

PREFACE

THIS volume contains a selection from the papers relating to the making of India's Constitution of Sri Benegal Narsinga Rau (1887-1953) who was Constitutional Adviser to the Constituent Assembly through all the stages of its labours. One of the considerations which weighed with him in accepting a seat on the International Court of Justice at the Hague early in 1952 was the hope of utilising the court's winter vacations for writing an authentic story of India's Constitution. Had that project not been frustrated by premature death, the result would have been a volume of unique value enriched by his reflections and comments.

In the course of a career of great distinction, he dealt with a variety of topics in his own masterly fashion—Hindu law reform, riparian rights, Kashmir, Hyderabad, control of atomic energy, I.N.A. trials, etc. His main achievement, however—and one for which he will be best remembered by future generations in India—was in his capacity as the main architect of India's Constitution. His vast knowledge of constitutional law and practice in several countries and his gift for lucid and precise exposition enabled the Indian Constituent Assembly to complete the immense task of framing the permanent constitution in a period of less than three years. He assisted to a considerable extent Burma's Constituent Assembly to frame her post-war constitution ahead of schedule. His paper on the Constitution of Burma, first written for the *India Quarterly*, the journal of the Indian Council of World Affairs, is reproduced as the last chapter in this volume, with the permission of the Council.

My original intention was to make this volume a comprehensive one, the first part dealing with India's constitutional problems and the second covering other problems with many of which Sri B. N. Rau was concerned as India's permanent representative at the United Nations, either in the General Assembly or in the Security Council or in one of its committees. It was, however, found impracticable to bring them within the compass of a single volume. His statements before the United Nations and other papers, such as those dealing with Hindu law reform, riparian rights etc., have, therefore, been excluded for subsequent publication in a separate volume.

A delay of some years in the publication of this volume, regrettable as it is, was due to circumstances beyond my control. Nevertheless, the memoranda and notes written at different stages of the framing of India's Constitution will, it is hoped, prove to be of permanent value and interest. A few papers, like the draft of an Indo-British treaty, were prepared in anticipation of the main outlines of Britain's post-war policy in regard to India. The draft treaty, whose provisions were subjected to a detailed analysis by experts, both in New Delhi and in London, was ultimately considered unnecessary. Nevertheless, it has been included in this volume as a document of historical interest.

The different chapters in this volume follow, in their sequence, the broad pattern set by the Constituent Assembly. The adoption of the resolution on the Assembly's objectives, at the commencement of its proceedings, was followed by a consideration of the rules of procedure, the adoption of a provisional time-table for the Assembly and a discussion of different parts of the author's first draft constitution by committees created for the purpose; such as the Union and Provincial Constitution Committees, the Union Powers Committee, the *ad hoc* committee on the Union Judiciary, etc.

These committees made considerable alterations in the original draft of the constitution as a preliminary to a clause-by-clause discussion by the Constituent Assembly, under the general guidance of a drafting committee. At this stage the author prepared a number of papers on important aspects of the constitution for the benefit of the members of the Constituent Assembly. These papers (on fundamental rights, second chambers, head of the State, Union executive, linguistic provinces and regional arrangements, etc.) appear as later chapters in the volume.

The author was sent on deputation in October 1947 to the U.S.A., Canada, Eire (Ireland) and the U.K. to discuss with the leading constitutional authorities in those countries some of the basic provisions of the Indian Constitution. A report embodying the results of such discussions is included as a separate chapter.

It should be noted that in the chapter (20) on "Panchayats as Electoral Colleges", the references to articles and clauses relate to the original draft of the Indian Constitution.

Some of the later chapters were written by the author, either on important questions arising out of the constitution after its final adoption (such as the position of India as a republic in the Commonwealth and common citizenship rights) or on specific matters, like the powers of the President under the constitution and the duties of the Finance Commission.

To Dr. Rajendra Prasad, our President, I owe a deep debt of gratitude for his encouragement and the keen interest he displayed at every stage of the preparation of this volume. I had free access to all the records of the Constituent Assembly in his possession and his permission to include some of the documents in this collection. Several friends gave their whole-hearted co-operation and greatly simplified my task; I must mention, in particular, Sri P. N. Krishna Mani, Under Secretary of the Rajya Sabha, whose close collaboration I found indispensable; also Sri M. P. Sarangapani, who

took great pains to revise the manuscript and correct the proofs. To the editor of *The Hindu* I am grateful for his permission to reproduce two papers which originally appeared in that paper.

B. SHIVA RAO

New Delhi

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