

NOTE FOR THE SUB-COMMITTEE

The Working Committee have appointed a sub-committee for the purpose of preparing material and draft proposals for the Constituent Assembly. This Committee consists of :

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Exactly how this committee should function and what it should do can only be satisfactorily decided when it meets. As the time at our disposal is limited, it is desirable to have an early meeting. I hope to fix the meeting soon and inform members by telegram. Probably it will be within ten days and the most suitable venue appears to be New Delhi.

Meanwhile I hope members will give thought to the matter and prepare ~~their~~ their own notes on the various subjects we have to consider. We shall have to suggest first of all the rules of business and procedure which we would like the Constituent Assembly to adopt. Then presumably some general directives in the form of resolutions which the Assembly can lay down at the outset. These directives, which will be of a political nature and not directly connected with any communal issue, will necessarily be given by the whole Assembly. Thus the constitution will be of a republican State with sovereignty residing in the people. The fact that the Federal Union Government has to raise revenues for the subjects under its control necessitates an indication at the outset of what revenue-raising subjects are to be within its scope, such as customs and tariffs, income tax and allied subjects. Currency and national credit cannot be divorced from the Centre. Also, inevitably, the Centre must have some powers to intervene in case of gross maladministration and breakdown of the administrative machinery as well as in cases of public calamities, like famine.

The three central subjects, which have already been indicated, must necessarily include allied and ancillary subjects. Thus External Affairs includes foreign trade policy, foreign loans etc. Defence and communications include the industries connected with them.

Fundamental Rights and Obligations have to be considered thoroughly and exhaustively. They will presumably go much further than the Karachi Congress resolution on the subject, and might include economic rights etc. This might go a long way to give confidence to minorities and remove their fears and suspicions, though of course such rights and obligations will apply to individuals and not to communities.

Then the constitution as a whole has to be drafted. In doing so we might ignore the suggested grouping and deal with the Centre and Provinces only.

The question of the States has also to be considered.

I hope members will come to the first meeting fully prepared with these and allied subjects.

Bombay
July 10, 1946

Jawaharlal Nehru

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CONSTITUENT ASSEMBLIES
IN THE WORLD

Covert threats have clouded the political plane. The Bombay somersault of the League struck the note of non-entry into the Constituent Assembly and the Resolution of the All India Muslim League Council avowedly stated that attempts would be put on spurt to wreck the machinery which would shortly be convoked for the exclusive purpose of drafting the constitution for a free and undivided India. The belief that if the Constituent Assembly would not be enabled to fruitfully frame a responsible constitution for India, will hold water, a revolution with blood and iron alone shall explode, come what may. That course would be the inevitable result of any such break-up, but yet is clear as a crystal. If religious fanaticism, or parochialism or rank communalism scura the free and unfettered course of our thoughts, the possible recourse will be to chaos. But the Viceroy's broadcast of the 24th August and the announcement of the personnel of the Interim National Government, though shows signs of weariness on the part of the Muslim League, it is equally an earmark for the fact that the Constituent Assembly would be convoked very soon and a Constitution for a Free and Independent India would be drafted. No communal force can dare try to cold-shoulder the process of constitution-making and sure, the Congress pursuing the theory and practice of non-violence will gird up her loins and fight to the finish in the interests of the Indian Nation with any such one.

History furnishes numerous examples of Constituent Assemblies. They have been divided into three categories. Countries like the American Colonies, Ireland, Czech-Slovakia, Yugoslavia, Finland, Poland, Esthonia, Latvia, Lithuania, etc. convened their Constituent Assemblies, which functioned with the help of the people who had secured national freedom after overthrowing a previously existing imperial regime. In the second order fall France, Germany and Austria, where Constituent Assemblies were prorogued for the purpose of establishing a new form of democratic government in the place of an existing despotic one. Canada, Australia, Switzerland and the states of America, where a new state had to be established by the union of the isolated and individually sovereign units, provide the third instance. In almost all these countries, the revolution that was called for, shaped a new order by dethroning the seat of the ruling power and by redrafting with new fervour and vigour, with the help of the constituents, a new constitution.

AMERICAN COLONIES

Let us take up the case of the Convention of the American Colonies. The Continental Congress, on November, 3, 1775, recommended "to the Provincial Convention of New Hampshire, to call a full and free representation of the people, and that the representatives, if they think necessary, establish such a form of Government, as in their judgment, will best produce the happiness of the people, and most effectually secure peace and good order in the province, during the continuance of the present dispute between Great Britain and the Colonies." The Provincial congress of New Hampshire elected with power to resolve itself into a house of representatives, took such a step and adopted a temporary constitution of January 5, 1776. But protests were raised and representatives were not elected for "No Bill of Rights had been drawn up, or form of Government come into, agreeably to the minds of the people of this State, by an Assembly peculiarly chosen for that purpose, since the Colonies were independent of the Crown of Great Britain". Later, at a meeting of the town of Walpole in February, 1777, it was resolved that "a new and lasting Plan of government is necessary to be formed..." and at last the House of Representatives recommended to Towns, Parishes & Places in this.

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State to meet in Convention at such time & place as shall be appointed by the General Assembly, for the sole purpose of framing & laying a permanent plan or system for the future Government of this State". The two Houses then voted in February 1779 that such system or form of government "as may be agreed upon such a Convention being approved of by three-fourths parts of the Inhabitants of this State in their respective Town meetings legally called for that purpose, and a return of such approbation being made to said Convention & Confirmed by them, shall remain as a permanent system or Form of Government of the State, and not otherwise." It was an established fact that the right to frame the constitution of one's own country was the birth-right of one, and every man of whatever state he may belong, where he is or he ought to be, by inalienable right, a co-legislator with all the other members of that community. In 1787, therefore, a Federal Convention assembled with specific ideas of amending the Articles of Confederation. Sessions were held in secret and a Constitution was drawn up as a compromise between the desire for a strong centralized government and the justifiable demand of the preservation of State Rights. The result was that the Massachusetts Constitution, which meant a big negation to the rights of the smaller states, was severely disfigured and mutilated. Later Randolph of Virginia, tabled and proposals of the ~~in~~ bigger states, who were accentuated by the sole desire for a central authority, while Paterson of New Jersey drafted the views of the smaller states. Out of these emerged a final document which leaned towards the demand of the central authority along with the notable concessions that were granted to smaller states.

IRELAND

Ireland had a different tale. The conscription of the Irishmen into the British Army raked up old sores and undaunted by the repressive measures in the wake of the bitterest opposition to Britain, all the political camps without a division became absorbed into Sinn Féin, under the ablest leadership of Eamon de Valera. The National Convention was convoked by the British Government in 1917 and representatives of the Irish Political parties, with a view to draft a future constitution for Ireland within the Commonwealth. Agreement was not reached and the Convention was boycotted by the Sinn Féin. The committee of representatives met on 24th January, 1922 and emphasized that firstly, it should prepare a free and democratic constitution; secondly, that it should be within the Treaty; thirdly, that it should provide for a particular position of the six North-eastern counties of Ulster; and fourthly, that it should specify certain safeguards for the old Unionist minority in the other parts of Ireland. The Draft Constitution that was issued on the 15th July, was favoured and all its broad principles were adhered to by the Constituent Assembly in the preparation of the Irish Free State. The final draft which was submitted to the Assembly, was produced after its rejection on December 6, 1921 and it was later redrafted and accepted by both. It was entitled "an Act to enact a Constitution for the Irish Free State and for implementing the Treaty between Great Britain and Ireland" and was signed at London on the 6th of December 1921. Though the procedure they adopted gave phillip to controversy regarding the location of Sovereignty, but still they fully believed that their legislative independence was established by the Treaty, and by the subsequent methods they adopted it in the course of enactment and ratification of the Constitution. It was mentioned in the Preamble to the Act that "Dail Eireann sitting as a Constituent Assembly in this Provisional Parliament, acknowledging that all lawful authority comes from God to the People and in the confidence that the National life and unity of Ireland shall thus be restored, hereby proclaims the establishment of the Irish Free State and in the exercise of undoubted right decrees..." the New Constitution.

ESTHONIA

In Esthonia, the Provisional Government held the elections on April 5, 1919, on the basis of universal suffrage when the extremists were defeated and the whole nation proclaimed the urgency of constitutional nationalism and socialism, coupled with economic reconstruction. The Provisional Government then delegated its power to the Assembly and a manifesto was produced guaranteeing an independent democratic republic and provided safeguards for the linguistic rights of the minorities, though Esthonian was established as the State language. The Bill of Rights stated: "Every one has the right to existence compatible with human dignity. To this end the law accords to all citizens the right to receive a certain amount of land which they may develop or where they may establish their inhabitants." In its passion for direct democracy, the Esthonian Constituent Assembly came very close to the French Socialist Workers Republic that was to be proposed by Tokel. It had safeguarded the sovereignty of the people against the abuses inherent in political opportunism, and had given a parliamentary immunity to its own members exempting them from accountability for the opinions given vent to and from military service.

LITHUANIA

In Lithuania a Constituent Assembly was created by the electoral law passed in the year 1920, providing for universal, equal, direct and secret suffrage, into a plan of proportional representation. In this case, the voting was exceptionally very heavy, in some districts as heavy as, 92%. The problem in this country was that the land-less had to be apportioned some land and to raise up the standard of living of the poor peasants was their focal point. Lithuanians were guided by Democracy, Liberty and Social Welfare; and in fact, the Preamble of the Constitution promulgated on May 6, 1922 enunciated the principles of a permanent political organization, complete independence on a democratic basis, the creation of conditions for the establishment of rights and justice, and assurance of equality and freedom to all citizens gave evidence of an ideal of social welfare to be realized by governmental protection.

An elaborate bill of Rights concerning individual national minorities was also included. Lithuania aimed to build upon sound conservative lines, guaranteeing equality before the law, inviolability of person and domicile, of Habeas Corpus, of freedom of religion, speech, communication, assembly, association and petition. Minorities, whose grievances Lithuanians could appreciate, were given a utonomy to administer the affairs of their national culture like education, charity and mutual aid, but it was maintained that religious convictions should not form the bases for pleas of refusing to stand by the nation, in its multi-faceted activities.

Thus the political experience and theories of the colonists supplied the principles, firstly, the employment of definite written instruments of government; secondly, the idea of a definite written constitution superior to legislative enactments, and of certain natural rights secured by such constitution; and thirdly, the theory of social contract. The Irish Constitution is of juristic interest firstly from the point of view that there was a rigid separation of the Constituent and Legislative Power, and secondly, from the angle of the Treaty, which made Ireland a co-equal member of the comity of Nations in the British Commonwealth. Esthonian Constitution extended the fundamental law of the land but also established economic and social reforms. Lithuanian Assembly was fully expressive of the national will and the national interest. In all these as well as other countries under the first category, the existence of the imperial yoke rebuked the people and was extinguished and anew constitutions were written with the help of the Constituent Assemblies.

FRANCE

FRANCE

In the second order ranks France. The King Louis XVI was obliged to convoke the Estates Generale, for financial exigencies and it was in May 1787 that all the one-thousand two hundred deputies had proclaimed that they truly represented the Nation and made incumbent upon their sanction before any policy or plan was pursued or executed. The King was at bay and asked them to vacate the Chamber. Instead, the Deputies assembled and took an oath at the Tennis Court. They resolved: "The National Assembly considering that being called upon to settle the constitution of the kingdom to bring about the regime of public order and to examine true principle of monarchy, nothing can hinder it from continuing its declarations in what was place it may be compelled to establish itself and that, in short, wherever its members may be collected together there is the National Assembly". It added: "Resolves that all members of the assembly taken an oath never to separate and to meet whenever circumstances may require it---until the constitution of the kingdom be firmly established on a solid rock and that the oath being taken by all of each one of the members confirm by their signature this unshakable resolution". This led to the appearance of the National Convention, which was by far liberal in character and which was elected in August 1792 on a more restricted franchise than the Estates Generale. It emphasized that the ratification of the Constitution was only within the competence of the people. Later, after five months of the inception of the Republic, which meant a desperate resistance to the Germans, fell Paris. Then the armistice was called for and a National Assembly was elected in February 1871 by universal manhood suffrage for the immediate maintenance of peace. It governed for four years, and prior to its dissolution, has formulated the existing Constitution. This Constitution is not embodied in one document, but is preserved in three constitutional laws passed on February 24 and 26, and July 16, 1875 respectively. These laws were not only passed by an assembly without a constitutional mandate, but also have never been put before the people.

GERMANY

At Weimar, when the German National assembly assembled, it had two concerns to look after. One referred to the Peace Terms and the other to the formation of a German Socialist Republic. Thus a Parliamentary Executive could not be convened until the revolution of the Spartacists, thereby paving the way for the Constituent Assembly to draw up the constitution of 1919. The German Socialist Republic stated "in the confidence that a national assembly will establish its complete sovereignty a Central Council places in the hands of the German National Assembly, the authority delegated to it by the Republican Congress of Workers and Soldiers Councils and wishes for its labours every success, for the happiness and salvation of the whole of the Germany ~~xxxx~~ nation and all the German races united in the new German Republic."

In pursuance of the right to convok a constituent assembly about an year, it declared that two Houses should be elected on universal and equal franchise. But the Frankfurt Assembly was broken because of the arrogance of the King of Prussia. Still, the ~~xxxx~~ idea of a democratic republican state to be raised out of the revolution had fanned the flame of bitterness against the centralized bureaucracy and to guard against all the reactionary elements and to "ensure the security of the right of equality without any prejudice of class consciousness" was all their aim. Therefore, it was said that the National Assembly was the highest and sole sovereign body in Germany. The committee of the states was accorded the right to consider the draft, though it had to be

placed before the Assembly for final ratification. Fichte appealed that "the state must be inspired with the spirit of the nation and the nation must be inspired with the spirit of the state". At long last, an unitary state had come to shape on a federal basis, with centralization of powers.

One singular feature is that with a view to establishing a legal system as early as possible a nice compromise between two kinds of legislation----constitution-making and urgent----was arrived at. In consonance with that immediate wish of the individual states, the Committee of the States was given the full responsibility as well as the right to consider the draft but with the condition that it should be placed before the people for final approval.

AUSTRIA

The Constitution of Austria of 1920 was drawn up by a Constituent Assembly with the ultimate aim of incorporating the New Austria into the New German Federal Republic. Their Constitution had to be applied to eight provinces, all of them constituting a quasi-federal state. As the peace treaties prohibited the merging up of Austria into Germany, the former's Constitution had the character of permanence. The distinct feature of the Austrian Constituent Assembly is that the Austrian case, which was decided by her Constitutional Court, in respect of constitutional disputes, involved a question of international significance. (March 19, '23) By the Geneva Protocol, October 4th, 1922, Austria, obligating herself to draft a programme of reforms and improvement, undertook specifically to "forthwith lay before the Austrian Parliament a draft law giving, during two years, to any Government which may then be in power, full authority to take all measures, within the limits of this programme, which in its opinion may be necessary to assure at the end of the period mentioned the re-establishment of budgetary equilibrium without there being any necessity to seek for further approval by Parliament."

Thus the French Assembly aimed at a unitary state on a federal basis, with centralization of powers and at the same time it was maintained that the consent of the individual states had to be obtained for any territorial re-organization. A thorough Unitary Constitution like that of France was not found fit and credible in Germany because of the latter's problem of racial disparities. In Germany, it was thought that though the sanction of the individual states was necessary, but yet the final provisions as the territorial re-groupings had to be decided by the Assembly. In Austria, the laws were passed by the Assembly without the help of the Constitutional Mandate and were never submitted to the people for favour of approval.

III Now we come to the third category, which refers to those states, where the necessity for establishing new states was immensely great by bringing into Unions the isolated and individually existing sovereign Units.

CANADA X

A Convention was demanded by the protagonists of the Lower Canada in 1823 as they found that the independence of the Executive in respect of the elected Assembly militated against their national interests and as such they petitioned to the King that "delegates freely and indiscriminately chosen and out of all classes of the community, as to be in harmony with the interests of the province," would "recommend the proper modifications in the governmental mechanism. They fully believed that such a "general Assembly" would "prove to be a faithful interpreter of all interests of the Colony taken collectively". But no response from the British Cabinet. At last, Lord Durham was sent, and he

recommended the unification of the two Canadas. Even then, no stone was turned. Then, some notable Canadian statesmen convened the Charlottetown Convention, which met at Quebec on October 10, 1864. In that month itself, they passed as many as seventy-two resolutions, which later were incorporated in substance in the British North America Act. The new Colony Secretary, of 1867, agreed to the idea of these statesmen, who represented their case and on July 1, 1867, the self-governing Dominion of Canada came into being. The effect was that the executive power was vested in the British Sovereign, whose representative in Canada was the Governor-General. As Prof. Keith says: "It appears to have been the laudable, if idle hope of the framers of confederation that they would be able to produce a measure which would so definitely assign to the federation on the one hand and to the provinces on the other their respective sphere of authority that no question of conflicts of law could every arise. If so, their hope was utterly defeated, for the number of complexities which have arisen regarding, the interpretation of the Constitution is deplorable..." And surely it is.

AUSTRALIA

Disunity was so much acute among the Colonies and responsible leaders thought it necessary to arrive at a permanent resolution for inter-colonial co-operation. The first scheme was formulated by Lord Grey in 1847. But it could not be successfully adopted. In 1853 some Select Committees consisting of the councils of New South Wales and Victoria favoured the idea of federation, but the Imperial Government rejected, whereupon a "General Association of the Australian Colonies" was established at London and released a memorandum in 1857 pressing for convening a Constituent Assembly. Once again this was met with a refusal and a denial. An Inter-Colonial Conference was prorogued and it recommended the formation of a Federal Australian Council. But by the year 1885, the run of external affairs compelled the colonies in toto to realize that a cohesion was the only needful. Sixteen years later, a Convention of leaders of all the different shades of opinion was convened; but fresh elections were warranted as there was a divergence of opinion. The Convention met in March 1897 and after agreement had been reached, it evolved a Constitution which was approved by broad majorities in five colonies. To this the Parliament gave its approval and sanction in 1900 and in 1901 arose the Commonwealth of Australia.

AUSSIA

Now let us turn to Russia, which is a multi-national Republic, the establishment of which can easily typify the iron fact that innumerable nationalities can subsist side by side in any other country, like India. The Provisional Government, which succeeded the abdication of the Tsar, issued a Proclamation that a popular Constitution would be drafted with the help of a "Constituent Assembly, based on universal suffrage" and it was opined that it should resemble the Assemblée Constituante of French Revolution. In fact by that time, Marx had already appealed for the inauguration of a Constituent Assembly and Lenin had expressed that: "The Soviets are the new State apparatus...It makes it possible to combine the advantages of parliamentarism with the advantage of immediate and direct democracy, that is, to unite, in persons of elected representatives of the people both legislative and executive functions"...Thus he pleaded for it with the main idea of laying the foundationstone for a Socialist Republic. But when the solemn assurances of the Provisional Government were withdrawn, the workers' tempers were frayed. Through the agencies of the Executive Committees, representatives of all political parties were elected and the Constituent Assembly in the year 1917 declared Russia to be a Socialist Federative Soviet Republic and adjourned sine die shifting the responsibility of preparing the Constitution upon the Central Executive Committee. This Constitution is "one of the most interesting political experiments experiments that the world has ever seen" as it could wipe out all the

economic ill with a political weapon

The framers of the Canadian Constitution, therefore, took all precautionary steps to keep the Centre powerful, and crystallised that diverse elements, racial and religious, can live side by side with the help of provincial autonomy. The example of Russia succinctly points that the diversity of peoples is no handicap to the evolution of a unified state. Australia sets a nice precedent too, that an Inter-Colonial cohesion alone would contribute much prosperity to the whole of Australia, than a set of packed colonies.

INDIA

The right to be an honourable mistress of her own home, has been the consistent demand, both inalienable and illimitable, of India and the most democratic vehicle to express that, is found by the countries of the World in the Constituent Assembly. But excepting in the case of North America and Eire, the fight for freedom was not closely associated with a foreign yoke. So the case for a Constituent Assembly has been broad-based upon the triennial rocks of the extinction of an Alien Imperialism; the framing of a Constitution for a Free India by Indians, who are the proud-co-legislators of such a document (of course based upon the principle of adult franchise); and the unflinching determination to convene the Assembly without the implications of violence and civil war.

Expression was given vent to the necessity for a Constituent Assembly as early as in the year 1934, when the Swaraj Party presented the policy of Constituent Assembly: "This Conference claims for India, in common with other nations, the right of self-determination and is of the opinion that the only method of applying that principle is to ~~convene a Constituent Assembly~~ ~~framed by all sections of Indian people to frame an acceptable constitution~~ convene a Constituent Assembly represented by all sections of Indian people to frame an acceptable constitution". Pt. Jawaharlal also proclaimed in those days that "Politically and nationally if it is granted, as it must be, that the people of India are to be the sole arbiters of India's fate and must, therefore, have full freedom to draw up their constitution, it follows that this can only be done by means of a Constituent Assembly elected on the widest franchise". It must also be maintained that the idea was conceived of by Mahatma Gandhi even in the year of 1922, when he said that: "The British Parliament, when the settlement comes, will ratify the wishes of the people of India as expressed not through the bureaucracy, but through her freely chosen representatives." In 1936 (28th December) at the Faizpur Congress, a resolution which reiterated the demand for the same was passed thus: "The Congress stands for a genuine democratic State in India where political power has been transferred to the people as a whole and the government is under their effective control. Such a State can only come into existence through a Constituent Assembly, elected by adult suffrage and having the power to determine finally the constitution of the country". In like vivid terms had the Working Committee of the Congress asserted the rights of self-determination and the demand for the Constituent Assembly, which implied bold assertion of India's right of sovereignty and its challenge to found the State and frame its Constitution. Latterly, the Karachi Resolution of the Fundamental Rights of Man was also drafted, as it would form one of the mile-stones in the success of any democratic constitution.

On 14th September, 1939, another resolution was passed by the Congress Cabinet to the effect that "Indian people must have the right of self-determination by framing their own constitution through a Constituent Assembly without external interference and must guide their own policy.

The Constitution-making Plan which was embodied in the Cabinet Delegation's Proposals of the 16th May, was discussed by the AICC on 7th July and was passed with an overwhelming majority of 153. The advice of Mahatma Gandhi, in his address on that day was: "The proposed Constituent Assembly, I know, is not a free assembly. There are many defects in the scheme but since we have been fighting for the last so many years why should we be afraid of the defects in the Constituent Assembly scheme; we can fight the Constituent Assembly itself if we find the defects are unremediable" and as such "I do not see any reason why should we be afraid of going into the Constituent Assembly." The same view was expressed by Maulana Azad, when he remarked: "We have secured Constituent Assembly as a result of our struggle and sacrifices during the past 50 years.... whatever difficulties may stand in our way we will overcome them as we are determined to reach our final goal. We will not in any way event sacrifice any of our fundamental principles. If unfortunately any insuperable difficulties drop up in direct conflict with our fundamental principles, we shall not hesitate to kill the Constituent Assembly". President Nehru calling for revolutionary statesmanship observed, "I do think that some time or other in the future we may have to summon our own proper revolutionary Constituent Assembly. That does not mean that we should not take advantage of this and work it out for our own advantage. If we do not succeed in the Constituent Assembly we change our tactics to suit whatever form we want to do".

This Assembly has been called "illegal and ultra vires". The idea may contain a grain of truth on the basis that it has no statutory ground behind and that it is not unfettered in the sense that the Constitution, it is likely to produce, will have to take the assent of the British Parliament. All this is true. As Thouret said, "To create a constitution is to regenerate the State". The legitimate right of a nation to organise itself for framing a constitution is called its constituent power and this "constitutional power is the beginning and end and the very essence of sovereignty. A people which cannot thus organise itself is a people enslaved". To the extent that the Constitution-making Body is elected by Indian votes and to the point that the Europeans had no locus standi at all in the matter, the Constituent Assembly has all the vestiges of sovereignty. Maulana Azad, in his letter to the Secretary of State on May 20, wrote: "The Assembly itself, when formed, will, in my Committee's opinion, be a sovereign body for the purpose of drafting the Constitution unhindered by any external authority, as well for entering into a Treaty. Further that it will be open to the Assembly to vary in any way it likes the recommendations and the procedure suggested by the Cabinet Delegation. The Constituent Assembly being a sovereign body for the purposes of the Constitution, its final decisions will automatically take effect". To this, the Secretary of State replied on May 22 that "Once the Constituent Assembly is formed and working on this basis, there is naturally no intention to interfere with its discretion or to question its decisions." To add to this, Pt. Jawaharlal remarked that the two problems that limit the sovereignty were minorities and the treaty. The minority problem has to be solved amongst the Indians themselves as in any other case in the world, and regarding the precedent of Ireland can be borne well in mind. The draft treaty submitted by the British Government on December 6, 1921, was rejected by the Irish delegation and when Mr. De Valera put forward an alternative draft, it was rejected. When the Irish Republic was set up, it was thought by one and all that the Treaty was a betrayal of the struggle for freedom, and a repudiation of National Sovereignty. Ireland, latterly, registered the Treaty with the League of Nations and used its own seal on its documents in 1924, when the British Government protested against this procedure on the ground that common allegiance to the Crown debarred the Irish Free State from being classed as an independent Sovereign State and produced the authority of the Article 18 of the Covenant. But the Irish refused and referred later on to the Permanent Court of ~~Amkianaxaf~~ International Justice providing for the compulsory arbitration of legal disputes "on the condition


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of reciprocity". Notwithstanding the anomalous constitutional relationships between Eire and Britain, the Anglo-Irish Agreements of 1938 closed the vacuum to some extent with the three agreements. Pt. Jawaharlal Nehru has put the view of the Congress thus: "But if the British Government presume to tell us that they propose to hold up anything because they do not agree in regard to the minorities or in regard to the treaty, we shall not accept that position. It would become a status belli. We shall tear up any treaty that they try to impose on us. Therefore these two limiting factors to the sovereignty of the Constituent Assembly are not accepted by us". Then why cannot this machinery be accepted?

The plea from the opposition was laid in the modus operandi of the elections. True it is that the Congress in its Faizpur session passed its famous resolution that the Constituent Assembly should be elected "by adult suffrage and having the power to determine finally the constitution of the country" and the same was emphasized in the AICC of 1939 that it will be elected "on the basis of adult or near franchise". It has been always realized Universal Adult Franchise is one of the vehicles of mobilizing that force and of making democracy healthy, and true it is that the Constituent Assembly is not a popularly elected body in the sense that the Provincial Assemblies which have elected the representatives of the Constituent Assembly are themselves representatives of only 14% of the country's population. The Cabinet Delegation has itself admitted that "the most satisfactory method" of constituting a Constituent Assembly "would be by election based on adult franchise", which was "considered impossible of adoption as it would lead to a wholly unacceptable delay in the formulation of a new Constitution". This has been accepted by all the major and minor political parties, and all of them have partaken in the elections. So this need not present any trouble. However, elections would be held on the widest franchise after the constitution will be drawn.

The question of grouping is the other we have to face. Mahulana Azad, in his letter, dated May 20th, addressed to the Secretary of State, observed: "The basic provision gives full autonomy to a province to do what it likes and subsequently there appears to be a certain compulsion in the matter which clearly infringes that autonomy. It is true, that at a later stage the provinces can opt out of any group. In any event, it is not clear how a province or its representatives can be compelled to do something which they do not want to do. A Provincial Assembly may give a mandate to its representatives not to enter any group or a particular ~~xxxx~~ group or section.... As sections B and C have been formed it is obvious that one province will play a dominating role in the section, the Punjab in section B and Bengal in section C. It is conceivable that this dominating province may frame a provincial constitution entirely against the wishes of Sind or the N.W.F.P. or Assam." It can be emphasised that the Section 15 of the Cabinet proposals has clearly recognized the rights of provinces to form groups or not. But with a view to making matters clearer, the Working Committee at its sitting in Wardha, declared that it would not insist on this point. The Viceroy in his broadcast of the 24th August stated that "assurances have been given to the Muslim League that the procedure laid down in the statement of May, 16 regarding the framing of provincial and group constitutions, will be faithfully adhered to; that there can be no question of any change in the fundamental principles proposed for the Constituent Assembly in Paragraph 15 of the Cabinet Mission's statement of 16th May or of a decision on a mail communal issue without a majority of both major communities; and that the Congress are ready to agree that any dispute of interpretation may be referred to the Federal Court."

Last but not the least in importance, is the problem of minorities. Sir Stafford pointed out that "if the (Congress) provide adequate opportunities for minority representatives to get elected, the minorities will gain and not lose by the arrangement. Despite this---We proposed, therefore an advisory committee. This provides a way of initiating recommendation for minority protection in the constitution in a body which should consist mainly of minority representatives". This in bold relief has met with the interests of all the communities, who are only political parties, but not communal. The Princes have been wobbling on the question of popular representation from the States to the Constituent Assembly and it has been clear that on the agenda of the Princes three alternatives of selection lie embodied: one relating to the selection of non-officials only as their nominees to the Assembly; second, to send non-officials as "advisers" only to the Princely quota of representatives and the third relates to the idea of allowing the States' People to elect their own representatives. Thus no obstacle seems to be in store from the States' point of view, as they have been seriously considering the question of self-government to the States people. The Sikhs have revised their previous decision and are entering the Assembly. Thus the only party that will boycott will be the Muslim League. But agreement could not be brought about, in spite of the efforts of Pt. Nehru, who initiated discussions with Mr. Jinnah at Bombay. Viceroy in his recent broadcast also remarked that if the League decided to come in, the Interim Government would be reshuffled. He appealed thus: "I sincerely trust that the Muslim League will reconsider their decision not to take part in a plan which promises to give them so wide a field in which to protect the interests and to decide the future of the Muslims of India." Or Else, as it is clear, the Viceroy would proceed on the work of the convocation of the Assembly, quite in tune with the famous words of Mr. Attlee that "a minority party cannot veto the progress of a majority".

Draft d.o. letter from Pandit Jawaharlal Nehru to Congress
Premiers and Presidents of Provincial Congress Committees.

My dear ,

Till the Interim Government is set up and for the period of the Constituent Assembly, it is important that appropriate publicity should create a suitable atmosphere and provide a background which should inspire the people of India as a whole to continue to have confidence in the Congress; should help the Constituent Assembly to deal with the delegation of powers to the Indian Union in a liberal spirit; and should keep the communal question in its proper place. If some Indians think in terms of sectional, provincial or communal politics, the task of the Congress, the Constituent Assembly and the Interim Government would become extremely difficult. It follows that a well organized and coordinated inter-provincial Congress publicity is an urgent necessity.

2. As to the aims of publicity I should like you to think over the matter, but generally speaking it seems to me that fissiparous and disintegrating forces (e.g., communal, party, feudal, class, caste, etc.) which weaken national unity and strength should be countered. Congress ideals need to be reiterated and the feeling against foreign rule maintained in order to prevent minor issues and petty rivalries from occupying ~~and~~ the stage. In this context it would be helpful if the emergence of India as an independent country and its importance in South East Asia were stressed so as to shift the emphasis from smaller to larger problems. Then there is the communal problem. It seems necessary to publicize specific measures adopted or intended for the protection and amelioration of all minorities and particularly Muslims as a cardinal principle of Congress policy. In this connection what has been done in one province should be made known elsewhere. An attempt might be made to remove Muslim fears and counter atrocity stories made current by the League. It would be useful if publicity could be

given to the harmful aspects of Pakistan ideology, partition of India, two-nation theory, compulsory grouping, weak Centre, appeal to powers outside India, etc. In this connection emphasis might be laid according to conditions prevailing in your province on economic as against communal-cum-political issues, as the real issues to be faced by all communities together.

3. In order to carry out coordinated publicity it would be necessary to have a publicity organization. It may be possible to use the official machinery to a certain extent, and where that is not possible, the Provincial Congress Committee might engage a small staff. The importance of having publicity officers has already been mentioned to Provincial Committees and I hope that if action has not already been taken, it would be taken now. Material specifically prepared by selected writers on the above lines might be usefully supplied to the Press. Speakers may be provided with specially prepared talking points, background material and guidance notes. It has been suggested that we might hold an All-India Exhibition of the Congress struggle 1920-46. For this purpose Provincial Committees might consider collecting material by way of photographs, etc. I will see if I can get prepared pictorial posters which would be sent to Provincial Committees for being printed locally with captions in local languages and distributed throughout the provinces. Short films can be utilized as well because the Central Government have ceased to provide and distribute them. After September next all provinces except Bengal and Sind could, by arrangement with the Central Cine Corporation of Bombay, show compulsorily 1000 feet of short films and newsreels approved by them. This would require coordinated action by all the Congress provinces.

4. I shall be glad to have your views on the suggestions made and to know how you propose carrying them out. I shall be pleased to assist you in any way I can. I have mentioned this matter to the Working Committee and they are generally in agreement with me and feel that we should make a beginning as early as possible.

Yours sincerely,

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