

The Constituent Assembly of India: Recollecting Contributions of Sir Benegal Narsing Rau, the Constitutional Adviser

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“India is the cradle of the human race, the birthplace of human speech, the mother of history, the grandmother of legend, and the great grand mother of tradition. Our most valuable and most astounding materials in the history of man are treasured up in India only!”

Mark Twain

INTRODUCTION

Before recollecting the contributions of Sir B.N. Rau in articulating of the Constitution of India, it is necessary to know about the evolution of concept of Constituent Assembly, formation of Indian Constituent Assembly and initiatives taken by its members to include the best features of some Constitutions of the World for the benefit of Indian people.

The term “Constituent Assembly” signifies a representative body chosen for the purpose of either considering and adopting or proposing a new Constitution or changes in the existing Constitution. It is called for the sole purpose of establishing the fundamental organic law of the State. It has nothing to do with ordinary legislature and the normal functions of the Government. Almost all the written Constitutions of the world have been framed by the Constituent Assemblies or Conventions.¹

A Constituent Assembly’s essential characteristic is to derive its authority from the sovereign will of the people. It is based on the principles that the Constitution should be framed by the people. This is done through its real representatives. It is a sovereign body and does its work with mature deliberation in a peaceable way.

Constituent Assembly is a Western political contribution to the science of Government. It was first conceived and adopted in the State of Massachusetts in the United States of America in about 1780. After the Declaration of Independence, the American war followed. The greatest Constituent Assembly was set during the Convention of Philadelphia in 1787. Since then Constituent Assembly became an indispensable instrument of political self determination.²

The study of different Constituent Assemblies reveals two different methods of forming them. The countries with Anglo-Saxon influences predominate in forming the Assembly with members who are elected by the existing provincial bodies, which may or may not be elected by a restricted franchise. The other method assumes that the Assembly should reflect the views of the nation; this is achieved by adopting adult franchise and proportional representation, which is more or less a scientific form of providing separate electorates.³

The historic origin of the Constituent Assembly can be found in the great movements that drove some of the people of Western countries to organize themselves into nations in order to destroy arbitrary power.

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¹ Venkatraman, T.S: Constituent Assemblies of the World, 1947.

² Ibid. p. 2.

³ Munshi, K.M: Indian Constitutional Documents-Munishi Papers, Volume II, 1967.

INDIAN CONSTITUENT ASSEMBLY

The idea of the Constituent Assembly for India was first put forward by Mr. M.N. Roy, the pioneer of the communist movement in India in the year 1930. In his open letter to the executive committee of the Socialist International protesting against the British party's failure to support the Indian freedom struggle, he had stated that "*the people of India would never accept any constitution framed by imperialist Round Table Conference or any such Commissions. The only Constitution acceptable to them would be the one framed by a Constituent Assembly to be elected by universal suffrage.*"⁴

The demand for a Constituent Assembly as part of its official policy was made by the Indian National Congress in 1934. The Congress Working Committee refused to accept the 1933 White Paper containing the proposal for Indian Constitutional reform and observed that: "*the only satisfactory alternative to the White Paper is a Constitution drawn up by a Constituent Assembly elected on the basis of adult franchise or as near it as possible, with the power, if necessary, to the important minorities to have their representatives elected exclusively by the electors belonging to such minorities.*"⁵

After the revival of the Indian National Congress in 1936, Pandit Jawaharlal Nehru became its President and began to popularize socialism.⁶ He reintroduced the demand for a Constituent Assembly by passing resolutions in the Indian National Congress. Mahatma Gandhi had written in "*Harijan*" in 1939 that he was compelled by Pandit Nehru to study the implications of a Constituent Assembly. He further expresses that "*Constituent Assembly alone can produce a Constitution indigenous to the country and truly and fully representing the will of the people.*" Further, he felt that "*the Constituent Assembly will represent all communities in their exact proportion. Except it there is no other way of doing full justice to rival claims without it there can be no finality to communal and other claims.*"⁷

After the Second World War, a new Government came to power in Great Britain in July 1945. The new Government announced their decision to convene a constitution drafting body. To find the solution for the question of Indian Independence, a team of three British Cabinet Ministers called the Cabinet Mission were sent to India in March 1946 to assist the Viceroy in setting up the machinery in India by which the Indians could devise their own Constitution. They held prolonged discussions with the Indian leaders of both Indian National Congress and the Muslim League. On May 16, 1946, the Mission announced their plan publicly. According to the Plan, India was to remain one State. The Provinces would be grouped geographically into three regions, one which would be predominantly Muslim, one predominantly Hindus, and in the third the population of the two communities would be nearly equal. The provincial representatives to the All India Constituent Assembly after a preliminary meeting would meet in three group assemblies to frame the Constitution for the component provinces and after this, they would return to the All India Assembly to draft the National Constitution.⁸

Both Congress and the Muslim League accepted the plan of the Cabinet Mission but with some reservations. The British Government realized that their attempt to evolve a Constitution agreeable to all the sections of the Indian people had been unsuccessful.

The elections were held and the members of the Constituent Assembly were elected in July 1946 but the first session of the Assembly could not be summoned until December 9, 1946 due to election of the provincial representatives in accordance with the Cabinet Mission's plan. The Indian National Congress won with an overwhelming majority.

The Constituent Assembly consisted of 389 members of whom 292 were elected by the elected members of the Provincial Legislative Assemblies while 93 members were nominated by the Princely States. A representative from each of the four Chief Commissioners Provinces of Delhi, Ajmer Marwad, Coorg, and British Baluchistan were also added. The seats of each province were distributed among the three main communities viz. General, Muslims, and Sikhs in proportion to their respective populations.

⁴ Karnik, V.B: M.N. Roy's Political Biography, 1978.

⁵ Khanna, H.R. Making of India's Constitution.

⁶ Karnik, V.B, M.N. Roy's Political Biography, 1978.

⁷ The Only Way, Harijan, pp. 352-353 dated 25 November 1939.

⁸ Khanna, H.R. : Making of India's Constitution.

Even before the proceedings of the Constituent Assembly could commence effectively, a sharp difference of opinion arose between the Congress and the Muslim League. Between July and December 1946, Sir B.N. Rau was consulted frequently by both the Congress and the Muslim League on specific issues. In September 1946, Mr. Jinnah had a detailed discussion with Sir B.N. Rau, which covered almost every point.⁹

The first meeting of the Constituent Assembly, which was held on December 9, 1946, was boycotted by the Muslim League. The members of the Muslim League withdrew from the Constituent Assembly and they urged dissolution of the Constituent Assembly on the grounds that it did not fully represent all sections of the people of India. At one of its initial sessions, the Constituent Assembly passed a resolution that it could not be dissolved except by a resolution assented to by at least two-third of the total members of the Assembly.¹⁰

According to Mr. Jinnah, the formation of independent Pakistan was inevitable. In March 1947 Lord Mountbatten took over as the Viceroy and on June 3, 1947, he announced that England would recognize the existence of two independent States of India and Pakistan from August 15, 1947. A separate Constituent Assembly for Pakistan was created on July 16, 1947.

After these developments, the membership of the Constituent Assembly of India was reduced to 299 out of which 229 represented the Provinces and 70 were nominated by the Princely States. The Indian Independence Act was passed by the British Parliament with effect from August 15, 1947 giving legality to the status of the Constituent Assembly. The Constituent Assembly, which had first met on December 9, 1946, reassembled after midnight of August 14, 1947, as the Sovereign Constituent Assembly for India in the Constitution Hall, New Delhi and earnestly began its work of drafting the Constitution of India.¹¹

The Constituent Assembly took almost three years to complete its historic task of drafting the Constitution for Independent India. During this period, it held 11 sessions covering a total of 165 days. Of these, 114 days were spent on the consideration of the Draft Constitution. The Constitution of India was adopted on November 26, 1949. In all 284 members actually signed the Constitution on January 24, 1950.¹² The Constitution came into force on January 26, 1950 and the Constituent Assembly was dissolved.

Granville Austin had said "*With the adoption of the Constitution by the members of the Constituent Assembly on 26 November 1949, India became the largest democracy in the world. By this act of strength and will, Assembly members began what was perhaps the greatest political venture since that originated in the Philadelphia in 1787.*"

There were many eminent persons who have contributed their best in the framing of India's Constitution. I would like to restrict myself to the contributions of **Sir Bengal Narsing Rau**, the Constitutional Advisor to the Constituent Assembly.

SIR BENGAL NARSING RAU

He was born in Mangalore on February 26, 1887 into a family of intellectuals. He had a brilliant academic career. He was educated at Presidency College, Madras and later with a Government of India Scholarship he studied at Trinity College, Cambridge. Pandit Jawaharlal Nehru was his contemporary at Cambridge and was an admirer of his scholarship and achievements. He qualified for the Indian Civil Service in 1909 and joined the Service in 1910. He started on the Executive side but preferred to move to Judiciary and was a District and Sessions Judge in Bengal from 1919 to 1923, acquiring an intimate knowledge in civil and criminal laws.

The quality of his work as District Judge in Bengal attracted official notice, and the Assam Government offered him the dual post of Secretary to the Provincial Legislative Council and Legal Remembrancer to the Government, which he served for eight years. When Simon Commission toured India in 1928–1929, he drafted the Assam Government's memorandum pleading for a generous financial deal for the Province from the proceeds of the duty on tea. The impression created by the memorandum was so favorable that the Assam Government decided to depute him to London in 1933, to present its case before the Joint Select Committee of Parliament.¹³

⁹ Rau, Benegal : India's Constitution in Making, 1963.

¹⁰ Ibid.

¹¹ Ibid.

¹² <http://parliamentofindia.nic.in/ls/debates/facts.htm>

¹³ Rau, Benegal : India's Constitution in making, 1963.

The Joint Select Committee of Parliament, Great Britain, asked the then Governor of Assam, Sir John Kerr, to prepare a note on a feasible system of filling up the seats of new Council of States by election on the basis of a single transferable vote.

He passed on the request to Sir B.N. Rau as being more competent than him to deal with the subject due to his wide knowledge of constitutional affairs. Sir B.N. Rau's knowledge was utilized in many ways.

Sir Rau returned to India in 1935. He had to forgo the opportunity of Judgeship of Calcutta High Court, because the Government of India was keen to borrow his services in connection with the new Constitution. The Chief Secretary to Bengal Government wrote to him: "*The appointment (with the Government of India) is likely to last for one year and might continue until the introduction of provincial autonomy. Your name has been suggested for this appointment, but before proceeding further, I should be glad to know your own views in the matter. Acceptance of the appointment would mean that you would have to forgo any chance of acting in the High Court which might occur between now and the introduction of provincial autonomy, say, at the beginning of 1937.*"¹⁴

The acceptance of this appointment proved to be the beginning of a new career and a period of intense activity in spheres for which he was well qualified by his earlier experience and talents. Many intricate problems of revising all the existing central and provincial statutes came to the forefront with the introduction of the new Constitution in 1935. He completed the given task in less than eighteen months with a high standard of draftsmanship, thus enabling the constitution to be brought into operation. He was knighted for his distinguished work in 1938.

Sir Maurice Gwyer, the first Chief Justice of Federal Court of India wanted to have Sir B.N. Rau as his colleague and one of the basic requirements to become a Federal Court Judge was a minimum five years' experience as Judge of High Court. Sir Rau went as Judge to the Calcutta High Court to qualify himself. But his term was not destined to run smoothly as there were many interruptions.¹⁵

The first interruption came when he was invited to become the Chairman of the Court of Enquiry involving the dispute about wages and working conditions of the old G.I.P Railways.

Sir B.N. Rau's appointment as the Chairman of the Hindu Law Reform Committee to study the possible reforms that could be made in Hindu Law by the Government of India was the second interruption.

Later he was also made the Chairman of Indus Waters Commission to solve the complex dispute relating to equitable distribution of waters of the Indus and some of her tributaries for irrigation among several regions of undivided India. He familiarized himself with all aspects of the problems of irrigation and tackled every problem in an impartial way. He submitted his report in 1942, which has been regarded not only in India, but also outside, as a classic on riparian rights, covering the subject with great legal knowledge and technical accuracy.¹⁶

After his formal retirement from the Indian Civil Service in 1944, he was persuaded by Sir Tej Bahadur Sapru to accept the post of Prime Minister of Kashmir. He served for eighteen months and then resigned due to the differences with the Maharaja.

In October 1945, Lord Wavell, the Viceroy wrote a letter to Lord Pethick Lawrence, Secretary of State for India saying that he intended to appoint Sir Benegal Narsing Rau in the Reforms Department. Sir Rau had served for broken periods as Reforms Commissioner before and during the Second World War in the Reforms Department of Government of India. He had acquired intimate knowledge of various facets of the constitutional problems during this assignment.¹⁷

Sir Rau was offered permanent Judgeship in Calcutta High Court by the Government of India after his tenure in the Reforms Department, which he politely refused at the same time expressing his gratitude for the consideration in the letter to the private secretary to the Viceroy of India in these words:

"If my personal prospects were all, a decision would have been easy but I have now reached a stage in my official life when they ought to cease to count. India is now a Federation. I have spent off and on, over a dozen years in the study of Constitutional law in general and the Indian Constitution in particular and within the limits permitted to me. I have had some share in the working out of the details of the federal scheme now taking shape. If, therefore, I have any choice, I should like to stay on here until Federation

¹⁴ Rau, Benegal : India's Constitution in making, 1963.

¹⁵ Ibid.

¹⁶ Rau, Benegal : India's Constitution in making, 1963.

¹⁷ Ibid.

in whatsoever form it ultimately becomes is an accomplished fact. This will mean the abandonment of any prospects in the High Court or anywhere else via the High Court, but such things are inevitable".¹⁸

The Viceroy, appreciating his point of view, placed him on special duty, with the status of a Secretary on the Reforms side. Immediately on joining the Secretariat in September 1945, he worked on the draft of an Indo-British treaty. In November 1945, at the insistence of Lord Wavell, the Viceroy, Sir B.N. Rau had a long informal discussion with Pandit Jawaharlal Nehru, seeking his view on the nature of voting in the Constitution-making body.¹⁹

HIS CONTRIBUTIONS IN FRAMING OF THE INDIAN CONSTITUTION:

In January 1946, he had written a valuable paper titled the "*Outlines of a New Constitution*." This paper was an effort to devise a workable scheme avoiding partition of the country. The proposals and memoranda that resulted from Sir B.N. Rau's efforts at balancing conflicting views and interests were never published. It appears that the Cabinet Mission's plan of May 16, 1946 which proposed Constituent Assembly for undivided India was influenced by this paper.²⁰

Sir B.N. Rau was appointed as the Constitutional Adviser on the establishment of the Constituent Assembly on July 1, 1946, which he accepted to serve on an honorary basis.

Sir B.N. Rau was responsible for creating the general structure of the democratic framework of the Constitution. He had prepared a series of pamphlets titled "*Constitutional Precedents*" in September 1946, for the use of the members of the Constituent Assembly, which dealt with the salient aspects of the new Constitution both substantive and procedural. In the introduction of this compilation, Sir B.N. Rau had stated that the object of the pamphlets was to stimulate interest and that the material set out therein has not been selected for the purpose of supporting any particular point of view. He had further requested every member of the Constituent Assembly to supplement this compilation from the results of their own study and research for a fair presentation of all points of view before the Constituent Assembly. The compilation dealt with the following subjects: points of procedure, opting in and out, linguistic provinces and regional arrangements, union subjects, democratic executives, safeguards for minorities, protection of tribal rights and interests, and protection of rights of women and children with a comparative study of relevant provisions in the Constitutions of the United States of America, Canada, Australia, and South Africa and procedures in Government machinery in United Kingdom, Austria-Hungary, Switzerland, Ireland, and U.S.S.R.²¹

Pandit Jawaharlal Nehru in his note to Mr. Eric Coates, Secretary, Cabinet Co-ordination Committee dated September 8, 1946 had appreciated the pamphlets prepared by Sir B.N. Rau in these words:

"Sir B.N. Rau has prepared a number of leaflets and pamphlets on the various issues before the Constituent Assembly, I have read most of them and I find them very helpful. I think they certainly need to be printed in convenient book form all together and sent to all the members of the Constituent Assembly. The pamphlets have been written very objectively and not with a view to support any particular thesis".²²

In September 1946, Sir B.N. Rau prepared two notes on Fundamental Rights for the use of the members of the Constituent Assembly analyzing the scope of various rights as embodied in the Constitutions of some of the more important countries of the world.

In December 1946, in the debate on the "Objective Resolution" resolution there were critical discussions about the future relations between India and the British Commonwealth. Sir B.N. Rau sent a note to Pandit Jawaharlal Nehru for his consideration before the debate could commence: *May I take the liberty of suggesting that in your reply on the "Objectives Resolution". You would know best what to say but my suggestions as it occurs to me:*

¹⁸ Rau, Benegal : India's Constitution in making, 1963.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Rau, B.N: Constitutional Precedents.

²² Rao, Shiva B.: *The Framing of India's Constitution: Select Documents* Volume 1, p. 383.

“The question has sometimes been asked what will be the relations between the new Indian Republic and the British Commonwealth. The answer is not difficult: in the world of today, the relations between States are not governed by labels. The U.S.A. has been a Republic for over 150 years; nevertheless, in two successive World Wars fought on the same side as England to ward off a common peril. Ireland is treated by England as a Dominion and a member of the British Commonwealth; yet, in the last World War, Ireland remained neutral. And so these names have ceased to have much significance as regards mutual relations. The world has entered upon a new era and we have to think in new terms. We are now, all of us, part of a new world organisation- the United Nations, units of the World Federation in the making. A vast ‘multicellular’ Republic is being formed, of which the United Kingdom, the Dominions, India and all the other States of the world are, or will in due course be, members. India’s relations with the other members will necessarily be of the friendliest and closest collaboration and co-operation in the pursuit of our common ideals.”²³

Sir B.N. Rau had prepared a questionnaire bearing on the salient features of the Constitution, which was circulated to all the members of the various legislatures on March 17, 1947 with a covering letter inviting their individual views thereon. They were requested to send in their answers before April 10, 1947, in order to facilitate the work of framing a new Constitution before June 1948.

The questionnaire was divided into five parts namely: *Head of the Indian Union, Executive, Legislature, Judiciary, and Amendments to the Constitution*. Each part had a certain number of questions and under each question a brief explanatory note was given.

Extract of the first question from Part A - Head of the Union²⁴

1. What should be the designation of head of the Indian Union?

[*Note: In this and the following notes reference has been made to the Constitutions of various countries. But it must be remembered that the United Kingdom and Ireland are not federations and even South Africa is not a true federation*]

U.S.A.		President
Switzerland		
Ireland		The local executive is Governor General on behalf of His Majesty
Canada		
Australia		
South Africa		The executive head is the Governor General

A “Memorandum on the Union Constitution” was prepared by him for the consideration the committee set up pursuant to a resolution passed by the Constituent Assembly on April 30, 1947. He also prepared an independent memorandum together with a detailed draft of many of the proposed provisions of the Union Constitution on May 30, 1947.

He was also a member of the Ad hoc Committee that was set up to consider and report on the Constitution and powers of the Supreme Court, which was headed by Shri S. Varadachariar, a former judge of the Federal Court. The other members of this committee were Alladi Krishaswami Ayyar, B.L. Mitter, and K.M. Munshi.

The original draft of the Constitution was prepared by Sir B.N. Rau in October 1947. It contained 243 Articles and 13 Schedules. The final Draft Constitution had 395 Articles and 8 Schedules as 2473 amendments were moved by the Constituent Assembly.

When the Drafting Committee was considering the provisions of the Draft Constitution, wherein an amendment was proposed for laying down qualifications for membership of Parliament, Sir B.N. Rau strongly expressed his views that some qualifications should be prescribed for Members of Parliament that should be so precisely formulated that an Election Tribunal would be able to say in a particular case whether or not the candidate has satisfied them. He further suggested that the best option would be to insert an enabling provision in the Constitution for the appropriate Legislature to define necessary standards.

²³ Rau, Benegal : India’s Constitution in making, 1963 p.lxx.

²⁴ Rau, Benegal : India’s Constitution in making, 1963.

He was deputed by the President of the Constituent Assembly to visit U.S.A., Canada, Eire, and Britain for personal discussions of important features of India's draft Constitution with leading constitutional experts.

He visited these countries between October and December 1947. He had discussions with the Chief Justice of the US Supreme Court; Former Chief Justice Hughes and Justice Frankfurter, Burton and Murphy; as well as with Mr. Boland, the Irish Secretary for Foreign Affairs in Ottawa with Justice Thorsen President of the Exchequer Court; Mr. John Hearne, the High Commissioner of Ireland; Mr. Wershof and Mr. Jackett, Constitutional experts; and Justice Learned Hand of the Federal Circuit Court of Appeals in New York.

Sir B.N. Rau had the privilege to meet President Truman at the White House. Mr. President's reaction was: "*Whatever else you may copy from our Constitution; do not copy our provision for mid-term elections.*" For which Sir Rau's reply was that since the Indian Constitution has adopted Parliamentary System, the President's term of office will be the same as that of the House of People.²⁵

Sir Rau met Dr. Jessup (Professor of International Law, Columbia University), Professor Mirkin (Constitutional Consultant, United Nations), Dr. Hamburger (Secretary-General, United Nations Year Book of Human Rights), Professor Dowling (Professor of Constitutional Law, Columbia University). Both Dr. Jessup and Prof. Dowling regarded as very important the fact that the amendment gave power to the Centre to legislate on a subject, which is normally provincial if it has a national importance.²⁶

The study tour proved to be valuable in reaching tentative decisions on certain provisions of the Indian Constitution.

Dr. Rajendra Prasad, the President in July 1948 wrote a letter to Sir B.N. Rau showing his appreciation that his paper on "India and the Commonwealth" was a useful and thought-provoking paper, intended to stimulate discussion rather than to offer advice. In this letter he also referred to the possibility of an offer of a new assignment to Sir B.N. Rau by the Prime Minister and sought his reactions.

Sir B.N. Rau replied in these words:

*"The Prime Minister has not mentioned anything to me; but I should like you to know what I feel generally. It is now nearly two years since I first took on my present job as Constitutional Adviser; and when I took it, I made it a condition that it should be on an honorary basis. It has largely been a labour of love all through, and I have been doing it in spite of various difficulties. Indeed, there were moments when, but for the fact that you were the President and perhaps needed me; I should have liked to retire from the scene. We are now nearing the end of our labours in the Constituent Assembly and I hope you will be able to spare me as soon as any work which is congenial to me offers itself."*²⁷

Sir B.N. Rau was relieved from his work as Constitutional Adviser but was entrusted with another important assignment relating to the Hyderabad issue in the United Nations Security Council. He prepared the brief for this subject in close consultation with the Pandit Jawarhal Nehru and Sardar Vallabhbhai Patel. In October 1948, the case before the Security Council was argued by Sir A. Ramaswami Mudaliar on the lines of the brief prepared. Sir Rau was sent on the Indian delegation to U.N. General Assembly in 1948 to assist India's spokesman on the Hyderabad issue. He made his mark as an outstanding delegate.

In 1948, Sir B.N. Rau's name was proposed for one of the vacancies in the International Court of Justice at The Hague. Even though his prospects seemed to be good at a later stage it was found that several Powers, which had earlier promised to support India, suddenly switched over to Yugoslavia's candidate.

However, in the same year, Sir B.N. Rau was elected to the International Law Commission and became the second Vice President. He continued to be a member until he was elected to the International Court of Justice.

Later, when India was elected as a member of the Security Council, Sir B.N. Rau was sent with a rank of an Ambassador. He worked hard as India's spokesman. His sense of duty was so immensely incredible that within four weeks of undergoing an operation for cancer, he was in his seat in the Security Council arguing the case of Kashmir from India's viewpoint. The work in the Security Council was hard and he neglected his health. India's term as a member of the Security Council was coming to an end, Sir Rau was satisfied that he had done his best to maintain India's reputation. There was a fear of recurrence of cancer towards the end of 1951. So he requested a position that

²⁵ Rau, Benegal: India's Constitution in Making, 1963.

²⁶ Ibid.

²⁷ Ibid.

better suited his health. During this time an invitation came to him from the Ministry of External Affairs to stand for election to the International Court of Justice for one of the vacancies. Without much effort, Sir Rau was elected as Judge of International Court of Justice at the end of 1951. He served as the Judge of International Court of Justice for little more than a year.²⁸

By mid 1953, his health deteriorated and the old trouble recurred in an aggravated form beyond the hope of recovery. When he was undergoing treatment at a hospital in Zurich, in October 1953, a touching incident happened. The late Mr. Ghulam Mahomed, the then Governor General of Pakistan who had suffered a paralytic stroke, came to meet Sir B.N. Rau leaning on his crutches and said, “*Come and be my guest at Karachi. We will look after you. We have no one like you in Pakistan.*” This shows the respect which Sir B. N. Rau commanded across the border. His journey through life ended on November 30, 1953.

Other important contributions:

- Sir B.N. Rau’s interest in science and research can be seen from his idea of establishing a Central Research Institute in India in 1939 to make the fullest possible use of the knowledge of scientists, particularly in the fields of medicine and surgery. He got in touch with Dr. Otto Loewi, an internationally reputed specialist in drug research, and also obtained from him the names of some top- ranking specialists. But the official reactions to this scheme were never warm or enthusiastic. Through the Department of Health, the Government of India went ahead with preliminary considerations in favor of such an Institute; the scheme was finally abandoned after months of futile negotiations. Thus a unique opportunity of starting a Research Institute under the guidance of a number of eminent world-renowned scientists was lost by India in 1939.
- Sir Jeremy Raisman, Finance Member during the Second World War was interested in introducing legislation for an estate (or death) duty. He was aware of Sir B.N. Rau’s legal acumen and his deep knowledge of Hindu Law, so he requested Sir Rau to draft a measure, with all the details worked out. The draft was later revised and modified by its author under the instructions of Sir Archibald Rowlands, Sir Jeremy Raisman’s successor.
- Shortly after the end of the Second World War, the Indian National Army trials began. The first of these trials that gained a great deal of attention involved three officers of the Indian army who had joined Netaji Subhash Chandra Bose’s liberation forces in Malaya. The trial took place in Red Fort, Delhi. The defence lawyer was Shri Bhulabhai Desai, who argued the case with remarkable ability. It is of interest to know that the line of defence was suggested by Sir B.N. Rau in a carefully drafted memorandum.
- Sir B.N. Rau also played a significant role in framing the Constitution of independent Burma. In 1946, General Aung San, the young head of post-war Burma was in New Delhi on his way to London to discuss his country’s future with the Labour Government. While in New Delhi, he showed keen interest in the procedure and mechanism of the Indian Constituent Assembly and consulted Sir B.N. Rau on the practicality of setting up similar machinery for framing Burma’s Constitution. General Aung San appointed a Constitutional Advisor and deputed him to New Delhi in early 1947. He had detailed consultations with Sir B.N. Rau. The first draft of the Constitution was prepared and taken to Rangoon in May 1947. After certain modifications in the first draft, a Drafting Committee gave it a final shape. Sir B. N. Rau was invited to Rangoon in August 1947 to read the final draft of the Burmese Constitution. It was adopted by Burma’s Constituent Assembly on September 24, 1947. Sir B.N. Rau had mentioned in his article for the *India Quarterly* that he had the honor of being associated closely with the framers of the Burmese Constitution at almost every stage.¹³
- Sir B.N. Rau takes the credit of laying the foundation of the Afro-Asian group in the United Nations.

Some eminent persons appreciating the knowledge and contributions of Sir B.N. Rau:

Dr. Rajendra Prasad, the President of the Constituent Assembly acknowledged the contribution of Sir B.N. Rau in his speech at the final session of the Constituent Assembly held on November 26, 1949 in these words:

“...The members of Constituent Assembly worked in a business like manner and produced reports which were considered by the Assembly and their recommendations were adopted as the basis on which the draft of the Constitution had to be prepared. This was done by Shri B.N. Rau, who brought to bear on

²⁸ Ibid.

his task a detailed knowledge of Constitutions of other countries and an extensive knowledge of the conditions of this country as well as his own administrative experience. The Assembly then appointed the Drafting Committee, which worked on the original draft prepared by Shri B.N. Rau and produced the draft Constitution, which was considered by the Assembly at great length at the second reading stage..."

*I must convey, if you will permit me, my own thanks as well as the thanks of the House to our Constitutional Adviser, Sir B.N. Rau, who worked honorarily all the time that he was here, assisting the Assembly not only with his thoroughness and intelligence, but also by supplying them with the material on which they could work."*²⁹

Dr. B.R. Ambedkar, the Chairman of the Drafting Committee of the Constituent Assembly acknowledged the contributions of Sir B.N. Rau on November 25, 1949 in these words:

*"I would also like to endorse what members of this House have said in regard to the services of Mr. B.N. Rau. His help we missed during the last stages but while missing his help we were aware of the enormous amount of assistance we had received from him during the earlier part of this work and particularly he was so progressive in his views, so sympathetic and so quick as to be able to evolve a formula whenever we had a difficulty. The credit that is given to me does not really belong to me. It belongs partly to Sir B.N. Rau, the Constitutional Adviser to the Constituent Assembly who prepared a rough draft of the Constitution for the consideration of the Drafting Committee."*³⁰

Justice Felix Frankfurter of the Supreme Court of U.S.A. remarked to Shri Girija Shankar Bajpai, the then Secretary General, Ministry of External Affairs: *"If the President of U.S.A. were to ask me to recommend a Judge for our Supreme Court on the strength of his knowledge of the history and working of the American Constitution, B.N. Rau would be the first on my list."*³¹

Granville Austin, Scholar of Indian Constitution in his book *"The Indian Constitution: Cornerstone of a Nation"* writes: *"B.N. Rau must be placed among those important in the framing of the Constitution. As Constitutional Adviser, Rau's advice was heard in the Assembly's inner councils, although he was not an Assembly member. A legalist, an eminent advocate and judge, a student of constitutional history, and an able draftsman, one of the more Europeanized intellectuals in the Assembly, Rau looked to Euro-American constitutional precedent perhaps even more than other Assembly members for the devices to be used in India's Constitution."*³²

Reference given in Parliament:

On November 30, 1953, the Prime Minister, with the leave of the Speaker, made a reference to the sad demise of Sir B.N. Rau who was neither a sitting member nor an ex-member of the House.

Pandit Jawaharlal Nehru, the Prime Minister said:

*"He was intimately connected with the Constitution-making and he might well be called one of the principal architects of our Constitution."*³³

Shri G.V. Mavalankar the Speaker, associating himself with the reference made by the Prime Minister observed that:

"Although, as stated by the Hon. the Leader of the House, it is not the practice in this House to make references to the passing away of non-Members, either of this Parliament or its predecessors, when the Hon. the Leader of the House asked me as to whether I could permit him to make a reference, I instinctively felt that I must, because the case here is quite exceptional. Apart from the unique personality of Mr. B. N. Rau and his eminent services to the country, what weighed most with me was that he was, as it were, interwoven in our present parliamentary life. He worked for it during the last few years of his life, and we all know what a valuable document in the form of the Constitution we have got. He was also the architect of the Hindu Law reform Bills. Thus his association with Parliament or the Legislature was so extensive and so wide that it is only technically that he was not a Member of Parliament. Apart from that, of course,

²⁹ Constituent Assembly Debates Volume XI dated November 26, 1949.

³⁰ Constituent Assembly Debates Volume XI dated November 25, 1949.

³¹ Rau, Benegal: *India's Constitution in Making*, 1963, Allied Publishers, Bombay.

³² Austin, Granville: *The Indian Constitution: Cornerstone of a Nation* p. 20.

³³ Sharma, Brij Kishore: *Introduction to the Constitution of India*, 2011, p. 173.

he was an eminent Indian and it is but proper that we all should gratefully remember him and express our sorrow at his sad demise at a comparatively, (as the Leader of the House said), young age. We may send our condolences to his family in their sad bereavement. I entirely associate myself with all that the Leader of the House has said.”

The House stood in silence for a minute as a mark of respect.³⁴

Sir B.N. Rau had an extraordinary combination of knowledge, talent, humility, and capacity for hard work. He not only commanded respect in India but also in foreign countries. This article is a humble tribute to this great son of India on his 130th Anniversary of his birth falling on February 26, 2017.

I would like to end with the words of Mr. Johann Heinrich Pestalozzi, the Swiss social reformer and educator:

“So when a great man dies, for years beyond our ken, the light he leaves behind him lies upon the paths of men.”

³⁴ H. P. Deb., Part II, dated November 30, 1953, Cols 1029-30. from web page <http://www.parliamentofindia.nic.in/ls/decision/decp47.htm>