

National Liberal Federation of India.

Report of the Committee on the Draft Constitution of India.

The Committee appointed by the Council of the National Liberal Federation met for four days of April in Bombay and examined the Draft Constitution. Because the Committee did not follow a logical order in considering the provisions of this Constitution, it was thought desirable to submit a report giving the salient features of the Committee's recommendations, and I was asked to draw up the Report. Accordingly, I have prepared this report. It should, however, be read with the minutes of the Committee's meetings, which should be regarded as part of the Report itself.

Within or Without the Commonwealth?

1. The unanimous opinion of the Committee was that severance of the British connection should not be effected now - (item 1 in the Minutes).

Linguistic Provinces.

2. Three of the five members present were opposed to the formation of linguistic provinces, the remaining two favoured such formations - item (4).

Fundamental Rights.

3. Opinion was unanimous that the exceptions provided in the Constitution to the exercise of rights mentioned in Art. 13 sec. 1, practically nullified the rights and should be deleted. - item (5).

Governor.

4. The alternative in Art 131 with an asteric was preferred by all, but one member opposed the panel system and supported election by the legislature pure and simple. - item (25).

Provincial Second Chambers.

5. Three members opposed and one favoured the constitution of Second Chambers in the provinces, the latter, however, being in favour of different kind of composition.-item (29)

Relations with Indian States.

6. The Committee was unanimous that no kind of differentiation should be made in favour of the Indian States which join the Union; that they should be treated on terms of perfect equality with Provinces. Until such equality was accepted, the States should be kept out, - item (16).

Protection of Minorities.

7. One member opposed representation of any community in the legislatures on the ground of religion, and two members insisted that in any case such representation be automatically terminated at the end of ten years. - item (14).

Emergency Powers.

8. It was agreed by all members that these powers were much too wide. But one member went further and thought that the emergency powers should be altogether scored out and he took particular objection to the provision of allowing the whole of provincial administration and legislation being taken over by the Centre in an emergency. - items (7) and (8).

Tribes.

9. Members were unanimous in suggesting that the same treatment should be given to large compact areas inhabited by tribes as is given to Assam - item (30).

Various other suggestions were made about matters like the High Court, division of powers, merging States etc. and for these reference to the minutes themselves is invited.

Poona, 21st May 1948.

Sd. S. G. VAZE.

Draft Constitution of India.

Minutes of the Meetings of the Committee

FIRST MEETING.

17-4-1948.

The Committee decided to follow the order of Mr. Dalvi's suggestions and after exhausting them to consider the suggestions that other members might put forward.

- (1) **Preamble.** Dr. Ambedkar in a statement had suggested the substitution of the word "State" for "Republic". The Committee endorsed this suggestion but did not favour Dr. Ambedkar's suggestion to substitute "Independent" for "Democratic". According to the Committee, then, India should be constituted into "a Sovereign Democratic State".

The substitution of "State" for "Republic" would no doubt prevent an automatic severance of the British connection, but the question still remained, should the severance be effected now? On that point the Committee expressed its opinion as follows :-

For the present India should remain within the British Commonwealth. By so doing, she will not forego her right to go out of the Commonwealth if at any time in future she considered that such a step was necessary in the national interests. The proper time for taking a final decision on the question would come when developments in the international situation became clearer.

- (2) **Article 213** (read with Part III, Division B, of First Schedule).

The States in part III which have merged should be administered as if they were parts of those States in Part I with whose administration they are integrated.

- (3) **Article 212**

Items 2 and 3 in Part II of First Schedule (viz. Ajmer-Merwara and Coorg) should be administered as parts of adjoining States in Part I.

(4) **Article 3** (read with para. 20 in Dr. Ambedkar's Introductory Note).

Messrs. Dalvi, Bharucha and Gokhale were against recognising the principle of linguistic provinces. In their opinion, the formation of provinces on the basis of language would accentuate fissiparous tendencies which were already strong.

Messrs. Altekar and Vaze, on the contrary, supported the formation of linguistic provinces. Their arguments were two: (1) the units of a federation must be as homogeneous as possible. Under an absolutist regime provinces differing widely in their individual characteristics could be held together. Under a democratic federation, units must be so formed that they would have an individuality of their own and that they would feel a strong sense of loyalty for the unit. (2) A democracy with adult suffrage for its base cannot be expected to work efficiently and well unless people speaking the same language are brought together as far as possible. Formation of homogeneous provinces on the basis of language will not of itself promote fissiparous tendencies. The remedy for the latter lies elsewhere.

Because the view-points on this subject were so radically different, Mr. Vaze did not put forward the suggestion he wanted to make, but it might be given here for the consideration of the Council. His suggestion is that the Article may be modelled on the lines of Article 18 of Germany's Weimar Constitution which gives power to the Central Government to bring about any territorial redistribution it thinks necessary in the national interest even without the consent of the State from which a territory is to be separated. Such a power will not, however, extend to States specified in Part III of the First Schedule.

(5) **Article 13** (Fundamental Rights)

The provisos in Sections (2) to (6) give power to the legislature practically to negative the rights mentioned in Section (1) and should therefore be deleted.

(6) **Article 15** (Due Process of Law).

The substitution of the words "except according to procedure established by law" for "without due process of law" will secure only the procedural rights or adjective rights but will deprive the citizens of the substantive rights associated in U. S. A. with the due process clause. The substitution should, therefore, not be made.

(7) **Article 275** (Emergency Provisions).

Mr. Vaze thought that the whole of Part XI dealing with Emergency Provisions should be deleted and pointed out in support that there were no such provisions in any of the modern constitutions. However, other members were of the view that there must be provided some constitutional machinery to meet a state of emergency. But they thought that the power given to the President in this Article might be brought into use only where there was war emergency. In their opinion "whereby the security of India is threatened, whether by war or domestic violence" should be changed into "whereby the security of India is threatened by war."

(8) **Article 278**

Mr. Vaze expressed the view that this Article should be deleted. He pointed out that Article 188 already gives the Governor the necessary power to meet emergencies in States specified in Part I of First Schedule, corresponding to the power given to the President in

Article 275 to meet a national emergency. But on top of this there was to be Article 278 which would enable the President to oust the Governor and the Central Legislature to oust the provincial Legislature, which would be wholly unjustifiable. Such a provision would be against the basic principles of a federal structure. In U. S. A. federal troops could be used in a State when this was necessary in the interest of preserving the integrity of U. S. A. itself or when the State concerned would ask for such help. In Australia too, there was a similar provision.

Messrs. Dalvi and Bharucha were in favour of retaining Article 278 as it stands; Messrs. Gokhale, Altekar and Vaze were for omitting it altogether.

SECOND MEETING.

18-4-1948.

(9) Article 281-288.

We are of opinion that provision should be made for securing liaison between the Union and the State Public Service Commissions with the object of having uniformity of standard and conditions of service common to services in all the States in some such manner as (a) laying down the principles of selection and qualifications and the conditions of service of officers in the States (b) providing for the Member of the Union Service Commission sitting with the State Service Commission for selection of personnel for key posts.

(10) Article 68 (2).

Duration of the House of the People should be four years instead of five as proposed in the Report.

(11) Articles 83 and 167.

With regard to Art. 83, an additional disqualification for membership should be "if he is convicted of an offence involving moral turpitude";

With regard to Article 167, an additional disqualification should be the same as above.

(12) Article 149 (2).

With regard to article 149 (2) "crime" should not be made a ground for absolute disqualification, but it should be provided that the voter is disqualified so long as the sentence remains unexpired. Corresponding change should be made in case of Central Assembly Franchise.

(13) Articles 107 and 200.

Delete articles 107 and 200, relating to retired judges.

THIRD MEETING

22-4-1948.

(14) Articles 292 to 295. (Representation of minority communities in legislatures).

Mr. Dalvi, while accepting reservation of seats for the Scheduled castes, was for rejecting such reservation for Muslims and Indian Christians; he was also for deleting Articles

293 and 295 providing for nomination of Anglo-Indians. Messrs. Bharucha and Vaze were for retaining all the Articles without change. Mr Dalvi thereupon agreed to the latter point of view but insisted on the deletion of the last words in Art. 305: "unless continued in operation by an amendment of the Constitution". Mr. Gokhale agreed with Mr. Dalvi, while Messrs. Bharucha and Vaze thought that while the deletion of the words would not leave the minority communities in any worse position, it would give no additional safeguard for the removal of reservation after ten years either. But it would make the minority communities psychollogically discontented without securing any compensating advantage to the general community and they were therefore for leaving Art. 305 intact.

(15) Article 217. (Distribution of Legislative Powers).

All members agreed with the point of view urged by Mr. Alladi Krishnaswamy Iyer in the footnote to the Article.

(16) Articles 224, 225, 236, 237, 258 and 142 (b) (Relations between Union and Indian States).

Following the Government of India Act, 1935, the Draft Constitution contemplates giving larger autonomy to the Indian States than to the Provinces. Union subjects might be less in number in the former than in the latter and subject to greater limitations; the former may have larger scope for administering Union subjects than the latter. All such differentiation should now stop. No agreements with Indian States should be allowed which admitted of such differentiation. The Union should have the same extent of competence in legislation, administration, finance (Art. 258) etc. in respect of all components of the Union. There should be complete uniformity in these respects.

(17) Articles 244 (b) (Freedom of Trade).

The provision should be "subject to the sanction of the Union Government.

(18) Articles 220, 221 (2), 205. (High Courts).

The Union Government should have power to determine the constitution and organisation of High Courts in the provinces, but in respect of the jurisdiction and powers of these High Courts, it should be provided that where provincial legislation seeks to restrict the jurisdiction and powers of High Courts sanction of the Union Government should first be taken.

(19) Articles 107 and 200. (Retired Judges).

These articles should go.

(20) Articles 109 to 113 (Appeals to the Supreme Court).

In the matter of appeals from the High Courts to the Supreme Court, the Indian States should be on a par with the provinces. In order to bring about a parity between the High Courts in the States and those in the provinces, the exceptions made in Articles 191 (1) and 123 (1) should be dropped.

(21) Article III (a) (Appellate Jurisdiction of Supreme Court),

Rs. 10,000 should be substituted for Rs. 20,000.

(22) Article 119. (Advisory opinions of Supreme Courts).

The Supreme Court should not be allowed to give advisory opinions, as it is not in U. S. A. and Australia.

Article 193. (Age limit for High Court Judges).

The age limit should be definitely placed at 65 years and the provincial legislature should not be allowed to lower it.

(23) Article 247. (Finance).

There is no reason to postpone the allocation of revenues between the Union and its component members for five years. The principles should be determined now and embodied in the Constitution.

(24) Article 253 (1) Salt Duty.

- No prohibition on the powers of the legislature in this respect is justified.

(25) Article 131. (Governor's Appointment)

All the members prefer the second to the first alternative. But Mr. Vaze put forward the view that the panel system provided for in the former has no justification. In his opinion the provincial legislature should elect the Governor. All possibility should be excluded of an outside authority passing over the nomination of the majority party and selecting the nominee of a minority party. To do anything else would infringe on the autonomy of the provinces to which in a federation they are entitled. Nor would it in reality afford the safeguard which is looked for in the panel system. But on this point, Mr. Vaze was in a minority of one.

(26) Article 68 and 150. (Duration of Lower Houses of Legislatures.)

Mr. Dalvi insists on reducing the normal duration of the lower houses of legislatures to four years. Mr. Vaze agrees that that would be the proper duration, but does not lay as much stress on it as Mr. Dalvi. Mr. Bharucha, however, feels that it should not be lower than five years and for the reasons given in the footnote to Article 151 (1).

(27) Article 144. (Appointment etc. of Provincial ministries).

This should be on lines with Art. 62.

(28) Article 145 (3). (Resignation of Advocate-General),

Mr. Dalvi thinks that this should be on lines with Art. 63 (4): "The Attorney-General shall hold office during the pleasure of the President".

FOURTH MEETING
Friday 23rd April 1948.

(29) Article 148. (Second Chambers),

With regard to Article 148 (Second Chambers), three members were of the view that there should be no Second Chambers while Mr. Bharucha was in favour in view of the introduction of adult franchise; such Second Chambers should, in his opinion, be constituted as follows:—

One third as provided in the draft Constitution and two-thirds to be directly elected by such constituencies as graduates of fifteen years' standing, and constituencies representing Industries, Commerce, Labour etc.

Mr. Gokhale's view was that in case a Second Chamber was to be established, it should be on the basis of functional representation.

(30) Fifth Schedule

With regard to Fifth Schedule, we are of opinion that while approving the general features of this Schedule, we urge that in compact areas such as districts of Chhota Nagpur, the Dangs etc., the principle of autonomous districts underlying the Sixth Schedule should as far as possible be adopted.

(31) Seventh Schedule. Item No. 4, in list I in Seventh Schedule.

We are of the opinion that no constituent State specified in part III should be allowed to retain any armed forces even subject to the control of the Centre in the matter of strength, organisation, maintenance etc.

Item 52, 53, 54 of List I read with entries 2 and 3 of list 2 and entry 16 of List III should be so expressed as to place the states in Part III on the same footing as the Provinces.

Matters relating to personal law of the community like marriages and divorce, wills and succession mentioned in items 6 and 7 of the concurrent list should only be in the Union list and removed from the Concurrent List.

(32) Article 226.

With regard to Article 226, two of us Messrs. Dalvi and Bharucha, are in favour of retention and Messrs. Gokhale and Vaze are against the retention of that clause on the ground that it will unnecessarily interfere with the autonomy of the three units especially as provision is already made in case of emergency under section 227.