

PROF. J. FRANCO LECTURES

SANTHANAM (K.)

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THE INDIAN CONSTITUTION -
PROMISE AND PERFORMANCE

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THE INDIAN CONSTITUTION—PROMISE AND PERFORMANCE

LECTURE I

The framing of the Indian Constitution during the years 1947 to 1949 and its inauguration on 26th January 1950 constitute a turning point in Indian history. This political achievement is second in its importance only to the unique struggle for freedom under the matchless leadership of Mahatma Gandhi. If we remember that, during these years, the country had to face all the numerous and complicated problems resulting from partition and rehabilitation of nearly 60 lakhs of refugees from Pakistan, following the terrible Hindu-Muslim riots on both sides of the new international border between Pakistan and India and it had also to manage a minor war in Kashmir resulting from the tribal invasion backed by the Pakistan army, the magnitude of this achievement will be evident. I may also point out that the failure of the leaders of Pakistan to realise the imperative necessity of a full-fledged and stable Constitution has led to the unstable political situation there which, in my view, is the root cause of Pakistan's hostility to India for which we have had to pay a heavy price recently.

Though the British Government transferred power to the leaders of the Congress, it was fortunate for the country that the latter did not at that time consider themselves to be party leaders. They felt and acted as trustees for the whole country and its future. In the elections to the Constituent Assembly, they tried to select prominent intellectuals from all parts of India, irrespective of party affiliations. In the actual proceedings of that Assembly, the most prominent parts were played by Dr. Ambedkhar who had been a bitter critic of the Congress, Alladi Krishnaswamy Ayyar and N. Gopalasamy Iyengar who did not belong to the Congress but were able and learned constitutional thinkers, Pandit Hriday Nath Kunzru who was the leader of the liberals and many others. B. N. Rao, another great non-party intellectual political thinker was the constitutional adviser to the Assembly. There were no party whips restricting the discussions or voting in that Assembly and over 2000 amendments were moved and discussed. Almost all the Articles of the Constitution were adopted unanimously or by overwhelming majorities. In framing the Constitution, the democratic systems of U.K., U.S.A., Canada, Australia and other democratic countries were carefully scrutinised and an earnest attempt was made to combine their best features. It is needless to say that a Constitution framed in this manner and spirit deserves to be cherished by the people of India.

In these two lectures, it will be my endeavour to assess objectively how far the promises held out by the Constitution have been fulfilled in practice. By the word 'promises', I mean the rights, privileges and benefits which the Indian people as individuals, regional groups organised as States and a nation under the Union are entitled to expect from the proper working of the Constitution. Many of these are actually embodied in the long written Constitution consisting of 392 Articles and 9 Schedules. But some of the promises, which are no less important than those specifically provided, are implied by certain features of the British political system incorporated in our Constitution and which have been regulated by conventions which cannot be reduced to precise legal obligations. There are still others, which flow from the spirit of the Constitution and which have to be gathered from the proceedings of the Constituent Assembly.

The features of the Constitution of India which are most important for the preservation and promotion of the life, liberty, progress and prosperity of our people are the following: i) Fundamental Rights, ii) The rule of law, iii) Federation, iv) Responsible Government, v) Scrutiny and control of public expenditure, vi) Efficient and incorruptible public services, vii) Free and fair elections and, viii) Economic prosperity and social justice. I shall try to indicate my assessment as to how far each of these has been achieved in practice in accordance with the letter and the spirit of the Constitution.

Part III of the Constitution consisting of 24 Articles contains a more comprehensive list of Fundamental Rights than is to be found in any of the democratic Constitutions of the world. The importance of the Fundamental Rights are brought out in Articles 13 and 32. According to the former article, all laws in force at the commencement of the Constitution, in so far as they are inconsistent with Fundamental Rights, shall be void and neither the Parliament nor the State Legislature can make any law which takes away or abridges these rights and to the extent they are inconsistent with them, they shall be void. According to latter Article, the Supreme Court has been empowered to enforce the Fundamental Rights and issue directions, orders or writs, whichever may be appropriate, for such enforcement. Thus the Fundamental Rights are guaranteed to all citizens irrespective of their political affiliation. Even if a citizen stood alone, in respect of any thought, belief or action, he will be protected by the rights so long as he does not break any law. Some of these rights are extended to all person residing in India even if they are not citizens. Thus Article 14 provides that, "The States shall not deny to any person equality before the law or the equal protection by the laws within the territory of India". Article 20 prohibits the conviction of any person for any offence except for violation of a law in force at the time of the commission or

subjecting him to a penalty greater than that provided by the law, as it existed at the time of the commission of the offence. It further prohibits the prosecution and punishment of any person for the same offence more than once or compelling him to be a witness against himself. Article 21, which is very important, declares that "No person shall be deprived of his life or personal liberty except according to procedure established by law." Article 22 which permits the Parliament to make laws for preventive detention, extends the safeguards provided therein to non-citizens. So far as citizens are concerned, Article 15 prohibits any kind of discrimination on grounds only of religion, race, caste, sex and place of birth, not only in legislation but also with respect to enforcement of existing customs and traditions preventing on such grounds, access to shops, public restaurants, hotels and places of public entertainments and the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public. Article 16 provides for equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State and prohibits discrimination against any citizen on the grounds mentioned above. Article 19 is perhaps the most important in the whole part, as it provides positively that all citizens shall have the right (a) to freedom of speech and expression: (b) to assemble peaceably and without arms: (c) to form associations or unions: (d) to move freely throughout the territory of India: (e) to reside and settle in any part of the territory of India: (f) to acquire, hold and dispose of property and: (g) to practise any profession or to carry any occupation, trade or business. Articles 25 to 30 provide complete protection for the religious and cultural rights of all sections of the Indian population. Article 31 provides that no person shall be deprived of his property save by law and for compensation in case of compulsory acquisition.

It has to be admitted that many of these articles relating to Fundamental Rights have been made subject to limitations which may be imposed by law in the interest of the security of the State, public order, morality and such considerations. Speaking on the third reading of the Constitution in the Constituent Assembly, Pandit Hirday Nath Kunzrn said, "the chapter on Fundamental Rights, though some of the provisions in it are open to serious criticism, confers substantial rights on the people of the country and particularly on the oppressed minorities. It also gives assurances to the minorities that are of the greatest value".

Alladi Krishnaswami Ayyar said, "The exceptions and qualifications introduced into the articles reproduce in statutory form the well-recognised exceptions and limitations on the Fundamental Rights dealt with in

the article. In the final form the article has emerged, this assembly has kept in view the need for drawing a line between personal liberty and the need for social control”.

Sardar Hukum Singh, the present Speaker of the Lok Sabha, was more critical. He said, “on a first glance, it would appear that the safeguarding of the Fundamental Rights set forth in Part III of the Constitution is complete. The charter is very exhaustive in description and the protection of these rights is also entrusted to the Supreme Court and ostensibly guaranteed. But on closer examination it would be found that these Rights and particularly the Rights to Freedom in Article 19 are hedged round with exceptions and reservations that make them ineffective in those situations when their impairment can ordinarily be apprehended”. It should also be added that in the first Constitutional Amendment of 1951, the scope for restriction of freedom of speech and expression by parliamentary legislation was extended by the inclusion of the words ‘friendly relations with foreign States and public order’. In this as well as the fourth amendment, the protection given to property by Article 31 was reduced considerably.

In spite of these limitations, I think it will be conceded by any reasonable person that the Fundamental Rights contained in Part III made the citizen of India as free as the citizen of any other democratic country in the world. The freedom of speech and the freedom of Press in India was almost unrestricted till 1962.

Unfortunately for this country, the invasion of India by China in 1962 resulted in a serious constitutional set-back. A State of Emergency was proclaimed under Article 352 which empowers the President to make such a proclamation, “If he is satisfied that a grave emergency exists whereby the security of India or any part of the country thereof is threatened whether by war or external aggression or internal disturbance”. Article 358 provides that, “while a Proclamation of Emergency is in operation, nothing in Article 19 shall restrict the power of the State as defined in Part III to make any law or to take any executive action which the State would but for the provisions contained in that part be competent to make or to take”. Article 359 empowers the President to declare that, “the right to move any court for the enforcement of such of the rights conferred by Part III as may be mentioned in the order and all proceedings pending in any court for the enforcement of the rights so mentioned shall remain suspended for the period during which the Proclamation is in force or for any shorter period as may be specified in the order”. The other consequences of a Proclamation of Emergency are that the Parliament can make laws on any subject included in the State List and the

Central Cabinet will have the power to issue general directions. The Parliament will also have the right to extend its own life and the life of any State Legislature beyond the normal period of 5 years by law by one year at a time. In his Alladi Krishnaswami Ayyar Endowment lectures delivered under the auspices of this University recently, Mr. Setalvad, Former Attorney General, pointed out the grave constitutional consequences of a literal interpretation and application of Article 352. According to this article, if the Presidential Proclamation is approved within two months by resolutions of both the Houses of Parliament, it will continue indefinitely till it is revoked by a subsequent Proclamation. I have no doubt that the Constituent Assembly thought that no Government will seek for and no Parliament will agree to the continuance of a Proclamation except during actual hostilities. That article, as it reads, does not express this intention clearly with the result that the Government of India has continued the Proclamation during 1963 and 64 and the first half of 1965 when it could not be contended by any reasonable person that there was an actual State of Emergency. The conditions in the country were entirely normal and the Central Ministers including the Prime Minister as well as the President were able to visit foreign countries which would be unimaginable in any state of real Emergency. The fact that there were hostilities between Pakistan and India this year cannot justify the continuation of the Proclamation during this interval. If necessary, there could have been a fresh Proclamation this year. It seems to be imagined that the absence of friendly relations between India and China and now between India and Pakistan will justify an indefinite prolongation of the State of Emergency. This will amount to almost a permanent suspension of the entire Part III of the Constitution and the drastic curtailment of Fundamental Rights which has been made by the Defence of India Act. A large number of persons have been placed under preventive detention under this Act without the safeguards provided under Article 22. Mr. Setalvad has also pointed out that "the arbitrary and extensive powers assumed under the Defence of India Act and the Rules have been exercised for the ordinary purposes of Government: to prevent traders from hoarding commodities, to put down strikes and for a variety of other normal functions of Government which could and should be dealt with under powers conferred by the ordinary law of the land"

While I agree with Mr. Setalvad that the Emergency has been utilised to supersede the ordinary law unnecessarily, the real and most serious harm done to the country by the unnecessary continuation of the Proclamation of Emergency during 1963 and 64 is the bad precedent which has been set for the future. It is now possible for any future Government which has a bare majority in both Houses of Parliament to suspend all Fundamental Rights indefinitely by the issue of a Proclamation

on some flimsy pretext. It can also by enacting drastic laws under it put under detention the inconvenient members of the opposition and even carry out drastic amendments to all those Articles of the Constitution which require only to be supported by an absolute majority of the total number of members and two-thirds of the members present and voting. To argue that the present Government has been moderate in the exercise of extra ordinary powers assumed under the Proclamation is hardly any consolation for the grave constitutional setback I have referred to. If the Fundamental Rights are to have any reality for the future, immediate steps will have to be taken to limit the duration and scope of the Articles of Part XVIII containing emergency provisions. Unless this is done, I am afraid the possibility of dictatorship when an extreme right or left party is able to get a majority of both houses has to be faced. This is a matter which requires the immediate attention, not only of the politicians but also of all intelligent citizens who want to secure the future of democracy in this country.

For any Government which wants to govern in an orderly manner and ensure justice and fair play, the rule of law is essential. The implications of the rule of law are the following: 1) No person should be subject to any penalty or punishment, unless it is proved that he has broken a law and his guilt has been proved in accordance with the procedure established by law, 2) No authority or institution should be able to impose any burdens or obligations except as authorised by law, 3) the laws should be made after careful scrutiny and full discussion by a legislature consisting of duly elected representatives of the people, 4) the laws should be interpreted and enforced by an impartial judiciary which is independent of executive authorities.

It may be conceded that all these conditions obtain in India from a formal point of view but in actual practice there are many factors which deprive the people to some extent of the full benefits of these provisions.

Though all power and authority has to be derived from law, it has become usual to pass laws which vest a considerable degree of discretion in officials administering the law. Though a planned economy may be desirable and even necessary for India, the process of planning has necessitated the institution of many controls and regulations which enable officials to discriminate among citizens and indulge in nepotism and unfair preferences. Except where it can be proved that discretion has been flagrantly abused, the aggrieved citizens has no judicial remedy. In a poor and developing country like India, the vesting of wide discretionary powers in officials without effective judicial remedies amounts to a negation of the rule of law in the most important aspect of national life,

It is true that laws can be made only by Parliament and the State Legislatures. The Constitution provides for free and unfettered discussion and the rules of procedure of these bodies have been adapted from British practices. The Lok Sabha and the State Assemblies are elected on the basis of universal adult franchise and the Rajya Sabha and the Legislative Councils in the State where they exist, though indirectly elected, must be deemed to be representative of the people. No fault can be found in the process of law-making in this country. Still, I regret to say that many laws are made both at the Centre and in the States without careful scrutiny. Often, they are rushed through legislatures and only a few bills are sent to Select Committees. The Chambers of Commerce, the Bar Councils and other public bodies who are in a position to realise the implications of the provisions of important bills which are introduced, do not consider it their duty to help the members of legislature with their views and suggestions, except when they are specifically asked for. While the Indian newspapers give a great deal of publicity to the proceedings of Parliament and State legislatures, I doubt if many of them have the staff competent to scrutinise bills and comment upon and criticize them in a constructive manner. All this may be due to the infancy of our democracy, the immaturity of our public life and the general absence of vigilant public opinion but the country has to suffer as a result of hasty and bad legislation. It is enough to mention the many amendments to the Company law which have been passed during the last few years and the uncertainty caused by frequent changes in a sphere where stability and certainty are all-important.

The Rajya Sabha in the Union and the Legislative Councils in the States which were meant to be revising chambers consisting of comparatively elder Statesmen have not, in my view, been able to function effectively. This is partly due to the fact the political parties have not considered it necessary to adhere to any reasonable standard of ability or experience in the selections to the Upper Houses. It has also become customary to rush legislation through these Houses and make the discussions therein more formal and ceremonial rather than real and effective.

The Indian Constitution has taken over many provisions from the Government of India Act 1952. The Articles relating to the promulgation of Ordinances by the President and the Governor which really mean the executive in the Central and the States are among them. Though they were intended to provide for cases of exceptional urgency when the Parliament or the Legislature are not in session, the powers have been used for mere convenience and sometimes even to prevent fair discussion in the legislature concerned. For, under the system of responsible Government, it is difficult for the party in power to refuse to convert the Ordinance into regular law, though if the matter had been brought before

the Legislative party in the normal course, it might have considered it on its merits. There is, therefore, urgent need to make the process of law making conform to public interest more effectively by all the methods which have been indicated above.

The Articles of the Constitution relating to judiciary have been implemented in a satisfactory manner. The Supreme Court has maintained a high reputation for independence, impartiality and justice. The High Courts in the States also have not been far behind in this respect. It is a matter of gratification that the Union and the State Governments have not tried to interfere with or influence them.

I wish I could say the same of the subordinate judiciary. As I have no direct knowledge of their working, I shall content myself with quoting the following observations made in the Report of the Committee on Prevention of Corruption. "Though we did not make any direct inquiries, we were informed by responsible persons including Vigilance and Special Police Establishment Officers that corruption exists in the lower ranks of the judiciary all over India and in some places it has spread to the higher ranks also. We were deeply distressed at this information. We, therefore, suggest that the Chief Justice of India in consultation with Chief Justices of the High Courts should arrange for a thorough inquiry into the incidence of corruptioa among the judiciary, and evolve, in consultation with the Union and States Governments, proper measures to prevent and eliminate it."

For a big country like India consisting of large and thickly populated regions with different histories, languages, cultures and traditions, Unitary Government is neither practicable nor desirable. The Constituent Assembly, therefore, wisely decided that only a federal system would be suitable. Unfortunately, however, on account of the strong feelings aroused by the partition and breaking away of Pakistan, it was felt necessary to make the centre exceptionally strong in relation to units. As it finally emerged, it was not a normal federation. In another context, I have called it a Paramount Federation, meaning that though the Constitution is federal, as it provides for units with exclusive jurisdiction over many important subjects such as, education, health, police, agriculture, forest etc. enumerated in the State list of the VII Schedule with certain exclusive sources of revenue and legislative and administrative autonomy, the State Governments are in many ways subordinates to the Union Government. The Governor is appointed by the President, i.e., by the Union Cabinet. Though the Parliament and the State Legislatures have a right to legislate on the subjects included in the concurrent list, Parliamentary Legislation supersedes State Legislation. All residuary powers vest in the Union.

According to Article 249, the Parliament may make laws temporarily with respect to any subject included in State list, if the Council of States decides by "two-thirds of members present and voting that it is necessary or expedient in the national interest that it may be done." The Union Government is empowered to issue directions with reference to the exercise of its own executive power, for the protection of railways and the construction and maintenance of means of communication declared to be of national or military importance. Even more sweeping is the power vested in Parliament to change the name, area and boundary of any State and even to merge or partition states by ordinary legislation. The States concerned are given merely the right of expressing their views on such changes before they are enacted into law. The cumulative effort of these provisions is that the Union Government exercises over the State Governments all the paramountcy powers exercised by the British Government over the Indian States.

In some respects, the emergency provisions of Part XVIII of the Constitution are calculated to make a mockery of the Indian federal structure. When a national Emergency is proclaimed under Article 352, Parliament becomes vested with the power to make laws with respect to any item in the State List. In other words, the State List in the VII Schedule is for the duration of the proclamation converted into a part of the Concurrent List. Similarly, the Union executive is empowered to issue directives in all matters. Also, the President may direct that the provisions of Articles 268 to 279 which provide for statutory devolution of revenues from the Union to the States may be suspended.

But the most far-reaching power is that given by Article 356 which empowers the President, "if he on receipt of a report from the Governor of a State or otherwise is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution", he may dissolve the State Assembly and dismiss the State Cabinet and vest the executive and legislative powers of the State with the Union Cabinet and Parliament. There has been a tendency to interpret the word 'cannot be carried on in accordance with the provisions of the Constitution' in such a wide manner that the existence of a State Government has come to depend on the discretion of the Central Government. In his Second Alladi Krishnaswami Ayyar Endowment lectures, Mr. Setalvad has dealt at length about this and said that "if the ruling party abused its political power in this manner, it would stifle the development of opposition parties, commanding the respect and confidence of the people which is imperative for the promotion of Parliamentary Government in this country."

It has been contended that if there is no single party or a coalition of parties with an assured majority, it should be deemed to follow that the Government of the State cannot be carried on in accordance with the provisions of the Constitution. I am convinced this is a wholly wrong and unwarranted interpretation of the provisions relating to the formation of State Cabinets. All that is provided in article 164 is that the Chief Minister shall be appointed by the Governor and other Ministers by the Governor on the advice of Chief Minister and that the Council of Ministers shall be collectively responsible to the Legislative Assembly of the State. Similar provisions hold good with reference to the formation of the Union Cabinet also. There are no provisions in the Constitution, empowering the President to suspend Parliament or supersede the Union Cabinet on the ground that it is not supported by an assured majority. I do not see how it can be contended that popular Government in a State should satisfy stricter tests than those applicable to the Union Government. If there is no majority for any party in Lok Sabha, it is the duty of the President to ask one of the minority parties to form the Government and allow it to try to secure the support of a majority of members on all important issues. If no such Government is possible, he has to dissolve the Lok Sabha and this process has to be continued indefinitely till a stable Government is formed. To insist that, in the States, the people will forfeit the right to be ruled in a comparatively more limited sphere by their own elected leaders because they did not give a majority to one of the contending parties is only another way of declaring that the formation of a State Government is contingent on the good behaviour of the people as judged by the Union Cabinet. This, I venture to think, is a total negation of all democratic principles. The argument that when a State Government is superseded, the people of the State will be governed by the popular Government at the centre which is subject to Parliament is similar to the contention of the old British Government that as the Government of India was controlled by the British Cabinet which was responsible to the British Parliament, there was no dictatorship or autocracy over India. So far as matters under the jurisdiction of the State Legislatures are concerned, the people of a State cannot expect from the Union Government the same concern and attention as it could expect from its own ministry whether that ministry has a regular backing of a majority of the Assembly or manages to secure that majority on all critical occasions by readjusting its policies so as to secure the co-operation of other minority groups.

In my view, the only circumstances which will justify the application of Article 356 are (i) breakdown of law and order within a State (ii) wide-

spread confusion during general elections and (iii) organised terrorism or intimidation of the civil authorities. Except in such circumstances, popular Government, whether the Cabinet is formed by a majority or a minority group, should be allowed to prevail with dissolution of the Assembly and general elections at necessary intervals. In this connection, it may be relevant to point out that in Canada there have been three general elections during the last three years, as the liberal and conservative parties have been nearly balanced without either having a majority. The present Labour Government in U.K. has got a majority of only two.

During the last 15 years, there have been some developments which were not contemplated by the Constituent Assembly and which have tended to reduce the autonomy of the States still further. The inauguration of planned economy and the setting up of the Planning Commission has led to centralisation of all policies even on matters exclusively assigned to the States and in which the States were expected to have full initiative for making experiments and for regulating the pace of development. Even in such matters as elementary education or provision of drinking water or housing, the State Governments have had to accept the plans made and directions given by the Planning Commission and the Central Government. Though the Planning Commission is not a statutory body, it has functioned more or less as a super central cabinet, so far as the states are concerned. The compliance of the states was ensured by the Central Government undertaking major responsibility for financing the State plans. Besides the statutory devolution as provided in the Constitution, the States have been given not less than Rs. 815 crores during the Third Plan as discretionary grants. Even more important has been the fact that the capital needs of the States for the plans have been met mainly by the Centre. On 15th August 1947, the then provinces owed only Rs. 44 crores to the Central Government. On 31st March 1966, the total outstanding debts of the States to the Union Government will be of the order of Rs. 4,000 crores. In other words, the State Governments have been reduced to the position of abject debtors who can never hope to redeem their debts.

The institution of the National Development Council consisting of the Prime Minister and the Chief Ministers of States which has been taking decisions on behalf of the States has tended to encroach upon the autonomy of the States. It has become habitual for the Chief Ministers to agree to them without consulting their legislatures or even their cabinets. It is not suggested that these decisions have always been to the disadvantage of the States. For instance, the surrender of sales taxes on textiles, sugar and tobacco has been of material advantage to most states. Still, the fact that the decision was arrived at over the head of State Legislatures, and State

Cabinets indicates the tendency to treat State autonomy as of little consequence.

All these developments may suggest that India is moving towards an unitary State but in actual fact, the States are today more separated from one another in thought and feeling than at the commencement of the Constitution. The linguistic reorganisation of States has led to an exaggerated attachment to language which has become an effective barrier between the States. The bi-lingual State of Bombay which was established in 1956 had to be split up into unilingual Maharashtra and Gujarat. The demand for a Punjabi Subha and agitation for the setting up of autonomus Hill States in the tribal areas of Assam as in the case of Nagaland show that the forces of division are powerful. I am convinced that the present emotional separation and rivalry for securing central enterprises without regard to national economy are as bad for the Indian federation, as the encroachments on constitutional and financial autonomy. The Indian federation is getting distorted and it is going to be a difficult task to restore rightful autonomy and eliminate unhealthy antagonisms.

LECTURE II

THE INDIAN CONSTITUTION-PROMISE AND PERFORMANCE

It is in the manner of constituting the Executive Government and defining its relations to the Legislature that material differences exist between democratic Governments. The British system of Cabinet, responsible to the Parliament and the American Presidential system are the two radically different methods. All other forms of executive formation are variations of either or a combination of the two in various degrees. The Constituent Assembly of India adopted the British System, though the American type of Presidential executive found some support. The advantages of the British system are the continuous responsibility of the Cabinet to Parliament and the elimination of all possible conflict between the Cabinet and Parliament. On the other hand, the Presidential system is more stable and party differences have comparatively less effect on administration.

The British system of responsible Government can function effectively only where there are two strong well organised and disciplined political parties. Unless the Cabinet has to face the possibility of losing its majority in Parliament or its majority being lost at the next general elections, it ceases to be responsible. In India, the Central Parliament and most of the State Legislatures have been dominated by a single party. This was almost inevitable, as it was the Congress which rallied the country during the struggle for freedom and almost all the important political workers belonged to it. But the lack of distinctive programmes and the tendency for fragmentation among the other parties have also been responsible for the weakness of the opposition. The result has been that the country has not had responsible Government in the proper sense of the term. At the centre, it has been a *de facto* single party Government. The only difference between the Central Government in India and the Governments of those countries which have been under single party dictatorship is that, in this country, the possibility of an opposition party taking over the Government has been kept open and the electorate has had the option at each general elections to vote for opposition candidates. There have been instances, as in the case of Madras, Orissa and Kerala where the majority party has for sometime been converted into a minority. These are no doubt valuable indications that responsible Government is a real possibility in this country. But until it becomes an actuality and both the Union and the State Government have

alternative Governments at least once in 10 or 15 years, it will not be possible to claim that effective democratic Government exists. It is essential that, until that stage is reached, measures should be devised to see that the Cabinets of Union and the States are at least responsive even if they are not strictly responsible. I think this can be best achieved by a proper Committee system in which the minority groups have effective representation, as in the case of the Public accounts Committees and the Estimates Committees. There have been suggestions that the present system of party Government should be replaced by all-party Governments. I do not think that this is practicable. Even a comparatively futile opposition is, in the long run, more useful than no opposition at all. There have also been proposals that the present British system should be replaced by the American Presidential executive. This might have been possible, if the Constituent Assembly had adopted it and India had started on her democratic road with elected Presidents and Governors. The present pattern cannot be changed without putting the entire Constitution into the melting pot and fashioning a new Constitution altogether with proper checks against Presidential autocracy and suitable devices for preventing conflicts between the executive and the legislature. Such wholesale political reorganisation will require leadership of the same calibre and popularity as existed in 1947. It will be dangerous to abandon the principle of responsible Government without establishing the alternative of strong but controlled Presidential executive. I think it is more profitable to foster the growth of effective opposition within the framework of the present Constitution.

As responsible Government of the British type rests mainly on conventions which could not be translated into statute without destroying their flexibility, they have been left to be implied in the provisions made for the constitution of the Council of Ministers for the Union and the States. In a written Constitution, these are rather anomalous. But an even greater difficulty is that the British conventions were evolved with respect to a Unitary State and unless India evolves new conventions appropriate to a federal system, many difficulties have to be encountered in working the Constitution. Even in the British system the relations between the constitutional head, the Prime Minister and the Cabinet are not very clearly defined. The general principle is that the sovereign can only express his views regarding any proposals, policies or appointments desired by the Cabinet. If the latter makes a firm decision, it will have to be accepted. But many occasions can be visualised in which the sovereign's views may have to be accepted by the Prime Minister and the Cabinet. If the majority behind the Ministry is reduced to a minority or if the majority party is clearly split up into factions, there is nothing to prevent the constitutional head from insisting on an alternative Government or dissolution,

In India, a similar situation has not occurred at the Union level and the will of the dominant majority has prevailed throughout.

Though, with respect to the normal working of the Constitution, the President has no alternative but to abide by the advice of his Council of Ministers, I feel that, in the circumstances of India, the President has the duty and the right to safeguard the Constitution even against the wishes of the Cabinet. He cannot and should not be a party to undermine or abuse the Constitution for party purposes. I have already pointed out the grave consequences that may follow if Proclamation of Emergency under article 352 were prolonged unduly, after the immediate urgency has disappeared. I am convinced that the President of India will be performing merely his constitutional function if he intimates his Council of Ministers that he would not be a party to a continued suspension of normal Government.

I think his constitutional functions are even more important for maintaining the proper relations between the Union and the States. Both in letter and spirit the Governors of the States are expected to function as constitutional heads, not amenable to any kind of suggestion or direction from the Union Government except when the State Constitution has been superseded under Article 356. I think it is the President's duty to safeguard this position of Governors. But, unfortunately, instead of maintaining this position, the Governors have slowly allowed themselves to function as agents of the Union Government. There have been instances of the Prime Minister directly suggesting or instructing a Governor, of the latter consulting the Prime Minister and Home Minister in relation to the formation of the Cabinet and of generally trying to please the Union Government. This unfortunate tendency has been strengthened by giving the same person extensions of Governorship or by appointing him as Governor of another State for a second term. The position of the Governor has been reduced to such an extent that he has come to be considered a mere ceremonial figure—head, except when he functions as an agent of the Union Government.

One of the British conventions is that a Minister holds office only at the discretion of the Prime Minister and he is expected to resign voluntarily, as soon as he is made aware that he has lost the confidence of his chief. While this Convention has generally prevailed in respect of this Union Cabinet, it has not been properly observed in the case of the State Cabinets. It has become usual for State Ministers to approach the party high command or the Prime Minister against his own Chief Minister. There have been many cases of Chief Ministers being called to Delhi to discuss such disputes. All such practices are wholly inconsistent with the

conventions of responsible Governments and tend to convert State Ministries into an incoherent body depending on the goodwill of outsiders.

Though under the British system, a majority party is entitled to form the Government, the latter is not expected to be a mere party Government, as in the case of single party dictatorships. It will be inappropriate for a Cabinet to reveal confidential notings even to its Legislative party on whose support it is dependent. It follows that it will be wholly unconstitutional to share such information with party leaders outside the Legislature. Unfortunately, there have been tendencies in recent years to confuse the roles of the external party organisation, the legislative wing and the Cabinet. When this confusion extends to the making of high appointments, like membership of the judiciary or the Public Services Commissions, charges of corruption and nepotism become inescapable. I think political scientists in the Universities should investigate the nature and limits of the British Conventions of responsible Government, how far they are applicable to Indian conditions and the adaptations of and additions to those Conventions which are required for the successful working of parliamentary democracy in India.

Though it may appear at first sight that a democratic Government, being answerable to the people, should be more economical than other forms of Government, it has been found in practice that this is not so. For one thing, democracy involves rapid development of social services. In a police State, even the construction of a few roads and the maintenance of some schools are considered to be exhibitions of concern and generosity towards the people. On the other hand, however anxious and earnest a democratic government may be to expand and improve social services, there is always a complaint that progress is not sufficient or speedy. In the case of a country like India in which the former Government had only minimal social services, the pressure on the Union and the State Governments after freedom, for the development of social services has been terrific. As most of these services have to be financed by taxation, the need for utmost economy and scrutiny of public expenditure is imperative. The Constitution has provided for the appointment of a Comptroller and Auditor General of India by the President by warrant under his hand and seal. In order to make him independent of the executive, it has been provided that he shall not be removed from office, except in the manner provided for judges of the Supreme Court and that he shall not be eligible for further office under the Government of the Union or any State. He will prescribe the form in which the accounts of the Union and the States shall be kept. He will submit to the President and the Governors annual reports relating to the accounts of the Union and the States. On the whole, these provisions have worked satisfactorily and

Comptroller and Auditor General has performed his functions without fear or favour. He has helped the Public accounts Committees to point out waste and misappropriation.

While the reports of the Comptroller and Auditor General have been of great value to check extravagance, waste and misappropriation of public funds, it cannot be claimed that any degree of economy or efficiency has been achieved in the expenditure of public funds either at the Union or State levels. One of the unfortunate results of planning in India has been to lay special emphasis on expenditure of allocated amounts irrespective of the physical achievement expected from them. Taxation has been increased to limits where they have begun to yield diminishing returns. The Union and the State Governments have yet to evolve a financial conscience and probably this will take place only when the opposition in Parliament and State legislatures has become much stronger and public criticism and protest against the increasing burdens have become more effective and insistent.

The modern welfare state which is an inevitable development of any kind of democracy requires a large and extensive bureaucracy. In the advanced countries, the percentage of national income which is taken over by Government in the form of taxes and fees amounts from 20 to 33 1/3% approximately, the families dependant upon government form a similar proportion. In India, the total number of public servants employed under the Central and State Governments, Local and quasi-government bodies is of the order of 88 lakhs. The rate at which the bureaucracy has been increasing is illustrated by the following figures. Between March 1956 and December 1964, the total number employed in the public sector increased from 52 lakhs to 88 lakhs. During the eighteen years since transfer of power, the number of Secretaries in the Central Secretariat increased from 18 to 48, Additional Secretaries from 10 to 20, Joint Secretaries from 34 to 115, Deputy Secretaries from 70 to 235 and Under Secretaries from 167 to 429.

It is obvious that the quality of administration and the actual content of social benefits derived by the people will depend upon the efficiency and integrity of the public services. The Constitution has provided for Public Service Commissions at the Union and the State levels for recruiting the personnel of the services and advising the Government on problems connected with them. Though the Members of these Commissions are to be appointed by the Central and State Governments, it has been provided that they will hold office for a term of 6 years or until they attain the age of retirement which is 65 years for the Union and 60 years for the State Commission. The members of

these Commissions have been made ineligible for reappointment for another term as also for other offices of the Government of India or the States. No member of a Commission can be removed except by order of the President on the ground of misbehaviour after the Supreme Court has, on inquiry, reported that he should be removed. The Government servant has also been protected against dismissal or other disciplinary action "until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him".

I am of the view that the Union Public Services Commission, has on the whole fulfilled the expectations of the Constitution and tried to recruit the best persons available for the All India and Central services. There have been complaints and rumours that some of the State Public Service Commissions have been subject to political pulls and communal prejudices.

Under the British regime the higher services were considered to have set up a tradition of high integrity while there was a lot of petty corruption among the lower ranks. The second world war gravely undermined this tradition. On transfer of power, a large number of the British Officers at the highest level retired and sudden and quick promotions were made of junior officers and a large number had to be recruited by *ad hoc* methods and fixed at various levels. The inauguration of planning and the institution of a system of controls and permits for various purposes put upon these ill-organised and hastily recruited services, a heavy burden of work and vast opportunities of conferring or refusing favours with the result that corruption has spread to all levels. It is inevitable that, as it is not possible to estimate precisely the extent of corruption, popular impression about its prevalence should be much greater than the actual fact. The question of integrity of the Union Public services has been inquired into by the Committee on Prevention of Corruption and its comprehensive Report has evoked the attention of the public and the Press. The following observations from that Report indicate the nature of this serious menace to our public life.

"The tendency to subvert integrity in the public services instead of being isolated and abated is growing into an organised, well-planned racket. We recognise that while considerable success had been achieved in putting anti-corruption measures on a firm footing there is much that remains to be done. It is a matter of profound concern that, in the past, there has been a certain amount of complacency in dealing with the situation.

It was represented to us that corruption has increased to such an extent that people have started losing faith in the integrity of public

administration. We heard from all sides that corruption has, in recent years, spread even to those levels of administration from which it was conspicuously absent in the past. We wish we could confidently and without reservation assert that at the political level, Ministers, Legislature and party officials were free from this malady. The general impressions are unfair and exaggerated. But the very fact that such impressions are there causes damage to the social fabric. That such impressions should have come into existence in so short a time after the people of this country had given themselves a Constitution of their own is all the more distressing if it is remembered that the struggle for freedom in India was fought on a particularly high moral plane and was led by Mahatma Gandhi who personified integrity. The people of India rightly expected that, when the governance of the country passed into the hands of the disciples of the Father of the Nation who were in their own individual capacities known for high character and ability, Governments in India, at the Centre and the States would set up and achieve a standard of integrity, second to none in the world both in the political and administrative aspects. It has to be frankly admitted that this hope has not been realised in full measure."

Many of the recommendations of that Report, relating to Central public services have been promptly implemented by the Union Government. A Central Vigilance Commission has been set up and the Central Bureau of Investigation has been strengthened. But, unfortunately, the recommendations relating to corruption at political levels have not yet been implemented. I understand they are under consideration. It is essential that action should be taken quickly. So long as the public servants feel that they have to observe a higher standard of integrity than Ministers and Legislators, they cannot be expected to be very enthusiastic about it. Mere punitive measures, while they may be unavoidable, cannot eradicate corruption completely. It is only through instilling a spirit of patriotism and promoting the evolution of a climate of honesty and responsibility that the desired results can be achieved.

Free and fair elections at regular periodic intervals is the indispensable basis of any kind of democratic government. There should be no restriction on candidature except as to age or prescribed disqualifications due to conviction for a criminal offence or similar improper conduct. Similarly, absolute freedom of voting should be guaranteed without any undue influence or direct or indirect intimidation. The Indian Constituent Assembly, after a keen discussion, adopted the principle of universal adult franchise for the Lok Sabha and the State Assemblies. It was argued that to extend adult franchise at one step for the vast population of India, a large part of which was illiterate, was to take a leap in the dark and imperil the orderly evolution of democracy. But the vast majority of that

Assembly felt that to stop short of adult franchise for all persons over 21 years of age was politically undesirable and socially unjust, as it would disfranchise the most backward sections of our population who had the greatest need for political protection. To ensure however, that the elections to the Parliament and the State Legislatures are conducted properly, the Indian Constitution has set up an Election Commission which is to be independent of the Executive authorities. This is a unique experiment. This Commission has so far consisted of a single Commissioner. He has the duty of superintendence, direction and control of the preparation of the electoral rolls and the conduct of all elections to the Parliament and to the Legislature of every state and of elections to the offices of the President and Vice-President. He is further entrusted with the power to appoint Election Tribunals for all election disputes arising out of or in connection with these elections. This experiment has been an unqualified success. There have been three general elections in 1952, 1957 and 1962. In 1952, the total number of voters in the electoral rolls was about 177 millions. This increased to over 200 millions in 1962 and it is worth noting that in all the elections, in spite of illiteracy and traditional inhibitions, the percentage of women voters who participated in the elections was nearly equal to that of men voters. In all the elections, most of the seats were contested and in a considerable number of constituencies, the candidates of the ruling Congress Party, some of them Ministers and prominent public workers were defeated by opposition candidates. There has never been any question as to the freedom and impartiality of these elections. In this respect, at least, democracy in India, has a solid foundation and the credit for this achievement goes to the successive Election Commissioners.

There is, however, one aspect of these elections which should cause serious concern to all students of politics in India. The expenditure on these elections has been growing steadily. In the last general election, expenditure for the parliamentary candidates was estimated in some cases to be as high as a lakh of rupees and for the State Assemblies Rs. 50,000/- There have been cases in which even these high figures have been exceeded. There are statutory limitations to such expenditure but it has been found altogether impossible to implement the legal provisions, as expenditure is incurred by so many persons and agencies that the law can be easily evaded.

The following observations made in the Report of the Committee on Prevention of Corruption are relevant in this connection. "The public belief in the prevalence of corruption at high political levels has been strengthened by the manner in which funds are collected by political parties, especially at the time of elections. Such suspicions attach not

only to the ruling party but to all parties, as often the opposition can also support private vested interests as well as members of the Government party. It is, therefore, essential that the conduct of political parties should be regulated in this matter by strict principles in relation to collection of funds and electioneering. We consider that, in Indian conditions, companies should not be allowed to participate in politics through their donations. It is true that this matter was debated at length during the discussions on the Companies (Amendment) Act 1960 and it was decided to permit such donations subject to restrictions of amount and condition of publication. We do not think that this is sufficient and feel that nothing but a total ban on all donations by incorporated bodies to political parties and purposes will clear the atmosphere”.

In this connection, it may be pointed out that in U.S.A. donations by companies to political parties and purposes have been statutorily prohibited. The law relating to elections, Title 18 Section 610 reads as follows: “It is unlawful for any national bank, or any corporation organised by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates or any political office, or for any corporation whatever, or any labour organization to make a contribution or expenditure in connection with any election at which Presidential and Vice-Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this Section.

Every corporation or labour organisation which makes any contribution or expenditure in violation of this section shall be fined not more than \$ 5000 and every officer or director of any corporation, or officer of any labour organization, who consents to any contribution or expenditure by the corporation or labor organization, as the case may be, in violation of this section shall be fined not more than \$ 1,000 or imprisoned not more than one year, or both.”

I come now to the last but also the greatest promise held out by the Constitution, namely economic prosperity and social justice. The preamble starts with the noble words, “WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN DEMOCRATIC REPUBLIC and to secure to all its citizens” and lists as the first objective, “JUSTICE, social economic and political” which is followed by LIBERTY, EQUALITY AND FRATERNITY. The content of social

justice is elaborated in Part IV which is entitled Directive Principles of State policy. There are 16 articles in this part. These articles are not justiciable, that is the citizen cannot go to a court to enforce them. There were doubts in the Constituent Assembly whether nonjusticiable, moral directives were appropriate to a Constitution which should be the Fundamental law of the country, every provision of which should be enforceable. But it was decided that the infant democracy of India should be given such proper guide lines as are contained in this part. In his speech winding up the final debate in the Constituent Assembly, Dr. Ambedkar said that we should not be content with political democracy and that we must convert it into a social democracy as well. Article 39 directs that the policy of the State should be directed towards securing an adequate means of livelihood for all citizens and that the ownership and control of the material resources of the community are so distributed as best to subserve the common good; that steps should be taken to prevent concentration of wealth and means of production to the common detriment, that there is equal pay for equal work for both men and women and that the health and strength of workers, men and women and children should be protected from undue exploitation. Article 41, directs that effective provisions should be made for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement and in other cases of unreserved want. Article 42 directs that provisions shall be made for securing just, humane conditions of work and maternity relief. Article 45 says that free and compulsory education should be provided within ten years from the commencement of the Constitution for all children, until they complete the age of fourteen years. I need not deal with the other articles which elaborate these ideas with reference to scheduled castes and other backward people and also deal with certain other matters like panchayats, prohibition, uniform civil code and promotion of international peace and security.

In spite of the doubts of the critics of this part, I feel that this has had perhaps a greater effect than many of the statutory provisions. The Planning Commission in its first Report took the directives of this Part as almost a mandate for the formulation of its plan. By the three five year Plans, a bold attempt has been made to force the pace of economic development and to increase the national as well as the per capita income. A moderate success has been achieved, though some of the poorest sections of the populations have not yet benefited by the plans. This is particularly true of landless agricultural labourers and the slum population of the urban areas. It has also to be confessed that though there has been some reduction in the number of the very rich people, inequality of distribution of income has increased rather than diminished. Perhaps this was inevitable in the early stages of economic development consistent with

the maintenance of political democracy. But bold steps are needed to reduce inequalities.

Notable advance has been made in the expansion of all social services, namely education, health, roads etc. Between 1949-50 and 1962-63, the number of Universities has increased from 26 to 54, Arts and Science colleges from 484 to 1,283 primary schools from 2,05,000 to 3,68,000 and secondary schools from 20,000 to 82,000. Professional and technical colleges and polytechnics in Engineering, medicine, agriculture and forestry and special education have grown even much faster. The total number of students in all institutions has increased from 24 millions to 57 millions. The expansion of health services shows the same notable advance. Numbers of hospitals and dispensaries have increased by 75%, beds have been doubled, doctors have been increased by 50%, nurses by 100%. Number of Medical colleges has risen 29 to 79 and admission of students from 2700 to 10,300.

It is, however, a great pity that no significant steps have been taken to implement the directives contained in Article 41, particularly those relating to the provision of public assistance in cases of unemployment, old age, sickness, disablement and other cases of unreserved want. As a result of education and modern means of communication, the old joint family is breaking up and millions of old people are being left uncared for. The only step that has been taken towards social security are the pensions for Government servants and Provident fund and health Insurance for organised workers. It may be that our national income is yet too small to permit adequate measures of social security for all the people. But there is no justification for not providing even minimum assistance to those among the old and disabled who are utterly destitute. In the last few years, one or two State Governments have been allotting small sums for discretionary assistance to the poor. The amounts provided are so small and the number of persons benefitted so few, that it can hardly be claimed to fulfil the directive of this article.

During the third reading of the Constitution, I said, "I think we are assured of the fullest democracy that any Constitution can give. How that democracy will work, to what extent it will be utilised to convert it into not only political democracy: but into industrial democracy, into social democracy that depends upon those who will work that Constitution, upon the general will of the people of India and the leaders who will be produced by the people of India. No Constitution can provide such things. All that a Constitution can provide is that the will of the people shall prevail and I think this Constitution has done it to the fullest extent."

From what I have said in these talks, it will be evident that I was a little over-optimistic.

I may now summarise my conclusions. There has been an earnest and fairly successful attempt to establish the rule of law, to ensure free and fair elections and to secure economic prosperity and social justice. On the other hand, the position of Fundamental Rights has become precarious. The Federation has become altogether distorted and responsible government is only a hope for the future. While the formal machinery exists for scrutiny and control of public expenditure, considerable waste and extravagance are yet prevalent, necessitating needlessly heavy taxation. The efficiency and integrity of public services leave much to be decided. It is for the Ministries at the Centre and the States to give the right lead in this respect by setting a high standard for themselves and devising means to enforce that standard.

The amendments to the Constitution have been too frequent and some of them were not necessary. Thus the promises have been but partially fulfilled. I have, nowever, no doubt that the future of democracy for India lies in cherishing the Constitution and trying to work it in the right spirit.

