

Pr. 18

1600

12/9/49

Forwarded to the  
Secretary - Chattram

From: Sardar Brothers,  
Sugar Agents,  
Kanodia Commercial Buildings,  
Kastoor-Sa-Gandhi Road,  
KANPUR.

Dated 9th May, 1949.

Respected Honourable Sardar & Beloved Leader Of the Country,  
JAIHIND !

Inspite of the facts that I know your time is very valuable, and your Honour should not be disturbed, but still I am compelled to write you this letter to clear the doubts that have arisen in my mind, seeing the spirit of provincialism increasing in the minds of my country men. Some time when I hear talk, of general people, I fear that My Hindustan may not be forced to become the Balkans of Europe.

Public has full faith in you, My respected SARDAR, and as long the reins of Government are in your hands; no body can dare to harm the country, but for the future of the country can not be said bright, as long the poisonous plant provincialism, is not being uprooted.

Your present act of joining small states of Hindustan, in big units like provinces, have no doubt has made the Republic of Hindustan as very strong, and your ~~like~~ beloved name will ever be remembered by the coming generations of Hindustan, with love and respect.

Respected Sardar, still there is very big task before you, and that is to uproot the position of provincialism, and to Make Hindustan a strong and safe republic. This can only be done to finish the ~~separate~~ Provincial Governments, and to create only one Central Government. No doubt this task is very hard, and specially, when the poisonous Plant of Provincialism, is being watered by persons like President of Congress, and other influential Congress leaders. To-day Beharee-Bengalee, Beharee-~~English~~, Cordia, Madras-Karnatic, & Maharashtra-Gujrati Controversy is daily, increasing, and this is all due to provincialism spirit.

More over present Provinces were being created by the ~~like~~ British ~~like~~ Empire to loot the country, and to feed their own country. This sort of Government do not suit the poor country, which is very very costly, and the poor public is being crushed under the heavy cost of Provincial Governments. Why we should have not one Central Powerful Government, instead of so many provinces Governments.

As you have grouped the states, similarly will it not be better to group the provinces only into four Zones, and two Military Zones of East & West. These Zones should not have any power to tax, but should draw the expenses from the Center. Only Central Government should have Power to Collect taxes. I have tried to explain my this idea, through the enclosed four charts, which will even finish the controversy of provincial languages, and hope your Honour will go through the same.

With Respect.

I am yours  
beloved Country man.

S.S. S. N.

Copy forwarded to Deshrattan, Shree Rajinder Prashad Jai, President of Constituent Assembly of Hindustan, New Delhi, with request, that my this pray be circulated amongst the members of the Assembly.



Elected president  
of  
Republic of Hindustan

Elected Premier  
Elected Deputy Premier  
with their cabinet  
Elected by Upper House of Parliament.

Upper House of Parliament of Hindustan  
Represented by each member of each  
Supreme Dist: Councils of Hindustan and 11 members representing  
Industry, Universities, Chambers, and Big port cities having  
corporation  
all above members are elected by lower House  
of Parliament of The Republic of Hindustan.

Lower House of Parliament of Republic of Hindustan.  
represented by elected members from each districts (Two members  
and one member by direct by each Supreme Dist: Council,  
and members representing Industry Universities, etc  
as shown below.

The above houses should work in Official Language  
of Country, and every member should know the Official  
Language of Hindustan.  
For Time Being (Limit should be fixed) to appoint  
translators.

Supreme Dist: Councils of  
five Districts, representing  
five district, with strength  
of 30 members elected by  
five district, and each district  
having five members, four being elected direct by  
public, and one member by the Municipal and Dist Boards of the District  
amongst from their selves.

Dist: Boards

Municipalities

corporations

Panchayats

Adult Voters of Villages

Adult Voters of Towns & Big Cities.

Please read from Below

Also elect President

Election for Lower House  
Universities elect members  
from each University  
Chambers of all towns elect Max 10 members  
jointly elect with City Public Two  
members from  
each Dist for  
Lower House  
of Parliament

Public



## PRESIDENT

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4 Elected Governors  
of 4 zones.2 Nominated Military  
Governors for two  
Military AreasAssisted by Commissioners  
for  
Supreme Districts Council  
areas.assisted by  
5-Collectors each for  
one district.Assisted by  
two- Deputy CollectorsAssisted by  
Head Taulkadars -2  
Each for one TaulkaAssisted by  
two Asst: TahlatiesAssisted by Head  
Patels.Assisted by  
Village Patels.Chart No.3.  
For Administration.

President.

Premier

Home Minister

Six Governors.

Director General  
Police of Hindustan.Six-Inspector General of Police  
each for one Zone.Deputy I.G. Police  
for each Dist:  
Council Area.

Commissioners

(Representing the  
Governor)Collectors As  
Dist: MagistratesSupdts  
of Police

Deputy Magistrates

Both to work under instructions of  
District Magistrates

Deputy Supdts of Polices

Circle ..Inspectors, Inspectors

Their Junior Staffs, ending with Police man.



President

Chief Federal Judge

Premier

Minister of Law

to be known as  
Honorable Justice of Hindustan  
Should work in Official  
Language of Country.

Assisted by  
~~six~~ Judges Bench  
representing each zone

Working in Official Language of  
Country.

Chief Judges of Zones  
with bench of Judges

High Court Judges  
for five Dist Councils Area  
With bench of 5 Judges  
each representing  
one Dist Councils

Working in language of the  
area.

Supreme Judge of  
District Council

Do Do do

Assisted by two judges.

Dist Judges

Do Do Do

Assisted by two judges.

Town Judge

Taulka Judge

City Judge

Assisted by  
2. Sub Judges

Assisted by  
3. sub judges

Assisted by  
required number of sub judges.

each having  
four sarpancha.  
of one Taulka

Various Head  
Village Panch  
assisted by  
Committee of  
four Village Pancha.

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19.19

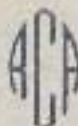
# RANG COMMITTEE AMRITSAR,

रंग कमेटी अमृतसर ।

16/8

13/5/48

CONSTITUTION SECTION



Dated the 7th, May, 1949.

*Forwarded to Secy. Chaudhary*  
No. \_\_\_\_\_  
The Honourable Dr. Rajinder Prasad,  
President,  
Constituent Assembly,  
New Delhi.



Honourable Sir,

Re- Sales Tax.

We, the members of the Rang Committee as also the Stockists and Distributors of the leading Importers at Amritsar, do hereby request you to incorporate the subject of sales tax with the Central subjects, and remove that from the provincial list of taxation.

This measure will result in uniform taxation and will remove disparity with regard to rate of taxation in different provinces and states.

Thanking you.

Yours faithfully,  
for the Rang Committee, Amritsar,  
*Valarai Ram Kollu*  
President Secretary.

Copy to :- 1. The Hindustan Times, New Delhi.  
2. The Tribune, Ambala.  
3. The Chamber of Commerce, Ambala City.



Maddala Soundaryarao,  
Ramarao Peta,  
Coacanada,  
10<sup>th</sup> May 1949.



The Honourable  
Dr. Rajender Prasad,  
President,  
Constituent Assembly,  
New Delhi

Subject: Abolition of Provincial Governments

Sir,

I enclose herewith my letter to the Honourable Sardar Vallabhbhai Patel dated 19<sup>th</sup> April 1949 on the above subject for the information of the Constituent Assembly.

The proposed alterations in the units of administration are intended to put an end to the growing evil of Provincialism, unhealthy rivalries and unnecessary controversies. Provincial legislatures are but costly shows serving no useful purpose. Their abolition will conduce to economy and efficiency in administration and to concentration of power in the Federal Government to enable it to fight successfully against all forces of evil, corruption and disintegration that are eating into the vitals of our body politic.

I request that the Constituent Assembly may pass the necessary legislation to bring about such a change. It may be the Government are contemplating to bring about such a change, but the sooner it is done the better. Tai Hind.

Yours Faithfully,  
Maddala Soundaryarao.



Copy.

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Maddala Soundanyarao,  
Ramarao Peta,  
Cocanada.  
19<sup>th</sup> April, 1949.

The Honourable  
Sardar Vallabhbhai Patel,  
Ag. Prime Minister of India,  
New Delhi

Subject: Abolition of Provincial Governments.

Sir,

I venture to place before the Government of India proposals for the abolition of the existing provinces, individual States and the States Unions together with their legislatures, and substituting in their stead, smaller units of administration for the better government of India. The existing provinces or the future linguistic provinces envisaged in the Press and the Platform are too unwieldy and unequal in size to have a uniform and efficient administration.

(1) Formation of smaller units about fifty in all, each consisting five districts on the average, is desirable in the present political atmosphere. For example take the case of the envisaged Andhra Province. The districts of Vizagapatam, East Godavari, West Godavari, Kistna and Guntur may be formed into one State; the districts of Nellore, Chittoor, North Arcot, Chengalpat and Madras into a Second State, Rayalsima consisting of Cudappah, Karnool, Bellary, Anantapur and Banganapalle into a third; Warangal, Nalgonda, Balda (Hyderabad), Karimnagar, and Adilabad districts into a Fourth State, Medak, Nizamabad, Mahboobnagar, Gadwal and Wanaparti into a Fifth. Thus the linguistic areas of Tamil, Kanarese, Malayalam, Maharashtra, etc., can be rearranged in smaller groups.

P.T.O



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- (1) The head of each state is to be appointed by the Federal Government and he is to be assisted in the administration of the State by a council of advisers elected by the people on a adult franchise.
  - (2) The regional language must be used for all work in the internal administration of the State. Some places in a few districts are bilingual, such as Chanda district in C.P. Ganjam district in Orissa, and Chengalpat district in Madras Province. Both languages spoken in those districts must be recognised as official languages.
  - (3) In interstate relations and relations with Federal Government English or the Federal Language (Hindustani) with Nagari script may be used.
  - (4) The existing High Courts also may be abolished, Chief Courts being created for each state. The Federal Court must be located in a central place of our Union, and it may be expanded so as to serve as a Court of appeal for all Chief Courts.
  - (5) To safeguard the cultural and other interests of the people speaking the same language, the existing Provincial Congress Committees formed on linguistic basis must continue to function. The jurisdiction of the existing universities also need not be changed, with the formation of the new states.

The division of Federal India into fifty or more states as stated above will put an end to all controversies, regarding linguistic provinces, boundary disputes, conflicting claims on the cities of Bombay and Madras and the accession of Hyderabad. All forces of disintegration such as Communalism, nepotism and corruptions of all kinds can be more easily eradicated. The cost of administration will be reduced and more money can be spent on constructive work to improve the happiness and prosperity of the common people.

If the scheme is acceptable to Government it may be placed before the All India Congress Committee at its next meeting for elucidation of its opinion.

In the context of world events that followed the Second world war the need for a strong, united and Independent India is greater at the present time than it was ever before. India with its vast resources and manpower, working for peace, happiness and prosperity for all will be a world force to count, which can resolve all future conflicts and ensure peace and security in the world. All efforts of the people and the Government must be concentrated to that end. *Jai Hind.*

Yours Faithfully,  
Maddala Sourdanjan Rao.



1761  
17/5

No. S-36/2888-8

Political and Services Department  
Bombay Castle, 16 May 1949.

From

M. D. Bhat, Esquire,  
Chief Secretary to the Government of Bombay  
Political and Services Department.

To

The Secretary to the Constituent Assembly of India,  
New Delhi.

Subject : Members of the Legislative Assembly  
qualifications of -.

Sir,

I am directed to forward herewith for the consideration of the Constituent Assembly of India a copy of a cutting from the Free Press Journal of Bombay dated 24th March 1949 on the above subject.

Yours faithfully

*Govindji*

For Chief Secretary to the Government of Bombay  
Political and Services Department.

VP.12.5.49.





Copy of the cutting from the Free Press Journal of Bombay  
dated the 23rd March 1948.

M.L.A's

"In a young democracy like ours, much depends on the quality of work turned out in the various legislatures. In these days of efficiency, when minimum educational standards are fixed for clerks and even peons in Government service and are rigidly adhered to, it is regrettable that no such minimum educational standards are fixed laid down for candidates standing for elections to the various legislative bodies. As general elections are fast approaching, I would suggest that a minimum educational qualification, say, Matriculation - for candidates to the various legislatures of the country should be fixed. It is time that efficiency is brought into the legislatures also.

-----T. K. RAOHAYAN.



To

The chairman Constituent Assembly New Delhi

Dear Sir,

In a true democracy the protection of minorities is important. In Soviet Union there are 2 separate national assemblies, chamber of soviets and chamber of nationalities. In the chamber of soviets, representation is according to population, while in the chamber of nationalities, there is equal representation of all the nationalities, small and large. If both the chambers approve a legislation, it becomes a law.

India should also have 2 chambers, one chamber of minorities representing Hindus, scheduled castes, Muslims, Christians, sikhs, parsies etc, in addition of regular legislative assembly, with equal representation and the regular legislative assembly should have representatives according to the basis of population. These 2 chambers should formulate laws, like that of Soviet Union to protect the minorities.

S. A. Wahid

Truly Yours

S.A. Wahid Hotel Windsor Bombay



CONSTITUENT ASSEMBLY  
OF INDIA.

Dy. No. 1767

18/5

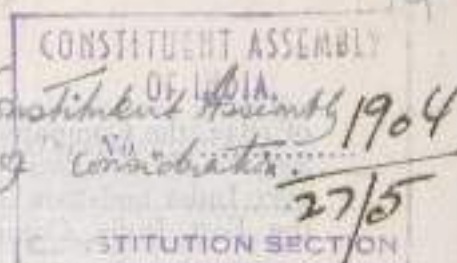
STITUTION SECTION

896  
14-5-49





Pr. 33



## SUABILITY OF THE STATE UNDER THE CONSTITUTION OF INDIA

BT

For Durga Das Basu, M.A., B.L., (West Bengal Civil Service, Judicial).

*Diamond Harbour (24 Parganas)*

The object of this Article is to explain the significance and also to discuss the propriety of article 274 (1) of the Draft Constitution of India, with reference to the law in England and the existing law of India.

Article 274 (1) of the Draft Constitution, following section 176 (1) of the Government of India Act, 1935, endows the State (i.e., the Government of India and the Government of a State in relation to their respective affairs) with a juristic personality, for the purpose of suing or of being sued.

In the present article, I shall deal only with the liability of the Government to be sued.

Clause (1) of article 274 of the Draft runs as follows (only relevant words are quoted) :

"The Government of India . . . and the Government of a State . . . may, subject to the provisions which may be made by Act of Parliament or by the Legislature of such State, enacted by virtue of powers conferred by this Constitution, . . . be sued in relation to their respective affairs *in the like cases as the Dominion of India and the corresponding Provinces might . . . have been sued if this Constitution had not been enacted.*"

*History of the provision.*—The italicised words in the above article have a noble heritage, and in order to appreciate their significance, we must trace the history from the time of the Honourable East India Company.

In 1765, the East India Company acquired the Dewani from the Moghul Emperor, and from that time up to 1858, the Company had a dual character, viz., that of a trader as well as of a sovereign inasmuch as it obtained the right of fiscal and general administration of the country from the grant of the Dewani. By the Charter Act



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of 1833, the Company came to hold the government of India in trust for the British Crown. In 1858, the Crown assumed sovereignty over India and took over the government of India from the hands of the East India Company.

Section 65 of the Government of India Act, 1858, declared the Secretary of State in Council to be a 'body corporate' for the purposes of suing and to be sued and provided—

"Every person shall have the same remedies against the Secretary of State in Council as he might have had against the East India Company, if the Government of India Act, 1858 had not been passed."

The above provision was reproduced in section 32 of the Government of India Acts, 1915 and 1919.

Section 176 (1) of the Government of India Act, 1935, also reproduced the same provision with two points of difference—(a) Instead of the Secretary of State in Council, the Federation of India and the Provincial Governments themselves were made liable to be sued in like cases where the Secretary of State might be sued under the previous Acts. (b) The liability of the Governments was 'subject to any provisions' of any Act that might be passed by the Federal Legislature or the Provincial Legislature, as the case might be.

The only change made by the Provisional Constitution Order made under the Indian Independence Act, 1947, is to substitute the word 'Dominion' for 'Federation' in section 176 (1) of the Government of India Act, 1935, which (so amended) lays down the law existing today. It runs as follows (only relevant words quoted) :

"The Dominion of India, . . . and a Provincial Government . . . may, subject to any provisions which may be made by Act of the Dominion Legislature or a Provincial Legislature enacted by virtue of powers conferred on the Legislature by this Act, . . . be sued in relation to their respective affairs in the like cases as the Secretary of State in Council might have been sued if this Act had not been passed."

It is thus clear from the above, that whether under the Draft Constitution or under the existing law (Government of India Act, 1935), in order to make the Government liable in a suit brought by a citizen, the question that has got to be answered is—

"Would such a suit lie against the East India Company, had the case arisen prior to 1858?"

And in order to answer that question, it is necessary to refer to the decisions in which Courts have held in which cases action lay against the East India Company and in which cases it did not lie.

*Existing Law.*—Though the decisions are not altogether uniform, the more or less agreed principles are capable of being summarised,



and these will be useful to the suitor and his legal adviser, until the Legislature intervenes, by virtue of the power conferred by the Constitution, to modify or supersede any of these principles. Now, the liability of the State, in a civil action, may, broadly speaking, arise either in contract or in torts. I shall discuss the law under the two heads separately :

*Contract.*

In England, the Sovereign is not, by reason of its Sovereignty, incapacitated to enter into a contract with a private individual. But in the absence of statutory liability, no regular action can be brought either against the official through whose agency it is entered into, or against the Crown. But a petition of right lies to the Crown to recover damages for breach of contract.

But in India, a direct suit has been allowed against the East India Company, the Secretary of State or the existing Governments in matters of contract, instead of a petition of right<sup>1</sup>. The Government of India Acts (section 30 of the Act of 1919, and section 175 of the Act of 1935) expressly empowered the Government to enter into contracts with private individuals and the corresponding provision in the Draft Constitution is article 272 (1). And in all these Constitution Acts, it is provided that the person making the contract on behalf of the Government shall not be personally liable in respect thereof (*Vide* section 175 (4) of the Act of 1935, and article 273 (2) of the Draft Constitution).

Subject to statutory conditions or limits, thus, the contractual liability of the State is the same as that of an individual under the ordinary law of contract, whether under the existing law or under the Draft, and, accordingly, the italicised words "*in the like cases as . . . if this Constitution had not been enacted*", appear to be redundant, so far as contractual liability is concerned.

*Torts.*

The liability of the State under the existing law, for actionable wrongs committed by its servants, cannot be so simply stated as in the case of contracts. As will appear from below, the state of the law is unnecessarily complicated by reason of its being founded on the position of the British Crown under the Common Law and of the East India Company upon its supposed representation of the Sovereignty of the Crown, both of which have become archaic, owing to changes in history and in law.

Under the *Common law of England*, "the King can do no wrong," and accordingly, no action lies against the Crown for tortious acts of its servants, the public officials. Nor are the public officials or their Departments liable in their *public capacity* for wrongs committed by the officials, for the wrongs of a servant, at common law, are the

1. Cf. *Rangabari v. Secretary of State* (1937) M.L.J. 525 : J.L.R. 1937 M. 517 : L.R. 64 I.A. 40 : 41 G.W.N. 545 (546) (P.C.) ; *Beckwith v. Secretary of State* (1937) M.L.J. 529 : J.L.R. 1937 M. 532 : L.R. 64 I.A. 55 : 41 G.W.N. 554 (560) (P.C.)



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wrongs of his master and so the immunity of the Crown prevents any action also against the public officials in their official capacity or the Departments<sup>1</sup>.

But the official himself would be *personally* liable for torts committed in the discharge of his official duties on the principle that "the civil irresponsibility of the supreme power to tortious acts could not be maintained with any show of justice if its agents were not personally responsible for them."

So, under the Common Law, a subject who was injured by some wrongful act committed by a public servant or some Department of the State, had to be contented with whatever relief he could get in an action brought against the particular official or officials who were directly responsible for that wrongful act. The State had no liability at all for any negligence or default committed by the Government and its members against the subject.

The above doctrine of immunity of the Sovereign was extended to the *East India Company* in respect of its "sovereign acts." It has been pointed out at the outset that since 1765 the East India Company had a dual character, *viz.*, that of a trader and that of a Sovereign. Hence, the East India Company was held to be not liable for acts done by the Company or its servants, in the exercise of its 'sovereign powers'; and, consequently, the Company's successor, the Secretary of State in Council was also not liable in like cases. The liability lay only for acts which could be done by the Company in its trading capacity, *i.e.*, in the course of transactions in which any private person (not being a Sovereign) could engage. This was laid down in the leading case of *The P. and O. Steam Navigation Co. v. Secretary of State*<sup>2</sup>, and the existing law is built up of a body of subsequent cases decided on the authority of this leading case. I shall now summarise the law as to liability of the Government, as it exists today, under a separate head.

It should be pointed out at the beginning that the law stated below relates to the liability of the State towards its citizen, and has nothing to do with the relation between the Government of India and other independent States or the Princes and Rulers of Indian States, who have been treated as such in respect of the political acts of the Government of India towards such States, and these acts have been given immunity from the municipal law, under the doctrine of 'Act of State.'<sup>3</sup>

But whether in England or in India, there is no such thing as an 'Act of State' as between the State and its subjects<sup>4</sup>. In the present article, we are concerned with the liability of the State towards its citizens, under the municipal law.

1. *Beckwith v. Parnwell-Gossell* (1906) 1 K.B. 178.

2. (1861) 5 Bora.H.C.R. App. A.

3. *Secretary of State v. Ramsden*, (1859) 23

Mon. P.C. 22; *Madhav v. Secretary of State* (1904) I.L.R. 32 Cal. 1; L.R. 31 I.A. 239.

4. *Estick v. Goringham*, (1765) 19 S.T. 1066



Nevertheless, there is in India immunity of the Government for 'acts done in the exercise of its sovereign functions', under the historical immunity of the East India Company for such acts. As I have stated at the outset, in order to make the Government of India or a Provincial Government liable, the person aggrieved has to satisfy the Court that the suit would lie against the East India Company, had the case arisen before 1858.

Thus, it has been held—

(A) No action lies against the Government for injury done to an individual in the course of exercise of the *sovereign functions* of the Government, such as the following :

(i) Commanderring goods during war<sup>1</sup>; (ii) making or repairing a military road<sup>2</sup>; (iii) administration of justice<sup>3</sup>; (iv) improper arrest, negligence or trespass by Police officers<sup>4</sup>; (v) wrongful refusal by officers of a Revenue Department to issue licence to the plaintiff, causing him damage<sup>5</sup>; (vi) negligence of officers of the Court of Wards in the administration of an estate under its charge<sup>6</sup>; (vii) wrongs committed by officers in the performance of duties imposed upon them by the Legislature<sup>7</sup> unless, of course, the statute itself prescribes the limits or conditions under which the executive acts are to be performed<sup>8</sup>.

(B) On the other hand, a suit lies against the Government for wrongs done by public servants in the course of transactions which a trading company or a private person could engage in<sup>9</sup>, such as the following :

(i) Injury due to the negligence of servants of the Government employed in a dockyard<sup>10</sup>; (ii) trespass upon or damage done to private property in the course of a dispute as to a right to land between Government and the private owner, even though committed in the course of a colourable exercise of statutory powers<sup>11</sup>; (iii) whenever the State has benefitted by the wrongful act of its servants whether done under statutory powers or not, the State is liable to be sued for *restitution* of the profits unlawfully made, just as a private owner<sup>12</sup>, e.g., where Government retains property or money unlawfully seized by its officers, a suit lies against the Government for its recovery<sup>13</sup>, with interest<sup>14</sup>.

1. *Krishna v. Secretary of State*, (1906) 34 Cal. 360.

2. *Secretary of State v. Cocking*, (1914) 30 Mad. 352.

3. *Mah Prasad v. Secretary of State*, (1929) 5 Luck. 157.

4. *Kadir Zillayi v. Secretary of State*, (1933) 9 Rang. 375; *Shivabhai v. Secretary of State*, (1904) 28 Bom. 314; *Rao v. Secretary of State*, (1919) 37 Mad. 55.

5. *Nabin v. Secretary of State*, (1875) 1 Cal. 11.

6. *Secretary of State v. Briggs*, (1932) 36 C.W.N. 606.

7. *Secretary of State v. Rao*, (1933) 37 C.W.N. 457; *Rao v. Secretary of State*, (1919) 37 Mad. 55; *Shivabhai v. Secretary of State*, (1904) 28 Bom.

314 (1925).

8. *Secretary of State v. Hari*, (1886) 5 Mad. 397.

9. *P. & O. Steam Navigation Co. v. Secretary of State*, (1901) 5 Bom. H.C.R. App. A.

10. *P. & O. Steam Navigation Co. v. Secy of State*, (1900) 27 Bom. 110.

11. *Secy of State v. Momen*, (1915) 24 M.L.J. 459; L.R. 20 I.A. 48; 40 Cal. 99; P.C.

12. *Bank of Bengal v. United Co.*, (1831) 10 Begg. 57; *Municipal Corporation of Bombay v. Secy of State*, (1932) 36 Bom. L.R. 358 (604).

13. *Railot v. Secretary of State*, (1912) 40 Cal. 459; *Shivabhai v. Secretary of State*, (1904) 28 Bom. 314.

14. *Wanappa v. Secretary of State*, (1915) 40 Bom. 200.



A little reflection would show that the above state of the law is defective and unsatisfactory from standpoints more than one, and that it cannot be tacitly adopted as the foundation when India is having a Constitution of its own.

Firstly, it is not clear and certain. As Seshagiri Ayyar, J., observed in *Secretary of State v. Cockcroft*<sup>1</sup>, there is no authoritative definition of what are 'sovereign functions'. No doubt, the constitution and control of various departments of the State are instances of the exercise of Sovereign powers. But as to other functions, it is difficult to determine in individual instances, whether it is done in the exercise of sovereign functions or not, as even Sir Barnes Peacock recognised in *P. and O. Steam Navigation Co.'s case*<sup>2</sup>. "Sovereign powers" according to his Lordship "are powers which cannot be lawfully exercised except by a Sovereign power." But this is a negative definition and itself begs the question "what are the powers which can be exercised by a Sovereign or by a private individual."

In fact, it is highly artificial to hold that the State would not be liable for wrongs done in course of construction or repair of a military road<sup>3</sup>, but would be liable for similar acts done in course of construction or repair of non-military roads, made for the use of the public. Nor is the principle quite clear when the local authorities are held liable for acts done in connection with municipal or other local roads on the ground that "Municipalities do not exercise purely sovereign functions"<sup>4</sup>. Seshagiri, J.,<sup>5</sup> sought to draw the line with reference to profit when his Lordship observed that the mere fact that a function or duty is undertaken by the State for interests of the public will not make it a sovereign act, particularly if some profit is derived by the State from the undertaking, as in the case of a Railway<sup>6</sup>. But even that test, it is submitted, is not a fully satisfactory test, for, there are many acts which may be undertaken by the State simply for the public benefit, without any idea of profit, e.g., the construction of civil roads, tanks and wells and other amenities for the citizens, which can as well be provided by private individuals, so that it cannot be said that "these acts could not be done except by a private individual."

The reference to a commercial undertaking being unsatisfactory, we are bound to come to the conclusion that the State is liable for all acts other than those done by it in the exercise of its Sovereign functions. This seems to have been suggested by the decision of the Judicial Committee in *Secretary of State v. Moment*<sup>7</sup>, but it has nowhere been so clearly stated, as yet. The difficulty was realised by Turner, C.J., and Ayyar, J., in *Secretary of State v. Hari*<sup>8</sup>, and their Lordships asserted that the Secretary of State should be held liable for all acts

1. [1914] 39 Mad. 251 (1950).

2. *P. & O. Steam Navigation Co. v. Secretary of State*, (1861) 5 Bom. H.C.R. App. A.

3. *Secretary of State v. Cockcroft*, (1914) 39 Mad. 375.

4. *Pengosatan Municipal Council v. Foster* (1917) 21 Mad. 538.

5. (1912) 24 M.L.J. 459 (I.L.R. 40 I.A. 48) 40 Cal. 291 (P.C.).

6. (1889) 5 Mad. 273.



of its servants, excepting those that are technically referred to as 'Acts of State.' But the other High Courts have not been able to agree. Thus, in *McInerney v. Secretary of State*<sup>1</sup>, Fletcher, J., held that an individual had no remedy against the Government for injury suffered by him in colliding with a post negligently put up at the edge of the Calcutta maidan, while he was lawfully walking by the adjoining road. The reason given was that in putting up the post, the Government were not carrying a commercial or trading operation. Very few people in free India would be able to accept this conclusion.

Secondly, the law is out of date. As many eminent jurists of India have already expressed that opinion, the Constitution of free India should not have any reference to historical or legal fictions which are anomalous in the present setting, the reference to the position of the East India Company is worse than useless. For, the State of Independent India is not taking over the sovereignty from the East India Company as did the British Crown in 1858. The provisions of the Constitution of India should be self-contained, and the State should not justify its wrongful acts by saying that the East India Company would not have been liable for like acts.

Thirdly, the very foundation of immunity for acts of the Sovereign has been taken away by the supersession of the English Common Law by the passing of the CROWN PROCEEDINGS ACT, 1947 (10 & 11, Geo. VI, C. 44). The reason which led to the passing of this statute is the patent fact that a personal action against the particular officer through whose hands the wrong may be held to have been committed, is but a poor consolation in many cases. Speaking of this statute Viscount Jowitt, the Lord Chancellor, has recently made observations, which are worth quoting in *extenso* :

"I should like to give you an illustration of the way in which our Government today is trying to uphold the rule of law. We do not desire that the Executive should not be under the control of the Judiciary and last year I succeeded in getting through Parliament an Act for which lawyers had been agitating for a generation.

There was an old legal maxim, 'the Crown can do no wrong.' The rigour of the maxim had been mitigated by the acceptance of the principle that though the Crown can do no wrong, yet no wrongdoer can therefore justify himself on the authority of the Crown. Thus, for instance, if a van belonging to His Majesty's Post Office was driven dangerously and caused injury to a pedestrian on the highway, the pedestrian could not sue the Crown or the Post-master-General as representing the Crown, for such an action would have to be based on the assumption that the Crown had done wrong. But he could sue the driver of the van, if he could find him, and the driver could not justify himself, for his negligence on the authority of the Crown, and, in practice, the Crown would stand behind the driver and pay the necessary damages.



Still, there were cases in which the observance of the rule worked great hardship, specially where no individual wrongdoer could be selected.

We have, therefore, now made it the law that any individual can sue the Crown in any Court in the land in exactly the same way as he could sue any other individual."<sup>1</sup>

There is no reason whatsoever why the law should not be the same in India as in England under the statute of 1947, as explained by the Lord Chancellor in the concluding lines of his speech, quoted above.

Thus it is evident that the existing law as to tortious liability of the State in India is founded on principles of English law which have become obsolete<sup>2</sup>, and upon the fiction of liability of the East India Company, which is not only anomalous but unwholesome. In a democratic country, there should not be anything like immunity for acts done in the exercise of 'sovereign functions', unless of course, the people's representatives enact any such immunity in particular cases, in the interests of the security of the State or the like. The scope for such exceptions is already maintained in article 274 (1) of the Draft, by making the liability 'subject to the provisions of any Act of Parliament or State Legislature.' Apart from such legislation, the liability of the State as an employer of public officials should be the same as that of a private employer for the acts of his employees, that is to say, the ordinary law of master and servant should govern the liability of the State. If England, notwithstanding its monarchical traditions and staunch conservatism has been able to acknowledge this principle, there is no reason why free India should not accept this principle of convenience for the benefit of the individual. The right to obtain proper redress for injury may be said to be one of the essential elements of freedom, if not a "fundamental right." In fact, article 40 (2) of the Constitution of Eire provides—

"The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name and property rights of every citizen."

So what I would suggest is that article 274 (1) be amended by striking off the concluding words beginning with "in the like cases. . . ." up to "had not been enacted."

It is not necessary to save the existing law as regards causes of action accruing prior to the commencement of the Constitution specifically, but if that is deemed necessary, the following proviso should be added:

"Nothing in this article shall affect causes of action accruing prior to commencement of this Constitution."

<sup>1</sup> Viscount Jowitt's lecture at Sorbonne, reported in 3 D.L.R. Journal, 4.

<sup>2</sup> Thus the historical case of *Pissot v. Canterbury v. The Queen*, (1842) 4 S. Tr. 767, upon which many Indian decisions relied [e.g.,

*Ross v. Secretary of State*, (1913) 37 Mod. 55; *Secretary of State v. Sreenivasa*, (1932) 35 C.W.N. 606, is no longer good law in England, and in these Indian decisions have lost their authority.



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Dr. 341

Western U.P. Chamber of Commerce,

President:  
RAI BAHADUR G.M. MODI  
MOORE INDUSTRIES  
MODINAGAR.

MURAN CHAND BUILDING  
MEERUT CANTT.

No. GM/1/49.

Dated 24th May 1949

The Hon'ble Dr. Rajendra Prasad,  
President, Constituent Assembly,  
NEW DELHI.

Sir,

I beg to forward herewith  
copies of the resolutions passed by  
this Chamber in its Annual General  
Meeting held on 19th May 1949 for  
favour of your kind consideration  
and necessary action.

Yours faithfully,

*Rajendra Prasad*

Advocate,  
Hon: Secretary.

Enc:- 2

CONSTITUENT ASSEMBLY  
OF INDIA.

1872

27/5

CONSTITUTION SECTION



THE WESTERN U.P. CHAMBER OF COMMERCE - MEERUT.

RESOLUTION PASSED BY THE GENERAL MEETING HELD ON 19TH MAY 1949.

8. This Chamber feels that the Provincial Government is gradually eliminating normal trade channels from their age-long work of distribution. The established trade channels have acquired considerable experience, established valuable contacts and rendered valuable services to the community. And it will be both inexpedient and uneconomic to eliminate them.

This Chamber, therefore, urges upon the Central and U.P. Governments to see that the existing trade channels are not disturbed and are fully utilised. If the working of certain controls calls for some change in the form of machinery for distribution fullest efforts should be made to absorb and integrate the existing units to the best advantage.

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*Raghubar Singh*  
Secretary.

The Western U.P. Chamber of Commerce,  
Meerut.



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THE WESTERN U.P. CHAMBER OF COMMERCE - MEERUT.

RESOLUTION PASSED BY THE GENERAL MEETING HELD ON 19TH MAY 1949.

12. This Chamber feels that there is no adequate representation of trade and industry in Provincial and Central Legislatures. Urgent and important questions pertaining to development and control of trade and industry are placed and discussed there, on which in the absence of correct and practical view-points of trade and industry based on ripe experience, hasty decisions are taken which very often result in subsequent amendments and objections all round increasing the complications.

It is, therefore, urged that trade and industry should be given adequate representation in Provincial and Central Legislatures through special constituencies of recognised Chambers and Trade Associations.

*Rajendra Bhat*  
Secretary,  
The Western U.P. Chamber of Commerce,  
Meerut.



B. T. E.



INDIAN POSTS AND TELEGRAPHS DEPARTMENT.

Recd. at	F. V. M.	Sent at	M.	CONSTITUTION ASSEMBLY OF INDIA.
From		To		By No. 183
By		By		No. 2575

X GG BERRAMPUR GM 20 74 PRESIDENT

CONASSEMBLY NEW DELHI

= INTERESTINGLY NOTED BROADCAST CURRENT DEBATE OF CONASSEMBLY ON SALARIES OF

GOVERNMENT SERVANTS STOP PRINCIPLE OF INCREASE OR DECREASE OF SALARIES MUST

DEPEND ON THE YEARLY INCOME OF THE INDIAN UNION STOP ON NO WAY SHOULD EXCEED

TWENTYFIVE PERCENT OF THE GROSS INCOME OF THE STATE STOP I PRAY A DUE DELIBERATION

MAY BE GIVEN TO THIS SUGGESTION DURING THE CURRENT DEBATE OF CONASSEMBLY

AMPPIN—

== ZEHINDAR LEADAKHEMIDI GANJAM ==



## DEPARTMENT OFFICE.

File No.

Serial No.

Letter  
Draft Memorandum  
 Telegram

No. CA.11/Cong/49

Dated

-6-48.

To

Shri Durga Das Basu, M.A., B.L.,  
 Diamond Harbour,  
 District 24 Parganas,  
 West Bengal.

Dear Sir,

I am desirous to acknowledge  
 the receipt of a copy of your comments  
 on article 274 of the Draft Constitution  
 of India, relating to suits and  
 proceedings.

Yours truly,

J.S.

1. Date of despatch
2. List of enclosures.

H. D. Basu

6.12.48

See No. - 10172  
 46



To

Date...

Sl. No...

File No...

OF INDIA

The Secretary  
Constituent Assembly

New DELHI

Sl. No 39

1835  
21/5

Sir,

Subject:- Provision in the Constitution Act for suspension and removal of Elected Members during term of office

"To err is human" and experience has shown that the members of Legislature, who are elected from among the ordinary -- mortals are neither infallible nor are they all superhuman. Cases have been reported in the Press, in which elected members have been charged with serious misconduct and some of them have even been -- prosecuted in courts. They are now given salaries, and it seems to me, that it is of public importance that such members should be subjected to the same treatment as is provided for ordinary set of Public servants, viz, they should be liable to be suspended by the President or the Governor, if a charge of criminal ~~xxxxxxx~~ offence is levelled against them in a court of law, or to the President or the Governor. Normally an elected member's conduct should be above criminality and where such an accusation is made, it is necessary that he should be relieved of duties, in which he can influence other public servants in the discharge of their public duties. *A law maker should not be a law breaker.*

A convention exists in other countries, to subject the conduct of members to be enquired into by a special committee of the legislature and Provision might be made ~~for~~ the constitution of a standing committee to deal with the question of members of the house, with the President as its chairman. The Committee should meet at a week's notice when summoned and determine the question of a member's suspension or removal from the house as the case may be.

The Citizen is the primary unit of the state and it is -- desirable that his right should be duly respected and protected. An elected member occupies only the position of an agent, and where he is accused of an offence, he should *prima facie* be considered unfit to act as a representative, till such time atleast as he is acquitted of the guilt honourably from a proper tribunal, judicial or legislative. The constitution is in the making and I shall thank you kindly to take action to make necessary provision, unless one is made already.

Thanking you.

Yours faithfully

*B. L. Sharma*

B.L. Sharma

18/5/49

*K. L. Datta*



## -:- A SUGGESTION -:-

To put a check to the Ministerial Vagaries in the provinces and the states.

(For inclusion in the Indian Constitution).

*Forwarded to  
Drafting Committee  
D. D. - 27/5-*

De Toqueville reviewing the British Constitution says that it is the best Constitution because of its checks and balances. The question of check was raised because democracy was in the state of experiment hence a good deal of caution was necessary. But Democracy as it works now must be a Government of the people, by the people and for the people; the most important factor being that the people must feel that the administration is being run for furthering their interest as a whole not for the interest of a particular section. In the modern set up untrammelled power is given to the executive (the Cabinet of Ministers) for the period between one general election and another. During this period the Cabinet of Ministers can do anything and everything without any check. In the democratic countries the so-called check is to be found in the obsolete practice of Impeachment. Because the check is obsolete therefore it is like brandishing a tin sword in a theatrical show. In Britain or America, the executive head of the state, the cabinet or the President generally does not deviate from the path of honesty and strict adherence to principle because he has a tradition to keep up. The Ministers or President has the illustrious fore-runners whose path he follows. He takes the office as a sacred trust hallowed by the footprints of the great departed. India has no such tradition; the present or future incumbents are to create one. According to some political writers to establish real democracy, Referendum, Recall and Initiative should be introduced in the Constitution. But practically introduction of them checks is impossible in a country like India. In the working of the administration, if the people feel that the Government is being run not for the public interest, such a feeling strikes at the root of the allegiance of the citizens to the state which is the primary condition of any democratic administration. In the language of Matthew Arnold it may be stated 'Might till right is ripe'. Hence in the new Constitution of India there must be some check, at least for sometime, to the untrammelled power of the ministers of the Cabinet in the provinces and in the States. The Ministers are in deed representatives of the people and elected by them but there is a good deal of difference between what man is and what he becomes before and after the election. As a Minister whether he is serving the Nation or himself, there is no one to check provided he can keep his party satisfied. He may take recourse to malpractices unhampered upto the time of next general election. In order to put a check to the Ministerial Vagaries, I beg to suggest that the following clauses be included in the Constitution :-

- (1) That there shall be a Board of Censors attached to each of the provincial and state Governments.
- (2) That the Board shall consist of two or three members according to the size and population of the province and the state.



- (3) That the Members of the Board shall be elected by the Voters of the Constituency (as a whole) at the time of the general election.
- (4) That only men over 60 years of age with following qualifications shall be eligible for standing as a Candidate for the Membership of the Board of Censors:-
  - (a) Retired High Court Judges
  - (b) Retired District and Session Judges with good records
  - (c) Principals or Professors of Colleges or of Universities. They must have served at least for 25 years in the capacity of teachers.
  - (d) Some retired Gazetted Officers of the Government with good records etc. etc. etc.
- (5) The status of the members of the Board of Censors shall be same as that of Ministers of the State.
- (6) The members of the Board of Censors shall keep themselves aloof from the administration of state and shall avoid mixing with the ministers or high officials of the State. The head quarters of the Board shall be located at a place different from the Governmental head quarters. Correspondence seeking information shall be addressed to the Governor who shall supply the Board with necessary information.
- (7) The Board of Censors shall be in full charge of Electioneering Matter, like framing the Voters' list, keeping the list under its Control and running the election.
- (8) After the general election when the Ministry has been formed, if the Board of Censors are satisfied that there is corruption, malpractices, or Nepotism in the working of the administration of the department of any particular Minister or all Ministers or at least the people has got bonafide cause of complaint against any Minister or all Ministers, the Board of Censors shall recommend to the Governor to ask the Minister or Ministers, retaining their offices, to resign their membership of the Assembly and seek for re-election from his/her constituency.
- (9) When the Board makes any such recommendation the Governor and the Ministers shall act according to the recommendation of the Board.
- (10) That the recommendation of Board of Censors shall be final and law Courts shall have no jurisdiction over the Board in respect of their decision.

*For acknowledgment of receipt or for further reference if considered necessary, letter may be addressed to*

CC-00000000

*Bijoy Kumar Roy  
Professor, Surindranath  
College  
10/B Panchanan Ghosh  
Lane  
Calcutta.*



To

The Honourable Members of the  
Constituent Assembly of India,  
New Delhi.



My Countrymen and Gentlemen,

At this time when I find, in the atmosphere around me, certain proposals being made to you that provision should suitably be made in the new Constitution of our Republic to call our nation "Bharatavarsha" or "Bharat" etc., I venture to forward to you and place before you a well conceived proposal or suggestion of some special significance which, I do hope and trust, will commend itself to you and which I request may be favoured with your most earnest and serious consideration with a view to its acceptance being facilitated.

The proposal which I solicit your attention for, is as to what should be the designation of the future President of our Republic. The principal idea in making this suggestion is that the President of our Indian Republic must have an appropriate special title by which he will be very easily distinguished from the Presidents of other Republics like U. S. A. and at the same time that designation which we shall fix upon must carry with it appropriate dignity and some becoming significance.

Gentlemen, the suggestion that has seriously occupied me for some days in the past and which I now desire to share with you, as the matter now lies in your hands, is that our President should be called by the name and style of "**Chakravarti**". This proposal has three good reasons at least behind it to commend it for acceptance.

- i) As already submitted above we shall thereby be giving an appropriate name and title to our President whereby he will be easily distinguished from the other presidents of similar other Republics. The title "Chakravarti," being a Sanskrit word, will form an appropriate designation for the President of our Indian Republic.
- ii) We have already adopted Ashoka's 'Chakra' as the emblem of the Indian Republic on its national flag. The 'CHAKRA' is taken to represent Ashoka's famous edicts promulgating principles of equity, justice and mercy which lead to the progress of Society and are conducive to the welfare of people at large. Thus, having adopted that famous 'Chakra' as our emblem both on our National flag and on the National Seal as indicative of so many enviable virtues, it would be in the fitness of things that our Head or President should be designated or called by the style of "Chakravarti" as he will always be expected to further the cause of that Wheel which will be significant of ever continuing Progress. "Chakravarti" in that sense would mean the faithful follower of the Wheel; i) चक्रं (राज्यचक्रं-Parliament) वर्तन इति चक्रवर्ती।  
ii) चक्रं (राष्ट्रचक्रं) वर्तयतीति चक्रवर्ती।

Our President of the Indian Republic would always be expected to follow Ashoka's Chakra.

- iii) The third and the last significance of somewhat personal character is that we shall thereby be indirectly perpetuating the memory of our first Governor General after the attainment of Independence, in whose place will come our future President of the Republic. As our first Governor General has been, to our glory, Shri CHAKRAVARTI RAJGOPALACHARI, it would be a fitting tribute to him that hereafter the honoured President of our Republic should be styled "Chakravarti" with all the appropriate significance attaching to that word.

**Note:-** None need be scared away by the idea that the word "Chakravarti" in any way signifies any idea of Imperialism or of Dominion over others which is repugnant to our ideal of the Republic. These meanings of the emperor or the universal monarch have come in only casually by virtue of certain traditions of particular times. But, the word "Chakravarti" has got the other equally true and prominent meaning of being 'Head' or 'Foremost'. It is in that sense that the word is suggested as an epithet or appellation for our President.

of:- आपद्वतः किल महाशयचक्रवर्ती विस्तारयत्यहृतपूर्वमुदारभाषम्।

At the cost of your valuable time I believe, Brethren, I have said enough to commend this proposal to you and I can only trust that you will find it acceptable as it has got its own appropriate significance in more than one respect.

Karwar,  
15th August, 1949.

M. P. P. K.

Allow me to remain,  
Sirs,  
Yours Fraternally,  
Sd. V. V. Wagh, M. A. B. S.



To

*J.S. K. Sanyal*  
*13/9* *Am. 58*  
 3221  
 The Hon'ble *Dr. B. K. Dasgupta* President  
*Dr. B. K. Dasgupta* ..... New Delhi

Sir,

This is the Third of my Memoranda submitted since the inception of the Constitution-Making. The First—"Tribals and their Constitutional Position"—was submitted in April 1947. The second—"Suggestions for Constitutional Amendments"—was placed before the Members in October, 1948. They were for the Tribals.

The suggestions made therein received due attention and consideration from the Members of the Minority Advisory Committee and the Constituent Assembly. Many of them, *mutatis mutandis* found a place in the Draft Constitution. I express my gratitude for that.

It is most fervently hoped that this Memorandum also will arouse enthusiasm in the hearts of the Hon'ble Members. To be sure, existence of a provision to amend the Constitution itself—will enable the rigid legal framework—to be kept up with changing social needs and changing political ideas. I have deliberately avoided over-meticulous details in the suggestions.

42, Colacota St.  
 Calcutta, 7

September 1, 1949

*Jogendranath*  
**Jogendranath Hazarika, B. A.**

(Student of Constitutional Law.)

CONSTITUTION

Dr. B. K. Dasgupta

No. 3609

28/9

CONSTITUTION

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A PROVISION TO AMEND ANY ARTICLE OF THE  
CONSTITUTION NEEDED.

By : Jogendra Nath Hazarika.  
Dibrugarh, Assam.

September 1, 1940

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295  
A provision to amend any Article of the Indian Constitution is wanted.

Article 304 of the Draft Constitution provides that an amendment of the Constitution may be initiated by the introduction of a bill for the purpose in either House of Parliament provided that if such amendment seeks to make any change in :

- (a) Any of the Lists in the Seventh Schedule ;
- (b) The representation of States in Parliament ; or
- (c) The powers of the Supreme Court ; the amendment shall also require to be ratified by the State Legislatures.

And also any change in the provisions relating to the method of choosing a Governor or the number of Houses of the Legislature and ratified by Parliament.

By Article 305, the provisions which have given reservation of seats to the Scheduled Castes and the Scheduled Tribes in Parliament and State Legislatures, will come to an end after a period of 10 years' time unless continued in operation by an amendment of the Constitution.

It is clear, therefore, that no other provisions of the Constitution which are not specified in Articles 304 and 305, shall be open to amendment. This conspicuous aspect of the Constitution will surely be disliked, if finally so adopted, by the posterity.

So, an Article empowering Parliament and the State Legislatures to introduce bills seeking to change any provision, other than the Provisions in Part III ( Fundamental Rights ) and Part IV ( Directive Principles of State Policy ), in the Constitution is required to enable the posterity to adapt themselves into the changing conditions.

Therefore, there may be provided for another method of initiating a bill for amendment, which, though may be more or less similar to that relating to Articles 304 and 305, shall be more rigid and complicated a process.

The rigid process may be provided for to initiate a bill for the purpose in either House of Parliament, but must be passed by a majority of not less than four-fifths of the total membership of both the Houses of Parliament sitting jointly for the purpose ; then the bill so passed be sent to the Legislatures of the States specified for the time being in Part I and Part III of the First Schedule, and if the bill is passed by a like majority of four-fifths of the total membership of all the legislatures, it be presented to the President for assent, and upon such assent being given, the Constitution shall, in accordance with the terms of the bill, stand amended.

Or, a bill, for the purpose, may be introduced in either House of the Legislature of any State specified for the time being in Part I of the First Schedule and passed by a majority of not less than four-fifths of the total membership of the Assembly if the Legislature is one-chamber, and of the Assembly and the Council if the Legislature is a bi-cameral one, and after so passing and the assent being given thereto by the Governor, the bill be sent to other Legislatures of all the States specified for the time being in Part I and Part III of the First Schedule, and if the bill is passed by a like majority of four-fifths in entire Legislatures taken together, then the bill be sent to Parliament for ratification, and on such ratification by a majority of not less than four-fifths of the total membership of both the Houses voting in a joint sitting, and assent thereto being given by the President, the Constitution shall stand amended in accordance with the terms of the bill.

If the State Legislatures do reject the bill passed by Parliament, twice consecutively in two successive sittings, the President shall submit the bill to a referendum, to be specially organized for the purpose in accordance with law, and the verdict of the referendum by an absolute majority will be final.

Similarly, if Parliament rejects the bill passed by the State Legislatures, twice consecutively in two successive sessions, the President shall submit the bill to a referendum to be specially organized for the purpose in accordance with law, and the verdict of the referendum by an absolute majority will be final.



The members of the Constituent Assembly as well as the public have noticed that certain clauses of the clauses of the Draft would not have been finally adopted in the present manner but for occasional intervention by Pandit Nehru or Sardar Patel, which provoked keen and meritorious debates for and against.

The mental make-up, and the taste for political sovereignty, of the people may change faster than ordinarily expected. The people may, for instance, require to change the method of choosing the President; they may require to transform the whole Constitution into a purely American model vesting more powers in the President; or they may make it more Parliamentary than Presidential conferring far more less powers on the President; they may require to shorten or lengthen the term of the Office of the President, or of the life of the Houses of Parliament; the legislative procedure may require slight changes; or they may not like to refer any provision of the Constitution to any existing law, because all laws, existing and future, must derive their power from the Constitution.

The present Constituent Assembly should not try to bind up the future generations under such a rigid Constitution without providing for a means therein to enable them to suit themselves to the fast changing world, if they are to honour, uphold, defend and preserve the Constitution now given by the best of our talents and genius.

It is sure that the Members of the Drafting Committee—Dr. Ambedkar and Mr. Ayyangar, or Pandit Nehru or Sardar Patel, cannot flatter themselves that their handiwork has approached perfection. If the Constitution cannot be amended by the provisions thereof, the only ways open to the people to do so would be either a mass revolution or a *coup d'etat* which no democratic people like to use.

Therefore, the Members of the Constituent Assembly may think more seriously over the matter once more and provide a clause to amend their Constitution, if and when necessary, in future. It would be not only wiser for them to do so to enhance the prestige and dignity of the people of India, but also they will thereby prevent the growth of dictatorship and communism.

It is most fervently hoped that this appeal would evoke in every mind of the Members of the Constituent Assembly a sense which would ensure the hopes and aspirations of the people of India.

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35: लक्ष्मण जयति ॥ १३-१२-५५

04394/1000/15

15/11/00

मानवीय अर्थशास्त्र प्रहोदम, S.A. 61, 300

विद्यान परिषद्, दिल्ली

अब सुनी इस बात की है कि हम  
स्वतन्त्र है, हमारा देश स्वतन्त्र है और विद्या  
पीठ पर धार्मिक काम करने के लिए विद्यार्थी  
बनाने हैं। परन्तु इस बात का है, हमारे  
नेतागण आज नहीं दुनियाँ में नका-बों  
में आर्थिक जोर से लगाया - पन्नों के  
प्रोपेगेंडा से धार्मिक काम करने व मर्गादा में  
न बनाकर मनमानी काम करने भी  
किन्तु परन्तु पथार्थ रूप से धर्म  
का अर्थ जानने भी कोशिश नहीं  
करें। मैं कोई विद्वान नहीं हूँ, बल्कि  
एक स्वतन्त्र नागरिक के नाते  
आपको ध्यान आकृषित होगा  
चाहता हूँ कि धर्म आप पर एक





POST

ADDRESS

Handwritten signature or mark.

Handwritten text: महाराष्ट्र

Handwritten text: दिल्ली

Handwritten text: दिल्ली

Handwritten text in Devanagari script, likely a letter or document, covering the bottom half of the page.



# DEAF AND DUMB SOCIETY

GOVIND BUILDING, PRINCESS STREET, BOMBAY

P. no. 12

March 1, 1949

K.V. Padmanabhan,  
Under Secretary,  
Constituent Assembly of India,  
New Delhi.

1029  
2/8/49

Dear friend,

Your reply No. CA/11/CONS/49 dated February 1, 1949 makes a little sense.

1. How can adult franchise be extended to dumb & deaf till teaching facilities are made available to them?
2. The ref. to Directive St. Principles etc. is a huge hoax. It's a promise for a distant future.
3. What about the census? Why not speed up? It is jam tomorrow but nothing to day.
4. Please consider again the plans I had suggested in my letter and let me know what the Central or Provincial Government going to do about it.
5. Does the Central or Provincial Government stand guarantee to provide suitable jobs to deaf & dumb today and not in distant future? I am prepared to forward a few cases who are in dire need of such Government aid even today. Please reply.
6. You have not written anything about the Laws of Inheritance. Is not the free Government of India improve our status by removing legal disabilities?
7. What about enacting special humanitarian legislative for Deaf & Dumbs?
8. Please send me a seasoned and explanatory letter. Short,

continued....



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# DEAF AND DUMB SOCIETY

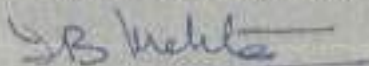
GOVIND BUILDING, PRINCESS STREET, BOMBAY 2

-2-

--Short--

telegraphic callous letters of acknowledgement. Notes will never solve this knotty problem.

Yours Sincerely



(I. B. MENTA)

Hon. Secretary, Deaf & Dumb  
Society.