

PANCHAYATS AS ELECTORAL COLLEGES

[An interesting proposal emerged, at the drafting stage of the Constituent Assembly's proceedings, for making village panchayats the basis of elections under the permanent constitution. The proposal was not new: the Commonwealth of India Bill of 1924, prepared by a National Convention of which Dr. Annie Besant and Sir Tej Bahadur Sapru were the joint sponsors, was based on the principle of adult suffrage at the village panchayat level and a system of indirect elections for both the Central and provincial legislatures. The President of the Constituent Assembly, Dr. Rajendra Prasad, referred it to the Constitutional Adviser, Sri B. N. Rau, for his advice. This is his note in reply.]

It may not be easy to work the panchayat idea into the draft constitution at the present stage. Articles 67 (5) (a) and 149 (1), which, I believe, embody decisions already taken by the Constituent Assembly, provide for direct election to the Lower House, both at the Centre and in the units. These decisions will first have to be reversed if elections are to be indirect, as required by the panchayat plan. Whether this will be practicable I do not know. In all the principal federations and unions of the world, the Lower House is elected by direct election. Even the Upper House or Senate of the United States of America, which was originally indirectly elected, is now (since 1913) directly elected.

The world trend is thus strongly towards direct election for obvious reasons. It may, therefore, not be easy to reverse the decision already arrived at by the Constituent Assembly and to make indirect elections instead of direct elections obligatory.

Perhaps the best course would be so to frame the constitution as to permit either mode of election, the actual mode to be adopted in any particular case being left to the appropriate legislature. On this view of the matter, I have prepared draft amendments on the following lines:

In article 67 (5) (a), for the words "directly chosen by the voters" and in article 149 (1), for the words "chosen by direct election", substitute the words "chosen either by the voters themselves or by persons elected by the voters". Under this amendment it will be for the Central legislature under article 290, and for the unit legislature under article 291, to prescribe whether the actual mode of election for the Lower House of the Central legislature and of the unit legislatures respectively is to be direct or indirect.

Even if the panchayat plan is to be adopted, its details will have to be carefully worked out for each province and for each Indian State with suitable modifications for towns. Apart from other difficulties, this will take time and rather than delay the passing of the constitution further, it would seem better to relegate these details to auxiliary legislation to be enacted after the constitution has been passed.

I entirely agree that legislators should have proper qualifications; the difficulty is to formulate them with any kind of precision. It would be easy enough to prescribe an educational standard which all candidates must satisfy; but this may not be considered either necessary or sufficient. The other criteria, namely, social service, character and the *sannyasin* outlook on life, do not lend themselves to precise definition, even if there was agreement about their necessity. Under the draft constitution, it would be open to the appropriate legislature to prescribe any qualifications in this behalf under articles 290 and 291 and any disqualifications under articles 83 (1) (e) and 167 (1) (e).

I have been considering the proposition that our constitution should start from the village and work upwards to the

provinces and to the Centre. Let us analyse exactly what this means. A constitution deals with the organs of government, whether executive, legislative or judicial, at various levels and their relations to one another. In federal constitutions one usually—though not invariably—deals with the Centre and the units: for example, the Canadian and the South African Constitutions deal both with the Centre and the provinces, but the Constitutions of the U.S.A. and of Australia deal mainly with the Centre and hardly with the structure of the States.

Is it suggested that the Indian Constitution should deal not merely with the structure of the Centre and of the units but should go down to the village? In other words, is the Indian Constitution not merely to deal with the executive, legislative, and judicial organs of the Centre and of the provinces, but also to create and deal with similar organs for the district, the sub-division, the *thana*, the *chowkidari* union and the village?

For example, are we to have in the constitution full specifications of a district executive, a district legislature and a district judiciary? At present we have no district legislature but only certain administrative bodies, such as district boards and municipal boards, with a limited power of making by-laws for certain purposes; the district executive is provided for in land revenue Acts or regulations, police Acts and so on; the district judiciary is provided for in Civil Courts Acts, the Criminal Procedure Code and the like. Is it suggested that these or similar provisions should be incorporated in the constitution itself? I fear that if we do this, not merely for the district but down to the village, the constitution will be of inordinate length and will be even more rigid than it is at present. It seems to me that while it may be possible to create panchayats and similar bodies to function as electoral colleges for the provincial and Central legislatures, it would be impracticable to endow them, or other bodies at the same level, with specific administrative or legislative or judicial functions by provisions inserted in the constitution itself.