

X. IMPORTANCE OF INDIA'S CONSTITUTION IN THE MAKING AS A SOURCE OF UNDERSTANDING THE CONSTITUTION

- DEVANSH MALHOTRA* AND DR. KALYANI ABHYANKAR**

Abstract

*This article provides a critical analysis of the substantive contribution made by B. Shiva Rao's book, *India's Constitution in the Making*, to document the historical, political and intellectual underpinnings of the Constitution of India. The article focuses on Rao's reconstruction of the deliberative process of the Constituent Assembly especially in relation to fundamental rights; liberty; preventive detention; and the Article 21 & 22 procedural safeguards. Rao has extensively used archival records, committee minutes, and correspondence between constitutional framers to piece together a unique participant-observer account of how the Constitution was created, as well as the competing philosophical perspectives of the Constitution that influenced the final product. The review goes on to further explore Rao's coverage of the work of Sir B.N. Rau and Dr. B.R. Ambedkar, and the ways in which the technical process of drafting a Constitution and the transformative vision for creating a new society converged to actually produce the Indian Constitution. In addition to commending the documentary, methodological, and jurisprudential values of Rao's work, the review also critiques its limited discussion of the socio-economic realities and post-colonial realities of how constitutional*

* Research Scholar (Law) at NLIU Bhopal.

** Assistant Professor of Law at VIT School of Law, Amravati, Andhra Pradesh.

rights operate. Ultimately, it is the position of the review that Rao's contribution represents one of the most important constitutional resource materials for thought about the philosophical commitments of the framers of the Constitution regarding liberty, due process, constitutional morality and democracy in India.

Keywords: Transformative Constitutionalism, Equality, Liberty, Justice, Constitutional Morality, Indian Supreme Court, Judicial Activism, Social Justice

I. INTRODUCTION: THE BOOK AND ITS AUTHOR

B. Shiva Rao's work *India's Constitution in the Making* is among the most authoritative and important text on the making of the Indian Constitution and the constitutional history of India. Rao is one of independent India's leading constitutional commentator and historians and was a participant observer of the process of making and framing the Constitution. This work provides a painstaking account of the historical, political, and intellectual foundations of the Indian Constitution. Rao had access not only to the process of the Constituent Assembly, but also the drafting minutes, the official correspondence and personal notes of many of the framers of the Constitution; this access provides the book with a unique authenticity and scholarly significance. More generally, while many works of constitutional commentary look to *post-facto* judicial interpretations and opinions, Rao's work is a rarity in the form of an original source-based

intellectual reconstruction, of the debates and philosophic choices of the framers of the Indian Republic.

II. CENTRAL OBJECTIVES AND SCOPE OF THE WORK

The primary focus of the book is to detail the historical development of the Indian Constitution, starting with the political discussions preceding independence, and concluding with the line-by-line debates of the Constituent Assembly. Rao details the different influences that shaped this process, including colonial (and therefore hierarchical) approaches to administration, nationalist constitutional thought, comparative constitutional experiences in other parts of the world, and the evolution of human rights norms on the international stage. The book serves more than just a narrative purpose; it also provides a rationale for why the framers favoured a constitutional democracy of rights in which liberty, equality, and procedural fairness suddenly acquired a much stronger footing.

The book situates the framing of the Constitution in its socio-political context, the pressures of repression during colonial rule, the important debate for civil liberties, and the risk of reviving authoritarianism. The historical framing gives contemporary scholars a framework to understand how liberty and human rights were conceived by the generation of framers engaged in framing the Constitution and in deliberation with one another.

III. STRUCTURE AND KEY THEMES

Rao divides the study into thematic sections related to:

1. The historical context of Indian constitutionalism, which includes the Indian constitutional experiments prior to 1935.
2. The Cabinet Mission Plan and discussions and negotiations which led to the meetings of the Assembly.
3. The internal processes of the Constituent Assembly, including committee arrangements, subcommittees, and the drafting process.
4. The article-by-article process of development, involving review of debates, proposals to amend the draft, dissents, and role of concepts.
5. The leadership contributions of those such as B.N. Rau, Dr. B.R. Ambedkar, K.M. Munshi, Alladi Krishnaswamy Ayyar and others.

One of the most important sections concerns the process in drafting Fundamental Rights, due process, preventive detention, and criminal procedure; all these directly relate to modern bail and liberty jurisprudence.

IV. RECONSTRUCTION OF LIBERTY, DUE PROCESS, AND PERSONAL FREEDOM

Rao's treatment of Article 21 (the right to life and personal liberty), Article 22 (arrest and detention), and the discussions regarding 'due process of law' *versus* 'procedure established by law' are some of the greatest benefits of the text. Rao thoughtfully outlines and quotes extensively from the Drafting Committee, and from correspondence, B.N. Rau had with members of the committee, and is able to capture the challenges the framers faced in balancing the structure of individual rights with the interests of the state in governance and security. In Rao's painstaking detailing of the debate concerning liberty, he describes:

- A profound distrust of executive action stemming from colonial times.
- A understanding that liberty lies at the heart of democracy.
- A fear of judicial overreach stemming from the American 'due process' doctrine.
- A willingness to have procedural safeguards in place to protect against arbitrary detention.

Rao makes it clear that framers did not intend to impose personal liberty to serve the urgency of legislative clerical expediency. Liberty was intended to be honoured as a fundamental value, with strong judicial protections.

V. THE ROLE OF B.N. RAU AND DRAFTING METHODOLOGY

One of the richest elements of Rao's work is his examination of the Indigenous intellectual role of Sir B.N. Rau, the Constitutional Adviser. Rao studies Rau's memoranda on fundamental rights, including consultations with international constitutional authorities (including Justice Felix Frankfurter) and a preference for a hybrid or mixed constitutional model. Rao's emphasis on the intentionality behind having:

- Personal liberty as inalienable.
- Broad procedural provisions scrapped over structural guarantees.
- State conduct would occur subject to ideally independent judicial oversight.

VI. CONSTITUENT ASSEMBLY DEBATES AS ANALYSED BY RAO

Rao provides a detailed summary and context for the Constituent Assembly Debates (CAD), with a particular emphasis on the following issues:

- Preventive detention
- Safeguards in criminal justice
- Rights against arbitrary arrests
- The balance between liberty and public order
- Equality before law (Article 14)

- Vulnerable communities' safeguards

Rao emphasises that many members (including Ambedkar, Kriplani, and K.T. Shah) said repeatedly that liberty cannot be sacrificed for administrative convenience. Rao's reconstruction clearly indicates the intellectual obligations that the Supreme Court must consider in balancing restrictions on Fundamental rights of citizens.

VII. STRENGTHS OF THE BOOK

Rao has gained unprecedented access to information such as internal notes, draft texts, deliberations by the Assembly and private correspondence between many of the original framers. Therefore, Rao's book, 'India's Constitution in The Making' serves not only as a history book, but also contains documentary evidence about the Constitution; Rao's work is based on archival material as well. Whereas previous books have relied on memories and ideologies to interpret what happened, Rao uses documentary evidence to present a picture of how the Constitution was created, and he gives insight into the intellectual effort that went into creating the Indian Constitution. A major strength of the book is Rao's approach to providing viewers with a balanced view of the process and not allowing himself or his readers to be swayed by the ideology of any particular group of individuals involved in this major historical event, nor does he try to sanitise the

processes that were involved in creating the Constitution. Instead, Rao highlights all of the many layers of issues that were present in the Assembly when its members were making their decisions on how to draft the Constitution, such as the many disagreements between members of the Assembly, withdrawn proposals by the Assembly members, the changes that occurred in the constitutional philosophies during the deliberations of the Assembly and all of the unresolved tensions that were present when the final text was produced. With this kind of methodological honesty on the part of the author, the reader can learn to understand not only how the Constitution was created, but also how it developed over time as a result of competing views on such issues as the State's powers, individual liberties, governance and social justice. Rao's excellent scholarship provides a complete record of all debates, amendments, dissenting opinions, recommendations from committees, and more, making it an essential resource for researchers studying Indian Constitutional Law from a doctrinal, historical, and jurisprudential standpoint. Additionally, the detailed mapping of ideological currents, including liberal individualism, communal concerns about social welfare, and socialist commitments to egalitarian transformation, creates a broad intellectual context for understanding how India's constitution developed its identity. Consequently, *India's Constitution in the Making* not only serves as a historical account but also offers a constitutional compass for evaluating present-day tensions between state security objectives and the protection of individual liberty.

The making of the Indian Constitution was a collaborative endeavour characterised by the distinct but complementary contributions of Sir B.N. Rau and Dr. B.R. Ambedkar. Dr. Rajendra Prasad famously summarized this relationship by noting that while Rau “visualised the plan and laid its foundation,” Ambedkar was the “skilful pilot” who steered the document through its final stages. Sir B.N. Rau, as the Constitutional Adviser, provided the necessary technical and scholarly framework. In October 1947, he produced a comprehensive working draft comprising 243 articles and 13 schedules, which served as the “rough draft” for the assembly. This draft was the culmination of extensive global research, during which Rau consulted international jurists like Justice Felix Frankfurter and Judge Learned Hand. These interactions led to pivotal recommendations, such as removing the “due process” clause to prevent judicial overreach and modelling India’s Directive Principles of State Policy on Article 45 of the Irish Constitution. Rau’s role was primarily that of intellectually bureaucratic and preparatory, establishing a legal structure without a direct political mandate. Dr. Ambedkar, as Chairman of the Drafting Committee, transformed this technical framework into a living political and moral charter. Over 141 days of intense labour, he led the committee in refining Rau’s draft to prioritise social and economic justice. Ambedkar infused the document with a transformative vision, ensuring it addressed the needs of marginalised groups through Fundamental Rights and affirmative action provisions. His role was both practical and ideological; he was the primary defender of every

clause on the floor of the Constituent Assembly, building political consensus among diverse and often conflicting groups during the volatile period following Partition. While some modern perspectives attempt to elevate Rau's technical authorship to diminish Ambedkar's leadership, Ambedkar himself explicitly acknowledged Rau's contributions as a vital starting point. He credited Rau for the preliminary draft while emphasizing that the Drafting Committee made major revisions to imbue the text with moral force. Ultimately, the Constitution represents a synthesis of Rau's international legal erudition and Ambedkar's commitment to democratic social reform, creating a robust framework that has governed Indian Republic for over seventy years.

VIII. CRITIQUES AND LIMITATIONS

The work is primarily descriptive therefore requires interpretation by later scholarship in order to supplement its findings. The work does not adequately outline empirical context since the socio-economic impact of constitutional rights is not considered as part of empirical context; the work does not adequately include a discussion of the connection between the criminal justice safeguards provided in the constitutional text and their application in the post-colonial enforcement environment as it exists today. Nonetheless, this work provides an essential foundation for furthering the field of constitutional studies.

IX. CONCLUSION

B. Shiva Rao's India's Constitution in the Making is one of the most authoritative scholarly works for appreciating the philosophical and structural foundations of the Indian Constitution. Its richness of context and documentation makes it indispensable for research involving these topics in the contexts of liberty, due process of law, and the guarantees of criminal procedure. India's Constitution in the Making is not just a historical curio; it is a living resource for understanding how India's constitutional DNA encodes liberty, due process, and fair procedure. Drawing on the original commitments of the framers to liberty, Rao's writing supports a normative critique of statutory regimes that routinely violate personal liberty and restrict personal freedom. For this reason, the book is an important academic resource for anyone interested in reconciling penal law with constitutional morality, apart from many other issues concerning, equality, liberty and upliftment of the weak.