



EAST INDIA (CONSTITUTIONAL REFORMS)

# RESIGNATION OF MINISTRIES IN BIHAR AND THE UNITED PROVINCES

(February, 1938)

*Presented by the Secretary of State for India to Parliament  
by Command of His Majesty  
February, 1938*

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# Resignation of Ministries in Bihar and the United Provinces

(February, 1938)

## I.—STATEMENT ISSUED BY THE GOVERNOR-GENERAL ON 22ND FEBRUARY 1938.

The history of the difficulties which have arisen in the United Provinces and Bihar in connection with the release of prisoners described as political prisoners is well known. In both Provinces discussions regarding the release of prisoners in this class have, for some time past, been proceeding between Ministers and Governors; and Governors throughout made it clear that they were ready and willing to examine individual cases and would not stand in the way of release, unless where circumstances were clearly such as to involve responsibilities laid upon them by the Act. The principle of individual examination was well established over many months in Provinces where Congress is in power. It was equally established in other Provinces, and Mr. Gandhi himself has proceeded on this basis in his recent discussions with the Government of Bengal. It was thus no new thing.

2. Discussions regarding release after examination of individual cases were still proceeding, when on 14th February a demand was tendered by the Premiers of Bihar and the United Provinces for immediate general release of all prisoners classed as "political" in those two Provinces. In the case of Bihar that demand, received by the Governor at 1 p.m., called for action by the Chief Secretary in this case by 4 p.m. the same day. In the case of the United Provinces the time limit set for compliance was, also, brief to a degree. In the case of Bihar the Premier made it clear that as a matter of principle he could not agree to individual examination. In the case of the United Provinces, after much discussion Ministers made it clear that a policy of gradual and individual release would not satisfy them.

3. The prisoners in question are almost without exception persons convicted of violence or of preparation for specific acts of violence, by normal criminal courts. The nature of their offences has been indicated sufficiently in the statements issued by the Governors. Their record is such that individual examination was called for, not merely for the reason I have given, but in the interest of public safety, and that examination was equally essential in the interest of maintenance of sanctions of law, and of authority and position of courts.

4. In these circumstances, having regard to the responsibilities which, under the Constitution, are placed upon the Governor-General, the Governors of both Provinces, after consulting their Ministers, referred for my instructions the advice which their Ministers had tendered. Having regard to the circumstances

described above; to the essential necessity of considering the reaction on adjoining Provinces of the release of these prisoners; and to the fact that acceptance of the principle that terrorist convicts should be indiscriminately released without regard to individual considerations would be highly dangerous, and in view of the history of terrorism in the past could not fail to give impetus to fresh terrorist organisation in Bengal, careful consideration left me with no choice but to conclude that issues involved were such that it was incumbent on me to issue an instruction to those Governors under provisions of section 126 (5) of the Act. That section empowers the Governor-General to issue orders to Governors of Provinces as to the manner in which the executive authority thereof is to be exercised for the purpose of preventing any grave menace to the peace and tranquillity of India or of any part thereof. To acquiesce in the immediate and indiscriminate release of prisoners with records of violent crime would have been to strike a blow at the root of law and order in India; dangerously to threaten peace and good government, and to run a grave risk to peace and tranquillity; all the more so since this categorical demand took no account of possible reactions of certain releases on the position elsewhere, or of the reiterated readiness of Governors to examine individual cases.

5. The Governors, on receipt of my instructions, informed their Ministers that they could not accept their advice on this matter. The Ministers therefore tendered their resignation.

6. The Governors concerned, and I, so far as I am concerned, have done our utmost over the last seven months to work in harmonious co-operation with the Congress Ministries of both these Provinces and all possible help has been lent them. There has been no foundation over that period for any suggestion that it is the policy, or desire, of the Governor-General or of the Governors to impede or interfere with legitimate activities of these Ministries, or to take any step the necessity for which was not imposed upon them by the terms of the Act. That is equally true to-day.

7. I have made it clear that in issuing the instructions I did, I had no hesitation in feeling that a grave menace to the basis of law and order, and so to the peace and tranquillity of India, would have been involved in acceptance by the Governors of demands of such an order presented to them in such a manner.

8. As regards the particular issue of the release of prisoners, so far as the Governors are concerned there is no going back on the policy of readiness to examine individual cases, and the Governors remain ready to agree to release, after examination, where no undue risk in their own Province, or in other Provinces, is involved. There is no impropriety, whatever may be suggested to the contrary, in their requiring such individual examination, or in their declining without it to accept the advice of their Ministers. Ministers are responsible for law and order.

But they are so responsible under the Act subject to the responsibility of Governors to ensure the peace and tranquillity of their own Province; and the Governors are bound to have in mind the corresponding responsibility that falls on the Governor-General for the peace and tranquillity of India or any part thereof. Neither a Governor nor the Governor-General will wish to see his responsibility attracted, but, as I made clear in my message of last June, where that responsibility is in fact attracted, neither the Governor nor the Governor-General can shrink from discharging it.

9. Finally, and this I wish particularly to emphasise, there is no foundation for the suggestion that the action I have taken is dictated by a desire to undermine the position of Congress Ministries. The record of the last seven months should have made it abundantly clear that the Governors and I myself are only too anxious to lend all assistance that we properly can within the framework of the Act to any Ministry in power in a Province. Neither the Governors nor the Governor-General have any desire to interfere, or any intention of interfering with the legitimate policy of a Congress or any other Government. The action taken was designed to safeguard the peace and tranquillity of India and, incidentally, to uphold the sanctions of law and orderly functioning of the constitutional machine. That action leaves it open to Ministers, in consultation with the Governors, to pursue a policy of release of prisoners, and they need anticipate no difficulty now, any more than in the past, in securing the friendly and ready co-operation of the Governors in individual examination. I am glad to think that in no quarter is there manifest any disposition to extend the area of difficulty beyond the limits of the position which I have described, and it is my sincere and earnest hope that it may shortly be possible to return to normality and that in the two Provinces most concerned Ministers in discussion with the Governors may find themselves able to resume their interrupted labours.

## II.—TEXT OF ORDER FOR RELEASE OF PRISONERS PASSED BY PRIME MINISTER OF BIHAR.

“ There are still quite a good number of political prisoners in jails of the Province. These prisoners have publicly renounced their faith in violence, and have also given written assurances to that effect. After the Bihar prisoners in the Andamans were repatriated to India, I saw these political prisoners in Hazaribah and Bhagalpur Jails with a view to knowing their minds. From my talks with them I felt convinced that they have given up their creed of violence. The political prisoners have all over the world, on such occasions, been treated differently from other criminals and, even in the interests of ensuring peace and tranquillity, it is necessary that Government should show its appreciation of this welcomed change in them by making a noble and statesmanlike gesture. By making such a gesture we shall only be making more zealous converts of them to the creed of non-violence, and will ensure peace and tranquillity in the Province.

This gesture should take the form of a general release of them. It is after very careful and anxious consideration that I have come to this conclusion; I tried my best to understand if special responsibilities of Governor or Governor-General at all came in, and I feel convinced that it is not so. I, therefore, order that following political prisoners should be released forthwith. (Here followed names of 23 terrorist prisoners given in statement below.) Orders are to issue to-day, and I should get a report by 4 p.m. that orders have issued. Besides the above there are a few prisoners left, regarding whom it is not yet settled if they are political prisoners. Orders regarding them will be passed later on."

### III.—MINUTE OF GOVERNOR OF BIHAR ON PRIME MINISTER'S ORDER.

The minute by the Honourable Prime Minister dated 14th February, 1938, received by me at 1 p.m. containing a direction to the Chief Secretary to issue by 4 p.m. to-day orders for release forthwith of 23 political prisoners, has been submitted to me by the Chief Secretary in accordance with the Rules of Business. The question was discussed at a meeting of the Council of Ministers held on the morning of 12th February, 1938, at which the Council agreed with the views of the Honourable Prime Minister as recapitulated in the minute, and with the proposal to prepare an order regarding the release of these political prisoners, which will be submitted to His Excellency the Governor as is prescribed by Rules of Business.

This proposal by the Prime Minister and his colleagues has been rightly brought to my notice. I did at the meeting on 12th February explain, as I had done on previous occasions, that in my view the appropriate course is to examine cases on their merits and discuss individual releases, rather than to direct a general release of all remaining prisoners. In view of definite recommendation now made to me by the Honourable Prime Minister in accordance with opinion of the Council, it is necessary for me to consider what action should be taken in the light of their advice. In particular as I made clear at the meeting, and also to the Honourable Prime Minister on other occasions, it appears to me that the proposal for an immediate release of all the remaining political prisoners involves issues of more than a purely provincial significance. It will, I think, be recognised that it is not possible for me to deal finally with this matter in the short period suggested by the Honourable Prime Minister.

### IV.—COMMUNIQUÉ ISSUED BY THE GOVERNOR OF THE UNITED PROVINCES.

(Note.—In the United Provinces the Ministers informed the Governor of their decision to release their political prisoners but did not issue any written orders in the matter. Consequently the

Governor did not record any minute as was the case in Bihar but issued the following statement to the Press on 16th February.)

" At the end of August, His Excellency the Governor agreed to release the prisoners convicted in connection with the Kakori Conspiracy case in which a number of murders and robberies were committed.

" Their release was followed by a widespread demonstration of a revolutionary character including the incitement of the people to violence as a result of which the policy of gradually releasing prisoners guilty of acts of violence was temporarily suspended.

" As a result of this counter-action taken by the Government the atmosphere improved and the question of the release of the remaining prisoners was taken up again in January, the Governor expressing his willingness to consider the release of individual prisoners on examination of their records.

" The Ministers felt unable to accept this course and formally advised the Governor to agree to the immediate release of 15 prisoners of whom six had been actively engaged in the terrorist movement and the remainder had been convicted of robbery with violence.

" The Governor drew the attention of the Ministers to the serious nature of the issue involved but the latter was unable to modify his advice and the Governor accordingly referred the matter to the Governor-General.

" The Governor-General thereupon issued instruction to him under Section 126 (5) of the Government of India Act. In the light of these instructions, the Governor found himself unable to accept the advice of the Ministers who consequently tendered their resignations.

" The Governor replied that before accepting the resignations he must consider alternative arrangements to enable the King's Government to be carried on."

V.—INSTRUCTION FROM GOVERNOR-GENERAL TO GOVERNORS OF BIHAR AND UNITED PROVINCES BY TELEGRAM DATED 15TH FEBRUARY.

I have carefully considered position in relation to my own responsibilities, but, with a full sense of gravity of the issues involved, I have no choice but to instruct you under the provisions of Section 126 (5)\* that, despite the advice in the contrary sense of your Ministers, you should decline to agree to the proposed general release of your " political " prisoners.

\* §126 (5) " Without prejudice to his powers under the last preceding subsection, the Governor-General, acting in his discretion may at any time issue orders to the Governor of a Province as to the manner in which the executive authority thereof is to be exercised for the purpose of preventing any grave menace to the peace or tranquillity of India or any part thereof."

VI.—STATEMENTS OF MINISTRIES IN BIHAR AND UNITED PROVINCES.

(A) *Text of letter from Bihar Ministry to Governor of Bihar, dated 15th February, 1938.*

Having considered your Excellency's note of 15th February, 1938, in connection with release of political prisoners, we have decided to resign our office, which we hereby do. We feel that conditions in which power in discharging special responsibilities in respect of peace and order could be legitimately exercised, do not exist in the Province. Nor are they likely to arise after release of 23 political prisoners on which, on grounds of policy and principle, we have insisted. We are not prepared to agree that release of these prisoners would have affected peace and tranquillity anywhere outside Bihar either. In this view of the matter we cannot but regard action of His Excellency the Governor-General, in a matter which is the primary concern of the Provincial Government, as a grave breach of the letter and the spirit of the Constitution. It is, therefore, no longer possible for us to continue in office. We are not prepared to submit to the course adopted by His Excellency the Governor and we have no alternative but to decline to be in office under such conditions. We therefore place our resignation in your Excellency's hands.

(B) *Text of letter from Prime Minister of United Provinces to Governor of United Provinces, dated 15th February, 1938.*

As Your Excellency intimated to me and my colleagues that, in compliance with order issued to you by the Governor-General under Section 126 (5) of Government of India Act, you are bound to reject the advice which we thought it our duty to tender to you in regard to the release of political prisoners, we think that only course open to us is to tender our resignations, which we hereby do. The issue now raised is of the widest importance both from the constitutional and the administrative points of view. The release of political prisoners has formed a prominent part of Congress programme throughout. It was distinctly mentioned in Congress election manifesto and the electorate in overwhelming numbers has supported the demand of Congress. It was again urged in resolution passed by the Convention in Delhi in March last year. The British Government must therefore have been fully aware of Congress policy and its implication in regard to this matter. It is unthinkable that Governor-General should not have realised that Congress, whenever it accepted office, would take the earliest opportunity to implement Congress programme and to honour its pledges. The Congress was invited to accept office with full knowledge of these facts. An assurance was also definitely held out that Congress in office would be free to carry out its programme. It is exceedingly strange, that when, after prolonged and patient consideration and discussion we proceed to give



effect to Congress policy, the Governor-General issues his orders under Section 126 to thwart the Congress Ministry in this Province in this matter. The reasons which have weighed with the Governor-General in taking this decision are not known to us, and in spite of our request to Your Excellency you expressed your inability to disclose them to us. The responsibility for maintaining law and order in the Province is that of Ministers. No Council of Ministers can discharge its functions satisfactorily if its considered opinion is disregarded arbitrarily in respect of momentous questions, strictly falling within their purview, by outside authority, and when even the courtesy of mentioning the grounds on which such interference is sought is not shown to it. It is inconceivable that release of no more than 15 political prisoners, some of whom were merely boys when they were convicted, and several of whom have undergone long terms of imprisonment and are due to be released within a few months in the usual course, can be a grave menace to peace and tranquillity of any Province in India. We have every reason to believe and are definitely assured that they have abjured the path of violence. The jail authorities have a similar impression after a close observation of individual prisoners in their charge. We have discussed this question on numerous occasions with Your Excellency and we are inclined to believe that you have come at least to appreciate our point of view. The decision of the Governor-General is attributed to extra-provincial affairs and it is significant that action has been taken under Section 126 and not under Section 54, which suggests that Governor of the Province does not consider that there is any menace to peace and tranquillity inside the Province itself. There is an insistent demand in the country for the release of these prisoners and it has been forcefully voiced in our own Assembly by all sections from time to time. Their non-release is apt to disturb peaceful atmosphere, to engender tension and to hamper growth of non-violence spirit. The Government of Burma has recently released all the rebellion prisoners. A general release of all political prisoners followed in 1921, immediately after the introduction of dyarchy in the Province. We have had occasion to discuss this question in all its aspects with you during the last seven months. While there have been hunger strikes in every other Province, the prisoners here have refrained from doing so and have reposed their trust in us. We had far reaching and comprehensive programme for agrarian reforms, rural developments, jail reforms, overhaul of local self-governing bodies, education, prohibition and excise reforms, and several other large issues which called for a tranquil atmosphere for their solution. This interference on the part of the Governor-General in the ordinary administration of the Province raises a constitutional issue of gravest import and, instead of promoting peace and tranquillity, is likely to imperil it, not only in this Province but elsewhere in India also. In our considered judgment their release is essential in public interest,

and Governor-General has, by his orders, disabled us from performing our elementary duty in this respect. We look upon this interference as an utter abuse, even of provisions of Section 126 (5), and it brings vividly home to us the unsubstantial character of autonomy which Provinces are supposed to enjoy, when advice of Council of Ministers can be trampled upon by one entirely outside the Province, and having no direct contact with it, and not a live part in its affairs. In the circumstances there is no alternative to the course which we have taken and we would request you to accept this resignation.

VII.—STATEMENT SHOWING NAMES OF PRISONERS AND DETAILS OF SENTENCES.

Name.	Age.	Sentence.		Offence.
		Length (in years).	Date.	
(1)	(2)	(3)	(4)	(5)
		<i>Bihar.</i>		
1. Jogendra Sukul ...	40	10	Oct., 1931	Dacoity with murder.
		10	Mar., 1932	Criminal conspiracy to commit dacoity.
2. Kedarmoni Sukul ...	32	10	Oct., 1931	Dacoity with murder.
3. Surajnath Chaube ...	26	Life	1932	Terrorist conspiracy. Sentenced under S. 121A, Indian Penal Code.
4. Kanhai Lal Missir ...	36	Life	1932	
5. Shyam Agarwala ...	25	Life	1932	
6. Shamdeo Narain ...	29	Life	1932	
7. Mahant Ram Raman Das.	41	10	Aug., 1933	
8. Sakaldip Raut ...	35	Life	Aug., 1932	Train wrecking.
9. Rampratap Singh ...	37	Life	Aug., 1932	Train wrecking.
10. Ram Prasad Singh	Not known	Life	Aug., 1932	Dacoity with murder.
11. Lekh Narain Lall ...	18	6	Mar., 1935	Offences under Explosives Act.
12. Dyanand Jha ...	33	14	Mar., 1936	Offences under Explosives Act.
13. Shiva Kant Misra	29	14		
14. Brahmdeo Narayan Thakur.	31	14		
15. Chandra Kant Misra	25	5		
16. Chandrika Singh ...	27	Life	May, 1934	Attempted murder.
17. Ragho Prasad ...	About 19	5	May, 1937	Offences under Explosives Act and for criminal conspiracy.
18. Panna Lal ...				
19. Ram Babu ...				
20. Anjani Kumar Singh	Not known	5	Apr., 1937	Offences under Explosives Act.
21. Sheo Prasad ...	22	2½	Sept., 1937	Offences under Explosives Act.
22. Satya Narayan Misra.	19	3½		
23. Rajendra Prasad ...	54	2½		

All the above were sentenced by Ordinary Criminal Courts.

II

Name.	Age.	Sentence.		Offence.
		Length (in years).	Date.	
(1)	(2)	(3)	(4)	(5)
<i>United Provinces.</i>				
1. Yashpal ... ..	33	14	Mar., 1932	Attempted murder and offences under Arms Act.
2. Halder Bajpai ...	30	6	Dec., 1932	Attempted murder.
3. Rajendra Prasad Nigam.	29	9	Nov., 1932	Attempted murder and offences under Arms Act.
4. Chandra Man Singh	28	7	Jan., 1933	Attempted murder and offences under Arms Act.
5. Reamesh Chandra Gupta.	25	10	Dec., 1931	Attempted murder and offences under Arms Act.
6. Desraj Singh ...	30	3	June, 1936	Offences under Arms Act.
7. Kanta Prasad ...	38	7	Feb., 1932	Offences under Arms Act.
8. Balak Ram ... ..	24	7	1937	Attempted murder (not for political motive).
9. Jogeshwar ... ..	26	14	Aug., 1933	For possessing bombs and explosives.
10. Puttu Singh ... ..	32	6	Aug., 1932	For possessing coining implements and explosives.
11. Roshan Singh ...	23	1½	1937	Mail robbery and hurt.
12. Ram Sohail ... ..	23	1½	1937	Mail robbery and hurt.
13. Gurcharan Singh ...	33	10 yrs. 10 months	Feb., 1929	Various offences of cheating and under Explosive Substances Act.
14. Ganga Prasad ...	23	4	1936	Dacoity.
15. Asutosh Ganguli ...	27	1 yr. 3 months	Aug., 1937	For taking part in the operations of an unlawful association, the Communist Party of India, and offences under the Press Emergency Powers Act.

All the above were sentenced by the Ordinary Criminal Courts.