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BERAR MEMORANDUM

Prepared by Free Berar Committee

OF THE ALL PARTIES CONFERENCE, AKOLA

In February last, the British Government declared its definite intention to take necessary steps to effect the transference of power, to responsible Indian hands by a date not later than June 1948. The Nizam's Government at Hyderabad, it appears, feels that this declaration could be made an excuse for re-opening the question of retrocession of Berar. Subtle propaganda towards this end is being made in Hyderabad Press and elsewhere. A communique was also issued by the Nizam's Government that the discussion of Berar question, would be carried on at the highest constitutional level. This has made the people of Berar, apprehensive that the British Government might be induced to commit itself regarding future of Berar, without a prior consent of the people of Berar, and thus their cherished aspirations were likely to be sabotaged.

It was, therefore, felt necessary to have an authoritative expression of public opinion in Berar on the question of the relation between Berar and the Nizam of Hyderabad. With this end in view, the Berar Provincial Congress Committee convened an All-Parties Conference at Akola, on 20th of April 1947, of all political parties in Berar, heads of local bodies and other public institutions, Berar representatives in the Central and Provincial Legislatures and also other persons prominent in the public life of Berar.

As a result of their deliberations, the Conference passed the following resolution embodying its unanimous and emphatic opinion on the question of the relation of Berar, with the Nizam of Hyderabad. The resolution is reproduced here for reference:—

RESOLUTION NO. 1

"Whereas Britain has declared its intention to transfer all power to the People of India by June 1948, and

Whereas efforts are being made for retrocession of Berar, and

Whereas all power and authority of the state is derived from the people and every people have an inalienable right to determine the constitution under which they will live, and

Whereas no treaty or engagement in respect of a people can bind the people unless they were a consenting party to the same, and

Whereas it has become necessary for Berar now to express its opinion on its constitutional future.

This Conference of the representatives of all shades of public opinion in Berar declares its firm and solemn resolve not to accept the de jure sovereignty of H. E. H. the Nizam nor to form part of the Dominions of H. E. H. the Nizam, but to form part of the Indian Union, the constitution of which is being framed at present by the 'Constituent Assembly.'

The present Memorandum is intended to state present trend of thoughts and some of the considerations, which impelled the Conference to adopt the objectives embodied in the above resolution and also to indicate that, declaration of objectives by the people of Berar, was a necessary and a natural culmination of a process of emancipation from the two-fold subjugation, of the British and of the Nizam.

To fully appreciate the justice of the claim made in the resolution, it will be necessary to have a brief Historical survey of the Constitutional position of Berar.

It is not necessary for the present purpose to go earlier than the treaty of Deogaon of 1803, by which the Bhoslas at Nagpur ceded the territory now known as Berar, to the East India Company. By the treaty of partition of 1804 (Article II) the East India Company assigned Berar to the Subhedar of the Deccan (The Nizam). This assignment was a gratuitous cession, as would be evident from the following extract from Wellesley's letter to the Nizam, dated 10th June 1804, which runs as follows:— "As the Subhedar possessed no positive right to any precise portion of our conquest, it appeared to be just and expedient that the territory to be assigned to the Subhedar of Deccan, should be considered as a gratuitous cession to His Highness on the part of the British Government and not surrendered to His Highness on the ground of his right to participation in the conquest effected during the War."

(4)
Historical survey
"gratuitous
cession of
1804"

For about 50 years from 1804 to 1853, the Nizam ruled Berar in a manner which has been termed by Sir Alfred Lyalls, (Gazetteer of Berar,) as 'a squeezing the orange process.' The people were subjected to all manner of harassment. revenues were exacted by most cruel and unjust methods. He used to lease out Berar to money lending companies and individuals on annual rent. People were constantly robbed by bands of Rohillas, Arabs and others. Law and order were in abeyance. This was one of the reasons why the British Govt. felt compelled to interfere in the internal affairs of the Nizam. Further the Nizam's Government was in heavy arrears in payment of the expenses of the subsidiary force. Therefore, by a treaty of 1853, the Nizam assigned Berar to the *Exclusive management* of the British Governments for the purpose of providing the regular payments to the Hyderabad contingent and for meeting other charges guaranteed in 10th Article of the Treaty of 1822.

(5)
Mis-rule between
1804 to 1853

By a supplementary Treaty of 1860,

(a) The debt of the Nizam to the extent of about Rs. 50,00,000 was cancelled.

(b) The Nizam agreed to forego all demand for the account of the receipts and expenditure of the Assigned Districts and the British Government agreed to pay any surplus that may hereafter accrue after defraying all charges under Article 6 and the expenses of administration. The expenses of administration were to be entirely at the discretion of the British Government.

From 1853 to 1902 Berar was administered as a separate unit of administration by the Government of India, through the Resident at Hyderabad. Later, it was realised that a separate civil administration of Berar and maintaining Hyderabad contingent as a force separate from the Indian Army, was a wasteful arrangement.

(6)
1853 to 1902

The income from Berar, which the Nizam obtained after 1860 was a fluctuating one. It was on an average during these 40 years, less than nine lacks of rupees per year. In order to remove these defects and to give the Nizam a more liberal share from the Revenues of Berar, a fresh agreement was entered into in 1902 by which the Nizam "leased them (Assigned Districts) to the British Government in perpetuity in consideration of the payment to him by the British Government of a fixed and perpetual rent of 25 lakhs of Rupees per annum. The British Government, while retaining the full and exclusive jurisdiction and authority in the Assigned Districts, which they enjoyed under the Treaties of 1853 and 1860, were to be at liberty, notwithstanding anything to the contrary in those Treaties, to administer the assigned Districts *in such manner as they deem desirable.*"

(7)
1902 to 1st
April 1937

From 1st of October 1903, the administration of Berar was transferred to the Chief Commissioner of the Central Provinces, who administered it along with the Central Provinces as a single unit of administration. The Revenues of Berar, the civil administration and the judiciary were amalgamated with those of the Central Provinces. After the introduction of 1919 Reforms, Berar sent its representatives to the Provincial and Central Legislatures and thus participated in the democratic progress of the British India. Technically however, Berar was not British India and the residents of Berar were not British subjects. The whole administration of Berar, from a legal point of view, was a foreign jurisdiction administration by the British Crown through its delegates, the Government of India and the Provincial Government. But for all practical purposes, Berar was British India and fully participated in the political, social, economic and educational progress in British India.

(8)
1st April 1937
and onwards

When the 1935 reforms were to be introduced in India in order to enable Berar to join the Federation and the Provincial Autonomy scheme of Government of India Act of 1935, a new agreement of 1936 was concluded. This agreement is still in force (as none of the conditions for its termination, contained in Articles 17 and 18, are present) and Section 47 of the Government of India Act, therefore, applies. The relevant portions of the Section are as follows: --

(a) Berar and Central Provinces are deemed to be one Governor's Province by the name of Central Provinces and Berar,

(b) Any reference in the Government of India Act, or in any other Act, to British India, would be construed as reference to the British India, and Berar and any reference in this Act to subjects of His Majesty, shall except for the purpose of any oath of allegiance, be deemed to include a reference to Berari subjects of His Exalted Highness.

Thus it will be seen that the legal anomalies existing in the period between 1853 to 1937, have been remedied to a large extent and the position of Berar, has been completely assimilated with that of British India, enjoying Provincial Autonomy. In the British Cabinet Delegation's Proposals of 16th May 1946, for the future constitution of India, Berar has been given a place in Section A, along with the Central Provinces and thus given a representation on the proposed Constituent Assembly. The Berar representatives have been elected and have been taking part in the deliberations of the Constituent Assembly. Thus it would be seen that Berar has been assigned a place in the new dispensation, not as part of Nizam's Dominions, but as an integral part of the British Dominions in India.

As would be evident from the Historical survey, the right and title which the Nizam obtained over Berar under the Cession of 1804, were split up into (a) right of administration and (b) other rights not involving the right of administration. The first (a) have been since 1853, assigned to the exclusive discretion of British Government, while (b) have been changed from time to time by the British Government by agreement or by exercise of its paramount power. In considering therefore, the question of future of Berar, it will be convenient to deal separately with these two kinds of rights of Nizam over Berar.

(9)
Nature of Be
question

The claim of retrocession of Berar, had been raised by Nizam and negated by the British Government on many previous occasions. In 1872 Sir Salar Jung claimed that Berar should be re-united in administration, as well as in sovereignty with the rest of the Nizam's Dominions. This claim was negated by the Secretary of State for India. Lord Salisbury by his despatch dated 28th March 1878, in which it was pointed out that although the assignment of Berar effected by the treaties of 1853, and 1860, was a "limited assignment," there was no stipulation as to time, and that the continuance of the assignment, did not depend on the consent of the Nizam. In 1902, the Government of India, in the letter to the Secretary of State dated 13th November 1902 pointed out that Berar was assigned without limit of time to the British Government and that the proposed agreement of 1902 merely substituted a perpetual lease in place of a perpetual but a limited assignment. Again in October 1923, the Nizam addressed a Memorandum to the Government of India, claiming that he is entitled to the complete restoration of Berar to his Dominions. This claim after a full and careful examination by Lord Reading and with the fullest approval of the British Government, was finally rejected, by a letter addressed, by Lord Reading to the Nizam dated 11th March 1925. Lord Reading approved the interpretation put upon the treaties of 1853 and 1860 on the previous occasions and stated, that the question of retrocession of Berar was no longer open and must be deemed to be finally, concluded, and res judicata.

(10)
Nizam's clai
to administe
Berar

After the rejection of the Nizam's claims by Lord Reading, the Nizam had again addressed a letter to the Viceroy on 20th September 1925, in which the Nizam complained "I cannot refrain from questioning the use of the word 'decision' in connection with the Berars. Outside foreign affairs, I have as an ally of the British Government, every justification to reserve to myself the right of looking upon a refusal given by His Majesty's Government, as a mere rejection and not a decision. I think it essential to invite Your Excellency's attention to this aspect of the question..... The rejection by His Majesty's Government, of my claim to the restoration of Berars, can only be a fact, expressing its views but it cannot impose upon me or upon my house any obligation to treat the subject as closed or to regard the claim as barred for all time. No such limitations can govern allies, who within the terms of the treaties, exercise full freedom of action to agree or disagree with a proposal put forward by one or the other.

(11)

Further "In matters, between the allies there can and ought not to be the barring of investigation or renewal of proposals, on the plea of res judicata. "To this Lord Reading gave the following emphatic reply on 27 March 1926:--

"I regret I cannot accept Your Highness's views that the orders of the Secretary of State on your representation, do not amount to a decision. It is the right and privilege of the paramount power to decide

all disputes that may arise between states or between one of the states and itself and even though a court of arbitration may be appointed in certain cases, its function is merely to offer independent advice to the Government of India, with whom the decision rests.

"The legal principle of res judicata, is based on sound practical considerations and it is obviously undesirable that a matter which, has once been decided, should form the subject of repeated controversies between the same parties."

Thus it will be seen that these declarations of the British Government on the question of retrocession of Berar, are decisions and are binding on the Nizam, make the matter covered by these decisions, res judicata for all future occasions.

- (12) The agreement of 1936 does not in any way, affect the validity or the finality of the pronouncement of Lord Reading on the question of retrocession of Berar. It will be seen that Sir Samuel Hoare the then secretary of state for India, gave the following assurance while introducing the Government of India Act in the House of Commons (Parliamentary Debates, Indian Affairs, Commons 1934-35, Vol. II, Cols. 2028-29):- "The agreement made between His Exalted Highness the Nizam and the Government, will come into operation, the inhabitants of Berar, need have no anxiety on that account." "I can assure the Hon'ble Members that there is no question of retroceding the administration of Berar, to the Nizam."

Similarly Lord Linlithgow in his Letter to the Nizam dated 26th October 1936, clearly stated that "His Majesty has been unwilling to insert in the agreement, anything which might appear to contemplate the probability of its determination, or as a necessary consequence, to include provisions for the future regulation in that event, of Berar. Never-the-less, in order that there may be no room for doubt, His Majesty thinks it right to state that he enters into the agreement upon the clear understanding that if by reason of any circumstances in future, it should unfortunately come to an end, His Majesty may in default of, or pending a new agreement, make such arrangements for the administration of Berar, notwithstanding anything to the contrary in the treaties of 1853 and 1860, as he may deem desirable and may exercise full and exclusive jurisdiction and authority therein."

- (13)
Effect of
disappearance
of paramountcy

It remains now briefly to notice the contention that with the disappearance of paramountcy, all the rights surrendered by the states to the Paramount Power, will return to the states and therefore, Berar must revert to the Nizam. This contention ignores the fact that the powers of administration over Berar, acquired by the British Government, are quite independent of the power of paramountcy which the British Crown has over all the States in India. British administration of Berar is founded upon the treaties and agreements between the British crown and Nizam, while paramountcy - "that supremacy of the British Crown, which exists independently of any treaties or engagements" - "is the right and duty of the British Crown, while scrupulously respecting all treaties and engagements with the Indian States to preserve peace and good order throughout India."

(Lord Reading's letter to the Nizam, dated 27th March 1926)

The position of Berar is an intermediate one between the British Dominions in India and an Indian State, but so far as powers of

administration are concerned, the position of Berar, is indistinguishable from that of any part of British India. The fact that the national sovereignty, has been retained in the Nizam, cannot have the effect of divesting the British Government or its Successor Government of the rights already vested in them, by lawful assignment from the Nizam. If the contention that all the rights secured by a treaty by a Paramount power, must also disappear with the paramountcy, were valid, it would lead to the astounding conclusion that the British Government will have to hand over practically the whole of British India, to some Indian ruler or other, from whom it was acquired by virtue of some treaty.

It is an old saying that using words wrongly, is not merely an error, but it creates an evil in the soul. The use of the word 'sovereignty' in respect of the rights over Berar that remained in the Nizam after 1853, is an instance of the truth of the above saying. To begin with, "the Indian States when they came in contact with the British Power, were not independent, possessed of full sovereignty. Nearly all of them (including the Subhedar of Deccan), were subordinates or tributary to the Moghal empire, the Maratha supremacy or the Sikh Kingdom or dependent on them. Some were rescued, others were created by the British" (Report of the Butler Committee). "The Dominions of the Indian Rulers are contrasted with the Dominions of the Queen and that their Subjects are contrasted with the subjects of the Queen, these are niceties of speech, handed down from other days and now devoid of international significance". (Westlake's International Law). The rights of any practical importance, which remained with the Nizam, were limited to some financial benefit out of the revenue of Berar, to be determined by the British Government. The question whether these rights should be continued or not, is not a matter which depends on the interpretation of treaties, but on political and moral considerations involved in this question.

(14)
Rights other
than those of
administration
claimed by
Nizam.

This would be especially so in the case of a 'Sovereign' who has permanently incapacitated himself from enjoying any rights in the conduct of administration of a country.

The earlier Decisions of the British Government on Berar question were not based solely or even chiefly on legal grounds but were actuated by broad considerations of public policy.

(15)
Political aspect

Even in 1876 in his despatch Lord Salisbury has stated that "the matter in controversy here, is not dignity, or revenue or any matter of personal enjoyment. It is the control over the lives and properties of two millions of men (Population of Berar is now about 4 millions). In dealing with interests of this magnitude, Her Majesty's Government, must necessarily be guided by considerations of a more imperative character than the sentiments, however friendly, which they entertain towards another Government. It would be invidious in this despatch to compare the relative merits of the British system of Government with that which has prevailed in the Dominions of the Nizam. But it may be at least confidently said that the two Governments differ widely in their methods and that a thickly peopled territory could not be transferred from one system to the other without a disturbance in the most important circumstances of life, being felt by every class of the population" "It would be necessary to make good a very strong case of advantage on the whole, to those who would be affected, in order to overbear the weighty presumption which treaties and the well being of the Assigned Districts, have established against a change".

Again in their letter of the 13th November 1902, the Government of India have stated that "events of the past half a century, during which the Assigned Districts of Berar have remained continuously under British administration, has constituted a prescription from which it was neither possible, nor desirable to depart", and "has also amounted to a guarantee to the population of Berar, for the continuance of the conditions and standards, under which they have attained to a high measure of prosperity." Similarly, Lord Reading in his replies to the Nizam dated "March 1925, has again emphasized the obligations of the Government of India to the people of Berar to continue those very conditions and standards referred to in the letter of 1902. The same solicitude for the political future of Berar has, we believe, prompted the British Government to give the assurances in the House of Commons and those contained in Lord Linlithgow's letter, and those implied in the Cabinet Delegation's proposals of May 1946, which enabled Berar to enter the Constituent Assembly."

(16)

The days of divine right of Kings are over. These are the days of Atlantic Charter and of self-determination securing to every people their inherent rights to determine the constitution under which they will live. The fact that the All-Parties Conference at Akola, demanded the abrogation of such remnants of sovereignty as are claimed by the Nizam, is by itself, a sufficient justification for such abrogation. It is to be further remembered that "no undertaking can be rightly interpreted without weighing the effect of lapse of time and change of circumstance. It is not only a question of material factors. It is also a question of morals. No compact can endure when owing to the evolution of ideas, it has ceased to square with the general conception of right and wrong. In this sense, *rebus sic stantibus* is the implicit condition of every treaty; and certainly things no longer stand in India as they stood when most of the treaties were made. It was assumed for instance by those, who made them, that the British Rule in India would continue. Indeed, they were made on the British side solely for the purpose of maintaining it. Manifestly, the whole situation is very different, when the British Government has declared its intention of bringing the British rule to an end as soon as possible. Pledges again to protect the dynastic rights of the Princes, must needs read differently now from the way they read a century or more ago. The treaties were intended to safeguard the ruling dynasty primarily against British usurpation of its rights and possibly also against the claims of rivals to the throne. The parties were not contemplating the possibility of democratic agitation. Democracy as practised now in Britain or in an Indian Province, was as inconceivable to the British Governing Class in the early 19th Century as it was to an Indian Prince."

(Prof. Coupland's Constitutional Problem of India,
Part III, Page 147)

The affirmation of the sovereignty of the Nizam over Berar in agreements entered between the British Government and the Nizam, can have no binding force on the People of Berar. The continuation of this sovereignty will be inconsistent with the declaration of His Majesty's Government, that India, which included Berar, was free to choose any form of Government, it liked. Berar as a party to the objectives resolution passed by the Constituent Assembly, has declared its intention to form part of the Independent Sovereign Republic of India.

(17)
Cultural and
moral aspect

Nizam had never conquered Berar nor had he at any time of its history, held an undisputed sway over the territory by power of his

arms. Having obtained Berar as a gratuitous cession, he ruled if it could be called a 'rule' for 50 years in a manner that made its termination inevitable on humanitarian, moral and financial grounds. In his own Dominions, the character of the administration is much the same as it was in 1878, when Salisbury wrote his famous despatch. Politically, Hyderabad is still medieval and feudal while Berar is modern and republican.

If a person working upon a thing belonging to another, so changes it that it becomes an altogether new thing, which cannot be reconverted to its original character, the old Roman Lawyers applying the principle of 'specificacio' declared the workman to be the owner of the new thing. The vast and radical changes, that have taken place in the political, economic and social life of the people of Berar since 1853, would be on the above analogy, an effective answer to any suggestion for the continuance of the sovereignty of Nizam. The British Crown has always claimed to exercise powers over the Indian States independently of and many times inconsistently with the treaties and engagements with the Indian Rulers. The moral justification for the exercise of such powers, had always been sought in the responsibility of the paramount power towards the people of the State, to take remedial action, whenever the welfare of the people of the State, were concerned. The time has now come after about 100 years of the British administration and an initiation into the practices of Democratic Government that the paramount power, should, in discharge of its responsibility to the people of Berar, terminate such vestiges of sovereignty to the Nizam as might be remaining to-day.

To conclude, therefore, the people of Berar claim that:—

(18)
Conclusion

- (a) the question of retroceding Berar to the administration of Nizam, is no longer open, having been finally concluded by the decisions of the British Government.
- (b) Retrocession of Berar will be a flagrant breach of the repeated assurances given by the British Government to the people of Berar,
- (c) the withdrawal of the British Paramountcy does not in any way effect the previous decisions and assurances on the future of Berar,
- (d) the continuance of the sovereignty of the Nizam, in any shape or form, after the withdrawal of the paramountcy, will be inconsistent with the obligations of the paramount power, towards the people of Berar,
- (e) legal, historical and moral considerations and current political theory of sovereignty of people all justify the claim of the All Parties Conference for the termination of the sovereignty of Nizam over Berar.

AKOLA }
Dated 29-5-1947 }

BRIJLAL BIYANI
President
Free Berar Committee

ANNEXTURE 1

Hon'ble Mr. Brijlal Biyani, President Berar Provincial Congress Committee issued invitations to practically all the parties and institutions working in the province together with the leading public men representing different schools of thought in the province to attend an All Parties Conference at Akola on 20th of April 1947. The Conference was attended by a large number of invitees and was presided over by Hon'ble Mr. Brijlal Biyani, President Berar Provincial Congress Committee. Among other resolutions the Conference passed the following resolution appointing Free Berar Committee.

RESOLUTION

It is resolved that a committee be formed to be called Free Berar Committee to devise ways and means for securing the achievement of the objectives agreed upon in this conference regarding the future of Berar. The Committee will consist of 45 members.

President:— Hon'ble Shri Brijlal Biyani

Members:—1 Messrs. Wamanrao Joshi, 2 Ramarao Deshmukh, 3 Dr. Panjabrao Deshmukh, 4 B. G. Khaparde, 5 Gopalrao Khedkar, 6 G. R. Kulkarni, 7 M. N. Phadke, 8 D. L. Kanade, 9 V. K. Soman, 10 T. S. Patil, 11 G. S. Mukhare, 12 R. J. Gharphalkar, 13 M. P. Kolhe, 14 D. B. K. V. Brahma, 15 Pramilatai Oke, 16 Radhadevi Gcenka, 17 Durgatai Joshi, 18 Kamlati Thakur, 19 L. S. Bhatkar, 20 Saqi Niyazi, 21 N. R. Bamangaonkar, 22 N. A. Athalye, 23 M. C. More, 24 Ratilal Navanilal, 25 Vallabhdasji Rathi, 26 V. B. Chaubal, 27 B. M. Deshmukh, 28 V. B. Sapre, 29 E. R. Mahajani, 30 R. B. Dinkarrao Rajurkar, 31 R. A. Kanitkar, 32 J. S. Chaudhari, 33 P. K. Deshmukh, 34 Dr. M. N. Parasnis, 35 Surajmalji Singi, 36 P. B. Gole, 37 Y. R. Dongre, 38 Dr. S. K. Kane, 39 P. S. Patil,

Note:—1 Names of the remaining members to be co-opted by the Committee.

2 The President is authorised to announce the Secretaries.
(Mr. B. N. Udasi, Pleader, Khamgaon was co-opted on 25-4-47 accordingly.)

The President announced the following as secretaries:

- 1 Mr. P. K. Deshmukh; 2 Mr. N. A. Athalye;
- 3 Mrs. Pramilatai Oke; 4 Mr. Y. R. Dongre
- 5 Mr. B. N. Udasi)

This Free Berar Committee by its resolution passed on 11-5-47, appointed a Sub-Committee, consisting of:—

- 1 Hon'ble Mr. Brijlal Biyani, President
- 2 Mr. M. N. Phadke, Bar-at-law, Akola
- 3 Mr. B. G. Khaparde, B.A. LL.B., Amraoti.
- 4 Mr. Ramrao Deshmukh, Bar-at-law, Amraoti
- 5 Dr. Panjabrao Deshmukh, Bar-at-law, Amraoti
- 6 Mr. R. A. Kanitkar, M. A., LL.B., Buldana
- 7 Mr. Waman Gopal Joshi, Amraoti
- 8 Mr. Saqui Niyazi, Akola

To prepare a Memorandum. for submitting the Berar case to His Excellency the Viceroy, Interim Government, President of the Constituent Assembly and President, Indian National Congress.

The Sub Committee prepared and submitted its Memorandum to the President of Free Berar Committee on 25th May 1947.

The said Memorandum is the one which is being forwarded to His Excellency the Viceroy, Interim Government, President of the Constituent Assembly and President, Indian National Congress.



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