. C. A. D., 1946 Vol 1, 102; See also Ambedkar *id* at 102.

30. *Id* at 117. See also Jayakar, *id* at 81 who was of the opinion that giving more provincial autonomy was "disastrous". "dangerous" and that it will lead you into trouble".

31. C. A. D., 1946 Vol. 11, 582. See also. Rai Bahadur Syamanandan Sahaya, *id* Vol. 1, 84.

32. Shiva Rao, Vol. 11, 730.

33. *Id* at 743.

the Union Powers Committee to the President of the Constituent Assembly, recorded the unanimous support of the committee on the point "that the soundest framework for our constitution is a Federation, with a strong centre"³⁴, which would be "ensuring peace"; "coordinating vital matters of common concern", and "speaking effectively for one whole country in the international sphere"³⁴. In this report, with the changing position, the residuary power was given to the Centre and in case of Indian States it could transfer its residuary power to the Centre. Nehru at this state denied any possibility of adopting the unitary constitution because such a move at this stage according to Nehru, would be "a retrograde step, both politically and administratively"³⁴.

Nehru's change over from a "very large" provincial autonomy to the strong Centre is also evident from his discussions in the committee. Masani writes³⁵ that he had a tug-of-war with Nehru with respect to planning and Nehru won by putting it in the central subject. Nehru also wanted to put public health, forests³⁶ and education in the concurrent subjects; whereas, all these subjects were under the residuary powers of the provinces. Nehru's leaning towards the centralised tendency can be seen from his correspondence with the Ministry for Works, Mines and Powers in July 1948 when he suggested that the East Punjab Government's scheme of Bhakra could be given to Centre as the state alone would not be able to shoulder the responsibility³⁷.

The another most important Committee of which Nehru was the Chairman was the Union Constitution Committee. This Committee had to decide with respect to the form of the Constitution of India. The Committee decided that, "the constitution should be a Federal structure with strong Centre." There were now three legislative lists-Federal, Provincial and Concurrent Lists. The residuary power was now given to the Centre. And except the residuary power the Indian states would be on par with the provinces with respect to the Federal Legislative List.³⁸ On the lines of section 51 xxxvii of the Australian Constitution, Federal Parliament could legislate on provincial subject with the

34. Shiva Rao, Vol. 11, 77.

35. See Masani in *The Union and States*, Ed. Jain, Kashyap & Srinivasan, 1972, 382.

36. Granville Austin, *The Indian Constitution: Cornerstone of a Nation*, 1972, 200, 239.

37. *The Report of the study Group on Central Board*, 1960, 3.

38. Shiva Rao, Vol. 11, 584.

provincial consent. Further, now provinces could get share from Federal revenue but this has "to be determined by the Federation. The another proposal of strong Centre was for "nominated Governor" which according to Nehru would not "encourage separated provincial tendency".³⁹ In spite of the centralised trend, Nehru never wanted the future Parliament to disbalance the distribution of power by simple procedure. Thus in the Supplementary Report of the Committee Nehru suggested that neither Parliament nor the provinces alone could amend the scheme of distribution of legislative powers.⁴⁰

Thus the deliberations of the Committees show that the Committees were mainly concerned with the scheme of legislative power. The distribution of financial power was the secondary subject and the administrative relation did not find any scope in the deliberations. The proceedings of the Committees also indicate that Nehru at first started with the thesis of provincial autonomy but with the changing conditions he also changed his philosophy and swung towards a strong Centre.

At the start of the Indian Independence Act, 1947 one finds Nehru's assertive mood. For example when a ban was imposed on Nehru's entry into Kashmir, Nehru wrote to the Magistrate that when he wanted to enter the State, "Jawaharlal never goes back, he goes forward. if you think otherwise then you donot know Jawaharlal."⁴¹ One may call it Nehru's arrogance but he was worried about the integrity of the country. And it was the sagacity of Nehru and Patel that India was saved from being divided into "many Pakistans".

Multi-Colour Shades in the Constituent Assembly

It has been rightly pointed out that Nehru, being preoccupied with the Prime Minister's responsibility did not contribute to the evolution of federalism "on the floor of the Constituent Assembly".⁴² But it will be unfair to put a stop there. We must examine what shape the Constituent Assembly gave to the Nehruvian structure. It was the federal structure of the Nehru Committees that was given a final touch by the Drafting Committee and it was placed before the Constituent Assembly for its consideration. The members of the Constituent Assembly gave different shades to the Nehruvian structure. It swung from the orthodox to the dynamic side and to its extinction as well. The rigid federalists

39. C. A. D. 1949, Vol. VIII, 454-456.

40. Shiva Rao, Vol. 11, 592.

41. S. Gopal, *Jawaharlal Nehru & Biography*, 1984 (Third Imp) ol. 11, 257.

42. M. P. Jain, *Supra* at 410,

wanted to give the units large autonomy and even suggested to replace "Union" with "Federation" because in a weak provincial foundation "our constitution will break down".⁴³ The dynamic federalists whose number was greater, supported the federal structure with a strong centre to "build up national unity in the best possible manner". They suggested to give up "a priori theories" of the federal government and to look to that concept which "is undergoing a transformation in the modern world."⁴⁴ There was also a cry in the Assembly to put a stop to federalism otherwise it "will lead to the establishment of innumerable Pakistans in this subcontinent" and that "it accentuates provincial rivalries and bitterness" leading to "the formation of linguistic provinces" and therefore, "to talk of federalism is to put back the hands of the clock"⁴⁵. Ambedkar's vision had a moderating influence. He advocated for a strong Centre with independent units at the same time he suggested that the Centre should not be "so strong that it may fall by its own weight"⁴⁶ There was for the first time a demand to shun "slavish surrender to the West"⁴⁷ and to take help of the Constitution of Soviet Union which was "the latest and the best"⁴⁷. In the light of multi-colour shades, the Constituent Assembly built on the Nehruvian foundation a more centralised structure⁴⁸.

Prime Minister Nehru and the Strong Center

Nehru was Prime Minister of India from 1950 till 1964 when the cruel hands of death snatched away a great national leader. The following is the resumé of his approach towards the development of federalism.

Nehru's presence at the helm of political affairs of the country had greatly affected the federal concept. At the Central level, "no one would say a word against Nehru" and there was "none who

43. See *per*, Mahboob Ali Baig, C. A. D., Vol. VII, 1948-49, 404; K. Santhanam, C. A. D. Vol. V. 1947, 44-59—he wanted more autonomy in financial relation; Ramaswamy Mudaliar, C. A. D., Vol. V., 1947, 88—He also demanded more financial autonomy for provinces.

44. See *per*, G. L. Mehta, C. A. D. Vol. V., 1947, 79:84; Alladi Krishnaswami Aiyer, C. A. D. Vol. IX, 1949, 838-839; T. T. Krishnamachari, C. A. D., Vol. XI, 1949, 952. 1956.

45. See *per*, Brajeshwar Prasad, C. A. D., Vol. VIII, 1648-49, 371-372.

46. C. A. D., Vol. VII, 1948-49, 7.

47. C. A. D., 1948-49, Vol. VII, 45-242.

48. See for example, Arts. 249, 250, 251, 253, 254, 257, 356, 360 etc. of the Constitution of India.

opposed Nehru"⁴⁹. From his experience in the Cabinet 'Gadgil', said that "if somebody opposed Nehru he often exchanged sharp words"⁴⁹. This was also the position at the state level where "no regional leader could dare to push any issue to a breaking point"⁵⁰. The charismatic leadership of Nehru can also be seen from the amending process in those cases where he piloted the Bill there were hardly "noes" in the House of People and the support of majority states was an easy job.

During Nehru's period there were five Constitution amendments which introduced changes in the legislative lists. In all these amendments the approach of the amending power was generally to curtail the exclusive state legislative powers and transfer them either to the Union or the concurrent list⁵¹. Thus these amendments brought in more centralised tendencies in the existing Constitution.

The Central Legislature during his time also brought in centripetal tendency and encroached on the state subjects permitted under the constitutional provisions. For example, the Supply & Price of Goods Act, 1950, Prize Competition Act, 1952; Estate Duty Act, 1952; Evacuee Interests (Separation) Act 1951; the River Boards Act, 1956; etc.

There are other fields also where Central domineering or what is called "coordinative" or "cooperative" approach was adopted. For example, 'Planning', which was a subject for which Nehru had a tug-of-war for its inclusion in the federal subject⁵² finds discussion as far back as 1946⁵³ when Nehru was the Vice-President of the Interim Government of India, and in 1948 again there was a demand from the Congress Economic Programme Committee⁵⁴ to constitute a planning commission. It was in 1950 that the Planning Commission was set up and Nehru was its Chairman as the Prime Minister. But during the working of the Planning Commission, Nehru "found the federal structure very irksome"⁵⁵.

Nehru's charismatic leadership evaded competitive federalism in the field of linguistic provinces. In order to evade the problem, for

49. N. V. Gadgil, *Government From Inside*, 1968, 83.

50. J. N. Sharma, *The Union and the States: A Study in Fiscal Federalism*, 1974, 16.

51. C. M. Jariwala, *Amendment of Legislative Powers; Retrospect and Prospect*, *The Academy Law Review*, 1984, 67.

52. *Masani, Supra* 382.

53. *The Report of the Advisory Planning Board*, 1946, 23.

54. *The Report of the Economic 'Programme' Committee (AICC) 1948*, 23.

55. F. C. Carnell, *Political Implication of Federation in New States*, in *Federalism and Economic Growth*—Hicks, 1961, 55, 56.

the time being Nehru wrote to Dr. Rajendra Prasad to give this matter to a Committee and on its report specific boundary commissions may be constituted⁵⁶. He also directed the working committee and also the Parliamentary Committee not to press the demand of linguistic provinces. Thus Nehru kept the linguistic problem at "low priority"⁵⁶.

The National Unity was an idea for which Nehru had "cherished and worked for"⁵⁶. He suggested to the Chief Ministers that they had to look at the thing from "all India point of view"⁵⁶ and warned them that if they wanted the course of action otherwise "then they would have to find another Prime Minister"⁵⁶. But the creation of the Andhra State led Nehru to come down and now he took the plea, "it was not democratic to smother such sentiments which, on general grounds, he did not find objectionable"⁵⁶. The another instance when Nehru had to give up Central domineering was the acceptance of Moraji Desai's suggestion to consult the State in the matter of legislation on concurrent subject⁵⁷.

To name some of many illustrations of centralised tendency in the name of 'cooperative' approach is the creation of the zonal councils. This was brain child of Nehru. At the deliberations of the State reorganisation Nehru suggested for the division of India into "four or five large divisions" each having a council to advice on "common regional problems" so as to "develop the habit of cooperative working". This suggestion was received with enthusiasm and excitement in Parliament because Bondurant⁵⁸ writes it gave a "sense of relief and hope" in the wilderness of creation of linguistic states. These councils were established on March 6, 1955 and worked under the Central dominence.

During Nehru's Prime Ministership the judiciary did not upset the Nehruvian concept. There are number of cases to support that the judiciary also supported 'strong Centre'. For example, in *Gujarat University v. Shri Krishna*,⁵⁹ a question arose whether the Gujarat State Legislature was competent to enact the Gujarat University Act, 1949 and the statute made thereunder which prescribed Gujarati an exclusive

56. *S. Gopal*, Vol. 11, 257, 259, 260. It was in 1956 that the States Reorganisation Act was ultimately enacted.

57. Morarji Desai, *The Story of My Life*, 1974, Vol. 11, 38.

58. J. V. Bondurant, *Regionalism versus Provincialism: A study in the Problem of Indian National Unity*, 1958, 55.

59. *A. I. R.* 1963 S. C. 703. See also *State of W. B. v. Union Of India*, *A. I. R.* 1963 S. C. 1241 where again Majority court supported centralised tendency but Subba Rao, J., dissenting stick to the dogmatic view.

medium in which instruction was to be imparted in the State Universities. The power with respect to "education including Universities was given to the State legislature in entry 11, list II but subject to powers of Parliament in list I, Entries 63, 64, 65 66. Entry 66, List I conferred exclusive power on Parliament with respect to "coordination and determination of standards in institutions of higher education." The Supreme Court, speaking through Shah, J., for the majority, did not accept, the plea that the prescription of medium of instruction in the University always came within the state list. On the contrary he held that such matter pertained to the head of "coordination and determination of standards in institution of higher education" over which Parliament had exclusive power. However, Subba Rao, J., dissenting, followed a rigid view following the case law under the 1935 Act and other federal constitutions. He was of the opinion that, "entry 11 of List II takes in the medium of instruction and that it is not comprehended by the phraseology of entry 66 of List I of the Seventh Schedule to the Constitution".⁶⁰ The minority view of Subba Rao, J., got unanimous support in the year 1964 when the said justice decided *Chitrallekha's case*⁶¹ tilting the balance in favour of the State.

The above judicial approach shows that during Nehru's time the judiciary allowed 'strong centre' concept to continue. It was in the last year of Nehru's regime that the justices started dividing on the concept of Indian federalism and a short while before his death, in 1964 the judiciary adopted a rigid approach.

EPILOGUE

At the dawn of Nehru's political career, the Britishers had sown the seed of federalism and the 1935 Act nurtured the plant. During his Presidency Nehru did not plant a new sapling instead he had to work on the existing structure. The Britishers adopted a double standard of federalism a competitive federalism for the Indian States and almost unitary approach for the British India.

Before the commencement of the Indian Constitution, Nehru did not develop any consistent approach. He began with the centrifugal approach and for a short while held the balance but finally he swept with the centripetal force. Nehru cannot be blamed for the zig zag approach because he was working under great strains and stresses. This

60. *Ib.* at 724.

61. *Chitrallekha v. State of Mysore*, A. I. R. 1964 S C. 1823

included the Muslim league's threat to go out of the Federation, the hope of Britishers to come back to the power ; and last but not the least, the non-cooperation of the Indian States. Moreover, the developments at this time in the other federal countries also showed a similar trend. But it was only question of degree, velocity or time. Had Nehru not moved with the time, Nehru's India would have been a "checkboard of disintegrating States." It was rightly pointed out by Nehru that in the "prickly thorns of frustration and despair (he) had pick out the rose." (*C. A. D.* 1949 Vol. VIII, 5).

During his Prime Ministership, Nehru continued the strong Centre philosophy with greater force. This was possible because of his charismatic leadership. The constitution amending body, Parliament, the national and state politics all of them endorsed Nehru's move. In this all round support the judiciary, it seems, had to toe the Nehruvian line. Thus during Nehru's times the Federal structure had easy go without much stresses and strains.

Nehru did not work on any *apriori* theory rather he worked on the practical problems and provided solutions to suit the existing condition. This is the reason that one does not find in Nehru's deliberations any "classroom lectures" or "theoretical expositions", But this does not mean that Nehru had no knowledge of the concept of federalism. His discussions in the committees and the Constituent Assembly are enough to support the above conclusion. Moreover, Nehru did not closed his vision to the cooperative federalism. He looked to the cooperative approach in case of difficulty. There was a tug-of-war between the western socialist and the capitalist to tilt the constitution on their side but Nehru did not opt for capitalist or socialist federalism. His vision was not confined to "any group or section or province" he had a broad vision of "all the four hundred million people of India". His federal engineering had the main aim "to attain national unity" a dream which Nehru cherished upto his last breath.

At times Nehru behaved as a shrewd politician and this is evident from the way in which he handled the problem of creation of linguistic states, Moreover, when Nehru was getting all round support it made him more assertive and at time arrogant, In this mood he even confessed that he did not allow "the democratic process at time."

He had established certain institutions for "coordinative and cooperative" approach between the Centre and States within and outside the Constitution but the domineering influence of Nehru did not allow

these institutions to flourish in right prospective. Nehru being the Centre of gravitation did not allow the States to move according to their own force. And the States moving almost on the Central crutches did not allow the Indian federalism to have a healthy growth. And for this reason immediately after Nehru's death from some quarters the fissiparous tendencies started raising their heads. But these shortcomings cannot minimise Nehru's contributions to the evolution of the Indian federalism with the main aim to attain 'national unity.'

It will be a great tribute to Nehruji if we all join hands in striving for National Unity in deversity an idea which Nehru cherished and worked until his last breath.

NEHRU AND THE CONSTITUTION OF INDIA

SUBHASH C. KASHYAP*

Jawaharlal Nehru, who as the Prime Minister of newly independent India had to steer the ship of the State and face many pressing problems, could not be expected to find much time to devote to the exercise of drafting the detailed provisions of the Constitution. On matters he would have liked to place his views before the Constituent Assembly, but "owing to the stress of circumstances" he could not give the necessary time. He very much regretted in humility and said that the loss was entirely his, this was characteristic of a democrat and a scholar in him.

Nevertheless, while others fashioned its structure and shape, Nehru gave to the Indian Constitution its fundamentals, philosophy add vision, spirit and soul. In this sense the role he played in the fashioning of India's Constitution was decisive, distinct and dominant—nay, unique.

Nehru was the Constituent Assembly's philosopher and its prime constitutional thinker. In his Resolution on objectives of the Constitution moved on the fifth day of the first sessiou of the Constituent Assembly, Nehru drew before the Assembly the blueprint of the Republican India.

The Objectives Resolution embodied the Constitution of India in miniature. Nehru laid down the general outlines of the constitutional framework and continued to influence what the Constituent Assembly did. In this sense, as has been said by Beatrice Pithey Lamb, the Constitution was "his handiwork".

While Nehru did not bother about what he considered petty details, he paid the most meticulous personal attention to the fundamentals. The President of the Constituent Assembly, Dr. Rajendta Prasad, also gave credit to Nehru and Patel "for fundamentals of the Constitution" Between the two, as Granville Austin puts it, each had his special interests—Patel was more interested in the Princely States, the public services, and the working of the Home Ministry, and Nehru in Fundamental Rights, protection of minority rights, and the social

*Secretary General, Lok Sabha, New Delhi.

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reform aspects of the Constitution—and each let the other have almost free rein in these areas. The blend in the Constitution of idealistic provisions and articles of a practical, administrative, and technical nature is perhaps the best evidence of the joint influence of these two men.

Even in the field of integration of the Princely States with the rest of India, without in any way meaning to detract from the unique role performed by Sardar Patel, it may be pointed out that Nehru's role was no less significant. It is often forgotten that the first most crucial steps in the direction were actually taken by Nehru in his capacity as the Chairman of the States Committee, the committee appointed by the Constituent Assembly to negotiate with the States Negotiating Committee. As early as in February, 1947, speaking at the Joint Meeting of the States Negotiating Committee and the corresponding States Committee of the Constituent Assembly, Nehru urged the States' representatives to meet, discuss and find a way out which may be agreeable to all the parties. For, if unfortunately, that way was not found, "events would move and the compulsion of events would force us to do something". While no one who was unwilling was to be forced to join the Constituent Assembly, "by compulsion of events, they may eventually be forced to accept its decision". The warning was clear and unambiguous. Nehru minced no words. Taking strong exception to a resolution earlier passed by the Princes Chamber, he said, "So far as the Constituent Assembly is concerned, it is obvious that the state of things as they are in India is the result of operation of forces and nobody can stop the forces simply by passing a resolution". Public opinion, Nehru argued, was far more advanced and far more revolutionary than the Constituent Assembly and if the princes tried to impose their conditions on the Assembly, it might not be possible to control the reaction of mass opinion. Again, while presenting to the Constituent Assembly the Report of the States Committee as its Chairman on April 28, 1947, Nehru extended a welcome to those States which had joined the Constituent Assembly and also those who would be joining thereafter but simultaneously reminded the princes that generally speaking they did not represent their people and that the people of the States wanted to come into the Assembly and if others prevented them, it meant putting "brakes and barriers" in their way.

Thus, Nehru showed remarkable statemanship and through a display of requisite firmness and a spirit of genuine accommodation

and conciliation, he succeeded in bringing around a large number of States to agree to send their representatives to the Assembly under the formula of representation settled during negotiations.

As Chairman of the two most important Committees of the Constituent Assembly, Union Constitution Committee and Union Powers Committee, Nehru helped in the formulation of principles of a harmonious Centre-State relationship. Also, he took a very close interest in the Fundamental Rights provisions of the Constitution because, he thought, they ensured liberties for the individual's full growth. He took equally active interest in the social and economic aspects of the Constitution and it is well known that Directive Principles of State Policy were adopted at his instance to give the Constitution a direction towards social and economic justice.

Nehru dwelt at length and repeatedly on the changing concept of property in the history of mankind. In the Congress Party meetings, he spoke rather strongly against the inclusion of the right to property as a fundamental right. Finally, in the Constituent Assembly, as a 'just compromise' between 'the right of individual and the right of community' he moved the most important and far-reaching amendment to the property clause providing for the compulsory acquisition of property. Speaking on his amendment, Nehru said that the right of the individual and the interest of the community were both important and the amendment, therefore, sought to harmonise the two by providing for acquisition of private property only for public purpose and on payment of compensation determined by Parliament by law.

The question of adult franchise was discussed threadbare in the Constituent Assembly. There was an opinion held by many responsible leaders that in the state of education of the masses adult franchise should not be introduced and restricted franchise should continue till the masses were sufficiently educated. But this was opposed by Nehru who had full faith in the innate commonsense of the masses. He vigorously pleaded that it was adult franchise alone which would not allow power and pelf to influence the administration one way or the other. He carried the day and carried on the venture successfully. Even the advanced countries took long time to introduce adult franchise. Even now the tribal population has no franchise in countries like USA and Australia. That India was able to introduce adult franchise at one stroke and make a superb success of it was entirely due to Nehru's faith in it and his able leadership.

Nehru strongly pleaded for parliamentary system of government, because he felt that parliamentary democracy was inevitably going in the direction of economic democracy and whatever forms it might take "only in the measure that it solves the economic problems does it succeed in the political field", and this form of government was "most likely to do so than the other forms which lead to some measure of authoritarianism". And, also because the parliamentary system with all its failings had "the virtue that it can fit in with the changing pattern of life".

Nehru spoke at length on the respective roles of and relationship between the legislature and the Judiciary. Within the terms of the Constitution, he felt, the will of Parliament was supreme and the Judiciary could not be allowed to function as a third chamber to thwart social reform measures.

He was all the time looking at the practical aspects of various proposals and situations and the functioning of the government. He would not agree to any sentimental approach to things and suggested pragmatism in the solution of all problems. A very important question in the Constituent Assembly was whether the Governors in the States should be elected or nominated. Nehru intervened effectively in the debate and in this connection referred to the high cost of elections in terms of time, energy and money. too many elections not being good for democracy and the greater desirability of a nominated Governor from outside the State. He felt that having elected Governors might encourage provincial tendencies and reduce the common links with the Centre.

His approach to problems was always informed by his love of the people and their development. On the questions of the adoption of international form of numerals as against the Hindi or Devnagari numerals, Nehru urged the acceptance of the form used internationally. For this, he said, was a forward looking approach and one in the best interests of the country's rapid progress "in the science and art of the modern day". Again, on the question of language generally, he spoke forcefully and while agreeing with the need for India having one of its own languages as an official and national link language, he deprecated any imposition and stressed the desirability of the All-India language growing from the people. Nehru thus played a very significant role in the evolution and final acceptance in the Constituent Assembly of the Ayyangar formula on language.

Nehru thought of generations ahead and sought to establish a constitutional system that would survive all upheavals and all pressures in the times to come. So he advocated necessary flexibility in the Constitution, for the Constitution "was meant to be a dynamic Constitution". Writing on July 13, 1947, as Chairman of the Union Constitution Committee, he recommended to the President of the Constituent Assembly draft of a provision for the amendment of the Constitution. This formed the basis of all subsequent discussions regarding the amendment clause and finally took the shape of Article 368 of the Constitution. Speaking on the motion regarding the Draft Constitution moved by Dr. Ambedkar, Nehru said that while we wanted this Constitution to be as solid and permanent a structure nevertheless there was no permanence in Constitutions. There should be a certain flexibility. He further pointed out that if we made anything rigid and permanent, we would stop a nation's growth, the growth of a living vital organic people. Therefore it had to be flexible.

Nehru thus played a crucial and predominant role at various stages of Constitution-making in the Constituent Assembly and its Committees and gave to the Constitution of India its philosophy and fundamentals.

But, this was only a beginning. For, a Constitution gets its real meaning and coherence only by the manner in which it is worked. The Constitution of India was really being made during the early years of its life when it was being actually put to work and test under the stewardship of Jawaharlal Nehru. Nehru's role in building the national edifice on firm foundations and giving to the Constitution its life and vitality by working it for the first 14 years, was most remarkable. Many loopholes were detected in the process of working and Nehru took it upon himself to plug these by bringing in the necessary constitutional amendments which clarified the real intent of the framers of the Constitution. While piloting the Constitution Amendment Bills and otherwise speaking on important issues, Nehru made very significant contributions to constitutional thinking on subjects like Fundamental Rights *vis-a-vis* Directive Principles, limits to Freedom of Speech etc., rights of the individual *vis-a-vis* interest of the society, supremacy of Parliament and jurisdiction of courts, Right to Property, protection to backward classes, resolution of the language problem, position of the President and the Prime Minister.

Thus, to sum up, as Michael Brecher in his perceptive biography of Nehru has said, "The Indian experiment in constitutional democracy owes more to him than to anyone else."

NEHRU'S FABIAN CONSTITUTIONALISM

Prof. M. C. J. KAGZI*

Introduction

Nehrus of India, most notably include Moti Lal Nehru (b. 1861-d. 1931) and Jawahar Lal Nehru (b. 14th November 1882-d. May 24, 1964), respectively, the father and the son. Indira Nehru—Gandhi (b. 19th August, 1919—d. 31st October, 1984), the daughter of Jawahar Lal Nehru was the wife of Firoz Gandhi. Moti Lal, the fatherly Nehru, was an Allahabad Lawyer of repute and a man of riches. He was taken to politics reluctantly rather late in life ; and became an old guard leader belonging to the Swarajist faction of the Indian National Congress. But at Calcutta session held in December, 1928 under his Presidentship, the old guard, father Nehru, had to face an intraparty opposition of the younger men lead by the younger Nehru. The generational gap in thought and action between them could not but be real and a fact. This both recognised. With all his love for the father Nehru, he irresistively went along with Gandhi and joined his non-cooperation and non-violence *satyagraha* movement. With him came the no other youth leaders than Subash Bose, Srinivas Iyengar and C. R. Das. The youth lead by Jawahar Lal walked away from the seniors and Gandhi came in fore-front as real leader of the youth and the Congress of the twenties. Jawahar Lal led to succession to Moti Lal as the next Congress President in the Lahore session. In the course of his mid-night Presidential address delivered on 28th December, 1929, on the banks of the Ravi, the younger Nehru gave the call of *Purna Swaraj* (complete freedom). He declared :

We believe that it is inalienable right of the Indian people... to have freedom and to enjoy the fruits of their toil... We believe also that if any Government deprives the people of their rights and oppresses them, the people have a right to alter or abolish it. The British Government in India has not only deprived the Indian people of their freedom, but has ruined India economically, politically, culturally and spirituarly. We believe, therefore, that Indian must sever the British connection and attain *Purna Swaraj* or complete independenc...

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The Ravi Banks Presidential Address marked the cut off point of time. Nehru became the leader, and remained on the Congress platform as one of the Principal spokesman for nearly two decades. In the thirties under the new activist younger leader there would be no more talk of dominion status within the British empire, home government, self-rule, autonomy, swaraj, reforms, compromise and arrangements with the imperialists. The Nehru Committee proposals were outdated, and allowed to, or declared to have lapsed. The resolve of *purna swaraj* objective of the Congress changed the whole national perspective. In pursuance of the *satyagraha* and other revolutionary [objectives, Nehru articulated the non-cooperation strategy, and over the years spelled out the swaraj measures and designs to attain the National Independence. In an article for Daily Herald (2 October, 1933) he observed that the Indians would themselves frame a Constitution for their country. They would set up a representative body for the purpose. The Constitution would be made and adopted on their behalf by their popularly constituted assembly—the Constituent Assembly (Consembly).

On the potter-wheels of Nehru's imagination the Consembly would be constituted of the representatives of the Indian people, who would be elected on the basis of adult franchise. The Consembly would be called into being on the basis of popular mandate, and once assembled even under a banyan tree and inagurated it would have full and complete constituent power. Its structure, ordering of its procedure, power and authority would not be regulated or directed or controlled by any outside centre of power. It would not be dissolved by any outside authority. It would dissolve itself only on completion of its historical task.

Nehru's idea of the Consembly was approved and adopted by the All India Congress. At the Lucknow Session (12-14 April 1936) of the Congress, Nehru. again spoke to demand the setting up of the Consembly. The resolution passed at this session to reject the Government of India Act, 1935, restated its resolve of "creating conditions for eventual rise of a duly elected popular Assembly with the purpose of framing the Constitution of a democratic Government of the people, by the people." The President Nehru said in his address "That Assembly will not come into existence till at least a semi-revolutionary situation has been created...and the people... can make their will felt."

Nehru along with Rajendra Prasad, Sardar Ballabh Bhai Patel, Maulana Abdulkalam Azad, Ayyar Gopala Swami Ayyangar, Alladi

Krishnaswamy Iyer, Bhim Rao Ambedkar, Kanhaiyalal Manik Lal Munshi, J. B. Kriplani were moving figures and important members of the activists framers'. Nay, he could appropriately be said to be the captain of the makers' team. He was associated with many a committee set up by the Consembly; and chairman of the Union Powers Committee, the Union Constitution Committee and the States' Committee. His role function as a member of a number of other committees and as a front line member of the Consembly could not be exaggerated. The number of opening speeches he delivered, the motion he moved, the number of occasions on which he intervened in the course of debates would show that he was the most active member-participant in the proceedings and debates. He had a say, if not a final word, in almost all important deliberations, discussions, compromises, promises, decisions of the committees and the Consembly. On most of the occasions he spoke to provide correct national perspectives of knotty issues, difficult problems and delicate decisions. His leadership was really matchless. Aware as he was of the historic significance and trust with destiny role of the Consembly, he spoke up inspiringly, nobly and eloquently on various stages and aspects of constitution making.

His finest utterances include speech in the mid-night session at the dawn of 15th August, 1947; speech on occasion of moving of the Objectives Resolution on 13 December, 1946; the National Flag Resolution speech of 22nd January, 1947; and speeches at the time of moving various committee reports for consideration: States Committee Report-8th April, 1947; Report on Principles of the Union Constitution—21 July 1947; and speeches in the course of debate on the Fundamental Rights Committee, the Draft Constitution—15th November, 1948, 31 May, 1949 and 12 August, 1947; and Language compromise—13 September, 1949. These speeches were historical and noteworthy and rare and matchless in expression, perspectives, depth of feelings and what not. Not infrequently he spoke with all his heart, and in his utterances he wore his heart on his sleeves.

Nehru chaired the twin committees: the Union Powers Committee, and the Union Constitution Committee; which provided the framework and structure of the Union of India. The earlier reports of these Committees did not demolish the core plan authorised by the Cabinet Mission. But, after the partition plan was accepted by the Congress as a result of Nehru's own commendation, he betrayed his capacity as a builder of the basic framework and structure of the centripetal quasi-federal Union of States. The report of the Powers Committee, presented

by him, recommended quasi-federalism in place of confederal approach of the Plan Proposals. The committee recommendations included:

- (i) Federal—Union with a centripetal force;
- (ii) Powers—distribution: Major power heads and residuary powers given exclusively to the Centre;
- (iii) Central executive powers—wide and effective.

The Parliament the President and the Opposition

Jawahar Lal Nehru, Dr. Rajendra Prasad and Ballabh Bhai Patel together with Benegal Narsing Rao, Bhim Rao Ambedkar, Alladi Krishnaswamy, Gopaldaswamy Ayyangar and Kanhaiyalal Munshi actively contributed to the discussion and debate with respect to provisions for President of the Republic. Nehru as Chairman of the Union Constitution Committee and Patel as the Chairman of the Provincial Constitution Committee backed up the decision of their Committees—which held a joint sitting on 7 June, 1947, recommended that India should have "the Parliamentary system of Constitution, the British type of Government with which we are familiar." Nehru's Committee had before it Rao's questionnaires and Ayyar-Ayyangar joint memorandum. Nehru resolutely emphasised that the nature, character and form of the Executive would be ministerial only.¹ He said that the executive power would, "Reside in the Ministry and in the Legislature and not in the President as such. He opposed the Presidential system of the United States, the Swiss system and the like. In line of this thinking he pressed for indirect Presidential election, the President's non-party man and apolitical character and impartial behaviour in office, constitutional head, and binding character of ministerial advice etc. He felt the constitutional conventions of parliamentary government would restrain the Presidential actions. He did not even see eye to eye with Prasad who would ascribe certain measure of discretion and power to the President of the Republic. This is the reason that for over twelve years of the, fifteen years term of office of Nehru's Prime Ministership and Dr. Rajendra Prasad's Presidentship, one finds embarrassing and strained relationship between them. Unlike other Presidents, Prasad held his Presidential office of his own. In 1957, Nehru had hoped that Prasad would step down, and Dr. S. Radha Krishnan, the then Vice-President, would become the second President of India. This would not be so as Prasad declined to oblige Nehru. The embarrassment was of his own counting. A little unhappy Nehru

¹ CAD IV 5, 734;

would not, rather could not deny Prasad a second term of the Presidency. However, he was not inclined to take chance any further; and in the summer of 1960 and subsequently, the question whether Prasad would run for a third term was allowed to be raised. In April 1961, Bhupesh Gupta, a Communist Member of the House of the People, moved a constitutional amendment bill, providing for restricting the Presidential terms in case of a person to two terms only. But, the Bill was not proceeded with as Prasad himself expressed his disinclination for any further term. Radha Krishnan was Nehru's choice for the Presidential office in 1962. Since Radha Krishnan, the Presidents have been men of Prime Ministerial choice and preference. Nehru can be credited for this practice. Thus the stature and status of the President vis-a-vis Prime Minister have been dwarfed, particularly after the quinquennial term of Radha Krishnan in 1967.

Nehru and Prasad did not share each other's views on the role functions of the President of the Republic; and even did not see eye to eye on certain occasions. Prasad was concerned about the high office and its functions. He even inquired about the Presidential powers from B. N. Rao, the Constitutional Advisor of the Consenbly. He did not look on the President as a figure head but according to him, the President would be focal point of state authority, and in the capacity of repository of sovereignty of the Republic would wield power prestige and discretion, which of course would be sparingly exercised with utmost restraint and responsibility. Nehru would, countenance no such views and instead resolutely maintained that the President was intended to act only in accordance with ministerial advice. He would act only constitutionally; and would not act at his discretion in all matters including giving assent to legislative Bills. It was public knowledge that they did not hold similar views on the issue of Hindu Code. Dr. Rajendra Prasad was reluctant to give assent to the Hindu law reforms Bill, while Nehru insisted on its enactment.

Whatever may be his personal and temperamental differences with Prasad about the role of the Presidency, Nehru would never be wanting in decency and would respect the dignity and the majesty of the High office of President of the Republic. He would never fail to show genuinely respect due to the Office, and would religiously pay formal calls upon the President, place all State papers and secrets before him and seek his advice and counsel.

Nehru preferred, practised and propagated parliamentary democracy both in form and in practice. He was an honest parliamentarian both in words and conduct. He honestly opted for parliamentary system of government unreservedly with all its basis: responsibility and accountability to the House of the people—the House [of Representatives of the people, and through it to the people. He listened and tolerated dissent, encouraged and participated in debate and submitted unquestionably the authority of the House. Not even remotely he would ever entertain any idea of any Prime Ministerial or Presidential type government. He had never any doubt that the parliamentary cabinet system was more democratic, more responsible, effective and efficient, and more sound to the genius of the Indian people.

He knew that the Consenbly framed and adopted the structure of Parliament without much of difficulty, after it had taken decisions for provisions for the following, namely—(i) Bicameralism; (ii) Representation-universal adult franchise; and (iii) Reservations for weaker sections of people.

During his Prime Ministerial term, Nehru had three quinquennial general elections, respectively in 1952, 1957 and 1962; and he held no mid-term poll. In 1952, 173 million voters voted him in power which was the largest in the world. Elections were held in 489 parliamentary constituencies; and 3373 State Assembly constituencies. Over 17,000 candidates jumped into the electoral contests. Nehru was the lone campaigner for the post-Independence Congress Party. He travelled throughout length and breadth of the country, and breath takingly covered 30,000 miles in 43 days. With no security risks at the time, and riding the horse of his popularity, he addressed public meetings, village commons, tehsil and district headquarters; and in city maidans, grounds, commons, school compounds, play-grounds and road side places. Some 30,000,000 men, women and children—young and old, poor and rich should have heard him speak, and ten times of these should have read or should have been told about his exhortations of democracy. The Congress Party, nay, Nehru's party was returned to power. It bagged 45% votes; and got 362 of 489 (74%) seats in the House of the people. It was returned in the States as well, except the erstwhile states of Madras, Orissa, PEPSU (Patiala and East Punjab States Union) and Travancore-Cochin. The Party was defeated in the centrally administered area of erstwhile Tripura. Over-all percentage of State votes received by his party was 42%. The peculiar undemocratic

character of the electoral system under the Constitution was much too obvious. With 35% vote, the Party was in minority in terms of votes; nevertheless, yet, it bagged a little more than 74% seats in the house of the people.

For Nehru, the general elections in 1957 and 1962 were almost repeat performance. He maintained his spell and charisma. He rode on electoral chariot, and won his victorious triumphs over the largest electorate in the world and history which rose from 173 to 193 millions in next 5 years. In spite of his huge parliamentary majorities over two-third of Lok Sabha members throughout, his belief of parliamentary institutions and responsible Government was strong and unshakable. To him, Parliament was house of collective will of the people, as it was composed of the representatives of the various sections and classes of the people; and indeed represented the whole of Indian. It provided the framework and structure of political and social unity and territorial integration of the country; and was the grand inquest of the Nation. He respected its authority to sanction legislation and money and discretion to approve policy and programmes of government; and his Government always submitted to its control. He observed religiously its rules of decorum, privileges; and betrayed the appearances of himself being a disciplined member of the House of the people. He paid due respect even to the speaker, his orders and ruling.

Though his Government always was comfortably placed, yet he would always take care that Opposition was able to express its views, enthusiastically and meticulously. He would follow all rules of parliamentary business, procedure and process. He would habitually attend the sittings of the House, and occasionally even of the Council of States. He would like to listen the Members speak upon and debate about the national issues, and would welcome criticism of the policy and actions of the Government. Numerically small opposition would even offer strong opposition of his Government. Men like J. B. Kripalani, Dr. Ram Manohar Lohia, Dr. Shyama Prasad Mookerji, H. V. Kamath, Mahabir Tyagi, Dr. Purshottam Das Tandon were dreaded opposition leaders. He would never use unkind utterances even though Dr. Lohia would be using utterances which were insultingly abusive. He listened to the unkind censorious debate on the issue of the Northern Boarder with calmness. Nehru would always like and encourage the Ministers to answer questions, and occasionally would see them real under opposition attack rather than himself rise to help them,

or rescue them from the sabre rattlings of the Opposition. Often he would intervene in the debate, make important announcements/statements of policy or issues relating to the important events. He would submit readily and obediently the policy and programme of the Government for approval of the House, and modify them in accord with the criticism, debate and suggestions offered in the House and the Council. Honestly and consciously he would do all required of him to promote a genuine parliamentary culture, and abide by popular commitment and uphold national aspirations.

Secularism : Lode Star of Constitution-Moral Values

Nehru was a man of the word. Born a Hindu, he practised no orthodoxy. His secular outlook was an aspect of his inherited elitist traits, discovery of past rich Hindu *darshan*, (Muslim cultural sophistication), Western liberalism and acquired humanism made up his individual identity and personality. His reflective mind would reject narrowness implied in theocracy, fundamentalism and conformism or ritualism. He would not accept an exploitation associated with institution of casteism, slavery, untouchability, socioeconomic inequalities and disabilities and liabilities. The virtues of forbearance, compassion, humanism, tolerance, universality and equality of all religions were his peculiar traits. Himself not a religious man or a believer of the Almighty and the faithful, he was not irreligious either. He found life "sufficient absorbing", and would not just accept "an assurance of a future life which will make up for the deficiencies of this life". He might not rationally accept "*Ishwar Allah Tera nam*" approach of Mahatma Gandhi, and would not join the latter's choice for attainment of *ram rajya* (just social order known to the Hindus), but nevertheless, he was a little awed of the Mahatma's sense of renunciation or abstinence demonstrated through his fasts unto death and vow of celibacy. In fact, Gandhi's respect for all religions and his catholicity and sincerity of convictions moved him and his intellect. Indeed he irresistibility went along the *Tao* (path) with Gandhi; and unquestionably accepted his thought and its basics: *prem* (love), *ahimsa* (non-killing), *satya* (truth) *Sahastilya* (co-existence) and *Ramrajya* (just social order). He would never feel that the contemporary religious men, to include Gandhi and Azad were not secular. Instead he would agree to disagree a little with Patel. In the context of social, economic and political realities he would accept secularism as equality and equal rights of all religious groups and as absence of fundamentalism: Hindu or Islamic. To him

secularism was not non-religionism; but a pragmatic idea; a value of the inherited composite culture and a constitutional value. It meant giving up of communalism, removal of separatism, abolition of separate electorate. He believed religiously that the Hindus, the Muslims, the Sikhs, the Jains, the Christians and others could co-exist in equal brotherhood and practice, profess and propagate their respective religions in India, even after the communal holocaust of the tragedy that was partition of the sub-continent. He was a visionary and thought as Akbar did in the past that a mosque could be built by the side of a Hindu temple, although at the same time he could not ignore Jinnah who subscribed to the two nation theory and who would like Aurangzeb not hesitate to demolish the temple and put up a mosque in its yard. In this Nehru differed with Patel a little, particularly, after partition which made the latter turn to be a bit realist; In 1946, Patel sarcastically remarked "there is one genuinely nationalist Muslim in India-Jawahar Lal."

Before independence secularism was in the nature of the National Congress strategy for allaying the unfounded fear of the Muslims about their status in India after freedom, and for providing rationale to its claim to the sole representative institution of the great mass of the Indian people. To Nehru secularism was, however, much more than the Congress creed of pre-Independence days. It was an inalienable social value, legal concept and constitutional idea. It was a rock and a shield. It rescued the Muslims after partition in India. But, for him and his secularism, the lot of the Muslims in partitioned India would have been a lot worse. Nehru's personal firmness in this respect was a better insurance of their security in Delhi and other places in this country than his Government which was internally divided on this issue. He stood rock-like with honesty of purpose in spite of the worst Muslim frenzy and violence against the Hindus across the then and undelineated India-Pak Border, provoking retaliatory violence against the Muslims in India. Morally he was supported by Mahatma Gandhi, but Patel would not just leave the Hindus to their fate in the mad holocaust let loose upon them in the West Pakistan. However, he could not prevail upon Nehru; but would still not relent with respect to the Hindus of East Pakistan (East Bengal), and actually threatened to take eyes for an eye. The iron man's firmness helped to save a large number of non-Muslims in East Pakistan; and thus he more than Nehru proved saviour of the Hindus in Pakistan by forcing the conclusion, of the Delhi Pact (1950). Nehru and Liaquat Ali Khan, the Prime Ministers of India and Pakistan agreed thereunder to provide

protection to persons in course of to and fro transit along the Eastern Indo-Pak borders, the right of subsequent return to their hearths and homes, recovery of looted property, restoration of abducted women, non-recognition of forced conversions etc. Had such a pact been made in respect of the West Pakistan as well the human misery would have been lessened, and the number of displaced persons' and the dimensions of their rehabilitation would not have assumed gigantic proportions.

The Nehruvian secularism was, and remains still an essential principle of the Constitution. The value concept of secularism is an article of constitutional faith and the lode star in the preambular skies of the Sovereign Socialist and Democratic Republic of India. The lode star idea largely attracts as with magnetic force, the other inalienable values of socialism, equality and democracy. It is all largely due to Nehru, whose Objectives Resolution of December, 1946, was passed by the Constituent Assembly, declaring secularism as the basic creed of the Republic. But, with all his firm conviction, Nehru did not entirely succeed in his endeavour to make India truly secular rid of communalism, casteism and social inequalities, discriminations, liabilities and disabilities. The devil of anti-national and anti-social forces showed their ugly faces in religious segregation and communal clashes, *Kaumi* divisions and sessionist linguisticism. The devil of communalism died not in his time. The heinous head of communal violence did not get buried. With all his secular creed, policy and action, he did not entirely succeed to usher in an era of secular society. The Muslims would not accept his creed even after partition, even though they supported him electorally, because, they were indebted to him personally and collectively for his support to them after the catastrophe that was partition. However, they did not heed, his secular advice to accept a uniform law code for personal secular family matters.

Language and Linguistism :

Nehru was aware that for the Indians, English was the language of the foreign imperialists. It was imposed by the British power in the sub-continent in the 18th and 19th centuries. Thomas Bbington Macaulay put it as the badge of slavery on the breast of the Indians, and so the English had that sting of sitting on our own linguistic heritage both of Sanskrit based and Tamil languages. But nonetheless, it was a crude fact of history, that the Indians had spoken it in various parts of the sub-continent for varied periods before independence. The social reformers, to include, Raja Ram Mohan Rai and Ishwar Chandra

Vidyasagar, asked the fellow countrymen to pick-up, speak and write the English language. The men in Bengal and Madras (Tamil Nadu) and Bombay (Maharashtra) spoke the foreign language longer than men in the Hindi heartland including the Rajasthan. It was also the mother tongue of the Anglo-Indians. It became the medium of education, the official language of administration, and the language of law and the courts. The urban educated, the administrator and the white collar class adopted it and cultivated it. It became the necessary and essential qualification of employment under the imperialist government and public services.

Though Nehru was, to quote him, rather 'partial' to English, because of his Western education at the Trinity and elitist background, yet he would not accept that an Indian "who does not know English... is somehow inferior to the other who knows imperfect English or whatever it is." He had no doubt that this could not be the language of the common men and the masses in this country. English would ever be a foreign language for the large majority of the Indians. It did not seem to him an arguable point that the country should preserve not only her identity and integrity but also develop the cultural heritage of masses only through the language(s) which had some deep roots in our minds and hearts and which was the language of the literature, art, science, philosophy and culture of the countrymen. There could be no real upsurge through the English language, or for that matter through any other foreign language. He would not shed tears, if the countrymen got rid of English.

But at the same time, he would like the countrymen to consider the language issues 'more objectively and impersonality' in total national perspectives. He would join issue with the Hindi enthusiasts, and would not let Hindi to be imposed on any non-Hindi section of the people. Rather he would let these have English, or opt for it. He would let the DMK men in Tamil Nadu or the Nagas continue in the North-East to have English, if they asked for it. He felt that it was in fitness of things that the Constitution declared Hindi in Devanagiri script the official language of the Union of India, but at the same time he laid stress on the direction that English "shall continue to be used for all official purposes for the first fifteen years after the commencement of the Constitution. Not only this, he stood by the provision that the fifteen years period for continued use of the English language could be extended by Parliament by law. He intended that the lingual change would under all circumstances be smooth and gradual. He said that

the English language would not abruptly be discarded, rather it would, after 26 January, 1965, supplant Hindi in offices; departments and agencies of the Government of the Union of India for business, communication and correspondence. The lingual change would even be slow in the Legislature, and it would be slower in Parliament and the State Legislatures and the Higher Courts: the Supreme Court and the High Courts. In fact, he considered that for the transitional period bilingualism was unavoidable, nay, a preferred necessity. But, he hoped that the foreign language would eventually cease to be used as the official language of free India. This would, however, not happen with the consent of the majority number of people in all the States. When the cut-off date neared, the DMK (Dravida Munnetra Kazagam) launched its anti-Hindi frenzied offensive in Tamil Nadu and Nehru stooped to conquer the linguistic fanaticism of the DMK section of the Tamilians by assuring them that the cut-off date would be cut-out, and the framer's mandate of making Hindi the official language would be allowed to wither away. The Official Languages Bill, 1963, was introduced for carrying out this Nehruvian assurance, given to the non-Hindi speaking regions of the country, particularly, Tamil Nadu. Speaking on the Bill in the Lok Sabha, he said :

This is a bill in continuation of what happened in the past, to remove a restriction which had been placed by the Constitution on the use of English after a certain date....

I had given on the last occasion as assurance about no major change being made in regard to the use of English without consent, without the approval of the non-Hindi speaking people. That was made by me, and that represents not only my view point, but the view point of our Government. And when it was made it was clear to me that it was made, largely with the approval of this House².

The official Language Act, 1963, was passed under the directory and enabling provision of Clause (3) of Article 343 of the Constitution. *Exlitera* the Act was valid, and was in true spirit and intendment of the Munshi-Ayyangar Compromise endorsed by the Constituent Assembly. Nevertheless, Nehru's assurance and his commendation of the Bill to Parliament was contrary to the archstone of the Munshi Ayyangar-Compromise formula, as it plainly caused withering away of a declaration. Though Nehru might have himself felt that the continued use of English

2. Lok Sabha Debates, 24 April, 1963.

as the official language was not incompatible with that declaration and the deep sense of nationalism, yet he unwittingly gave up the ghost of Macaulay. He was wholly-right in keeping the Hindiwallahs—the Hindu enthusiasts—in good humour and in check by reminding them of their larger commitment to the nationalist spirit of accommodation for the non-Hindi countrymen, but he was clearly wrong in appeasing the anti-Hindi extremists of Tamil Nadu. He did not honestly and completely carry out the constitutional directive with respect to the lingual change by letting Hindi become the official language, and by non-use of the English language after 25 January, 1965. All the same, he might have honestly felt that it was unavoidable to meet the demands of national unity. It is another matter that he is not vindicated. He did not realise that his innocent assurance would be seized upon by the DK (Dravida Kazhagam), DMK (Dravida Munnetra Kazhagam) and AIADMK (All India Anna Dravida Munnetra Kazhagam) men for anti-Hindi sloganised agitation. Occasionally, these groups engaged in fighting with one another united in the common anti-Hindi front; and day in and day-out carried on their *jihead* of lingual intolerance by calls for erasing Hindi letterings from the name boards of railway stations or blackening of sign boards along the streets of Madras city, or protesting outside the houses against use of Hindi on AIR (All India Radio) and T. V. (Door Darshan). Their agitation against the myth of imposition of Hindi by back-door means betrayal the trust reposed by Nehru. Nay, they show that Nehru was after all wrong.

The idea of linguistic reorganisation of the States of the Union was nothing new³. While in the past it was put forth by the National Congress, and was forcefully put across by the Nehru Committee. In their report the committee had recommended for the formation of (i) Kannada speaking Province of Karnataka, areas of the erstwhile Bombay Province and Madras Province; and (ii) a Sindhi speaking Province of Sindh within the territories of the then erstwhile Bombay Province. The Committee articulated the linguistic basis of reorganisation thus :

Language as a rule corresponds with a special variety of culture, traditions and literature... The mere fact that the people living in a particular area feel that they are a unit, and desire to develop their culture is an important consideration even though there may be no sufficient historical or cultural justification for

3. Speech of Rao Bahadur Sharan in the Indian Legislative Council, 6 February, 1918, Sh. Srinivasa Sastri opposed Rao Bahadur.

their demand. Sentiments in such matters is often more important than fact⁴.

However, the demand for linguistic reorganisation was resisted soon after the partition of the country, although the issue of integration of the erstwhile British Indian Provinces and the old princely States was very vexed issue of political integration before the framers who had just made transitional and made shift division of Indian Union into Part 'A', Part 'B' and Part 'C' States, as the official Dar Commission (1948) strongly, and the Congress Party JVP Committee mildly recommended against the States reorganisation at that time. The JVP Committee was named after the first initials of the names of its members : Jawahar Lal, Vallabhabhai Patel and Pattabhi Sitaramayya. The committee recalled and recommended the past policy and pledge of the Congress, and in this respect, they suggested that the matter could be reopened if there were an insistent demand "after commencement of the Constitution".

In the Consesmbly, Nehru expressed himself on this subject⁵ as follows :

...it seems to me and it has long summed to be inevitable that in India some kind of reorganisation should take place of provinces etc, to fit in more with cultural, geographical and economic condition of the people and with their desires. We have long been committed to this. I do not think it is good enough to say linguistic provinces, that is a major factor to be considered. no doubt. What I would like to place before the House is that, important from the point of our future life and governance as this question is, I would not have thought that this was a question of that primary importance, which must be settled here and now today....

In view of this background it was no wonder that one of the pre-occupation of Nehru was the long drawn out process of the States' Reorganisation. If not a personal commitment, it was certainly a programme and a pledge of the Congress Party and his Government. As it would be, the linguistic redistribution became a major head of legislation, and also constitutional amendment during his Prime Ministerial tenure. The First Schedule Part A, Part B and Part C states of the Union

4. Report of the Committee of the All Parties Conference 1928, pp. 62-63.

5. Re the motion regarding the Draft Constitution CAD Vol. VII, pp 320-21, 8 Nov., 1948.

were reorganised by uniting two or more States, or parts of such States or by increasing their areas, or diminishing their areas, or altering their boundaries. The legislation in this respect was passed by Parliament, by the procedure set forth in Article 3 and was supported by amendment (s) passed by procedure of Article 368 of the Constitution.

The linguistic demand agitation storm blew over the Eastern Coast along the Bay of Bengal, and high gale winds passed over the Telegu speaking area of the erstwhile (Part A) State of Madras. It took a heavy toll and caused martyrdom of Potti Srivamulu. The establishment of the Andhra State out of the Telegu speaking areas of the erstwhile Madras State could no longer be put off, if the fury of the lingual violence was to be contained. The State of Andhra Act, 1953, was passed and the State was inaugurated in October, 1953.

Nehru and his Government took note of the warning signals of perils of any delay; and to ensure settlement of the larger question of States reorganisation "in an atmosphere of goodwill and calm, and on a rather scholarly discussion of the various factors" appointed the States Reorganisation Commission (SRC), which consisted of Sayeed Fazal Ali, former Judge of the Supreme Court and the then Orissa Governor (Chairman); Pandit Hirdaya Nath Kunzru, a noted Parliamentarian, and Sardar K. M. Pannikar, former Indian Ambassador to China and Egypt. The SRC Report of October, 1955, contained an in depth historical and socio-political study of the map of India through the relevant past; and it also provided a plan of future reorganisation of the States. The SRC plan was drawn up on the basis of an intelligent and instructive analysis of the several relevant considerations, factors, demands, contested regional claims and counter-claims in total perspectives of the future developing integrated India. The SRC report raised a more or less healthy discussion, although the SRC plan received no universal acclaim. It occasioned disturbances in Bombay and Ahmedabad, and at some later stage, raised a storm even in the Cabinet cup. In Parliament the Report was debated. Intervening therein Nehru commended a fuller conception of the issues of national territorial integration and emotional unity of the country⁶. He asked for a larger outlook over the SRC plan. He said it hardly mattered what was the delineation of inter-state boundary lines. There could not be walled linguistic areas; and citizens' free movement and right to settle in any

6. *L. S. Deb*, Vol. X, Pt. II, Cols. 3493-3514.

area of any State could not be unduly restricted by inter-State linguistic boundaries.

Nehru was a crusader of unity and integrity of the Nation. His thinking approach and efforts in connection with States' reorganisation was governed by the larger national perspectives. Sentimentally involved in the national endeavour to promote emotional and culture integration, he was emotionally unconcerned with any regional or linguistic claims or counter-claims. He looked for national consensus on the SRC plan with or without alterations in it, and looked out for the interests of the linguistic minorities in bi-lingual or multi-lingual areas within the linguistic States, or in areas along the inter-State boundaries of such linguistic States. He would like the country men to adopt a liberal out-look, and desired all citizens in all States to promote a spirit of emotional unity and territorial integration of the country transcending linguistic or regional diversities. He desired to promote the idea of commonness among people in different States. He would not like that the inter-State boundaries should become inter-State linguistic barriers. He would accept bi-lingualism, nay, multi-lingualism if it would promote lingual harmony. He said :

...I repeat, if I say, that I attach the greatest importance to the language, but I refuse to associate it necessarily with a State. Inevitably, of course, in India as it is, there are bound to be States where one language is predominant... But there are bound to be areas where there are two languages, as I have said, we should encourage both of them.

He felt that lingual predominance, and not unilingualism should be one of the several relevant important grounds of any worthwhile reorganisation. Bilingualism, nay, trilingualism, or even multi-lingualism in certain areas could not simply be avoided in this country of ours, nor other relevant factors could be ignored altogether. He said :

I am concerned with two things : first the principles : that is the principle of life wherever you may live, on whichever side, and secondly, the manner of approach of this problem; that is to say : how do we discuss these matters, how do we decide them, how do we accept the decisions made. That is vital... There is the method of democracy, of discussion, of argument, or persuasion, and ultimate decision and acceptance of that decision even though it goes against our grain or our opinion...or else, simply the bigger

were reorganised by uniting two or more States, or parts of such States or by increasing their areas, or diminishing their areas, or altering their boundaries. The legislation in this respect was passed by Parliament, by the procedure set forth in Article 3 and was supported by amendment (s) passed by procedure of Article 368 of the Constitution.

The linguistic demand agitation storm blew over the Eastern Coast along the Bay of Bengal, and high gale winds passed over the Telegu speaking area of the erstwhile (Part A) State of Madras. It took a heavy toll and caused martyrdom of Potti Srivamulu. The establishment of the Andhra State out of the Telegu speaking areas of the erstwhile Madras State could no longer be put off, if the fury of the lingual violence was to be contained. The State of Andhra Act, 1953, was passed and the State was inaugurated in October, 1953.

Nehru and his Government took note of the warning signals of perils of any delay; and to ensure settlement of the larger question of States reorganisation "in an atmosphere of goodwill and calm, and on a rather scholarly discussion of the various factors" appointed the States Reorganisation Commission (SRC), which consisted of Sayeed Fazal Ali, former Judge of the Supreme Court and the then Orissa Governor (Chairman); Pandit Hirdaya Nath Kunzru, a noted Parliamentarian, and Sardar K. M. Pannikar, former Indian Ambassador to China and Egypt. The SRC Report of October, 1955, contained an in depth historical and socio-political study of the map of India through the relevant past; and it also provided a plan of future reorganisation of the States. The SRC plan was drawn up on the basis of an intelligent and instructive analysis of the several relevant considerations, factors, demands, contested regional claims and counter-claims in total perspectives of the future developing integrated India. The SRC report raised a more or less healthy discussion, although the SRC plan received no universal acclaim. It occasioned disturbances in Bombay and Ahmedabad, and at some later stage, raised a storm even in the Cabinet cup. In Parliament the Report was debated. Intervening therein Nehru commended a fuller conception of the issues of national territorial integration and emotional unity of the country⁶. He asked for a larger outlook over the SRC plan. He said it hardly mattered what was the delineation of inter-state boundary lines. There could not be walled linguistic areas; and citizens' free movement and right to settle in any

6. *L. S. Deb*, Vol. X, Pt, II, Cols. 3493-3514.

area of any State could not be unduly restricted by inter-State linguistic boundaries.

Nehru was a crusader of unity and integrity of the Nation. His thinking approach and efforts in connection with States' reorganisation was governed by the larger national perspectives. Sentimentally involved in the national endeavour to promote emotional and culture integration, he was emotionally unconcerned with any regional or linguistic claims or counter-claims. He looked for national consensus on the SRC plan with or without alterations in it, and looked out for the interests of the linguistic minorities in bi-lingual or multi-lingual areas within the linguistic States, or in areas along the inter-State boundaries of such linguistic States. He would like the country men to adopt a liberal out-look, and desired all citizens in all States to promote a spirit of emotional unity and territorial integration of the country transcending linguistic or regional diversities. He desired to promote the idea of commonness among people in different States. He would not like that the inter-State boundaries should become inter-State linguistic barriers. He would accept bi-lingualism, nay, multi-lingualism if it would promote lingual harmony. He said :

...I repeat, if I say, that I attach the greatest importance to the language, but I refuse to associate it necessarily with a State. Inevitably, of course, in India as it is, there are bound to be States where one language is predominant... But there are bound to be areas where there are two languages, as I have said, we should encourage both of them.

He felt that lingual predominance, and not unilingualism should be one of the several relevant important grounds of any worthwhile reorganisation. Bilingualism, nay, trilingualism, or even multi-lingualism in certain areas could not simply be avoided in this country of ours, nor other relevant factors could be ignored altogether. He said :

I am concerned with two things : first the principles : that is the principle of life wherever you may live, on whichever side, and secondly, the manner of approach of this problem; that is to say : how do we discuss these matters, how do we decide them, how do we accept the decisions made. That is vital... There is the method of democracy, of discussion, of argument, or persuasion, and ultimate decision and acceptance of that decision even though it goes against our grain or our opinion...or else, simply the bigger

in Articles 19 and insertion of a new Articles 31A and 31B thus :

When we felt that some parts of the Constitution, as the judiciary interpreted them, were coming in the way of social or other process, it was the right thing and inevitable for us to...ask this House to approve certain changes. The changes are not great or vital.

... every change that is referred here is implied in the Constitution itself. Take article 31A or 31B dealing with land reforms or the abolition of the Zamindari. The Constituent Assembly took great and considerable care to lay down that these changes should not be challenged in a court of law. In spite of this care, perhaps the language was not clear enough.... There is not going to be much more waiting...in this matter of the abolition of Zamindari the Government is dead right...And, if these reforms do not go through quickly enough then there will be trouble for those who delay.

Observanda

Nehru was inspired by the noble ideals of freedom struggle and objectives of constitution-framing. He stood for upholding and protecting the sovereignty, unity and integrity of the country. Conscious as he was of his unique historical role and his status of being the first among equals, he regarded his claim to political leadership beyond challenge. With his heart and soul he wished to act democratically, subject to acceptance of his unchallenged claim to the leadership in Parliament, in the Government and otherwise. He had his heart in the right place for most of the time, and consciously believed in his undoubted importance and innocently believed that he could provide a banyan tree giving shade to all sorts of men. Nonetheless, it must not be denied that he desired to promote humanism; and had an innate Fabian faith in democracy and efficacy of constitutional and legal processes. He regarded Parliament as the unchallenged supreme authority, and was honestly opposed to authoritarianism. His contribution for strengthening the constitutional framework and structure must be acknowledged. His valent efforts to implant the parliamentary institutions and responsible government cannot simply be exaggerated. Consciously nay, religiously he tried to enhance the supremacy and power of Parliament and encouraged the growth of a genuine parliamentary culture. But, all through he himself was a Fabian, and an elitist parliamentarian.

He was unduely inspired by some of the distinguished British peculiarities of parliamentary institutions and good old conventions. Aware as he was of the ideas and ideals embodied in the Constitution, he should be credited to have laid the rock foundation of Fabian constitutionalism, constitutional conventions and practices which he found to be in accord with the letter and spirit underlining the provisions of the Constitution. He betrayed a high sense of respect and reverence for the institutions of the Presidency, and the judiciary as well showed high regard even to the Opposition.

Nehru experienced no difficulties in inner party democracy as his party was unified under his leadership. Except for the CPI there was no worthwhile national opposition. The Jana Sangh in areas in the North and Sheikh's National Conference in Kashmir threw no challenge at the national level. For most of the time in all the States, except Kerala and Kashmir his party men controlled the governments. These State Governments merely had the appearances of the Governments within the quasi-federal Union of India, but essentially these were *subai* governments of the grand *mughalia* unitary commonwealth managed by the unified Congress leadership. Centre-State relations were throughout more or less monotonously harmonious, except in relation to Jammu & Kashmir when Sheikh Mohammad Abdullah, the lion of the Valley, had to be caged in 1953, and CPI Ministers of Kerala Ministry had to be sent to their respective homes by proclamation of the President's rule in 1958 on intervention of his daughter-Indira Gandhi. Extralegally he shared political power with her in the late fifties by nominating her the Congress Party Chief. He had rare occasions to put States under the President's rule. The State Governors during his term of office were those who were mostly elderly Congressmen; and at the same time were personally known and friendly to him. The Chief Ministers and the Ministers were more often than not men who were fellow Congress workers who looked up to him for inspiration and leadership. The unified Congress Party and his own charisma and centrepetal alacommand injected into the quasi-federal plan of the Constitution, unitarianism and made it peculiarly Nehruvian commonwealth.

Although he had felt inspired by Gandhi's idealism and even by his *Ram rajya utopia*, but still he did not wish to be an unrealist. He felt intellectually attracted towards the West for its scientific temper, technology and heavy industry. He desired his country and countrymen to do a long march and catch up with the developed societies of the West. To him each of the successive electoral victory was a renowned

"tyrst with destiny", and a call for putting the shoulder to the big wheel of progress : Socio-economic revolution, endeavour to remove poverty, backwardness, illiteracy, inequalities and disabilities of ages. Unlike the Mahatma he stood for modernisation, infrastructure of heavy and basic industries, industrialisation, mechanised farming and river valley projects ; production of electricity and power. He set up an infrastructure of planning, development and growth. He provided the legal and administrative infrastructure for attainment of planning objectives.

Nehru has been described as a banyan tree : an Indian tree with outgrowing branches which take fresh roots and become new pillar trunks. The tree bears no fruits, but throws under it a large cool shade. Buddha sat for mediation under Bodhistava which was a banyan tree and still exists in Bodh Gaya. The bannians of the past found it large enough to build a pagoda (a Burmese type temple) under it. Nehru was a banyan tree which gave a large shade for so many persons who gathered around him. There were men who left to themselves would do nothing and with certain exceptions were even men of doubtful integrity and accused of abuse of office, influence, power and also who indulged in a corrupt moral social and economic practices and corruption. He protected them and gave them respectability, nay, high ministerial berths. These men needed a safe sanctuary and umbrella protection for their ill gotten gains. He discouraged accusations and allegations of corruption against public men : Ministers and others, and was always reluctant to appoint an enquiry commission against Chief Ministers and others for inquiring into charges of corruption. He would not require Pratap Singh Kairon to purge himself of corruption and charges of abuse of office till the Supreme Court would find him guilty. He would not ask TTK to leave the ministerial office till the one man Inquiry Commission would find him guilty of abuse of ministerial influence over the men considered responsible for proper functioning of the L. I. C. Men who could throw their own large or small shades on the ground were sent away by him. He made the Congress Party a party of men smaller than him and men who sought to stand and sit under his cool banyan shade. Men who could be his rivals, were purged under the Kamraj plan.

Nehru was out and out a nationalist. Right from his early days of his throwing himself into the Home Rule agitation led by Mrs. Annie Besant and his associations with Tilak's League he made a ceaseless discovery of his homeland and his countrymen, their past glories and dark days of subjugation. The immediate event which strived nationa-

lism in him was the Jallianwallaha Bagh massacre of 1919. This catastrophic tragedy angered him with the British rulers who betrayed utter contempt for the fellow Indians, and spilled blood of peaceful men, women and children. His meeting with Gandhi too in 1919 stirred his innerself and on asking of the Mahatma, he joined the Swadeshi movement for boycott of foreign cloth. He developed a sense of hostility against British Raj and a feeling of love and affection for Swadeshi things. The Indian nationalism in him produced a deep sense of love for the country and unity in the various sections of people : Hindus, Muslims. Their cultural renaissance and vitality of common heritage of the countrymen all over. He would sing *vonde matram* : the national song reverentially even after it was banned by the British Indian Government, and would not desist from it even when the British Indian policemen would give *lathi* blows or resort to firing on unarmed peaceful men, women and children. He would not let the Congress Flag, fall to the ground even if he was bodily wounded. He loved Bharat Mata. But at the same time his nationalism was never a restricted nationalist concept. He thought nationalism good in so far as it inspired the people to wage a war of liberation, freedom and swaraj. But, he was not oblivious of the fact that the highttened sense of nationalism could provide rationale for national aggressiveness racism and genocide of minority groups within the country. Clearly he had the Nazi cult in his mind. But, he thought it bad in so far as it roused national aggressiveness and racialism in Europe. Nationalism to him did not mean in the negative sense of internationalism. Nor he would command perpetuation of hatred between the rulers of the past and a liberated nation. He was a man of the world. Nationalism did not come in his way of advocating commowalth links between the Republic of India, Britain and other members of the erstwhile British Commonwealth after Independence under the formal headship of the British King. His speech on this subject in the Consembly is still a rational commitment for inauguration of a new era of equality of nations on the ruins of an empire.

NEHRU AND THE CONSTITUTION MAKING : A PHILOSOPHY OF NATION BUILDING

Dr. NALINI PANT

In Nehru we have the philosopher and the statesman. Put two together, we have the myth that the man of affairs, the man who was constantly in touch with day-to-day political reality was basically a philosopher. It is because of this fact that there arises the necessity to relate his political philosophy/thought to political action. And in doing so, naturally his leadership and his participation in the task of constitution making for the independent India comes to the foreground.

As a steering wheel of the Constituent Assembly, Nehru's primary emphasis was to lay the foundations of a strong nation. Moving the historic Objectives Resolution on the 13th December 1946, he said: "The real work of this Constituent Assembly is the high adventure of giving shape, in the printed and written words, to a nation's dreams and aspirations".¹ This illustrates with clarity that from the very beginning Nehru took upon himself the task of nation-building. He was rather skeptic whether he would be able to spell out the exact material for it (nation-building)—whether he had the felicity to give expression to his thoughts. Exhorting the house to consider the Resolution "not in a spirit of narrow legal wording, but to look at the spirit behind that Resolution", he said, "words are magic things after enough, but even the magic of words sometimes cannot convey the magic of the human spirit and of a Nation's passion".²

The fact of the matter is that the *nation* embodies the passion and the spirit of its people. It denotes human group bound together by common solidarity, John Stuart Mill gave this definition for the first time. According to him, "A portion of mankind may be said to constitute a nationality, if they are united among themselves by common sympathies which do not exist between them and any other-which make them cooperate with each other more willingly than with other people desire to be under the same government, and desire that it should be government by themselves, or a portion of themselves exclusively".³

* Reader, Political Science, Banaras Hindu University.

1. C. A. D., I, p. 59, 13th Dec. 1949. (*Emphasis added*).
2. C. A. D., Vol. I.
3. J. S. Mill, *On Liberty*.

Nationhood has both, 'objective' and 'subjective' factors. 'Objective' factors are—territorial identity, geography (hills, rivers etc.), history and economic structure. 'Subjective' factors include, will of the people and language. Many of these factors (listed above) can be encouraged or accelerated by suitable measures of public policy; and this has given currency to the concept of nation—building. In other words, 'nation-building' is a sum total of such policies.

As a member of the Constituent Assembly, Jawaharlal Nehru was highly conscious of this architectonic task of nation-building. He endeavoured (through the Constituent Assembly) to embody the will, the spirit and passions of the people of India *in a nation* "which is bound to be sovereign.... Independent...and a Republic."⁴

Sovereignty lies in the people of India as a whole. Since a sovereign cannot accept any kind of imposition, it is but obvious that only within the framework of a democratic and a republican system that the will of the people can get articulated and find expression. The concept of democracy and of the sovereignty of the people stands on the supposition that the political system is run *by* the people and stands *for* the people. It means that the sovereign people govern themselves for the good of themselves. Thus, the essence of democracy lies both in its *procedural* (*by* the people) and *substantial* (*for* the people) aspects. Moreover, democracy contains an economic component as well. In the absence of economic security, political freedom and democracy have no meaning. Nehru is emphatic on this point and says: "well, I stand for socialism; and I hope, India will stand for socialism...we have laid down not theoretical words and formulae, *but rather the content of the thing we desire*",⁵ At another place he says: "The service of India means the service of the millions who suffer. It means the ending of poverty and disease and inequality of opportunity."⁶

Political freedom, in short, stands on the shoulders of economic freedom. Can an untaught, underfed and unclothed person understand the value of freedom? For the healthy development of a nation the primary requisite is that its people are provided with the daily necessities of life. For "freedom begins where necessities ends."⁷ Long back, Aristotle perceived 'the state comes into existence for the sake of life,

4. C. A. D. Vol. I.

5. C. A. D., Vol. I, p. 62 (*Emphasis added*).

6. C. A. D., Vol. V, p.

7. Karl Marx, *Capital*, Vol. III, p. 66

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6. C. A. D., Vol. V, p.

7. Karl Marx, *Capital*, Vol. III, p. 66

and continues to exist for the sake of good life. In almost the same (Aristotelian) wave length Nehru says : "It is important that we should have the good things of the world, *the material possessions of the world. that our people should have the necessities of life. That is of the utmost importance. Nevertheless, a nation, and specially a nation like India with an immemorial past, lives by other things also, the things of the spirit.*"⁸ Nehru reiterated that the spirit of the Indian people has to be safeguarded from all types of disintegrating forces—from such divisive forces as regionalism, fanaticism, groupism, linguistic divisiveness, etc. Emphasising the necessity of cooperation he said : "The time has come when we have to rise above party and think of the *Nation*, think sometimes of even the world at large of which our nation is a great part."⁹

Nehru, thus, evoked the people of India to rise above petty differences and build a strong nation, unity and integrity, however, does not mean dull uniformity. It means unity within diversity; and entails that all the diverse threads in a nation's life—culture, religion, group, language, etc.—are intertwined in a manner as to create an harmonious whole; it represents such a harmony in which the 'distinctness' of 'each' is preserved. Evidently, such a unity is not an 'excellence in simplicity'; it is not the operation of one single idea. It is rather an 'excellence in composition'—a synthesis of many ideas and many cultures, a symphony achieved from many notes. Nehru upheld such an organic concept of the nation. Let him speak for himself : "*We are a living and a vital nation, and it is right that people should think differently....and it is also right, that thinking differently when they come to decisions, they should act unitedly in furtherance of those decisions.*"¹⁰ At another place he says : "... the ultimate objective is not *separatism but building up an organic nation, not necessarily a uniform nation because we have a varied culture, and in this country ways of living differ. habits differ and cultural traditions differ...If we seek to impose some kind of regimented unity that makes a living organism rather lifeless....*"¹¹

This, however, is by no means the end of Nehru's pleading. With the concept of the nation an organism, there is yet another and deeper principle involved in his concept of nationhood. This is the concept of freedom. "We are free now", he says "but along with

8. C. A. D., Vol. IV, p. 739 (Emphasis added).

9. C. A. D., Vol. I, p. 60 (Emphasis added).

10. C. A. D., Vol. VII, p. 320 (Emphasis added.)

11. *Ibid*, p. 323 (Emphasis added).

freedom, come responsibilities and burden. We have to face them and overcome them all.. uprooting the foreign domination is not all. Unless and until each and every Indian breathes the air of freedom and his miseries are banished and his hard lot is improved, our task remains unfinished.... It is not the individual pride and strength that is comforting, rather it is the *pride of the country and the nation, and a confidence in people who have suffered* terribly for the cause that makes me bold to think. We shall successfully shoulder the huge burden of hardships and find a solution of these problems."¹²

It is manifest that Nehru's concept of freedom is a composite one. It is positive and deterministic. It is a synthesis of freedom *from* and freedom *to*. It denotes freedom *from* foreign domination, and aspires freedom *to* develop. As such, he emphasises, i. e. we have to be conscious of this tremendous burden of responsibility "which freedom has brought : *the discipline of freedom and the organized way of working freedom.*"¹³ It is precisely for this reason that each Indian citizen is bound by the *ends* of the social and political order into which he has emerged; that he is no more at liberty to renounce his duty: just because they are duties, they are independent of his will. Duties are the extension of freedom. Would it be possible to find a more explicit assertion of duties responsibilities that has to be borne for the sake of nation-building? Freedom is granted and must only be granted, conditionally on performance of duties.

Another point that is significant in Nehru's philosophy of nation-building (through his ideas expressed in the Constituent Assembly) is his emphasis on the principle of growth and development. We can mark what he says : "...we want this constitution to be as solid and as permanent a structure as we can make it, nevertheless there is no permanence in the constitutions. There should be a certain flexibility. *If you make anything rigid and permanent, you stop a nation's growth, the growth of a living vital organic people.* Therefore, it has to be flexible."¹⁴ A mighty nation cannot remain static; it has to develop; it has to march forward. Yet, a nation has its own culture acquired through generations and generations; that has to be preserved while moving forward.

In almost a Hegelian strain Nehru talks of the culture of the nation. He says : "people talk about culture, about *Sanskriti* etc., and

12. C. A. D., Vol. IV, p. 3; (Emphasis added).

13. C. A. D., Vol. VII, p. 319 (Emphasis added).

14. C. A. D., Vol. VII, p. 321 (Emphasis added).

rightly, because a nation must have a sound basis of culture to rest itself, and....that culture must inevitably have its roots in the genius of the people and in their past.... Have your roots in that powerful and tremendous culture that took shape thousands and thousands of years ago and took shape so powerfully that in spite of every attack upon it inside and outside, even in spite of our own failings and decay and degradation, yet it has subsisted and given us some strength. Obviously that must continue."¹⁵

Nevertheless the nation-culture has to be synthesised with the culture of the age—the *spirit of the times* as Hegel would call it. Nehru is emphatic that the people has to align themselves with the *Yuga dharma*; if they do not do so, they would find themselves out of the tune of the Times. There is a rational culture with certain absolute values; there is also a culture of the Times with relative values. Unless the both are synthesised, the nation would find itself at a loss. If the nation neglects the spirit of the Times, it would go backwards into rigid conservatism reactionary outlook. If, on the other hand, the spirit of the nation—*Yuga dharma*—is neglected the nation would lose its roots altogether and may break down. Hence, for a healthy growth of the nation, the culture of the nation has to be balanced with the culture of the age (*Yuga Dharma*).¹⁶

And, this brings us to the humanist aspect of Nehru's philosophy of nation-building. Nehru is not a radical nationalist. He had a firm conviction that the 'New India'—renascent, vital and fearless—would be the harbinger of goodwill, peace and universal brotherhood. He says: "The freedom that has come to India by virtue of many things, history, tradition, resources, our geographical position, our great potential and all that, inevitably leads India to play an important part in the world affairs."¹⁷ Nehru's humanistic philosophy of nation-building, thus, lays a particular emphasis on activity—the *will to act*. It is a philosophy of action, of dynamism, of growth. It is noteworthy to mark his emphasis on *action* when he says that it is our duty "to wipe every tear from every eye." "That may be beyond us", he says, "but as long as there are tears and suffering, so long our work will not be over."¹⁸ Nehru sees the need to vitalise the soul of the nation by impressing upon the people the values of action and dynamism.

15. C. A. D., Vol. IX, p 1412.

16. See, C. A. D., Vol. IX, p 1412.

17. C. A. D., Vol VII, p. 319 (*Emphasis added*)

18. C. A. D., Vol. IV, p. (*Emphasis added*).

Thus, Nehru's philosophy of nation-building, evolved during the process of constitution-making, involves a philosophy of an organic nation, of growth, of positive and determinist freedom, of humanism and of will to act. It envisages that the Indian nation is an inheritor of a glorious past, and looks forward to a bright future through the dialectics and the turmoils of the present.

And, at this what the British philosopher, Burke (1729-1797), said for the state, could be substituted for 'Nation' in Nehru. "It is a partnership in all Science, a partnership in all art; a partnership in every virtue, and in all perfection. As the end of such a partnership cannot be obtained in many generations, it becomes a partnership not only between those who are living, but between those who are dead and those who are to be born."¹⁹ If Burke is considered to be a philosophical conservative, Nehru is a philosophical Nation-builder. If Burke's conservatism has a liberal base, Nehru's nationalism has a socialist-humanist base.

19. Edmund Burke, *Reflections on the Revolution in France*,

ABSTRACTS*

The Fundamental Rights

JAWAHARLAL NEHRU AND THE FUNDAMENTAL RIGHTS,

Dr. S. P. Sathe, *Principal, Indian Law Society, Law College, Poona*

Nehru's family background, his contact with Gandhi and his training abroad greatly influenced his personality and outlook. Nehru had become fully converted to socialism and now he realised that without socialism "neither the country nor the individual could develop much". And he knew that this should be achieved through a democratic process.

The Karachi Resolution was drafted by Nehru which advocated "Political and economic freedom". Nehru showed great concern for the untouchables and downtroddens. During his regime Parliament passed the Untouchability (Offences) Act, 1955. Even though he emphasised that their economic and educational interests should be protected, still Nehru insisted a proper balancing between the goal of equality and protective discrimination.

Liberty was at the heart of Nehru and he did not want it to be restricted unless the safety of the State was at stake. He was against the preventive detention measure and suggested that it should be "resorted to as rarely as possible". As regards the freedom of press, it could become real, if the press was freed from the control of big business houses.

In the field of the fundamental rights, Nehru's important contribution was in the area of property right. Nehru did not favour the concept of private property. He was in favour of compensation for expropriation of private property. According to him in petty acquisition, the ordinary law of compensation must apply and in case of acquisition for social reform full compensation could not be paid. According to him unless there was a fraud on the constitution or where compensation was illusory the legislative determination was to be final and that the judiciary must not interfere.

*These are the abstracts of other papers and are Compiled by V. P. Magotra, Lecturer in Law, Banaras Hindu University, Varanasi.

Thus it will not be incorrect to conclude that democracy and constitutionalism came to stay in India mainly due to the relentless efforts of Jawaharlal Nehru.

NEHRU AND RIGHT TO PROPERTY, A. H. Ansari, *Lecturer in Law, Banaras Hindu University, Varanasi.*

Jawahar Lal Nehru had deep convictions and concern for the individual human values. He had always pleaded for individual freedom. In this humanism he provided the background for his ideas of Fundamental Rights. He took the stand that the Fundamental Rights be preserved to allow the social progress.

The perpetuated big gap between the rich and poor, greatly influenced Nehru. He was of the opinion that the rights of individual in respect to property should be protected but to a certain limit. Article 31 of the Constitution was originally proposed by Nehru in the draft constitution on Sept. 10, 1949. Nehru was against the concentration of wealth and land. He was never in favour of full compensation.

During Nehru's time, the constitution (Fourth Amendment) Act, 1955 made amendment in Article 31 (2) of the Constitution to balance the individual and community rights. It nullified the contrary view of the Supreme Court in this regard. But it is unfortunate that the Supreme Court still adopted the same course and it frustrated Nehru's whole thesis about the property right. However the constituent power tried through the constitution Twenty-fifth and the Forty fourth Amendments to put back the clock but it is still doubtful whether the Judiciary will change its course and bridge the gap between the rich and poor.

NEHRU, FREEDOM OF PRESS AND THE FIRST AMENDMENT TO THE CONSTITUTION, V. P. Magotra. *Lecturer, Law School, Banaras Hindu University, Varanasi-5.*

Nehru had a great faith in the values underlying the freedom of speech and expression. Therefore, Press, as a means of expression and communication was very dear to him. Freedom of Press meant to him "permitting what we do not like, in our putting up with criticisms of ourselves, in our allowing of public expression of views which seem to us even to be injurious to our own cause itself". He showed great concern for the increasing monopolistic tendencies in the Indian Press.

Nehru always insisted on quality and a sense of social responsibility on the part of newspapers. The consideration of responsibility on the part of the Press motivated Nehru to get some amendments to Art. 19 (2) passed by Parliament during his time. These amendments on the one hand increased the area of social control on Press while on the other increased the scope of judicial review subjecting every law to judicial scrutiny on the ground of reasonableness. Nehru's assertion in the Parliament while speaking on First Amendment that Art. 19 (2) did not exhaust all the restrictions which could be imposed on the right under Art. 19 (1) (a) and other restrictions might be imposed in view of the rights of others in the society, might not be legally correct, yet the considerations of societal interests were foremost in his mind when he made this statement. Justice Mathew's formulation of freedom of speech in his dissent in the *Bennett Coleman's* case goes very close to Nehru's idea of free speech. The learned judge relied heavily on 'the Community right to hear' advocated by Nehru.

THE RELATIONSHIP BETWEEN FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES: NEHRU'S PERCEPTION, Dr. B. Errabbi, *Reader in Law, University of Delhi, Varanasi.*

Nehru from the very beginning did not visualise a possible conflict between the Fundamental Rights and the Directive Principles. There is nothing in the Constituent Assembly Debates to show any thing contrary in this regard. When he was speaking on the Constitution (First Amendment) Bill, 1951 he categorically stated that there was no conflict between the two and that, "I am quite sure" in this regard. Even he was not happy with the judicial view giving primacy to the fundamental rights which hindered and hampered the whole purpose behind the Constitution of India. In order to set the house right, Nehru advocated the use of constituent power to remove any contradiction between the Fundamental Rights and the Directive Principles. He even went to the extent of suggesting that the Fundamental Rights should subserve the Directive Principles. The later constitution amendments and judicial pronouncements have taken note of this theme.

Socialism

NEHRU, SOCIALISM AND THE INDIAN CONSTITUTION, Prof. P. Koteswar Rao, *Head and Dean, Faculty of Law, S. V. University, Tirupati.*

Nehru was greatly influenced by Marxism and the socialist philosophy. He was convinced that socialism was the only remedy for the poverty and inequality of the Indian society. He, however, did not blindly adhere to the soviet socialist system though he realised that the socialism can solve the world problem of hunger. He recognised the possibility of establishing socialism by democratic methods.

Nehru translated his idea of socialism through various measures after he became the Prime Minister. Foremost amongst them was the adoption of Planned economy through series of five years plans on the Soviet pattern. A planning Commission was set up during Nehru's time to give effect to the policy of economic equality and distributive justice. Various land reform measures were implemented apart from the legislations abolishing inter-mediarities, imposing ceiling on land holdings, and bringing about labour welfare by improving the standard of life of workers.

Thus Nehru stands as a pole star in the horizon of Constitutional socialism in India.

NEHRU'S CONTRIBUTION TO SOCIAL AND ECONOMIC PLANNING INDIA, Prof. M. L. Upadhyaya, *Head and Dean, Faculty of Law and Principal, Univ. College of Law, Calcutta Univ., Calcutta.*

The objectives of economic and social justice enshrined in the Preamble was the outcome of Nehru's efforts and thus he was "the father of all social and economic planning in India. He convinced the other members of the Constituent Assembly to provide in the constitution a social control on the private enterprises. Nehru's concern for social and economic justice is reflected in the Directive Principles of State Policy. These principles pervaded all through the social planning in India. In order to achieve these goals Nehru "unhesitatingly decided to amend the Constitution". His speeches in Parliament on the Amendment Bill reveal his commitment to the above goals.

Thus Nehru was a great social planner and under whose leadership the process of development in this regard accelerated.

JAWAHARLAL NEHRU AND SOCIAL AND ECONOMIC JUSTICE UNDER THE INDIAN CONSTITUTION, V. S. Chauhan, *Reader in Law, Banaras Hindu University, Varanasi.*

Nehru was the moving spirit in making the constitution a social documents. His philosophy of socio-economic justice was given shape in objectives Resolution he moved in the Constituent Assembly. This was later on enshrined in the Constitution, particularly in Chapters III and IV.

Nehru was interested in all round development of his fellow citizens so that they lead a good life. He thought that this could be possible only by a socialist pattern of society which meant to him a society in which there was equality of opportunity and the possibility for everyone to lead a happy life. He wanted the Constitution to be an instrument of social change. In his moving speech in the Constituent Assembly he advocated that its first task was "to feed the starving people and to cloth the naked masses and to give to every Indian the fullest opportunity to develop himself according to his capacity". That shows his concern for poor and the downtrodden which was transformed in the Constitution in shape of provisions protecting minorities, Harijans and other weaker sections of the society. He did not hesitate to get the Constitution amended in 1951 when he realised that the decision of the Supreme Court in *Champakam Dorairajan* went against the spirit of the Constitution. Nehru later saw a conflict between fundamental rights and the directive principles. Speaking in the Lok Sabha in 1951 he said that the Directives 'represent dynamic move towards certain objective, the Fundamental Rights represent something static'. "But somehow, that dyanmic movement and the standstill do not quite fit into each other". It was his concern for the socio-economic rights of the people that he categorically stated that in case of conflict, Directive Principles should prevail over Fundamental Rights. Thus the Indian Constitution bears the imprint of Nehru's inspiration.

Secularism

NEHRU AND SECULARISM, Prof. Krishna Bahadur, *Professor of Law, Banaras Hindu University, Varanasi-5.*

India is a secular State. Nehru's philosophy of secularism "was not confined only to the freedom of religion and faith but also to the issues appertenant thereto". Nehru, in oder to allow the concept of

secular State to gain ground, advocated for the protection of privileges and rights of the minorities. He supported, "the view of abolition of reservation on communal grounds". But at the same time he knew that "communalism is strong enough in India and so the separatist tendency persists".

The language problem was a vital issue to further and strengthen secularism. Here Nehru advocated a compromising approach in place of any "authoritarian attempt". He requested the members not to turn down the formula of 'Hindustani' language because "it would be hard for me if this House asked me to reject that thing by which I have stood nearly all my political life". Nehru wanted that the cultural heritage must continue with the scientific advances. He also advocated that "Nationalism and secularism go together". He gave a slogan of 'secular democracy' where all of us must do something to earn goodwill.

JAWAHARLAL NEHRU AND INDIA SECULARISM, Dr. K. Parameswaran, *Professor, Centre for Advanced Legal Studies and Research, Trivendrum.*

Jawaharlal Nehru was a humanist and not religious if the term religion is understood as dogmatic, authoritarian, opposed to individual personality and freedom to dissent. He was opposed to any association with religious elements or sentiments in politics. He did not advocate the concept of State religion but he was in favour of the secular state. He was conscious of the fact that a narrow sectarian outlook would greatly harm the national interest. The series of cases decided by the Supreme Court and the High Courts have yet to attain the ideals set by Nehru. They have at times taken "a clear anti-secular outlook". Further they have also adopted, "The unwholesome practice of...enmeshed in caste question". It is time that the judiciary must make efforts to "put the nation on the correct track of secular State as envisaged by Jawaharlal Nehru".

THE PARLIAMENTARY GOVERNMENT

NEHRU, PARLIAMENTARY DEMOCRACY AND THE POWERS AND POSITION OF THE PRESIDENT, Prof. S. T. Rama Rao, *University of Madras, Madras.*

Nehru being the pre-eminent leader played a key role in the constitution making. As the Chairman of the Union Constitution Committee, he played an important role in the matter of cabinet system of government and the powers and functions of the President and the governors.

Nehru was trained in the cabinet system of government. He had seen the working of that system in Britain. and on this point there was near unanimity in the Constituent Assembly. Nehru being the first Prime Minister had great role in making cabinet system work in India.

In Parliament, he is compared with Churchill. He had utmost regard for the opposition. He even made compromises with his colleagues like Patel, Azad and Krishnamachary in order to accommodate their viewpoints. He was therefore a great democrat.

Before covering of the Constituent Assembly, the Congress had set up an expert committee on the Constitution with Nehru as its Chairman. The Committee recommended a parliamentary system of government for India. The Union Constitution Committee chaired by Nehru also decided in favour of Parliamentary system. It rejected the suggestion of the Constitutional Advisor to confer on the President some special responsibilities. Attempts were made to introduce qualifications to the Cabinet system but they were rejected by Nehru and Patel. Nehru was clear in his mind that the President was to act according to the advice of the Council of ministers which was the bed-rock of cabinet system. That was why he opposed the direct election of the President and favoured indirect election. He said this was desirable because "we want to emphasise the ministerial character of the Government that power really resided in the Ministry and in the Legislature and not in the President as such". He however, was in favour of an impartial president and did not like the idea that only the members of Parliament elect the President because that would bring a man belonging to dominant political party. He favoured a wider electoral college consisting of members of Parliament and State legislatures, so as to give prestige and position to the President. However, he made it abundantly clear that the President was only a constitutional head, the real powers being with the Council of Ministers headed by the Prime Minister.

NEHRU AND INDEPENDENCE OF JUDICIARY. Prof. R. C. Vyas, *Professor of Law, University of Lucknow, Lucknow.*

Nehru was greatly impressed by the British traditions of fearless and independent judiciary. He recognised the importance of free judiciary in a democracy. He once observed that a strong and independent judiciary was the pillar for upholding the rule of law in a democratic form of government. Nehru proposed in the Constituent Assembly a judiciary completely separate from and wholly independent of the Executive and Legislature. This idea was not immediately acceptable to the Assembly but was incorporated in the Directive Principles as the ultimate objective.

Nehru wanted to put the appointment and removal of the judges beyond the interference of executive. The committee on the supreme Court, therefore, made a departure from the Act of 1935. The executive was not given free hand in this matter. In case of removal of a judge Nehru wanted that a Supreme Court judge should be removed only on proved misbehaviour or incapacity on an address from both the Houses of Parliament. He favoured an age limit of sixty five for the Supreme Court Judge.

In the matter of salaries and terms of service, Nehru advocated that the judges should not be put at the mercy of executive and the legislature, and that the Supreme Court should also be given control over its expenditure and administrative staff. It was under the inspiration of Nehru that it was made clear in the constitution that the conduct of the judges of the Supreme Court and High Courts in performance of their duties would not be discussed in Parliament.

Nehru was thus instrumental in giving the judiciary of India a responsible and respectful position in the constitutional fabric of our country.

THE JUDICIARY

NEHRU AND THE JUDICIARY. Som Nath Sharma, *Research Scholar, Banaras Hindu University, Varanasi.*

Nehru was votary of independence of judiciary but assigned a very limited role for it. He favoured a limited judicial review. His speech in the Constituent Assembly on property rights brings out clearly his preception of the judicial review. About the justiciability of compensa-

tion, he made it clear that it was the legislature which was the final authority on compensation. Judiciary should only come in those cases where there was a gross abuse of law or fraud on the Constitution. No. Court, he thought, can function as a third House. No. Court could stand in judgement over the sovereign will of Parliament representing the will of the entire community. But in spite of his abiding faith in the will of the legislature, he always proceeded constitutionally whenever he thought that a particular decision of the Court was not in accordance with the socio-economic policies of the government. He was not in favour of packing the Court with his own judges. He preferred to over side the judgement of the Court by suitable amendment in the Constitution. The First (1951) and the Fourth (1955) amendments to the Constitution stand out in this regard.

Nehru did nothing which distorted the image of judiciary. During his tenure as Prime Minister 27 judges were appointed to the Supreme Court. The rule of seniority was followed in case of appointment of the Chief Justice. He gave full respect to judges. He apologized to Justice Bose and Chief Justice of India for his casual remarks against Justice Bose. All this enhanced the prestige of the judiciary in the eyes of public and also showed Nehru's respect for the judiciary.

NEHRU ON SOCIAL JUSTICE AND JUDICIARY. Prof. K. C. Joshi, *Head and Dean, Faculty of Law, Kumaon University, Almora.*

Nehru not only played a significant role in the freedom of the country but also played a major role in bringing about a socio-economic structure of the county. To him freedom not only meant the change of rule but also emancipation of the general masses. He wanted social justice for the underfed and underclothed. He was socialist to the core. His socialism was opposed to "the status quoist and the privileged". He envisaged a social system in which there will be a diversion of profits and property from the 'haves' to the 'have-nots'. The Karachi resolution on Fundamental Rights drafted by Nehru illustrates his social philosophy which *inter alia*, advocated real economic freedom for the starving millions.

Nehru's absolute faith in the democratically elected representatives of the people determined his attitude towards judiciary. He did not hate judiciary but thought that its role was limited only to those cases where there was gross abuse of law or fraud on the Constitution. And that in socio-economic matters concerning the community, it was the Parliament which should guide rather than judiciary.

Federalism

NEHRU ON FEDERAL FINANCE : THEN AND NOW Prof. M. P. Singh *Professor of Law, Faculty of Law, University of Delhi, Delhi.*

From the very beginning Nehru was very critical of the federation proposed under the Govt. of India Act, 1935. He continued this line of approach in the subsequent exercise of constitution making.

Nehru's charisma greatly influenced the members of various committees and so it will not be wrong to say, "(w) hatever these committees did may be largely attributed to him". It was on 6th June, 1947, that the Union Constitution Committee resolved to have "a federal structure with a strong Centre". The Union Powers Committee recommended that more tax subjects should be given to the Centre. At first it did not get unanimous support but ultimately Nehru's recommendation of strong Centre carried a great weight in deciding this issue. This theme continued in some of the amendments to the Indian Constitution in this connection during Nehru's time.

Today the State are becoming more and more dependent on the Centre and this has resulted in stresses and strains in the centre-State relations. However, the Finance Commission is making attempts to keep the federal arrangement moving. In order to strengthen the democratic and federal structure, it is necessary that, "there must be an increased democratisation of financial relations between the Union and the States."

NEHRU AND THE INDIAN STATE Prof. H. C. Srivastava, *Professor of Sociology, Banaras Hindu University, Varanasi.*

Nehru made important efforts in developing a third World model of State formation and development. The two world wars had altered the pre-war form of democracy in practice. 'National situation' had now become the determinate factor in shaping the process of state formation. Nehru wanted to incorporate in the Constitution both Political as well as Economic Freedom. For this he did not contemplate "a socialist transformation through Constitutional means" because he very well knew the conservative elements in the Congress party who were opposed to socialism as such. Nehru did not want to disintegrate the Congress party, Nehru could not afford the luxury of creating dissensions at that time and therefore, he tried to accomodate the views of conservative elements as well. And thus he gave priority to building a nation-state first on the foundation of a democratic Constitution

By 1954, Nehru was ready to make a radical departure from his own accommodative politics. At Avadi session of the Congress, he moved a resolution that, "planning should take place with a view to the establishment of socialistic pattern of society where the principle means of production are under social ownership or control". The New Industrial Policy of 1956 gave great prominence to public sector over the private sector. The result was the formation of a new party-the Swatantra Party-by the rightists in the Congress.

Nehru's important contribution was the building of a Third-World model of development and State-formation by transcending Eurocentric models of liberal democracy and soviet socialism. His emphasis on self-reliance, peace and non-alignment was strategic in building a third-world model of State and development.

THE INTERNATIONAL RELATIONS

JAWAHAR LAL NEHRU'S QUEST FOR INTERNATIONAL PEACE AND SECURITY: CRITICAL EVALUATION IN RETROSPECT, Verma G.P. *Reader in the Law, Banaras Hindu University Varanasi.*

Nehru, played an important role in the struggle for peace and freedom in India and the world. He was the person who laid great stress on world peace, abolition of imperialism establishment of social, economic and political justice, democracy and respect for desire of the dependent nations of the world for achieving freedom. Nehru gave slogan that either there is one world or none. He knew about the hurdles in the world peace but he did not loose heart. He made great efforts for peaceful coexistence, disarmament, opposition to racial discrimination, imperialism and colonialism. His concerted efforts towards strengthening the bond in favour of United Nations, British-Commonwealth, Afro-Asian nations and neighbours are well known.

World became familiar with Nehru's quest for international peace and security through his powerful and unchallenged advocacy of basic values in maintaining international relations. Nehru's age was the age of confident assumptions, high aspirations and considerable achievements. He was synthesis of the east and west. He understood both and became the true leader of the largest democracy in the globe. With all his short-comings Nehru was a great man, sincerely devoted to the welfare of the world and to the cause of peace, in international

understanding and cooperation. He emerged as the international champion of freedom, democracy, justice, equality and rule of law and also an humanist of the world community. It is in this context that Nehru, acquires a greater relevance today, than ever before.

JAWAHARLAL NEHRU, THE DOCTRINE OF PANCHSHEEL AND INDIA'S CONSTITUTIONAL VISION OF INTERNATIONAL ORDER. D. P. Verma, *Lecturer in Law, Banaras Hindu University, Varanasi.*

The aim of this paper is to study, in general Nehru's contribution to the maintenance of peace, good neighbourliness and the idea of moral conduct in international relations. To keep this paper within limit, it is addressed to two objectives: *First*, a survey of the Constituent Assembly Debate in order to provide an account of thoughts of the framers of the Indian constitution and to find out how far Nehru's idea could influence the drafting of the article relating to India's international relations; and *Second*, an evaluation of the concept of *Panchsheel* that characterizes the development of international law in Asia. It is also felt useful to take this opportunity to note Nehru's idea of peace and the Asian phase of his political thought. It is concluded that Nehru's *Panchsheel* message reflected India's constitutional vision of world order; and it is further submitted in respect of the doctrine that the contribution has, at least, at the normative level, strengthened the regime of the principles of international law and peace. The paper is divided into four parts. The first part deals with the constitutional vision. The second part discusses Nehru's idea of peace; and third part analyzes the doctrine. Finally, the fourth part is the conclusion that Nehru could very successfully give not only a shape to constitutional vision of international order for which India has stood, he contributed as well a concept, a doctrine, largely at the level of fundamental principles which can be seen as a development of international law in Asia.

NEHRU'S ONE WORLD AND INDIAN CONSTITUTION. M. N. P. Srivastava, *Lecturer in Law, Banaras Hindu University, Varanasi.*

Jawaharlal Nehru, the first Prime Minister, the first Foreign Minister of the Independent India and the architect of independent modern India, was not just a nationalist but an international statesman of outstanding ability. He was a profound devotee of peace and a strong supporter of international cooperation.

He showed great concern for the civilization which was in danger of perishing under oppression, war and also the increasing gap between the rich and poor nations. He was aware of the present day changes brought about by the amazing scientific discoveries and unbelievable technological developments which effected the production, social relations, and brought about the uncontrolled growth of population, terrible wars, armed conflicts and prevalence of nationalism. In order to set the things right Nehru advocated the establishment of cooperation of the people of world. Among the nations, he advocated that they must reject the use of armed forces and should have genuine willingness to settle their disputes peacefully. He even went to the extent of saying that for the world peace, freedom and collective security, the concept of national sovereignty could be diluted to a certain extent.

He considered the whole humanity as one. He fought for the freedom of the people of world at large because he was of the opinion that no racial inequality should be perpetuated and that people who were subjugated should be free. And in this philosophy he advocated the concept of "one World" based on unbreakable strong international cooperation between all the nations big or small.

His important contribution was 'Panchsheel' i. e. respect for each other's territorial integrity and sovereignty, non-aggression, non-interference in each other's internal affairs, equality and mutual benefit, and peaceful co-existence.

Under the dynamic leadership of Prime Minister Jawaharlal Nehru, India declared independent foreign policy aiming at promoting world peace. India, during Nehru prime ministership settled its disputes through negotiation, the Court and the United Nations. India tried not only to maintain friendly relations with all the neighbours but also contributed for the cause of weak nations and dignity of human beings.

Jawaharlal Nehru dedicated his life in promoting international brotherhood and establishing security to eliminate agonizing tension and to bring genuine progress and everlasting peace in the world.

NEHRU'S VISION OF NEW INTERNATIONAL ORDER,
Prof. R. Jagan Mohan Rao, *Professor of Law, Andhra University, Waltair.*

The purpose of this paper is to analyse the prospects of realizing the goal of the New International Order of Nehru's concepts of Non-Alignment and Peaceful Coexistence, were the foundations on which he

wanted to build 'One World', in the interest of, and for the benefit of all mankind. In order to make these foundations solid Nehru preached the twin concepts of Panchsheel and Non-Alignment as instrument of peace and second security. Nehru did not confine his vision within India he was concerned about other nations as well. He made tireless efforts for the world peace and world order. On the whole Nehru's political philosophy and personality reveals that there was some amount of contradiction in his policies as well as his action and reaction in relation to others. However, he not only played a significant role in building up modern India on the edifice of a democratic, secular, socialist constitution, but also for the reorientation and re-structuring of the authoritarian colonial imperialist world into an egalitarian international order based on democratic and secular values with a view to promote the greatest good of greatest numbers to whom the world order of Nehru's vision would be worth living with mutual happiness brotherhood and universal understanding.

NEHRU ON THE BASIC STRUCTURE OF THE CONSTITUTION : AN OVER-VIEW. Prof. S. R. Bhansali, *Head and Dean, Faculty of Law, University of Jodhpur, Jodhpur.*

The basic assumptions of the major opinion of the Supreme Court in *Keshwananda Bharti*, and *Minerva Mills Ltd.*, about the non-amendability of the basic structure of identity of the Constitution, superamacy of the Constitution, and the relationship between the Fundamental Rights and the Directive Principles are not in accord with Nehru's view point.

The objective Resolution which Nehru moved in the Constituent Assembly on December 13, 1946 were later on translated into Preamble with some modification. To some of judges in *Keshwananda*, the preamble contains the basic features which cannot be amended by the Parliament, but to Nehru there was nothing permanent in the Constitution and it could always be improved upon with the experience of time. "If you make anything rigid and permanent, you stop a Nation's growth, the growth of a living vital organic people."

Nehru had an absolute faith in the will of the Parliament which represented the will of the people. He was of the opinion that it was Parliament which was supreme and not the Constitution.

He did not subscribe to the theory that Fundamental Rights are superior. He was of the opinion that the Fundamentals Rights must subserve the directive principles since the directives were fundamental in the governance of the country.

THE CONGRESS DEMAND OF CONSTITUTIONAL REFORMS AND JAWAHARLAL NEHRU. Dr. J. P. Misra *Reader in History, Banaras Hindu University, Varanasi.*

There was rise in the nationalist movement in India after the close of the First World War and the Congress started making powerful demand for Constitutional reforms. The Act of 1919 did not meet the aspirations of the Congress and it now demanded a right to decide our own destiny. The Congress, presented alternative proposals for Constitutional reforms with the concurrence of other political parties. The basic idea was that the Indians of all shades and opinions should be associated with the Constitution making. The Nehru Report laid down the future Constitutional framework for India agreeable to all. Though Jawaharlal was not its member, his contribution in framing up the report was acknowledged by Motilal.

Nehru report accepted the dominion status for India. This was not acceptable to Jawaharlal who wanted full freedom. When the Act of 1935 came, it was also not accepted by the Congress. Jawaharlal was the President of the Congress at that time. He described the Act as a 'retrograde measure' designed to perpetuate exploitation of the Indians. He asked for a Constituent Assembly elected on an adult franchise to formulate the Constitution. He asserted the democratic method for framing the Constitution. After the outbreak of the Second World War, the Congress was willing to support the war efforts only on the condition of independence for India and a Constitution framed by our elected Constituent Assembly. The dream of Nehru came true after the war when the Constituent Assembly met on 9th December 1946 and he moved the most significant Objective Resolution.

Nehru and Rural Development. Prof. S. C. Srivastava, Professor of Law, Kurukshetra University, Kurukshetra.

Nehru wanted a social order in which the basic needs of the common man would be satisfied and where everyone would enjoy the fundamental human freedoms and equality of opportunity. He was greatly worried about the plight of the poor. He said in the Constituent Assembly "At present the greatest and most important question in India is how to solve the problem of the poor and the starving..... If we cannot solve this problem soon, all our paper constitution will become useless and purposeless". Accordingly Nehru was instrumental in starting various social welfare programmes. The Planned development

through five-year plans was the first major decision for integrated development during Nehru's period. Nehru recognised the importance of agriculture in a country like Indian and he put due emphasis on it. He embarked upon a massive programme of land reforms. Nehru's idea of cooperative village management was to establish an integrated socio-economic rural structure in which agricultural production, village industries, processing industries, marketing and rural trade were all to be organised on cooperative lines. Various laws were passed by the states and Amendments were also made in the Constitution during Nehru's time, so as to ensure that these measures of socio-economic importance were not declared unconstitutional by the Courts. Nehru's overall community development programme included family planning, applied nutrition programme, settlement of landless labour and creation of employment opportunities in rural areas. This programme, however, did not catch up with the expected momentum.

Nehru advocated introducing panchayat at the village level and thus to bring *Swaraj* to the village. According to Nehru, the object behind the Panchayati Raj was to create opportunities for human beings to grow so that they may be able to think, act and cooperate with each other and act together.

Thus Nehru set the stage for rural development in India.

NEHRU IN THE CONSTITUENT ASSEMBLY : SOME EXCERPTS FROM THE DEBATES*

DEMOCRACY

We have met here today because 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.

It has ever been and shall always be our ardent desire to see the people of India united together so that we may frame a constitution which will be acceptable to the masses of the Indian people. It is, at the same time, manifest that when a great country starts to advance, no party or group can stop it.

[Vol. 1, page 57, 13th DEC 1946]

A great country is sure to have a lot of controversial issues; but we have tried to avoid controversy as much as possible. Unfortunately, our country is full of differences, but no one, except perhaps a few, would dispute the fundamentals which this Resolution lays down. The Resolution states that it is our firm and solemn resolve to have a sovereign Indian republic. We have not mentioned the word 'republic' till this time; but you will well understand that a free India can be nothing but a republic.

[Vol. 1, Page 58, 13th DEC 1946]

The future of India that we have envisaged is not confined to any group or section or province or other, but it comprises all the four hundred million people of India, and it is with deep regret that we find some benches empty and some colleagues, who might have been here, absent.

[Vol. 1, Page 60, 13th DEC 1946]

Although we have not used the word 'democratic' because we thought it is obvious that the word 'republic' contains that word and we did not want to use unnecessary words and redundant words, but we have done something much more than using the word. We have given the content of democracy in this Resolution and not only the content of democracy but the content, if I may say so, of economic democracy.

[Vol. 1, Page 62, 13th DEC 1946]

* Compiled by Amar Nath Srivastava, LL. M. (B. H. U.), Research Assistant, Law School, Banaras Hindu University, Varanasi.

Persons of various groups, communities, and interests would look at it from different points of view, and diverse questions and problems would be raised by them, but we should all bear in mind that we should not, on the eve of Independence, allow ourselves to be carried away by petty matters. If India goes down, all will go down; if India thrives, all will thrive and if India lives, all will live including the parties, communities and groups.

[Vol. 2 Page 318, 22 Jan. 1947]

FORM OF GOVERNMENT

It is our firm and solemn resolve to have an independent sovereign republic. India is bound to be sovereign, it is bound to be independent and it is bound to be a republic. I will not go into the arguments about monarchy and the rest, but obviously we cannot produce monarchy in India out of the nothing. It is not there. If it is to be an independent and sovereign State, we are not going to have an external monarchy and we cannot have a research for some local monarchies. It must inevitably be a republic. A republic may not be democate but the whole of our past is witness to this fact that we stand for democratic institutions. Obviously we are aiming at democracy and nothing less than a democracy. What form of democracy, what shape it might take is another matter? The democracies of the present day, many of them in Europe and elsewhere, have played a great part in the world's progress. Yet it may be doubtful if those democracies may not have to change their shape somewhat before long if they have to remain completely democratic. We are not going just to copy, I hope, a certain democratic procedure or an institution of a so-called democratic country. We may improve upon it. In any event whatever system of Government we may establish here must fit in with the temper of our people and be acceptable to them. We stand for democracy.

[Vol. 1 Page 62 13 DEC 1946.]

FUNDAMENTAL RIGHTS

A fundamental right should be looked upon, not from the point of view of any particular difficulty of the moment, but as something that you want to make permanent in the Constitution. The other matter should be looked upon—however important it might be—not from this permanent and fundamental point of view, but from the more temporary point of view.

Every care should be taken in protecting the tribal areas, those unfortunate brethren of ours who are backward through no fault of theirs, through the fault of social customs, and may be, ourselves or our forefathers or others; that it is our intention and it is our fixed desire to help them as much as possible.

[Vol. 3 Page 466 30th APL. 1947]

There will be no full freedom in this country or in the world as long as a single human being is un-free. There will be no complete freedom as long as there is starvation, hunger, lack of clothing lack of necessities of life and lack of opportunity of growth for every single human being, man, woman and child in the country. We may not accomplish that because it is a terrific task. But we shall do our utmost to accomplish that task and hope that our successors when they come have an easier path to pursue. But there is no ending to that road to freedom.

[Vol. 4 Page 739 22nd July 1947]

There is no question of any expropriation without compensation so far as this Constitution is concerned. If property is required for public use it is a well established law that it should be acquired by the State, by compulsion if necessary and compensation is paid and the law has laid down methods of judging that compensation. Now, normally speaking in regard to such acquisition—what might be called petty acquisition or acquisition of small bits of property or even relatively large bits, if you like, for the improvement of a town, etc.—the law has been clearly laid down. But more and more today the community has to deal with large schemes of social reform, social engineering etc., which can hardly be considered from the point of view of that individual acquisition of a small bit of land or structure.

If we have to take the property, if the State so wills, we have to see that fair and equitable compensation is given, because we proceed on the basis of fair and equitable compensation. But when we consider the equity of it we have always to remember that the equity does not apply only to the individual but to the community. No individual can override ultimately the rights of the community at large. No community should injure and invade the rights of the individual unless it be for the most urgent and important reasons. [Vol: 9 Page 1,92 10th Sept 1949]

The law should provide for the compensation for the property and should either fix the amount of compensation or specify the principles under which or the manner in which the compensation is to be deter-

mined. The law should do it. Parliament should do it. There is no reference in this to any judiciary coming into the picture.

Parliament fixes either the compensation itself or the principles governing that compensation and they should not be challenged except for one reason, Where it is thought that there has been a gross abuse of the law, where in fact there has been a fraud on the Constitution. Naturally the judiciary comes in to see if there has been a fraud on the Constitution or not. [Vol. 9 Page 1193 10th SEPT. 1949].

Socialism

We have not said that it should be a Socialist State. Well, I stand for Socialism and, I hope, India will stand for Socialism and that India will go towards the constitution of a Socialist State and I do believe that the whole world will have to go that way. What form of Socialism again is another matter for your consideration.

[Vol. 1 Page 62 13 DEC. 1946]

The first task of this Assembly is to free India through a new constitution to feed the starving people and cloth the naked masses, and to give every Indian fullest opportunity to develop himself according to his capacity. At present the greatest and most important question in India is how to solve the problem of the poor and the starving. Wherever we turn, we are confronted with this problem. If we cannot solve this problem soon, all our paper constitutions will become useless and purposeless.

[Vol. 2 Page 316-317 22nd JAN. 1947]

The ambition of the greatest man of our generation has been to wipe every tear from every eye. That may be beyond us but as long as there are tears and suffering, so long our work will not be over.

Vol. 5 Page 4 15 AUG. 1947

Secularism

India does not belong to any one party or group of people or caste. It does not belong to the followers of any particular religion. It is the country of all, of every religion and creed. One freedom is to be shared equally by every Indian. All Indians shall have equal rights, and each one of them is to partake equally in that freedom.

[Vol. 5 Page 4 14th AUG. 1947]

Now I use the words 'secular democracy' and many others use these words. But sometimes I have the feeling that these words are used today so much and by people who understand their significance. It is an ideal to be aimed at and every one of us whether we are Hindus or Muslims, Sikhs or Christians, whatever we are, none of us can say in his hearts that he has no prejudice and no taint of communalism in his mind or heart. None or very few can say that, because we are all products of the past. I do not myself particularly enjoy and one of us trying to deliver sermons and homilies to the others as to how they should behave, or one group telling the other group whether of the majority or of the minority, how they should do this or that in order to earn goodwill. Of course something has to be done to gain goodwill. That is essential. But goodwill and all loyalty and all affection are hardly things which are obtained by sermonising. These develop because of certain circumstances certain appeals of the mind and heart and a realisation of what is really good for everyone in the long analysis.

[Vol. 8 Page 332 26th MAY 1949]

Execuctive

A. CENTRAL

1. The President of India

One thing we have to decide at the very beginning is what should be the kind of governmental structure, whether it is one system where there is ministerial responsibility or whether it is the Presidential system as prevails in the United States of America. We have given anxious thought to this matter and we came to the very definite conclusion that it would not be desirable, first because we want to emphasize the ministerial character of the Government that power really resided in the Ministry and in the Legislature and not in the President as such. At the same time we did not want to make the President just a mere figure-head like the French President. If we had an election by adult franchise and yet did not give him any real powers, it might become slightly anomalous and there might be just extraordinary expense of time and energy and money without any adequate result. Each country evolves the system of its choice. I do think that while there are virtues in the American system, there are great defects in that system. I am not concerned with the United States of America. I am concerned with India at present and I am quite convinced in my mind that if we try to

adopt that here, we shall prevent the development of any ministerial form of Government and we shall waste tremendous amount of time and energy.

Why not the Central Legislature by itself elect the President? The Central Legislature may, and probably will be dominated, say, by one party or group which will form the ministry. If that group elects the President, inevitably they will tend to choose a person of their own party. He will then be even more a dummy than otherwise. The President and the ministry will represent exactly the same thing. It is possible that even otherwise the President may represent the same group or party or ideas. But we have taken a middle course and asked all the members of all the legislatures all over India, in all the units to become voters. It is just likely that they will be choosing a party man. Always that is possible of course. Anyway, we may rule out electing the President by the Central Legislature as being on too narrow a basis,

To have it on adult franchise, you must have some kind of electoral college. It has been suggested that we may have some kind of electoral college which will include all manner of people—members of municipalities, district, boards and so on. That, I think will be introducing confusion without doing good to anybody. It will mean a large number of petty elections for making up the electoral college. In the various legislatures you have already a ready-made electoral college—that is, the members of the legislatures all over India. Probably they will number a few thousands. And presumably these members of the legislatures will be in a better position to judge the merits of the individual in question or the candidates than some other larger electoral college consisting of municipal members and others.

You will notice that in choosing this method, we have taken care to prevent any weightage in voting, because legislatures, as has been explained, I believe in a note, may not be representative of the population, of the numbers of the population.

[Vol. 4 Pages 713-715 21st July 1947]

The question of the election of the President, from the North and the South and from the States or non-State units is concerned, it seems to be wrong in principle. It is not desirable that we elect the President, once from one class and the next time from the other, and framing of rules and statutory provisions for this purposes is highly undesirable.

If you want to elect the President by adult franchise, then this would mean that we will have to waste much of our time in holding

(Presidential) elections and we will not be able to act according to our new Constitution.

[Vol. 4 Page 805 24th July 1947]

When a person becomes President, he will not be too young. He may be in late forties or fifties and I think it is not right for person to be asked to assume this burden beyond ten years. President Roosevelt, under the stress of circumstances carried on for the fourth term, but he only carried on for two or three months after his election. So I submit that this rule about not holding office more than twice is a good rule and we should adhere to it.

[Vol. 4 Pages 807 24th July 1947]

2. Council of Ministers

The issue of ministers being elected by proportional representation. I can think of nothing more conducive to creating a feeble ministry and a feeble government than this business of electing them by proportional representation: and I would therefore like the House to reject this amendment.

That raises a very fundamental issue of what from you are going to give to your constitution, the ministerial parliamentary type or the American type. So far we have been proceeding with the building up of the constitution in the ministerial sense and I do submit that we cannot go back upon it and it will upset the whole scheme and structure of the constitution.

[Vol. 4 Pages 864-865 28 July 1947]

B. STATE

Governor

At present we are not concerned with the question of terminology. We do not know whether our Constitution would be in the English or any other language. So far as the term itself is concerned, you are all aware of there being Governors in America as also of the powers and authority they wield. I, therefore, submit that this does not violate in the least the ideas and the principles we have in view.

[Vol. 4 Page 582 15 July 1947]

I felt that from almost every point of view this proposal that is moved of a nominated Governor, in the present context of the Constitution, was not only desirable from the practical point of view but from the democratic point of view too it was desirable and worthwhile.

[Vol. 8 Page 454 31st May 1949]

If we have an elected Governor that would to some extent encourage that separatist provincial tendency more than otherwise. There will be far fewer common links with the Centre. There, would, normally speaking almost inevitably I imagine, be a Governor from that particular province who stands for the governorship. As has been stated he might be some kind of a rival almost in that particular majority group, which for the moment controls that government of the province. Then there will be these enormous elections on the basis of adult suffrage. Apart from the tremendous burden of these elections for the provincial and central legislatures, to add another election on energy and time of the nation but also the money of the nation and divert it from far more worthwhile projects. Apart from this it would undoubtedly mean, I think, encouraging that rather narrow provincial way of thinking and functioning in each province.

He must be acceptable to the province, he must be acceptable to the Government of the province and yet he must not be known to be apart of the party machine of that province. He may be sometimes, possibly, a man from that province itself. We do not rule it out. But on the whole it probably would be desirable to have people from outside—eminent people, sometimes people who have not taken too great a part in politics would probably like a more active domain for their activities but there may be an eminent educationist or persons eminence in other walks of life, who would naturally while co-operating fully with the Government and carrying out the policy of the Government, at any rate helping in every way so that the policy might be carried out, he would nevertheless represent before the public same one slightly above the party and thereby, in fact, help that government more than if he was considered as part of the party machine.

[Vol. 8 Page 455 31st May 1949]

JUDICIARY

Some amendments have dealt, that is, the age-limit of the Supreme Court Judges. Some Members have proposed an amendment reducing the proposed age-limit to sixty; one of them suggested increasing it to sixty-eight. It is rather difficult to give any particular reasons for a particular age, sixty-five or sixty-six; there is not too much difference. This business of fixing age-limits in India in the past was, I believe, governed by entirely the service view.

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With regard to judges, and Federal Court Judges especially, we cannot proceed on the lines of the normal administrative services. We

require top men in the administrative services. Nevertheless, the type of work that a judge does is somewhat different. It is, in a sense, less physically tiring. Thus a person normally, if he is a judge, does not have to face storm and fury so much as an administrative officer might have to. But at the same time it is highly responsible work, and in all countries, so far as I know, age-limits for judges are far higher. In fact there are none at all. In America the greatest judge that I believe the Supreme Court produced went on functioning till the age of ninety-two—Holmes—and he went on functioning extremely well up to the age of ninety-two for thirty or forty years running. If you go to the Privy Council of England I do not know what they are now, but some years back when I went there I saw patriarchs sitting there with long flowing beards; and their age might have been anything up to a hundred years, so far as looks were concerned. May be, you may over-do this type of thing. But the point is we must not look upon this merely as a question of giving jobs to younger people. When you need the best men, obviously age cannot be a criterion. A young man may be exceedingly good, an old man may be bad. But the point is if an old man has experience and is thoroughly fit, mentally and otherwise, then it is unfortunate and it is a waste from the State's point of view to push him aside, or force him to be pushed aside, and put in some one in his place who has neither the experience nor the talent, perhaps.

Judges presumably in future will come very largely from the bar and it will be for you to consider at a later stage what rules to frame so that we can get the best material from the bar for the High Court or Federal Court Judges. It is important that these judges should be not only first-rate, but should be acknowledged to be first-rate in the country, and of the highest integrity, if necessary, people who can stand up against the executive government, and whoever may come in their way.

A man appointed to the Federal Court is presumably one who has gone through an apprenticeship in the High Court somewhere. He cannot be absolutely bad, otherwise he would not have got there. He must have justified himself in a High Court as Chief Justice or something. So you are fairly assured that he is up to a certain standard. If so, let him continue. Otherwise the risk is greater, of pushing out a thoroughly competent man because of the age-limit, because he has attained the age of sixty. So I beg the House to accept the age-limit of 65 for Federal Court Judges that has been suggested,

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Within limits no judge and no Supreme Court can make itself a third chamber. No Supreme Court and no judiciary can stand in judgment over the sovereign will of Parliament representing the will of the entire community. If we go wrong here and there it can point it out, but in the ultimate analysis, where the future of the community is concerned, no judiciary can come in the way. And if it comes in the way, ultimately the whole Constitution is a creature of Parliament. But we must respect the judiciary, the Supreme Court and the other High Courts in the land. As wise people, their duty it is to see that in a moment of passion, in a moment of excitement, even the representatives of the people do not go wrong; they might. In the detached atmosphere of the courts, they should see to it that nothing is done that may be against the Constitution, that may be against the good of the country, that may be against the community in the larger sense of the term.

[Vol 9 Pages 1195-1196 10 Sept. 1649]

We have seen in great countries across the seas that the executive, which is the appointing authority of the judiciary, begins to appoint Judges of its own liking for getting decisions in its own favour, but that is not a very good method.

(Vol 9 Page 1976 10 Sept. 1949)

LANGUAGE

Now, it is an obvious thing and a vital thing that any country, much more so a free and independent country, must function in its own language. Unfortunately, the mere fact that I am speaking to this House in a foreign language and so many of our colleagues here have to address the House in a foreign language itself shows that something is lacking. It is lacking; let us recognise it; we shall get rid of that lacuna undoubtedly. But, in trying to press for a change, an immediate change, we get wrapped up in numerous controversies and possibly even delay the whole Constitution. If we proceed in an urgent matter to impose something, may be by a majority, on an unwilling minority in parts of the country or even in this House, we do not really succeed in what we have started to achieve. Powerful forces are at work in the country which will inevitably lead to the substitution of the English language by an Indian language or Indian languages in so far as the different parts of the country are concerned; but there will always be one all-India language. Powerful forces are also working at the formation of that all-India language. Language ultimately grows from the people; it is seldom that it can be imposed. Any attempt to impose a particular form of language on an unwilling people has usually met

with the strongest opposition and has actually resulted in something the very reverse of what the promoters thought.

[Vol. 7 Page 321 8 Nov. 1948]

Language is a unifying factor and it is also a factor promoting disunity. It is an integrating factor and it is a disintegrating factor as between two languages, as between two countries. So it has both those aspects and when therefore you think in terms of a common language here you have to think of both those facts.

[Vol. 9 Pages 1409-1410 13th Sep., 1949]

While English is a great language—and I think it is perfectly right to say that English has done us a lot of good and we have learnt much from it and progressed much nevertheless no nation can become great on the basis of a foreign language. Why? Because a foreign language can never be the language of the people, for you will have two strata or more—those who live in thought and action of a foreign tongue and those who live in another world. So he taught us that we must do our work more and more in our own language.

We cannot go far or take our people by the million in a foreign language. Therefore, however great the English language may be—and it is great—we have to think in doing our national work, our public and our private work as far as possible, in our own various languages and more particularly in the language that you may choose for all India use.

No language can be great which is divorced from the language of the people. Ultimately a language grows in greatness and strength if there is a proper marriage between those who are learned and the marriage of the people.

[Vol. 9 Page 1410 13th Sep. 1949]

The purists and precisionists in the matter of language have their place and should be there, it is a dangerous thing to allow a language to become the pet child of purists and such like people because then it is cut off from the common people. So you have to have both: certainly a certain precision, a certain profundity and a certain all-embraciveness in language and at the same time contacts with the people, drawing its sustenance from the common people.

The word 'Hindustani', not in any technical sense, but in that broad sense representing that composite language which is both the language of the people and the language of various groups and others in Northern India and to the last he drew the attention of the people

and the national to that. I am a small man and it is rather presumptuous of me to say that I agree with him or do not agree with him, but for the last thirty years or so, in my own humble way, I stood by that creed in regard to language and it would be hard for me if this House asked me to reject that thing by which I have stood nearly all my political life.

Men shape a language, but then that language itself shapes those men and society. It is a question of action and interaction and it may well be said that if a language is a feeble language or an unprecise language, if a language is just an ornate language, you will find those characteristics reflected in the people who use that language. If the language is feeble those people will be rather feeble; if it is just ornate and nothing else they will tend to ornateness. So it is important what direction you give to it. If a language is exclusive those people become exclusive in thought and mind and action.

[Vol. 9 Page 1411 13th Sep. 1949]

We took to English obviously because it was the conqueror's language, not so much because at that time it was such an important language, although it created a great gulf between us who knew English and those who did not know English and that was fatal for the progress of a nation. That is a thing which certainly we cannot possibly tolerate today.

[Vol. 9 Pages 1413-1414 13th Sep. 1949]

You just cannot force any language down the people or group who resist that You cannot do it successfully. You have to win through the goodwill of those people, those groups in India in the various provinces whose mother tongue is not Hindi. You have to win the goodwill of those groups who speak, let us say, some variation of Hindi, Urdu or Hindustani.

[Vol. 9 pages 1414-15 13th Sep. 1949]

AMENDMENT OF THE CONSTITUTION

While we want this Constitution to be as solid and as permanent a structure as we can make it, nevertheless there is no permanence in Constitutions. There should be a certain flexibility. If you make anything rigid and permanent, you stop a Nation's growth, the growth of a living vital organic people. Therefore it has to be flexible. So also, when you pass this Constitution you will, and I think it is proposed, lay down a period of years—whatever that period may be—during which changes to that Constitution can be easily made without any difficult process. We, who are assembled in this House, undoubtedly represent the people of India, nevertheless I think it can be said, and

truthfully, that when a new House, by whatever name it goes, is elected in terms of this Constitution, and every adult in India has the right to vote—man and woman—the House that emerges then will certainly be fully representative of every section of the Indian people. It is right that House elected so—under this Constitution of course it will have the right to do anything—should have an easy opportunity to make such changes as it wants to. But in any event, we should not make a Constitution such as some other great countries have, which are so rigid that they do not and cannot be adapted easily to changing condition. Today especially, when the world is in turmoil and we are passing through a very swift period of transition, what we may do today may not be wholly applicable tomorrow. Therefore, while we make a Constitution which is sound and as basic as we can, it should also be flexible and for a period we should be in a position to change it with relative facility.

[Vol. 7 Pages 322-323 8 Nov. 1948]

A Constitution is something which should last a long time, which is built on a strong foundation, and which may of course be varied from time to time—it should not be rigid—nevertheless, one should think of it as something which is going to last, which is not a transitory Constitution, a provisional Constitution, a something which you are going to change from day to day, a something which has provisions for the next year or the year after next and so on and so forth. So far as the basic nature of the Constitution is concerned, it must deal with the fundamental aspects of the political, the social, the economic and other spheres, and not with the details which are matters for legislation. You will find that if you go into too great detail and mix up the really basic and fundamental things with the important but nevertheless secondary things, you bring the basic things to the level of the secondary things too.

[Vol. 7 Pages 538-89 6th Nov. 1948 (Sic) 25th Nov. 1948]

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