THE STATES AND THE NEW CONSTITUTION

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that a small committee can sit around the Table and agree upon the

THE STATES AND THE NEW CONSTITUTION

By S. M. BOSE, M.A., LL.B. (Cantab), Barrister-at-Law

One of the most important questions that will have to be solved under the New Constitution envisaged by the Cabinet Delegation Plan regarding the post-war political status of India is the position of Indian States and their relation with British India (to use an old phrase which needs modification with the withdrawal of the British). No satisfactory solution of the intricacies of the coming New Constitution is possible without dealing with this vital problem—what is to be the position of, the part to be played by, the Indian States, and the relation between them and British India. What part can the great Indian Rulers play in shaping the future of India? What is to be their position in the future Indian polity?

The present position of the States as envisaged by the Government of India Act, 1935 will first be examined.

There are 109 States, the Rulers of which are entitled to a salute of more than eleven guns and as such, are entitled to be members of the Chamber of Princes in their own right; 127 States, the Rulers of which are represented in groups in the Chamber by 12 members elected by themselves; and 327 petty estates and jagirs, etc., who have no such representation.

These 563 States differ considerably in area, population, internal administration and importance; but they are all alike in that they are under the personal rule of the Prince who has the final voice over legislation and the administration of justice. They are also alike in that they are not part, or governed by the law, of British India.

The States stand in a peculiar relationship to the British Crown as Paramount Power in India. This relationship, which is *sui generis*, is not governed either by international or municipal law. The Paramount Power—the Crown acting through the Secretary of State for India and the Governor-General in Council—has its relations with the States based upon treaties, engagements and *Sanads*, supplemented by usage and sufferance and political practice. The relationship of the Paramount Power with the States, is not merely a contractual relationship, but a living, growing relationship shaped by circumstances and policy, as the Butler Committee put it; it is not fixed, rigid or static, but adaptable, mobile or dynamic in character. As Lord Reading bluntly but forcibly expressed it in 1926, the sovereignty of the British Crown in India is supreme in India and no Ruler of an Indian State can justifiably claim to negotiate with the British Government on an equal footing and it is the right and privilege of the Paramount Power to decide all disputes that may arise between the States or between one of the States and itself. Where Imperial interests are concerned, or the general welfare of the people of a State is seriously affected by the action of its government, it is with the Paramount Power that the ultimate responsibility of taking remedial action, if necessary, must lie. Thus, as explained by Lord Reading, the Crown has, independently of treaties, the right by usage, to take all the steps it thinks fit, to ensure the safety of the British Empire, the interest of India as a whole, or the interest of any particular State.

State Rulers enjoy varying degrees of internal sovereignty. Even this qualified sovereignty may be over-ruled by the Crown in cases of mismanagement by the Ruler. No Ruler of a State can enter directly into relations with any foreign power or even with another State. Thus it follows that a State has no international status, as being fully sovereign neither in its internal nor in its external relations, though no doubt principles of natural justice must be taken to guide such relations. Relations between a State and the Crown further lie outside the sphere of municipal law. Briefly, such relationship comes under the prerogative of the Crown—that portion of it which may be called Paramountcy.

The Cabinet Delegation's proposal for the abolition of Paramountcy has greatly improved the position and status of the Indian States. Under the new constitution as envisaged by the Cabinet Delegation, new arrangements will have to be entered into by the States with British India, but what these arrangements are to be, has not been outlined. Solution of the various intricate questions regarding the new relation between the two must be attempted. Suggestions are here put forward to help such a solution.

First, the relation between the State Ruler and the subjects must be determined. Hitherto the State subjects have been at the mercy of the Rulers who refused to recognise that their subjects could have any claim to rights and privileges—such as those enjoyed by their brothers in British India. The Rulers have been naturally, like their British counterpart, very unwilling to part with their autocratic right and privilege, and they have been against the spread of democratic feeling among their subjects. Recently, however, there has been a welcome change in their attitude. But this change must be carried out into practice. Their subjects have greatly lagged behind their brethren across the border and there is, therefore, a considerable leeway to make up. But the difficulty must be frankly faced and immediate steps should be taken to start real representative institutions in the States, where the subjects are given a real voice in matters affecting their interest. The Rulers must fully and cordially co-operate with their subjects and voluntarily relinquish the privileges they so long enjoyed as Autocratic Heads. This is a *sine qua non*, essential to the building up of a United India. So it is suggested that the Rulers should by a Charter of Freedom, given to their subjects, grant political rights as enjoyed by British Indian subjects, and considerably modify their position.

Next, if the States are to get their rights recognised, there must be union among them. Instead of about 600 different entities, there must be a much smaller number, united and strong. So follows the principle of merger and union between various states, which have common ties of race, tradition and culture. This grouping of various small States with larger, will be followed by a

later union among the large States, till there arises a kind of Federation or Union of Indian States. So from amalgamation of the smaller States with the larger, there may be grouping together in important blocs, or amalgamations. Sir Sultan Ahmed in his thought-provoking pamphlet on "A Treaty between India and the United Kingdom," has suggested the following blocs : (1) Kashmir and the Punjab States ; (2) Kathiawar and Rajputana States ; (3) Central India and Eastern States ; (4) Mysore, Travancore and Cochin ; and (5) Hyderabad. In the interest of the States themselves, such a Union is eminently desirable so that they may enter into the Federation of India, to include both the States and British India. The exact nature of this relationship between the Union of Indian States and the Union of British India will be dealt with later on.

So the suggestion is that all the States should realise that for their security and useful existence, there must be a Union among all of them, to be settled by them by mutual agreement, or if they so prefer, by arbitration by some disinterested authority. The five great State blocs mentioned above may think it desirable to have a form of Federation among themselves, as among the British Provinces now.

Finally, the nature of the future relationship between the Union of Indian States, as advocated above, and the Union of British India, has to be now considered.

This may be of two kinds : (1) a Federation of the States with British India, somewhat on the lines of the Government of India Act, 1935, but more flexible in character ; or (2) the creation of a common authority over British India and the States, charged only with the problems of defence and security of India as a whole, on the lines of the scheme of Lionel Curtis.

The first scheme envisages a federated union between the groups of Indian States with the British Indian Provinces, both the Units being represented in the Central Legislature on a joint basis of population and income, the powers of the Central Legislature over each of the two Units being carefully defined by statutory safeguards. Such a Federation will be on lines somewhat similar to those laid down in the Constitution Act, with necessary modifications, one of these being that every one of the States must form part of the Federation, without any so-called right of secession. This is essential ; no State should keep out of the Federated Union, not only in the interest of India as a whole but also in its own interest. Separation between a State and British India is impossible ; for it is not possible to build an impassable wall between them. Different parts of the Indian Sub-continent cannot get beyond the reach of each other. There is one common unity pervading the whole and a water-tight partition is out of the question.

The other alternative form of Union would be one in which each of the parties, the States on the one hand, and British India on the other, preserves its separate entity on all matters except those of common defence and security ; for these specific purposes only, there is to be set up a Common Authority charged with the task of creating such forces by land, sea and air as may be required to secure India as a whole, from attack. This Authority is, by agreement between the Units, to have the power to take all necessary measures for the defence and the security of what may be called the Commonwealth of India, and to levy the cost of such measures from the various members of the Commonwealth. The Commonwealth will be empowered to make its common security from war, a first charge on all the resources of the component units; it will frame estimates for defence, showing the total sum required for the purpose. These estimates will be submitted to a Commonwealth Legislature elected by the citizens of all the component parts of the Commonwealth,—the British Indian Provinces and the States.

In other words, the second scheme is based on there being two component parts—the States Union and the Union of the British Provinces, with separate existence and separate legislatures ; but only for purposes of defence and security of India as a whole, there is to be set up the Commonwealth Authority above them, whose function will be to create and maintain such forces by land, sea and air as may be necessary to secure the various component parts of the Union from attack. This Authority thus, will have two branches—the Commonwealth Executive and the Commonwealth Legislature. The former will frame the necessary Budget for the common purposes of security and defence and lay this Budget before the Commonwealth Legislature. The amount of the estimates, when passed by this Legislature, will be apportioned among the members of the Commonwealth of India, in the ratio of their taxable capacity, as assessed by a commission of financial experts. The Commonwealth Authority will also be empowered to enter into negotiations with other members of the United Nations Organisation, regarding matters of defence and security in which all the members of the U.N.O. are equally interested. For this is *One World*, and anything which affects the security of any part thereof, affects the security of the whole.

A comparison of the two schemes may be useful ; the first scheme—which may be called the Federation of India scheme, envisages a union between the British Indian Provinces and the States, with a common legislature—somewhat on the lines of the Government of India Act, 1935 ; State subjects and British Indian subjects will be more or less on equal footing and enjoy similar privileges. But this Federation would, to a material extent, merge the States with British India.

The second scheme may be called the Commonwealth of India scheme, envisages the separate existence of the Union of States and of the Union of British Indian Provinces ; but for certain common purposes only, for defence and security—there will be a supreme Commonwealth Authority above them, to deal with the task of creating and maintaining forces essential for the security of India as a whole. In this scheme, the States preserve their identity, and only unite with British India for the sole purpose of defence and security. This scheme is on the lines of the Dumberton Oaks proposals on a small scale.

Whatever be the scheme adopted, it is evident that very careful investigations will have to be made to settle the actual details of the arrangement between the States and British India.

In the first scheme referred to above and the Federation of Indian Scheme (Scheme A), the following matters will require to be settled in detail :

(*a*) *Defence* : It is advisable that the various State armies should be amalgamated into one and this State Army should be trained and equipped like the British India Army. So the United National Indian Army can fight as one if necessary, against a common foe. Air and naval forces which are very costly should, if

possible, be united under one common head. In the matter of security and defence, no doubt the Federation will seek co-operation with other members of the U.N.O.

(*b*) *The vexed question of tributes* : The States at present pay tribute to the Crown, which forms part of the central revenues. The amount varies from Rs. 24½ lakhs payable now by Mysore to Rs. 3 by a small State named Ravasan in Bombay. The tributes are payable in terms of treaties on which territories were at one time exchanged or restored or on adjustment of claims between the Government of India and the State. In many cases, tributes are paid in full discharge of obligations to maintain or supply troops. The total of these tributes amounts to a little over 72 lakhs. The Joint Parliamentary Committee recommended the gradual remission over a period of years (corresponding to the period during which it is proposed to defer the full assignment to the Provinces of a share of the income tax) of any contributions paid by a State in excess of the value of privileges or immunities enjoyed. For relief should be given to the States because it is anomalous that some units of the proposed Federation alone should be making payments of this description.

(*c*) Some States have ceded territory in return for protection and the Act also recognises the claims of such States to some relief as in the case of States now paying tributes, because the origin of tributes and of ceded territories is the same. Under this head the amount involved is about Rupees one crore.

(*d*) Some States have been enjoying privileges or immunities—(*i*) in respect of levy of their own customs duty by some States and immunity from contribution to the Central Customs revenue ; (*ii*) some States manufacture their own salt and are immune from contribution to the Central Salt revenue (total about Rs. 46 lakhs) ; (*iii*) immunities in respect of posts and telegraphs : some States enjoy the privilege of having their official correspondence carried free by the Indian Postal Department ; some States get free annual grant of service stamps ; some States like Gwalior and Patiala maintain their separate postal system under convention with the Government of India ; some others like Hyderabad, Travancore and Cochin have this without any such convention ; (*iv*) Hyderabad has the right to issue its own currency notes.

The Act (Secs. 146-147) contemplates the remission by instalments of tributes or "cash contributions" in excess of the value of privilege or immunity enjoyed by the State.

How is this matter to be determined under the new constitution ? The proposed abolition of paramountcy ought not to mean abolition in *toto* of cash contributions for these form part of the Central revenues. The Government of the British Indian Union will be the successor of the present Government of India and as such, should inherit the rights of the latter in this respect until varied by mutual consent.

In the second scheme referred to above as the Commonwealth of India Scheme (Scheme B), where the Union of States join the British India Union only, for the limited purpose of security and defence, similar questions regarding tributes, privileges and immunity will arise. These matters along with other Commonwealth relations must be laid down by treaty between the parties. To settle the terms of the Treaty or Treaties, there must be a Tribunal of Arbitrators composed of representatives from the States and from British India, with an impartial Chairman, preferably from the U.S.A. The findings of this Tribunal will be binding on both the parties and will be embodied in the Treaty or Treaties, the terms whereof might be altered or amended by agreement between the parties at stated intervals.

So, whatever be the scheme adopted—Scheme A or Scheme B—there must be a Treaty or Treaties between the States or group of States on the one hand, and British India on the other hand ; and it is clear that the withdrawal of British power from British India must be contemporaneous with the withdrawal of paramountcy over the States. There can be no hiatus.

The above consideration will show the great need of caution and careful study before the relation between the States and British India under the New Constitution can be settled.

So, whatever be the scheme adopted, there is no doubt that some form of close union and co-operation among all the parts of India is essential. Notwithstanding differences in religion and outlook, there is beyond doubt an underlying unity, both geographical and racial, in India, a cultural heritage that runs like a golden thread uniting all parts of India. Recent events have only stressed more strongly the need for unity. The days of self-sufficiency, of isolationism are over. The principle of self-determination was in the nineteenth century, an integrating force for bringing unity among various small warring units, making them into a single state. In the twentieth century, this principle has unfortunately become a disintegrating force which leads to anarchy. As Walter Lippmann has truly remarked, to make the principle of self-determination the supreme law of international life now is to invite sheer anarchy. The principle rejects the ideal of a State within which diverse peoples find justice and liberty under equal laws and become a commonwealth. Self-determination is very different from self-government ; and by sanctioning secession, it encourages majorities and minorities to be intransigent and irreconcilable.

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No.CA/501/Gen/46

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Sr. No. (2) Issue

(5)

2nd October 1946

From:

K.V.Padmanabhan Esquire,
Assistant Secretary.

To :

S.M.Bose Esquire,
M.A.,LL.B.,(Cantab),Bar-at-Law,
3, Federation Road, CALCUTTA

Dear Sir,

I am desired by the Constitutional Adviser to acknowledge with thanks the receipt of your pamphlet on "The States and the New Constitution".

Yours truly,

(K. V. PADMANABHAN)
ASSISTANT SECRETARY

ASW

Dn. no. 1754
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7/10/46.

The Malayalee demand has received fresh impetus after the re

Dy. No. 787/Gen/46

Sr. No (3)

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CREATION OF LINGUISTIC PROVINCES
:An Urgent need:
-oOo-

Sri KALA VENKATARAO, M.L.A. Amalapuram:
Member East Godavary Dt.
Constituent Assembly.

An informal meeting of certain members of the Constituent Assembly, members of the A.I.C.C. and other friends interested in the creation of new linguistic Provinces as component parts of the Indian Union to be and that to happen by the time the Union itself will be ushered into existence, met in New Delhi on 24-9-46 at the residence of Lala Deshbandu Gupta. The meeting was convened by Shri Shankera Rao Deo, well-known leader of Maharashtra and till recently member of the Congress Working Committee. The gathering was representative though not numerous. Some representatives of the States were also present. There was a unanimous agreement about the need to create linguistic provinces and also about the necessity of gathering strong public opinion to press on the Constituent Assembly when it will meet, the A-1 Priority that this subject ought to have. So it was resolved to convene an All India Convention fully representative of public opinion, a few days prior to the first sitting of the Constituent Assembly.

In as much as that there is unaninity of opinion both in the Congress and non-congress circles about the need for the creation of linguistic Provinces, there has grown a certain amount of lassitude about the necessity to organise a public agitation about this affair. But certain portents of which I am and many friends are aware make us uneasy about this. We have reason to think that some of the 'high-placed' feel that linguistic provinces can be planned and created at leisure sometime after the new constitution will come into force. The reasons advanced are:

1. That there are certain difficulties in the way due to the wording of the Cabinet Mission's declaration of May 16.

2. That the process of enquiry etc. involved will cause delay regarding the transfer of power from Britain to India. Before examining the validity of these two grounds it would be necessary to examine in at least superficial detail some major factors of the existing back ground.

The Andhras have been demanding a province of their own, for long. The Canareese are also in the field for a good length of time. The Malayalee demand has received fresh impetus after the recent declaration of His Highness the Maharajah of Cochin. The Maharatta friends have taken up the question with all the enthusiasm of fresh entrants. There is also a demand for Hirayana Province carved out of Punjab and U.P. More welcome to the Andhras is the fact that responsible Tamil friends are as serious for a Tamil province as we the Telugu are. Some important Tamil leaders have even suggested that a small committee can sit around the Table and agree upon the boundaries of the Tamil and Telugu areas and thus save some good time to the Constituent Assembly. So we can presume that there is widespread public support and not much of inter-Provincial wrangling over this matter.

Now let us come to the stand taken up by the Indian National Congress in this matter:

That the National Congress was impressed about the need for the creation of the Linguistic Provinces can be easily seen from its constitution adopted by the Congress Session at Nagapur in December 1920. The constitution provided for 21 Provinces mainly based on languages. But the Congress having adopted a policy of non-cooperation with the existing Government of the land, could not press upon the Parliament the need to create linguistic Provinces. The creation

of 3 new Provinces in 1937 - Sind, N.W.F. and Orissa - had congress support of course, but apart from the common demand practical pressure for such creation was exerted more by non-congress groups in those days. After the formation of the Congress Ministries in 1937 the question was taken up in all seriousness. On an unanimous request from all the Congress Legislators of Andhra in March 1938, the Congress Government in Madras gave precedence for a resolution demanding the creation of linguistic provinces from out of the present Madras Presidency and it was adopted unanimously by the Legislature. In spite of a few bickerings among the linguistic groups, the general idea of splitting up the province had very good popular support. On July 19th, 1938, the T.N.C.C. adopted a resolution "This committee while supporting whole-heartedly the desire of the Andhras for a separate Andhra Province and also expressing the eagerness of Tamilians for a Tamilian province -----" About the same time the Working Committee of the Indian National Congress adopted a resolution at Wardha which interàlia read "-----This committee desires to assure the people of the areas concerned that the solution of this question would be undertaken as a part of the future scheme of the Government of India as soon as the congress has the power so to do and calls upon the people of these areas to detist from any further agitation on this behalf which may divert attention from the main issue now before the country. The wish of the Working Committee not to carry on agitation was respected in general. About a year later the congress Ministries resigned and the country later had to pass through ordeal and suffering in 1940-41 and 1942-45. In the final months of the year 1945 and the early months of the year 1946, the congress fought the Central and Provincial elections. In the election manifestoes the programme of linguistic provinces was clearly mentioned.

"It (congress) has stood for full opportunities for the people as a whole to grow and develop according to their own wishes and genius: it has also stood for the freedom of each group and territorial area within the nation to develop its own culture within the larger frame work and it has stated that for this purpose such territorial area or provinces should be constituted, as far as possible, on a linguistic and cultural basis." The fact that the congress candidates swept the polls every where in all provinces must be deemed to be a clear endorsement of the ideals and programme of the Congress adumberated in its election manifestoes. Soon after the elections were over the cabinet mission came to India and its declarations are now before the public. The Congress is now committed to the Mission's long term and short term programmes and to fulfil the latter has recently joined the Interim National Government of India. The Constituent Assembly of India is scheduled to meet on 9-12-1946 at New Delhi.

Now is the opportunity for securing A-1 Priority to the problem of linguistic provinces. It cannot be denied that the congress has to-day "the power so to do" in terms of the Working committee resolution of 1938 quoted above when it mans 8 Provincial Governments and shares one more, when it forms the core of the Interim Government and when it commands the majority in the Constituent Assembly. But still I apprehend the "Big if". Of course it cannot be said that any one is opposing the principle as such. The advocacy is there and much more so the sympathy too of well meaning friends. But what about the two points raised at the beginning of this article - Cabinet Mission's declaration and the apprehended delay regarding the 'transfer of power.'

The Hindustan Times in a recent article pointed out the difficulty that Sub-clause 5 of para 19 of the Cabinet Mission's statement of 16-5-46 read with Sub-clause 8 of the same para may imply that the status quo regarding the existing British Provinces should remain till atleast the first general election under the new Consti-

tution will have taken place. For ready reference I am quoting below both the said clauses in extenso:

Para 19 Sub-clause 5:

"These sections (groups A,B,C) shall proceed to settle the Provincial constitutions for all Provinces included in each section and shall also decide whether any group constitution shall be set up for those provinces and, if so, with what Provincial subjects the group should deal. Provinces shall have the power to opt out of the groups in accordance with the provisions of Sub-clause 8 below:'

Sub-clause 8:

"As soon as the new constitutional arrangements have come into operation, it shall be open to any province to elect to come out of any group in which it has been placed. Such a decision shall be taken by a new legislature of the Province after the first general election under the new constitution."

The Hindustan Times has placed a very strict legal interpretation on a document which was not drafted to satisfy the creteria that commonly govern the drafting of statutes. Further the interpretation ought to be liberal without injuring the basic intention. In the present case ~~the~~ too much stress is sought to be laid on the article 'The' governing the word 'Provinces' making it mean, the existing provinces alone. I do not think that the discretion of any particular group is fettered to such a length. If say, group A, after due deliberation wants to have well defined component units in its Region based on languages and does not seek thereby to encroach upon groups B and C or their boundaries as at present existing, why should it be said that it offends the declaration? Further, if as a result of a Hindu-Muslim agreement meanwhile, the parties are agreed to disturb even the boundaries of groups B and C as formed with group A, such an agreement should not be impeded by a restricted interpretation like the present one. After all the commission have stated in para 16 "It is not our object to lay out the details of a constitution on the above lines, but to set in motion the machinery whereby a constitution can be settled by Indians for Indians." The machinery now set in motion, namely the full house of the constituent Assembly or the particulars group sitting separately to frame the details of the constitution or its parts has the needed liberty to frame constitutions for linguistic units also if it prefers to do so. If the constitutional Pundits still feel a difficulty the Mission themselves can be approached by a request either by the Interim Government or by the Constituent Assembly ~~so as not to~~ to clarify the wording of the statement so as not to obstruct the creation of new linguistic Provinces. Any other alternative will not satisfy millions of people in India.

Apprehending that the procedure to create linguistic provinces suggested above will not satisfy some high placed legal luminaries, we may have to think of asking for the creation of linguistic provinces according to the procedure under the 1935 Act.

"They (officials of the East India company) had to provide a suitable administrative machinery for groups and patches of territory which came intermittently into their hands. The problem was also solved by the new areas being simply added to an adjoining older possession of the company and brought under its administration. No thought was given to the homogeneity or otherwise of the combination from the point of view of race, language or religion."

M.R. PALANDE.

When such is the unplanned formation of the British Indian provinces, further delay should not be thought of to apply a scientific

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basis to fix up new units even, when the Independence constitution of India will have to be formed. The British Government was also prepared to recarve the provinces on a more rational basis and hence the provisions in the Constitution Acts of 1919 and 1935. Lack of unanimous opinion in the various linguistic groups in the multi-lingual provinces and want of agitation rising to the required pitch, kept these provisions in cold storage. But the days are now changed and even conservative body like the Council of State recently adopted a resolution moved by Honourable Thirumalarao for the creation of the Andhra Province.

Under section 60 of the Government of India Act 1919, the Governor-General-in-Council was competent to declare by a notification a change in the Boundaries of an existing province or carve a new one. A more comprehensive procedure is laid down under section 290 of the Act of 1935. Now the power is vested in the Crown to create new provinces by order in Council. But before the order can be placed before the Parliament, the view of the Central Government and the legislature and the Provincial government and legislatures have to be obtained.

If my apprehension regarding the postponement of the creation of new provinces proves to be correct, then all interested in the scheme will have to approach the Congress High Command for support and see that the provisions of section 290 of the Act of 1935 are pressed into service <u>at once</u>. I beg to suggest the following procedure:

1. The concerned provincial Legislative Assemblies and Councils if need be at special sessions summoned immediately pass resolutions requesting the Interim Government and the Secretary of State to prepare schemes for new linguistic provinces and then submit orders in Council under section 290 to Parliament.

2. The Interim Government should after receiving the requests from concerned Provinces place the proposals before the Houses of the Central Legislature and with their approval and their recommendation forward them to the Secretary of State for India.

3. The Interim Government should also make a request to the Crown to expedite the procedure so as to create the provinces before the Constituent Assembly concluded its labours.

Meanwhile the Provincial governments should appoint fact finding committees and in addition conciliation boards representative of linguistic interests in each of the composite provinces. With the goodwill now existing and with the influence of the congress in office, agreed formulas can be got ready at early dates and fait accomplie can be placed before the Boundary commissions empanelled by the Crown. This will help to cut short the procedure by months and will answer both the criticisms stated above.

The argument "We are agreed on principle, why not wait' is not just and should not be hurled against patient people who accepted the advice contained in the working committee resolution of 1938. The time is now come and justice requires implementation of promises. For example, the Andhra claim is over 35 years old. Due to the congress boycott of the Simon Commission, no public body in Andhra approached the commission to press its reasonable claim for the creation of the Andhra Province. While Orissa could secure a province of its own at that time, we defaulted and are not sorry for it. The rightful cause of the Andhras was recognised even then in the Joint Parliamentary committee. (Vide proceedings Vol.I Part II page 443).

"----There are said to be six million people only in Orissa of

whom only about five million are Oriya-speaking, but the Telugu area, which has already been given the name of the Andhra Province, contains no less than eighteen million telugu speakers who are anxious to separate themselves from the Tamils of Madras. There are no more reasons for keeping the Oriyas outside Bengal than there are for refusing a similar claim made by the Telugu speakers of the Madras Presidency ---"- And this from Sir Reginald Craddock who was then opposing the creation of linguistic provinces. It is well known that the future Andhra province would not need a Federal subvention and if the claim for a separate Andhra province is put in cold storage due to a restricted interpretation of the cabinet mission's declaration, it will hurt the Andhras as anything else would not.

I am not an advocate for the Andhra Province alone. I stand for the immediate fulfilment of the pledge contained in the Wardha resolution of the Working committee in 1938 and the recent Congress election manifestoes for the creation of linguistic ~~pro~~ units. I am as much for the Andhra Province as for the Tamil, Kerala, Karnataka and Maharatta Provinces and would appeal for speedy common action to approach the Congress Working committee and the Constituent Assembly. I am not at all baffled by the problem of boundaries and with goodwill and the policy of give and take based on accepted principles, we can speedily dispose knotty problems.

Finally I hope that the New constitution of India when it will come into being will be composed of units realigned on the basis of language and culture.

To Sir. B.N. Rau, Adviser to the Govt of India
for necessary action
C.A. has seen
Dy. No. 1198/Gen/46
Dt. 16/11/46.
New Delhi
M. Satyanarayan Sastry
16/11

A Fourteen-Point Memorandum

FOR THE FUTURE CONSTITUTION OF INDIA

Submitted to the Constituent Assembly

BY

Sree Manikonda Satyanarayana Sastry, B. A., B. L.,

Vuruturu, Pamarru Post, Kistna Dt.
Madras Presidency.

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1. *One Federation*:-For the whole of India, including the present native States, for the first ten years.

2. *Secession*:-of the federating units to be thought of only after the said ten years. Secession will come about only if so decided by a special majority vote of 70 per cent of all adult inhabitants in any particular territorial unit taken in a general Plebiscite, to be conducted by the Indian Federal Government, or by an International body to be constituted from a panel of judges to be chosen by the Federation and the particular territorial unit.

3. *Linguistic Units*:- Territorial Units or Provinces to be constituted on a Linguistic basis: Boundaries to be settled by a Boundary Commission. Linguistic areas in the present native states to be clubbed with similar contiguous linguistic areas in the present British Provinces.

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4. *Franchise & Representation :-* in all Legislatures to be confined only to Indian Nationals - Muslims being Nationals of India. Those who hold Nationality (or citizenship) elsewhere in the world—eg. Europeans—can have no representation in any of the Indian Legislatures.

5. (a) *Joint Electorates :-* With reservation of seats to minorities.

   (b) *Elections :* Direct to all legislatures from primary voters.

   (c) *Franchise :* to be universal adult franchise.

6. *Native States :*—to give up allegiance to the British Crown and Rulers to be responsible to the people of their respective states, and act as constitutional heads of their states in the same manner as Governors of provinces.

7. *Executive :-* to be responsible to the Legislatures —both in the Federation and in the Provinces.

8. *Federal Government :-* to be in charge of Defence, foreign political and trade relations, Currency, Communications etc., and general Co-ordination of national policies. (Protection of minorities)

9. *Provincial Units :*— to be autonomous subject to the above powers and functions assigned to the Federation.

10. *Fundamental Rights :*— regarding religious and social beliefs and practices, to be declared.

11. *State to be non-denominational :*— (It is to be neither Hindu, nor Moslem, nor Sikh etc.,) State not to interfere by legislation in matters

relating to religious and social matters of any community, except by a 66% vote of legislators of that community, and except when the matter is one repugnent to public morality or policy.

12. *Judiciary:*— One Independent Federal Court for the whole of India to be the highest judiciary in the land, with Provincial High courts. The present jurisdiction of the British Privy Council to be abolished. Village Panchayats or Group Panchayats with panels of judges & powers of disposal to be established on a decentralised system.

13. *Social Equality:*— Present social inequalities and special social disabilities attached to certain communities to be completely done away with by all legislative & executive means possible. Observance of these inequalities by any of the so called high castes or communities to be penalised.

14. *Economic Equality:*— Economic equality to be similarly established by all legislative & executive means possible & to this end the following measures are to be primarly undertaken by the Federal or Provincial Governments as the case may be:—

(a) *Production:*—Socialisation of all means of Production including lands, factories etc., Village not exceeding 2,000 population on the average to be taken as the unit of human society and people settled therein and production of food, clothing etc., to be arranged by an equitable plan of division of labour. Centralised production to be arranged for

such of the articles as cannot be produced in the primary unit of the village. (For more details reference may be made to my book "Village Republics" published by Kala Peetam Bezwada, Priced at Rs. 2 per copy.)

(b) *Distribution*:—of all basic essentials and permissible luxuries to be on the same scale for all members of the society whatever status they may be in for the time being, whether in the position of a Governor or a washerman, because all basic human needs are the same. To this end, Free Ration card system for all these needs and luxuries to be introduced. Each individual will thus be given a free *all-inclusive card* provided he does the work alloted to him in the general or particular plan of running the human society. This free card system will incidentally

(c) *Do away with the present monetary system*:- Which is the source of all present economic inequalities and which is a potent "*enslaving power*" wrongly called "purchasing power" in the hands of the idle rich.

K. S. Press, Masula. 18--9--46 1000 Copies K. 86.

~~DEPARTMENT~~ OFFICE. Of the Constituent Assembly.
Dy. No. 1342/Sec/46
Sec. Vol-(5)
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SOME ASPECTS OF THE UNION OF DECCAN STATES

By : R. R. Diwakar

Since vigorous attempts are being made for the Union of Deccan States—about 14 in number—it is necessary to examine at this juncture some of the important aspects of such a Union.

1 THE BACKGROUND :

It is almost a reality that India is going to have a new constitution forged by the Constituent Assembly and the British are going to quit after the Indo - British Treaty is signed. That treaty is to come at the end of the labours of the Constituent Assembly. The Constituent Assembly includes 93 representatives of States in India, out of a total representation of 389 for the whole of India.

The Cabinet Mission has declared that ' paramountcy ' is going to end. The actual words are : ' It is quite clear that with the attainment of Independence by British India, whether inside or outside the British Commonwealth, the relationship which has hitherto existed between the Rulers of the State and the British Crown will no longer be possible. Paramountcy can neither be retained by the British Crown nor transferred to the new Government.'

These words lend themselves to different interpretations, no doubt. But the States are proceeding on the assumption that the Sovereignity vests in them as soon as the British withdraw from India.

At the same time, all the smaller States at any rate, have realised that they cannot continue to be independent units in any way and that even for efficient administration on modern lines, they have to combine. The Standing Committee of the States People's Conference in its meeting at Delhi in September '46 has laid down that an administrative unit can be efficient only if there is a population of fifty lakhs and a revenue of three crores. The Chamber of Princes, having realised that small States ought to combine if they want to survive, have made certain recommendations regarding forming unions. The Political Department of the Government of India is of the same opinion and has expressed frankly its opinion through the Residents in the respective States and through Mr. Herbert while he visited the Deccan States.

The Chamber of Princes has appointed a Negotiating Committee to negotiate with the Constituent Assembly (before the entry of the States' representatives), with the Congress and the League.

It is yet not definite as to what is going to be the proportion of representation as between the Princes and the people of the States, when State representatives are sent to the Constituent Assembly. The Congress and the States People's Conference have been demanding that the people

alone have the right to represent States. The princes say they have right to send their nominees. Some of them would send half and half and so on.

Most of the Praja Mandals have declared their opinion that merger in British Provinces is the best. Shri Shikhare has published an elaborate case advocating merger and has said that amalgamation of States as among themselves is detrimental to merger. Mahatma Gandhi writing in the 'Harijan' said that the Princes should not bother about union just now. They should first give Responsible Government to their own people and allow them to decide about unions.

It is in this background that efforts are being made to bring into existence a union of Deccan States - not all - Sangali has declared that it does not want Kolhapur to join the Union and Kolhapur is not likely to join just yet.

2. THE CONSTITUTIONAL ASPECT :

If the Union is to be constitutionally sound, the full consent of the representatives of the parties concerned is necessary as the Union is sought to be brought into existence by the method of negotiations.

The parties are : (i) the Princes, (ii) the people of the respective States and (iii) the paramount power or the powers that be in India.

If the Princes are supposed to be fully independent and sovereign no question arises as to their competence to enter into any arrangement with other Princes similarly situated. But if the paramount power is there, the successor of any Prince can question the right of that Prince to enter into any arrangement regarding his kingdom and his people without their express and representative consent. Regarding the individual consent of the Princes in this case it may not be difficult to get it, since the arrangement is likely to make their survival comparatively surer and easier. In fact the Chamber of Princes has suggested unions with that express intention.

Now regarding the consent of the people. Today there are no uniform representative bodies in all the States. The Legislatures, where they exist are not very representative and are looked upon by the people of the States as unrepresentative and in many States as tools of the Princes. The Praja Mandals are there but they are more or less bodies which have sprung into existence for purposes of agitation and cannot be said to be representative in the constitutional sense. So it is clear that whatever arrangements are made and whatever agreements are entered into either by the Legislatures or the Praja Mandals, it must be open to the new Legislatures, which ought to be fully representative, to remain in the proposed Union or not. The result is quite otherwise if each individual State gives today full responsibility to its people and the fully elected Legislatures agree to unions with other states where there are similar representative institutions. That is exactly why Mahatmaji suggested to the Princes the royal and straight road of giving Full Responsible Government to all their people and then think of union.

As things obtain today, either the Legislatures imperfect, unrepresentative and old as they are and not elected on this important issue will consent to the union or the Praja Mandals will do it, or it is said that the Regional Council (a combine of some members of the Praja Mandals) will decide the fate of particular States. This is the most unsatisfactory arrangement both from the point of view of democracy and constitution making. The power to opt out must vest in the new Legislatures which ought to be based on the broadest possible franchise and which ought to be wholly elected. That alone can cure the initial handicap that exists.

Another important thing is the place of the Union in the India of the future. Such small unions cannot be federating units of the Union of India at the Union Level. A number of such unions will have to combine again to approach the Union Level, namely of a small province of British India consisting of about 50 lakhs of population and about 3 crores of revenue.

One more thing which should be clear is whether the Princes or their Board going to make a declaration that the constitution that they are giving or sanctioning for the people of the Union is irrevocable. If there is no such declaration then sovereignity will again rest in the Board of Princes and not in the people.

3. CONTIGUITY AND HOMOGENITY :

The Union contemplated is not going to be a contiguous area. A casual glance at the Map (vide Shri Shikhare's brochure) will show this fact. Thus proper planning and development is an impossible task and cooperation and coordination at every step is necessary with the surrondinq non-state areas. Regarding homogenity also the situation is very unsatisfactory. Kannada and Marathi populations are mixed in various proportions and even those two groups of people will not be contiguous among themselves in the Union. It is said that they will be formed into two separate groups or districts in the Union. But then how will they be governed ? Will everything be done in two languages ? Will the cadre of public servants be bilingual and all the records bilingual ? This is not yet clear.

4. LINGUISTIC PROVINCES :

If linguistic provinces become a fact, what are the Kannada and Marathi populations to do ? Are they to join their respective linguistic provinces ? Is any provision to be made now regarding such an arrangement ? Or is the Union arrangement to continue even when there are linguistic provinces ?

What of the Princes, if the respective linguistic populations join the linguistic provinces ?

Unless and until there are clear provisions as regards all these questions, the basis of the steps now being taken can be said to be quite unsound.

5. ADMINISTRATIVE EFFICIENCY :

The Union now proposed, especially without Kolhapur is not likely to form an administratively efficient unit. The Standing Committee of the States People's Conference in its meeting has decided that the minimum unit for being administratively sound and efficient should consist of 50 lakhs of people and 3 crores of revenue. This Union with Kolhapur will consist of 27,85,428 people and Rs. 1,60,51,068 of revenue. Without Kolhapur it will consist of 16,93,382 people and 1,00,57,490 of revenue. Either way administratively the Union, from the point of view of the standard set by the States People's Conference, falls far short.

6. IS IT A STEP TO MERGER?

Some of the protagonists of the Union were ere long strong advocates of merger of States into British Provinces. Now they say that the proposed Union is a step to merger.

The Union idea was conceived by States and by the Chamber of Princes and was encouraged by the Political Department of the Indian Government. Survival of States and Princes is the main intention so far as the Chamber of Princes is concerned. That body is quite explicit about it. When the Princes who are about to unite are personally approached, they frankly admit that merger seems to be their destiny but that the Union may prolong their life. To argue that a Union is a step to merger inspite of the above facts and recitals is rather strange.

The various Praja Mandals have passed resolutions against the Union idea and they stand instinctively for merger. Now it is sought to change their minds on the plea that the Union is conducive to merger. The Union is being pushed from the end of the Princes without first getting the consent of either the Legislatures or the Praja Mandals.

The Union Idea can rest on a sound basis only if (a) there is a declaration by the Princes that the will of the people is supreme and that the constitution to be given is irrevocable; (b) there is provision for the new Legislatures under the new constitution to opt out of the Union and seek their fortune elsewhere; (c) there is provision for the people to join their respective linguistic provinces when they come into existence; (d) there is provision for the Union to join a neighbouring province or other unions of States to be able to federate with the Union Government of India at the 'Union Level'; (e) there is a surety of administrative unit being sufficiently big to be efficient and able to run a modern administration.

7. THE PROPER WAY :

The most proper and straight forward way is to press for Full Responsible Government in each State and then push any scheme with the full consent of the accredited representatives of the people of the respective States.

Samyukta Karnatak Press, Hubli

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S. No. 7

AB
Con

The Secretary,
Indian Constituent Assembly,
New Delhi.

Dear Sir,

I beg to submit herewith my Memorandum entitled 'The Basic Principles of the Indian Constitution or a Memorandum to the Indian Constituent Assembly' regarding impending Constitutional changes in India, and to request you to take such steps as you may deem necessary to get it circulated, as soon as possible, among all the members of the Indian Constituent Assembly, whether from British India or from the Indian States, and also to get it published along with the final Report of the Indian Constituent Assembly.

Kindly acknowledge receipt and intimate your action thereon.

Yours faithfully,

Inder Lal

(Inder Lal)
Govt. Pensioner,
Mohalla Sangian,
Saharanpur.

Dated 22nd Nov., 1946.

OFFICE OF THE
CONSTITUTIONAL ADVISER
Date 40/5/25/11
Diary No. 60/46-Const
File No. 1480A/Gen/46

MM
28/11

The Research Officer (Mr. Desikachari) kindly may see in the first instance.
The General Branch will deal with this. The receipt should be acknowledged & the gentleman told that we cannot undertake to have it circulated among the members as it is published.

Krishnan
26.11.46.

26/11/46
A.S.

27.11.46

GOKHALE INSTITUTE OF PUBLIC AFFAIRS
BASAVANGUDI P.O. (BANGALORE CITY)

D. V. GUNDAPPA
Secretary

Personal + Private

November 29, 1946.

Dear friend,

May I, counting on your kindness of years ago, ask for help in connexion with a public object ?

I am preparing a short memorandum on the problems before the Constituent Assembly, particularly in relation to the states, for circulation among members of the Assembly at its first meeting; and I should be grateful if the Assembly office would arrange for the distribution of the copies (free) of the pamphlet. Could you help me there ?

I wrote to Sir B.N.Rau on the 20th asking for this kindness. Perhaps I'll get a reply shortly. I did not then know of your official connexion with the Assembly. I sent you early in August a copy of my article on the Cabinet Deleg'n. As I got no acknowledgement, I thought you had left Delhi or taken up other work. I saw from the "Hindu" yesterday that the invitations for the first meeting of the Assembly have gone over your signature, and I then thought I might take the liberty

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ಗೋಖಲೆ ಸಾರ್ವಜನಿಕ ವಿಚಾರ ಸಂಸ್ಥೆ
ಬಸವನಗುಡಿ ಪೋಸ್ಟು (ಬೆಂಗಳೂರು ಸಿಟಿ)

of troubling you for help.

May I add I share in Mysore's pride in the high distinction your worth has achieved ?

Looking forward to your reply, & with warm felicitations,

Yours sincerely,

H. V. Gundappa

I've just heard the Radio say that Pt. Nehru is going to London with the Viceroy. I think its good. But will the Const. assembly meeting be postponed? Pray send me essential information.

Yrs
H.V.G.

H.C.S.,

H. V. R. Iyengar Esq., C.I.E.,
Secretary, Constituent Assembly,
Council House, New Delhi.

Dec. 11, 1946.

Dy. No. 3098/3-/46

S.No (17) 130

Where is the States' Negotiating Committee?

(By Mr. D. V. Gundappa)

One of the many ambiguities of the British Cabinet Mission's Statement of May 16 concerns the position of the States' Negotiating Committee, with reference to the Constituent Assembly. Has that Committee a place, or has it not, in the Assembly?

In Paragraph 19 (ii) of the Statement, in the context of the "constitution - making - machinery," the Cabinet Mission has said: "The States would, in the preliminary stage, be represented by a Negotiating Committee."

The "preliminary stage" of what? "Be represented" where? These are natural questions. If the answer be, as the context unmistakably indicates, that the "preliminary stage" mentioned is that of the Constituent Assembly, and the representation meant has reference to the same Assembly, it is reasonable to expect that invitations to attend the preliminary session of the Assembly should have been issued to members of the Negotiating Committee also. But from the reports in the press, it does not appear that invitations were so sent. No member of the Negotiating Committee is reported as having been admitted into the personnel of the Assembly. From this it is inferable that the Cabinet Mission did not contemplate that the Negotiating Committee should form part of the Assembly. Is there no room for controversy here? Will that not mean trouble for the future?

Not that any worker for the People's cause in the States is bothered about the place shown to the Negotiating Committee as it is at present constituted. It contains no representative of the People and as such has no moral title to recognition. The object of this note is to bring into prominence the intriguing situation created by the Cabinet Mission. In view particularly of H. M. G's. latest pronouncement about not implementing for "any unwilling parts of the country" a constitution in the making of which "a large section of the Indian population had not been represented", it is important to know whether the present constitution of the Constituent Assembly is according to the terms of the Cabinet Mission's State-

1946-Nov.16

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Grave injustice will be done to the People of the Indian States if the Constituent Assembly starts functioning without their authentic representatives in it.

The States' Negotiating Committee is undemocratic and cannot be trusted to stand up for the People's rights.

The Cabinet Mission's scheme is grievously defective on this point; but it is within H E the Crown Representative's and the Constituent Assembly's competency to remedy the defect It may be as followes :—

Firstly, the Negotiating Committee should be made representative of the People's point of view by the addition to its membership of popular leaders approved by the States' public opinion, not less in numbar than the Princes and their nominees in that body. H. E. the Crown Representative may appoint such additional members in consultation with the executive of the All-India States' People's Conference, of which Pandit Jawaharlal Nehru is the permanent president.

Secondly, until the seats allotted to the States are filled up with the People's elected representatives, the Contituent Assembly should postpone business which directly or indirectly involves the rights and interests of the People of the States.

Thirdly, it should be open to the States' representatives, after they have joined Constituent Assembly in their full quota, to move the Assembly to re-consider its decisions, if any, on any matter which is of interest to them.

Unless these three suggestions are adopted three is bound to be bitter resentment among the 93 millions of People throughout the States, and the Cabinet Mission's great plan for India's independence is bound to suffer damage.

GOKHALE INSTITUTE
OF PUBLIC AFFAIRS
BANGALORE CITY.

Dec. 8, 1946.

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Outcome of the London Talks

(By Mr. D.V. Gundappa)

There is no reason why we should break our hearts over the outcome of the London talks. Nothing better was expected.

It is significant that H. M. G. make no reference to Par. 15(5) of the Cabinet Mission's statement of May 16. That overlooked clause lays down that "Provinces should be 'free' to form groups." Logically speaking, H. M. G. should have admitted that it is this clause that should govern the construction of Cl. 19–iv, v and viii which they now quote. Cl. 15(5) clearly indicates that the counting of votes on questions connected with Grouping should be Province-wise and neither community-wise nor individual-wise. The Province as a whole acts as one unit for all purposes of Grouping. But H. M. G. has now thought fit to score out the above words (15–5) of the Cabinet Mission.

Of the two evils of the Grouping scheme namely (i) a Province's having to live in partnership with a neighbour not agreeable to it, and (2) its having to live under a constitution in the framing of which unwanted outsiders had a powerful hand,–the latter is by far the worse. It will therefore be proper to press the latter case more particularly on the attention of the Federal Court. It will manifestly be against all canons of equity to lay down that a Province should submit itself to a constitution vitiated by the interference of outside hands.

There is only one way of counter-acting the most glaring of the evils to be feared from compulsory Grouping; and that is to create a strong and omnicompetent Union Centre. The Union Centre should have power to step in where there is gross abuse or wrong whether within the sphere of a Province or within a Group. All emergency powers for peace, order and good government throughout India including the States should be vested in the Union Centre. When this is secured, we need not so much mind the Group arrangement. Let the Constituent Assembly therefore concentrate attention first upon the powers and jurisdiction of the Union Centre.

GOKHALE INSTITUTE
OF PUBLIC AFFAIRS
BANGALORE CITY

By. No. 3168/gn/46

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From: A. K. Sanyal B. L.
5, Balaram Ghose Street,
Calcutta 4.

To
The Presedent,
Constituent Assembly,
New Delhi.

Calcutta the 21st December, 1946.
23rd

Dear Sir,

With due hesitation may I put it to you as follows:-

The labour Cabinet is really sailing in Congress boat, alternately flying Congress and League flags in the journey. The Labour Government is dealing with a Muslim League in their own country as well.

The Labour Cabinet does not mean that the question of Section-voting on Provincial constitutions should really go to the Federal Court. Both the Labour Cabinet and the Muslim League say in advance that they will not accept any adverse opinion passed by the Federal Court.

But then the Labour Cabinet does not mean that the Cinstituent Assembly should not continue its work even in absence of Muslim League members; there the Labour Cabinet says that in the event of a constitution framed in absence of the Muslim Leaguers such constitution will not be applicable in Muslim majority areas (December 6). The constitution itself will not be held in question. It will be applicable for the most part of the Indian country barring parts of the country where Muslims are in majority i. e. East Bengal, Sind and a part of the Punjab. That West Bengal and Part of Punjab are Hindu and Sikh majority areas are well recognised in the Cabinet Mission's document denying Pakisthan over non-Muslim spheres.

The outcome will be that residents of East Bengal, of Sind and the Muslim area of the Punjab will have to be notified with a prescribed date by which time they will either apply for inclusion into the new Indian constitution or make up their own independent administration and enter into relations of Defence and communications etc. with new Indian Government.

The public in those places will then hardly agree to fall out of Indian market and communication. They may elect to join United India inspite of their Pakisthani Leaders.

Very probably the British Cabinet will then immensely cheer up these tracts to set up their separate administration and have treatyrelations with India. I have every apprehension that East Bengal, Sind and part of the Punjab will be ultimately wanted to be Trusteeship area under Great Britain or U.N.O. The question is neither the Hindusthan nor the Pakisthan but the control of jute, a peace-time and war-time essential and two Ports one in Arabian Sea and another in the Bay of Bengal for Britain to keep herself a running factor in Asiatic relations and commerce.

When such a question will arise it will be a small-looking affair with vast area of India coming directly under a definite constitution, accepted on all hands, with two outlying areas at two corners of India going recalcitrant. Then the

the Muslim Leaders of many Provinces will have a lost voice in the matter. In the worst result Hindus may have to re-patriate from East Bengal and Sind. Indian tariff will be in jeopardy on account of these two Mahomedan dominated areas.

But the vital question remains elsewhere.

Only three things are mentioned by the Cabinet Mission as Central subjects namely (1) International relations, - (2) Defence, (3) Communications. Two other vital subjects, always Central by their very nature namely Currency and Customs are silently omitted from Central list and emphasis is laid upon all other subjects going to Autonomous Provinces with residuary powers to Provinces.

If Provinces set up their independent Sea and Land Customs and play their independent currencies then it is better that each Province should from start declare its own indepen - dence and frame its own constitution. Such a centre has never been possible in Europe or any part of Europe and League of Nations is already a scrapped past. With many Customs and many Currencies prevelent in India it will result in cross contacts of Provinces with sundry foreign nations. Provinces will then take to European Nationalism and repeat European History in India. One-legged centre without Central Currency and Customs will not stand long; it will have little urge or ability to march in the fast developing world of to-morrow.

In any event Currency and Customs should never be allowed to go out of hands of the centre. Provinces must not have any independent commercial contact with the foreign country. Wars are born out of monetary pursuits and investments.

All rivers, roads, railways must belong to the centre. In modern warfare competence will entail constant study and control and liability for all roads of all kind in all parts of India by the defending authority.

All sea coasts and land front must be directly under Central Administration, inspection and protection.

The Police force, without which the defence is at any time in an awkward situation, must be manned on behalf of the centre with maximum Provincial Autonomy in the sphere of day to day Administration. Superior service in the Police should - therefore be a Central service.

All Provincial Courts must have a Central Court of Appeal. There is exactly rock of love for the centre. Any centre that has no judiciary with it never survives in the sentiment of the people. When unlinked with people's standing sentiment the Centre gradually becomes a high dungeon and conclave; then it breaks either by internal or external quarrels or both.

Yours sincerely,

Amiya Kumar Sangal

Dy. No. 3169/Gen/46

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To

The Hon. Dr Rajendra Prasad,
President, The Constituent Assembly,
N E W - D E L H I.

S. No. 27

Respected Sir,

May I humbly draw your honour's attention to the following points with a view to help your honour to smooth the way of the present dead-lock?

The interpretations and mis-interpretations of the Cabinet Mission's Scheme have created an avalanche of fateful actions. The more clarifications to bridge up the differences are made, the more they are widened. It is therefore advisabl that we should no longer wait for any further clarification: because ambiguity is the key-note of the British diplomacy. Yet, if we try to pile on these interpretations or rather - mis-interpretations the Federal Court's decision, we accumulate a load of matter, which the Constituent Assembly cannot be expected to cope with. We have therefore to find out a way to steer the Conassembly clear of any rocks. We can find it in the press conference of the 16th May 1946 held by the - Ministers for the purpose of the exposition of their scheme.

In the course of the said conference, Sir Stafford Cripps said: " Now that it has been finally and absolutely decided that India is to have the complete independence she desires, whether within or without the British Commonwealth as she chooses, we are anxious that she shall have it as soon as possible and the soonest is when there is a new constitutional structure decided upon by the Indian people." In other words India is free to proclaim as an Indian Sovereign Republic.

About handing over the power, he further stated: " One thing is, however, absolutely certain and this is — the quicker you start, the quicker you will end and the sooner we shall be able to withdraw, handing over the power to th new governments of the Union, Provinces and, if it is so decided

decided, of the groups." In other words grouping of the Provinces are left to the decision of the provinces themselves; because all subjects other than the Union subjects and all residuary powers would vest in the provinces and not in the groups. Hence it is perfectly reasonable that grouping should be left tothe decision of the provinces as it is preposterous for any professed democrat to object to that procedure.

In order to facilitate a free and rapid progress of the constitution-making from being blocked by any party, the Cabinet Mission have laid down paragraph 15 as the only stipulation as pointed out by Sir Stafford Cripps in the said Conference:- "The form in which we propose that the constitution-making bodies should be assembled is important for this reason. It permits of arriving at constitutions in the recommended form. It goes a little further than that in one respect. As we believe and hope that the two parties will come into this constitution-making on the basis of our recommendations, it would not be fair either of them if the fundamental basis which we recommend could be easily departed from. So we stipulate that a departure from that basis which is laid down in paragraph 15 of the statement should only be made if a majority of both communities agree to it. That, I think, is eminently fair to both parties. It does not mean that no departure can be made from the recommendations. But it does mean that the special provision I have mentioned will applyto such resolutions in the Constituent Assembly of the Union." This clear-cut exposition of their own scheme leaves no doubt as to the exact basis to be adopted by the Constituent Assembly for the contemplated Constitution.

In the course of his introductory remarks, Sir Stafford said:. " The statement does not purport to set out a new constitution for India. It is of no use asking us, ' how do you propose to do this or that?' The answer will be, 'we don't propose to do anything as regards decision upon a constitution. That is not for us to decide. What we have had to do is to lay down one or two broad principles of how the constitution might be constructed and recommend those broad

as foundations to the Indian people. You will notice we use the word, ' recommend ', with regard to the ultimate constitutional forms with which we deal."

In view of what has been stated above, the British Governments statement of the Dec. 6th as an addition to this recommendation has no bearing on the contemplated Constitution because " recommend " does not mean " lay down".

May God show your honour some light to guide the destiny of India.

I beg to remain,

Respected Sir,

Your most obediently,

Shivram S. Kenkare

6, Sunwell House,
Forjet Hill Road,
Bombay: 26
24-12-46

OFFICE OF THE
CONSTITUTIONAL ADVISER
Date 6/1/1947
Diary No.
Sec. No.

Dy no. 3151/Genl/46.

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28.12.46

109, Serain Goberdhan
Benares City,
the 12th December 46

S. No (33)

Sir,

Let me avail leave to occupy a few minutes of your valuable time. Indeed, it is out in the quest of justice to be done.

We are passing thru difficult and uncertain days - our political life is ablaze. Yet, one thing is certain, there is no going back. The State Paper of May the 16th has come to stay.

Whatever may be the shortcomings of the Paper, it is one document which has brought the two rival thoughts nearest to each other and has gained endorsement from the three important parties, the Congress, the League and the Princes. If they are not able to co-operate with each other today, the way it is due, it is because of things otherwise. Appreciation is due to the author of the Plan, all the while.

Specially, when the author is a youngman!- who deserves to be encouraged. It is, however, claimed that the Plan had been drafted by the three Cabinet Ministers and the Viceroy; when the reality is a bit removed from the fact.

The seeds of the Plan can be found in that popular pamphlet 'JAI HIND'. I have been working on the problem since 1939, when I was a close associate of Netaji towards the organisation of the FORWARD BLOCK. Netaji looked to my "solution" with favour and considered it quite plausible for the dissolution of the Minorities' and the Princes' problems.

The pamphlet was published in February 1946 and a copy of it was sent to Mr. Reginald Sorensen, when he happened to visit India as a memeber of the Parliamentary Delegation. Later on, on the eve of the arrival of the Cabinet Mission in India a copy of it was sent to the Viceroy on dated the 13th March 1946, which he acknowledged in his letter under date the 18th March 1946. Another copy of it was sent to Sir Stafford Cripps on the 22nd March 1946 which he acknowledged on the 30th March 1946.

The pamphlet was composed of five articles in which Artcle 4 of 'Prelude to Unity' dealt with the problem of the Indian Minorities and suggested means to solve it after its own style. In view of the fact that His Excellency and the Mission could not possibly spare so much time as to read the whole of the pamphlet, an "Addenda" to the pamphlet (being an up-to-date summary of the Plan) was appended to the booklet.

It is nice, it has been able to justify its coming into being; and a Plan based on the fundamentals as contained in the pamphlet has been offered by the H.M.G.'s Government to resolve the Indian

Deadlock. Sure, an acknowledgement should have been forthcoming to me, to that effect. And not that, I should write no less than nine letters to His Excellency, and each of them should go even un-acknowledged.

I am herewith enclosing a copy of the pamphlet and the 'Addenda' for your perusal. To facilitate things and carry my claim home more smoothly, I am accompanying this letter with a comparative study (chart) of the Cabinet Mission's Proposals, proposals as laid down in the pamphlet and Proposals according to the Addenda. Please note that not only the fundamentals of the Plan (such as the Grouping, the three-tier government, the double-majority system , the minorities' Committee which correspond with the propositions of the 'Favoured Lands', the Ad-hoc bodies, the 'Reservation', the Minorities' Committee and the Council etc of the pamphlet) had been borrowed from the booklet but sometimes even the language ran, very surprisingly enough, similar to the Addenda.

What I make an appeal to you for and desire from you is that you please go thru the pamphlet and give your OWN VERDICT - whether you agree with my claim or no; and if you do, to what extent. An early reply will highly oblige me.

With kindest thoughts,

Yours very truly,

Gyan P. Srivastava

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A D D E N D A

Being the summary of the solution to the Indian Deadlock evolved in Article IV of the pamphlet 'JAI HIND' by Dr. Gyan P. Srivastava, Ex-President: World Youth League and submitted to the Cabinet Delegation, 1946 for consideration:

Firstly, there should be a Union of India embodying both British India and the States, which would deal with foreign affairs, defence currency, minorities' safeguard and national-economic planning; and should have the power necessary to raise the finance required f o r these subjects.

Secondly, the native princes should introduce responsible government in their states run on a basis similar to the provinces.

Thirdly, territories which are presently known as British India should be so divided as to form a certain number of "favoured lands" for certain communities, viz,

1. (a) the N.W.F.P., Baluchistan, Sind, Punjab (minus the Ambala division, Gurudaspur and Kangra Districts, and Una and Garhshankar Tehsils of the Hoshiarpur district),
   (b) Sylhet distrcit of Assam and the sixteen Muslim Majority districts of Bengal, for Muslims.
2. Gurudaspur and Amritsar districts of the Punjab for Sikhs, where they might be allowed either to raise their population to atleast 50% or given over 50% representation in the executive and the legislature,
3. Parsi dominated areas of Bombay to Parsis, with similar reservations as in 2, above,
4. certain stretch of territory in S.India in and around Cochin State for Christians with similar reservations as in 2 above,
5. the rest for Hindus (vide pp 32 of the pamphlet)

These 'Favoured Lands' may for administrative purposes be broken into cultural (if possible economical) units, whose people must have the right to opt out or opt in a particular 'Favoured Land' irrespective of the fact that 'Favoured Land' belonged to an alien community - the choice being exercisable after the constitution is drawn.

Fourthly, the Union should have an executive, a legislature and a judiciary constituted from British Indian and state representatives, legislature maintaining parity between Hindu Representatives on one side and mother minority representatives on the other - system of election being joint electorate with reservation of seats. (No party with a communal brand shall be allowed to contest the elections). RESEVATION: Any question raising a major communal issue - ultimate authority to decide which shall be the Union Court - in the legislature should require for its decision majority of the representatives present and voting of each of the communities so effected as well as majority of all members present and voting; otherwise it shall not apply to that particular community which has so resented without introduwing such devise which might be found feasible by it under the circumstances unless the community as a whole called on a referrendum by the legislature so prefers. (Vide pp 30)

Fifthly, the office of the Union President should in rotation be

filled by a Hindu, then a Muslim and then a Non-Hindu-Muslim nominee.

Sixthly, India and Gt. Britain should bind themselves with the understanding that each shall offer to the other mutual tariff preference and consult on necessary protective measures against foreign menace to any of them and shall extend every assistance in the event of invasion by a thirdx power.

And seventhly, as an immediate measure, the Viceroy should proceed with the setting up of an interim government at the Centre composed of responsible public leaders, who should be entrusted with the responsibility of calling a Constituent Assembly composed of representatives sent by provincial legislatures and the states - one for every million people and in proportion (communal) to the cummunity's strength (population) in the province. These representatives should first divide themselves sectionwise to frame the constitution of constituent cultural provinces (which must be demarkated before the constitution is drawn) falling under the particular 'Favoured Land' in consultation with their own (cultural provinces') constitutional representatives; and then, after dealing with such other common subjects which have been delegated to the Favoured Land Legislature or Executive by the provinces (cultural), shall together proceed to draw a constitution for the Union, with reservation laid in para four above in regard to Union Legislature.

COMPARATIVE STUDY OF THE CABINET MISSION'S MAY 16 PROPOSALS, PROPOSALS AS LAID DOWN IN PAMPHLET "JAI HIND" AND PROPOSALS ACCORDING TO THE SUMMARY OF THE SOLUTION, BROUGHT UP-TO-DATE, GIVEN IN THE PAMPHLET (THE ADDENDA)

Cabinet Mission's Props	Proposals as laid down in JAI HIND	proposals according to the ADDENDA
1. There should be a Union of India, embodying both British India and the states, which should deal with the following subjects: Foreign affairs, Defence and communications; and should have the powers necessary to raise the Finances required for the subjects. (Para 15,i)	1. Indian Union.... The Centre shall have under its exclusive jurisdiction foreign affairs, defence military..mines..coining and regulating the currency, and imposing such taxes which may enable it meet its expences; and shall exercise concurrent but superior legislation with the constituent states in matters of national-economic planning (pp 33, lines 17-28)	1. There should be a Union of India and the states, which would deal with foreign affairs, defence, currency, minorities' safeguard and national-economic planning and should have the power necessary to raise the finance required for these subjects. (lines 5-9)
2. The Union should have an Executive and a Legislature constituted from British Indian and State representative (Para 15,ii)		2. The Union should have an executive, a legislature and a judiciary constituted from Br. Indian and State representatives (lines 35&36)
3. Any question raising a major communal issue in the Legislature should require for its decision a majority of the representatives present and voting of each of the two major communities as well as the members present and voting (Para 15,ii)	3. It will have to be provisioned that no bill or resolution, or any part thereof, passed in any legislature or any other elected body would be applicable to a particular community, if more than ⅔ of the members of that community in that body had opposed such a bill resolution or part thereof on the ground that it would be injurious to the interests of that community or in the alternative, such other method was devised as might be found feasible and practicable to deal with such cases. On the otherhand, the legislature or the body may then submit the bill or resolution for referrendum to the community in general to get its final and binding verdict on the issue. (pp 30, lines 8-21)	3. RESERVATION: Any question raising a major communal issue -ultimate authority to decide which shall be the Union Court - in the legislature should require for its decision majority of the representatives present and voting of each of the communities so effected as well as majority of all members present and voting; otherwise it shall not apply to that particular community which has so resented without introducing such devise which might be found feasible by it under the circumstances unless the community as a whole called on a referrendum by the legislature so prefers. (lines 41-49)