HUMAN VERSUS CIVIC EQUALITY

FUNDAMENTAL RIGHTS IN CONSTITUTION

By Sir B. L. MITTER

THE chapter on Fundamental Rights in our Constitution is a difficult chapter. It aims to achieve the purposes set out in the preamble, namely, to secure to all the citizens of India social, economic and political justice, liberty of thought, expression, belief, faith and worship, equality of status and of opportunity and to promote among them all Fraternity assuring the dignity of the individual and the unity of the Nation. For this purpose a number of Rights are formulated in abstract terms, and it is enacted that

> "All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part (Fundamental Rights) shall, to the extent of such inconsistency, be void". (Sec. 13).

It is realised that in the existing laws there are many such inconsistencies. Hence, Sec. 372(1) enacts that

> "Subject to the other provisions of this Constitution, all the laws in force in the territory of India immediately before the commencement of this Constitution shall continue in force until altered or repealed or amended by a competent Legislature or other competent authority". (Sec. 372).

Thus, notwithstanding the fact that the existing laws are kept alive, they are kept alive subject to the provisions of Section 13 quoted above. Such portions of the existing laws as are inconsistent with such provisions are declared void. In other words, the existing laws automatically stand amended and are brought into accord with the Fundamental Rights of the Constitution.

VAST POWERS OF PRESIDENT

How much goes and how much remains may be matters of controversy, and it was felt undesirable that such automatic amendments should be left in uncertainty. Hence, it is provided, in Sec. 372, that within two years, the President may make necessary adaptations and modifications of the existing laws and the adaptations and modifications, so made, "shall not be questioned in any court of law." The President will probably act in accordance with the advice of his Council of Ministers, though there is no provision in the Constitution that he is bound to do so. (Sec. 74). It comes to this, then, that the President is given extensive legislative power, the exercise of which cannot be scrutinised by any court. It may be contended that this domination of the legislature by the executive is inconsistent with the conception of democracy. The argument that, the President being the choice of the people, it is immaterial whether he acts in an executive or a legislative capacity, is not convincing. He will be chosen by indirect and not direct election. The real justification for investing the President with large legislative power may be that it is for a brief transitory period till the normal functioning of the three branches of the Constitution—executive, legislative, and judicial, gets going.

An interesting situation may arise if the President omits to make adaptations or modifications of any existing law which may in parts offend against any Fundamental Right. It will then be for the courts to decide the extent, if any, to which such law is inconsistent with any such Fundamental Right. This may be a rich field of litigation for the display of legal acumen.

One Fundamental Right is of a novel character and there is no existing law to confound it. It is Abolition of Untouchability. Sec. 17 enacts—

> "Untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law."

The term "untouchability" is not defined in the Constitution. The Oxford Dictionary gives this meaning:—

> "Untouchable" is a non-caste Hindu whom a caste-man may not touch.

According to this meaning, "untouchability" is a matter of social status. Its abolition is a measure of social justice. Practice of untouchability is forbidden by Sec. 17. The effective part of the section, however, is the creation of a new offence. The ingredient of this offence is enforcement of any disability arising out of untouchability. The disability must refer to civil disability, i.e., denial of a legal right. Ordinarily, denial of a legal right gives rise to a right to damages. Under Sec. 17, it is made an offence. Thus, any person who denies to another a legal right on the ground of untouchability, exposes himself not only to civil action for damages, but also to criminal prosecution.

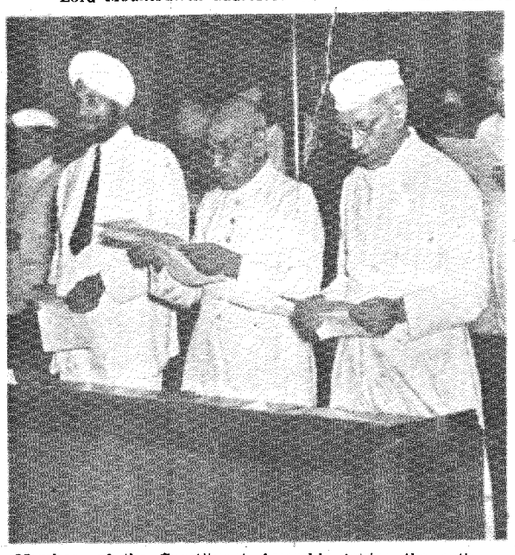
PROBLEM OF "HUMAN EQUALITY"

This provision may go a long way to bring about civic equality. To what extent, it may bring social justice in the sense of promoting social intercourse on an equal footing, is doubtful. An "untouchable" may still be excluded from social functions. A caste-man cannot be prevented from taking a bath to wash away the pollution of touch of an "untouchable" or from throwing away food touched by him. There is a distinction between civic equality and human equality. The one may be a first step to the other. It is not till human equality is established that we can claim to have made a homogeneous people or a homogeneous nation.

The Constitution has imposed this moral responsibility on caste-Hindus Our present caste-distinction, based as it is on birth and rigidly maintained on this contingency alone, does not permit any internal change by the acquisition of merit or the commission of sin. Such change cannot be effected by legislation. Advance of the low in the scale of economics, education and enlightenment is the only means to abridge the gulf. This is the obligation of high descent. *Noblesse oblige.*

AUGUST 15, 1947 – THE HISTORIC DAY

Lord Mountbatten addresses the session of the Constituent Assembly held on Independence Day, August 15, 1947.

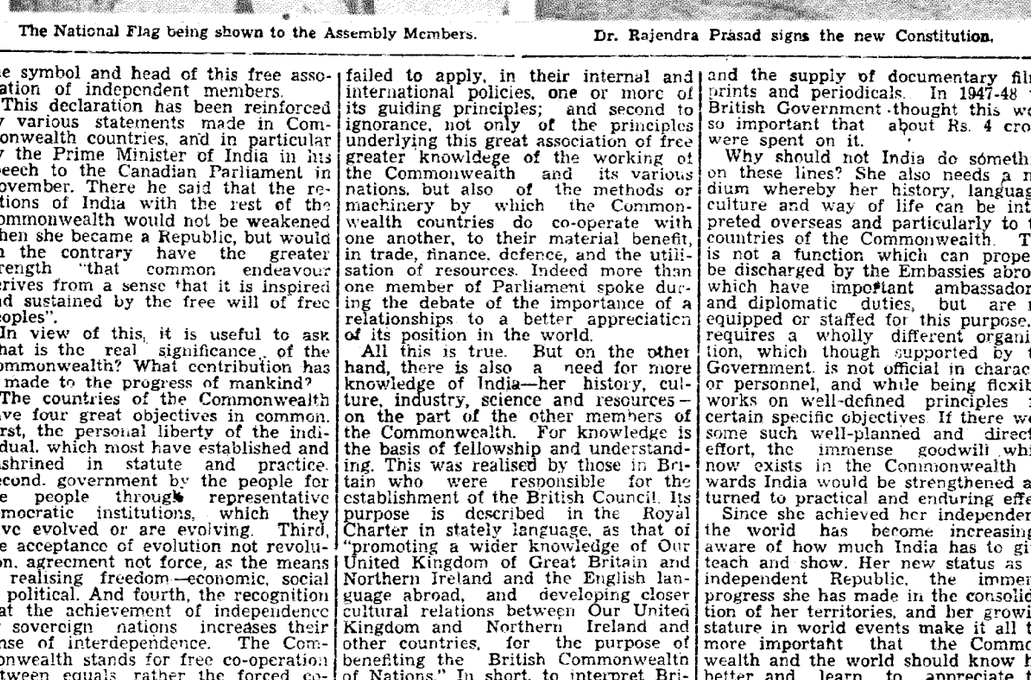


Members of the Constituent Assembly taking the oath at midnight on Independence Day.

Pandit Jawaharlal Nehru being sworn in as Free India's first Prime Minister.

The National Flag being shown to the Assembly Members.

Dr. Rajendra Prasad signs the new Constitution.



A picture taken at the London Conference of Prime Ministers of the Commonwealth last April when Pandit Nehru announced India's decision to become a Republic.

EQUAL PARTNERS IN COMMONWEALTH

EVOLUTION OF INDO-BRITISH TIES

By SIR F. E. JAMES

ON a Monday afternoon in December 1949 in a sparsely attended House of Commons, a Bill with the unpromising title of The (Consequential Provision) Bill was presented for a second reading. It was a short measure, consisting of a title and a single clause with four sub-sections.

The title revealed its historic importance—"To make provision as to the operation of the law in relation to India, and persons and things in any way belonging to or connected with India, in view of India's becoming a Republic while remaining a member of the Commonwealth".

On the 26th January 1950, the Republic of India will be formally and solemnly established. Until recently this might have meant the severance of India from the Commonwealth, because once she became a Republic her territories ceased in law to be part of the Dominions of the King and therefore part of the Commonwealth and Empire.

But this will not happen for two reasons.

First, India declared her wish, while becoming a Republic, to remain a full member of the Commonwealth. Second, this desire was examined frankly and sympathetically by the Prime Ministers of the Commonwealth at their conference last April, and met in a manner which illustrates the advantage of having no formal machinery or written constitution. The Prime Ministers unanimously agreed on a declaration by which India while becoming a Republican State, and thus removing the Crown from her constitution, remains a full and equal member of the Commonwealth, accepting the King as the symbol and head of this free association of independent members.

This declaration has been reinforced by various statements made in Commonwealth countries, and in particular by the Prime Minister of India in his speech to the Canadian Parliament in November. There he said that the relations of India with the rest of the Commonwealth would not be weakened when she became a Republic, but would on the contrary have the greater strength "that common endeavour derives from a sense that it is inspired and sustained by the free will of free peoples".

In view of this, it is useful to ask what is the real significance of the Commonwealth? What contribution has it made to the progress of mankind?

The countries of the Commonwealth have four great objectives in common. First, the personal liberty of the individual, which most have established and enshrined in statute and practice. Second, government by the people for the people through representative democratic institutions, which they have evolved or are evolving. Third, the acceptance of evolution not revolution, agreement not force, as the means of realising freedom—economic, social or political. And fourth, the recognition that the achievement of independence by sovereign nations increases their sense of interdependence. The Commonwealth stands for free co-operation between equals, rather the forced co-operation between ruler and ruled, or between a nation and its dependents.

Now this Commonwealth and the principles upon which it is based are of great importance to the world, and particularly to Asia. There are, of course, some in India and in the East who are hostile to the Commonwealth and to India's remaining a member of it. This is mainly due to two reasons. First, to the way in which some of the members of the Commonwealth have failed to apply, in their internal and international policies, one or more of its guiding principles; and second to ignorance, not only of the principles underlying this great association of free greater knowledge of the working of the Commonwealth and its various nations, but also of the methods or machinery by which the Commonwealth countries do co-operate with one another, to their material benefit, in trade, finance, defence, and the utilisation of resources. Indeed more than one member of Parliament spoke during the debate of the importance of a relationships to a better appreciation of its position in the world.

All this is true. But on the other hand, there is also a need for more knowledge of India—her history, culture, industry, science and resources—on the part of the other members of the Commonwealth. For knowledge is the basis of fellowship and understanding. This was realised by those in Britain who were responsible for the establishment of the British Council. Its purpose is described in the Royal Charter in stately language, as that of "promoting a wider knowledge of Our United Kingdom of Great Britain and Northern Ireland and the English language abroad, and developing closer cultural relations between Our United Kingdom and Northern Ireland and other countries, for the purpose of benefiting the British Commonwealth of Nations." In short, to interpret Britain to people overseas. This is achieved, partly by bringing to the United Kingdom selected visitors from abroad —post-graduate scholars, specialists, men prominent in their professions and in public life, or leaders of movements associated with educational or social services; and partly by carrying Britain overseas, through lectures, the exchange of University teachers, book exhibitions, tours of orchestras, theatrical companies and individual artistes, and the supply of documentary films, prints and periodicals. In 1947-48 the British Government thought this work so important that about Rs. 4 crores were spent on it.

Why should not India do something on these lines? She also needs a medium whereby her history, languages, culture and way of life can be interpreted overseas and particularly to the countries of the Commonwealth. This is not a function which can properly be discharged by the Embassies abroad, which have important ambassadorial and diplomatic duties, but are not equipped or staffed for this purpose. It requires a wholly different organisation, which though supported by the Government, is not official in character or personnel, and while being flexible, works on well-defined principles for certain specific objectives. If there were some such well-planned and directed effort, the immense goodwill which now exists in the Commonwealth towards India would be strengthened and turned to practical and enduring effect.

Since she achieved her independence the world has become increasingly aware of how much India has to give, teach and show. Her new status as an independent Republic, the immense progress she has made in the consolidation of her territories, and her growing stature in world events make it all the more important that the Commonwealth and the world should know her better and learn to appreciate the wealth of her cultural heritage and the abundance of her potential resources.

The British Council has already an office in India which was opened with the blessing and the encouragement of the Government and has useful educational and social work to its credit. If, therefore, a British Council can so successfully present Britain to India and to the world, why should not an Indian Council similarly present India to Britain and to the world.

BRITAIN'S BATTLE FOR SURVIVAL

OBJECT LESSON TO INDIA

By Sir GEORGE SCHUSTER

THERE is only one question which really matters in world affairs to-day: "How can the free democracies build a sure foundation for their own survival?" There is only one answer—*co-operation*—co-operation among nations and among all ranks within each nation. Co-operation must be based on understanding. I want to promote such understanding between the Indian and British peoples; and so I shall write chiefly of our British position. But first let me say how I view the Indian scene.

Human history can show no example of a greater political achievement than the successful start of an independent India. Yet, unless mass poverty can be relieved, all this may be lost. The menace of disruptive Communist influences gives the economic problem a desperate new urgency. The nature of that problem for India is clear. The growing population, the strain of the war years with their wear-and-tear and inflation, the changes in the surrounding world, and above all, the separation of what was a single economic unit into the three detached pieces of India, Pakistan and Burma, these are the main factors. The remedies too are not hard to perceive. India's economic difficulties result from under-production, especially of food. She has vast latent resources; but she needs capital to develop them, and this capital must come from outside. India cannot create it internally without cutting down disastrously her living standards or without introducing systems of forced saving on the lines of the Russian plans. And the consequences of that would be fatal to the tradition of free democracy which is to-day one of India's great spiritual assets.

Now let me turn to Britain. Here we are affected by three main factors. First there is the sacrifice and destruction of our wealth in the war, especially the loss of our foreign investment income. Secondly, there are the changes in the surrounding world —especially the new dependence of the eastern hemisphere on the American continent. And thirdly, just at the time when we are burdened with these material tasks, we have embarked on a great social venture, an attempt to create a satisfactory pattern of an industrial democracy in which manual workers can be more than wage-slaves, in which all have an equal opportunity and from which the haunting fear of unemployment and poverty has been removed.

INDUSTRIAL DEMOCRACY

I want to start with a few words about this last point, partly because it is one for which outsiders, especially Americans, criticise us, and partly because it implies ideas with which I believe Indian readers will sympathise. The Americans say, "This is not the time for you to try such costly experiments." I think they are profoundly wrong. We are confronted to-day with revolutionary changes not only in the economic and political structure of the world, but also in human outlook. We in Britain cannot possibly succeed in our material tasks without the willing co-operation of the great body of workers. We cannot get that co-operation without creating a sense of partnership and social justice. I believe we are moving towards that. Nothing that I can remember in my lifetime has been more remarkable than the way in which, during the last two years, the British Trade Union leaders have come to adopt a completely new conception of their role. Instead of merely fighting the employers for higher wages, they are now openly recognising that the only way to improve the lot of their members is to increase productivity and that they must work as constructive partners with the employers to achieve this end.

If there were space I could describe many recent happenings to illustrate this. I would refer particularly to the reports which are now being made by joint teams of management and Trade Union representatives who, under the auspices of the Anglo-American Council on Productivity, have been visiting the United States and have been coming back with recommendations as to how British industries can increase their productivity. I could quote, too, the response of the Trade Unions to Sir Stafford Cripps's call for self-restraint in claiming wage increases. Step by step the doctrine is becoming accepted that there should be no increases in earnings unless these are balanced by increases in productivity and that the Trade Unions must work for this. I could describe, too, many interesting cases where progressive firms in British industry are developing methods of joint consultation between management and workers which are leading to remarkable results in increasing productivity. These are the favourable signs, though of course there are difficulties too. This is no easy road; but it is the one road *forward*. The only alternative would take us back towards a system of authoritarianism relying on the spurs of fear and poverty. And that road, if pursued to its effective end, must lead eventually either to chaos or to some form of 'police state'—whether Fascist or Communist.

Having chosen our road, how are we proceeding along it towards accomplishing our material tasks? The most difficult part lies ahead; but much has been achieved. Industrial productivity per head is now rising rapidly (Britain is the only European industrial country except Sweden which, by 1949, had reached a higher output per head than in 1938). Total industrial production is now more than one third above pre-war and is increasing at the rate of 6 to 7 per cent per annum. Exports are running at 50 per cent above the pre-war volume.

A French journalist, writing recently in the *Manchester Guardian*, and comparing Britain with other European countries, said:

> "Britain has made by far the most remarkable recovery. . . . During my stay I saw the trials at De Havillands of the first jet plane capable (at least 18 months ahead of its American rivals) of use on civil air lines and twice as fast as the Constellation type; I saw the Austin Motor Works, the foremost in Europe, with an output since the end of September of 3,000 cars a week, employing 18,000 workers against a pre-war output of 2,000 cars a week with 24,000 workers; I saw the approaching completion near Manchester of the most modern oil refinery in Europe."

These are hopeful signs and I could multiply illustrations of this kind.

But have we done enough to solve our problems? Not yet. We want still more production if we are to satisfy not only our home requirements (current consumption and making good the arrears and destruction of the war years in housing and industrial equipment), but also the claims of countries like India for repayment of debts incurred in war. And then beyond that lies the problem of selling our exports in a way which will pay for essential imports.

That brings me to the second of the three main factors affecting our position—the changes in the surrounding world and the new preponderance of America. Here it is important to understand the exact nature of the British problem. Before the war Britain paid with direct exports for less than a third of her imports from North America. The difference was made up in three main ways, (1) with dollars earned by large British investments in North America, (2) with dollars earned from other countries, Malaya and West Africa for example, which sold more than they bought from the dollar area, and (3) by the sale of new gold mined in the sterling area. To-day Britain has reduced her imports from North America and increased her exports, so that we are paying now for 36 per cent instead of 27 per cent of our American imports in this way. But the other methods for paying for dollar supplies have all changed. We have lost the income from our dollar investments which had to be sold during the war; the war has tended to make the U.S.A. more self-sufficient (e.g. synthetic rubber production has reduced her imports of Malayan natural rubber); and finally, while the U.S.A. has become less dependent on supplies from the sterling area, sterling area countries have become more dependent on supplies from the U.S.A. and instead of being net dollar earners are large dollar consumers. India and Pakistan together, for example, took nine times as much by value in 1948 as in 1938 from America and South Africa took seven times as much. It is changes like this that have been creating the drain on the British dollar and gold reserves. In fact, a substantial part of Britain's 'Marshall aid' dollars has had to be used towards repaying India's sterling balances.

STERLING SOLUTION

I have done no more than point to some of the main factors in our problem. Space forbids fuller analysis and I want to end by stating some simple conclusions.

1. We in Britain must do our utmost to help India to get the capital equipment which she needs. As far as we can, we must supply this against the sterling balances. I have no sympathy with those who are crying out now against what they call "unrequited exports." All I would say to India is: "Understand our position. Do not seek to force us to make payments at a rate which we cannot afford. That will ruin us both."

2. The key to a fully satisfactory solution lies with the United States. They should support Britain's effort to meet India's needs. "Britain," said the *Observer* in a recent article, "is now being strongly drawn to clock and scale down the sterling balances and to divert exports from India so as to close the dollar gap." This would be disastrous policy. It would be the exact reverse of that co-operation by which alone a sure foundation can be built for the survival of the free democracies against the menace of Communism. On the contrary America should enlarge the whole conception of the Marshall plan to include India and the neighbouring countries of Asia. To treat India as a 'backward country' which is to get help, if at all, under President Truman's fourth point implies a totally inadequate conception.

3. In any case, however much or little immediate support comes from America, I believe that in the long run it will suit India best to look to Britain for supplies of machinery and technical collaboration. American methods of highly mechanised mass production are too far removed from India's 'industrial culture.' British methods have a much closer affinity to it. And this doesn't imply any idea of expecting India to accept 'backward' methods. I believe that in technical methods British industry is at the threshold of great new advances (especially in the newer industries like aircraft production), and beyond that I believe that in all that concerns human relations in industry, British methods represent a more advanced stage of civilisation, and that there is now beginning in this country a great new move forward towards the development of a satisfactory pattern of an industrial society.

4. My last point arises from what I have just said. I venture with all humility to suggest that it will be valuable for India to take special steps to study what is happening in Britain during the next years. I should like to see a strong Indian team, working from the High Commissioner's office, constantly studying developments in British industry, especially in the handling of human relations. Such a team should include Indian Trade Union representatives and social scientists as well as technical experts.

All that I have written is based on the belief that India and Britain can understand each other in a special way, because the aims and problems of our two countries are so much the same. The essential purpose of both is to promote the progress and welfare of their peoples. Both think of progress and welfare not merely in terms of material values. Yet both are in deadly peril unless they can solve their material problems. I, and many Englishmen with me, join India with our own country in our prayers for success.

LAW—THE KING OF KINGS

THE notion of a paramount law limiting the power of the State over the individual existed in India from the days of the Upanishads. The Brihadaranyaka Upanishad (Circa 800 B.C.) contains a celebrated passage: "The supreme being created a most excellent Law (Dharma) The Law is the King of kings. Therefore there is nothing higher than the law." The Mahabharata (approximately 2nd century B.C.) contains the story of a king who was deposed and executed because he offended against the Law, indicating that even Kings had to obey on pain of death the Law of Nature. The coronation oath prescribed for a King in the Mahabharata ends with the promise: "Whatever law there is here, whatever is dictated by equity and whatever is best on statesmanship, that I will unhesitatingly do: I will never be arbitrary."

There is evidence in the ancient scriptures that kingship was regarded as elective in origin. In the Aitareya Brahmana (Circa 1000 B.C.) the coronation oath which the King-elect was required to take is given as follows: "Between the night I am born and the night I die, whatever good I might have done, my heavens, my life and my children, may I be deprived of, if I oppress you."

The Code of Manu (about the 2nd century A.D.) prescribes that the King must have Ministers with whom he must discuss and consider all matters of State. The Arthasastra enunciates the rule: "When there is an extraordinary matter, the Ministers and the Council of Ministers should be called together and informed. There, whatever the majority decides to be done should be done (by the king)." The Sukranit (about the 12th century A.D. —but this is said to embody the doctrines of a far more ancient time) contains the injunction: "Without the Ministers, matters of State should never be considered by the King, even if he is well-versed in all the sciences and in State-craft. A wise king must always follow the opinion of the members of the Council of Ministers. He must never stand on his own opinion. When the sovereign becomes independent, he plans for ruin: in time he loses the State and loses his subjects." The Nitivakyamrita (about the 10th century A.D.) emphasises that "he is no true king who acts against the advice of his Ministers."