

**COMMUNAL DEADLOCK
AND
A WAY TO SOLVE IT**

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COMMUNAL DEADLOCK AND A WAY TO SOLVE IT

Mr. President,

I am indeed very grateful for your kind invitation to address the Annual Session of the All-India Scheduled Castes Federation. I am happy to see this great gathering of the Scheduled Castes. Having regard to the very short time which has elapsed since its establishment, the growth of the Federation appears by all evidence to be phenomenal. That the Scheduled Castes all over India have rallied round the Federation and are determined to make the Federation their only representative organization is beyond question. The growth of the Federation within so short a time will not be fully appreciated unless the tremendous difficulties in the way of our organization have been fully appreciated. There are agents of other political organizations which decoy our people by false blandishments, by false promises and by false propaganda. There is the ignorance of our own people, who do not know the critical nature of the times we are living in and who do not know the value of organization for achieving our political objects. There is a lamentable lack of resources at our command. We have no money. We have no press. The cruelest of tyrannies and oppressions, to which our people are subjected, day in and day out all over India, are never reported by the Press. Even our views on social and political questions are systematically suppressed by an organized conspiracy on the part of the Press. We have no funds to maintain a machinery, to render help to our people and to educate, agitate and organize them.

These are the odds we have to contend against. That the Federation, notwithstanding these difficulties, should have grown to this dimension is entirely due to our men who have been ceaselessly and unselfishly devoting themselves to the building up of this organization. I am sure you would like me to pay Mr. Ganpat Mahadev Jadhav, the President of the Bombay City Scheduled Castes Federation, our tribute for the work he has done. As everyone knows, he possesses remarkable degree of organizing capacity and I am sure the success of this Session is due to a great extent to his efforts and to those who have been his co-workers.

Ordinarily, at a gathering such as this I would have spoken—and our people would expect me to speak—on any one of the social and political problems of the Scheduled Castes. But I do not propose to engage myself in a discourse on so sectarian a subject. Instead, I propose to speak on a topic, which is general and has a wider appeal, namely the shape and form of the future Constitution of India.

It may be as well for me to explain the reasons for my decision. For the moment, the responsibility for leading the movement of the Scheduled Castes and facing its day-to-day problems does not lie on my shoulders. On account of my office I am out of it and I have no desire to take it up. That is one reason why I do not propose to take up a sectarian subject which is related only to the Scheduled Castes.

The Scheduled Castes are often charged as being selfish, interested only in themselves ; that they have no constructive suggestions to make for the solution of the country's political problem. The charge is entirely untrue ; and if it is true, the Untouchables will not be the only ones who will be found guilty of it. Most people in India do not make constructive suggestions. The reason is not that there are not people capable of constructive thought. The reason why all constructive thought remains bottled up is because a long and continuous propaganda has inculcated upon the minds of the generality of the people that nothing should be respected and nothing should be accepted unless it emanates from the Congress. It is this which has killed all constructive thought in this country. At the same time, I believe this charge against the Scheduled Castes should be repelled in a positive way by showing that the Scheduled Castes are capable of putting forth constructive proposals for the general political advancement of the country which the country, if it cares to, may consider. This is the second reason why I have on this occasion chosen this subject of general interest.

II

RESPONSIBILITY FOR FRAMING THE CONSTITUTION

Before I set out in concrete terms the constitutional proposals I have in mind, I wish to raise two preliminary issues. First is : Who should frame a Constitution for India ? It is necessary to raise this question because there are quite a lot of people in India who are hoping, if not asking, the British Government to resolve the deadlock and to frame a Constitution for India. I think there is a gross fallacy in such a view which needs to be exposed. A Constitution, framed by the British Government and imposed upon Indians, sufficed in the past. But if the nature of the future Constitution Indians are clamouring for, is borne in mind it will be clear that an imposed Constitution will not do.

The difference between the past Constitutions and the future Constitution of India is fundamental, and those, who still rely on the British for framing

a Constitution for India, do not seem to have realized this difference. The difference lies in this that the past Constitutions contained a breakdown clause. But the future Constitution of India cannot contain such a breakdown clause. People in India decry the breakdown clause—by now the notorious section 93 of the Government of India Act, 1935. That is because they do not know the why and the how of its place in the Act. Its importance will become apparent if two important considerations governing the political life of a community are borne in mind. First of these considerations is that Law and Order is the medicine of the body politic, and when the body politic goes sick this medicine must be administered. Indeed, so important is this consideration that failure to administer it must be deemed to be a crime against society and civilization. The second consideration is that though it is true that no government has a vested right to govern, it is equally true that there must always be a government to govern—which I mean maintain Law and Order—until it is displaced by a better government. The breakdown clause serves these two purposes. As such, it is of the highest value for the peace and tranquillity of the people. It is the one and only means which can save the country from anarchy. For, when Constitutional Government fails, the breakdown clause has at least the merit of maintaining Government.

In the past this distinction between Constitutional Government and Government with the provision for Government stepping in when Constitutional Government failed, was a feasible proposition. It was feasible because while the British Government gave Indians the right to a Constitutional Government, it kept to itself the right to govern, should Constitutional Government fail. In the future Constitution of India, it would not be possible to maintain this distinction. It would not be possible for the British Government to give the Indians the right to Constitutional Government and also to keep to itself the right to govern in case there was a breakdown in the Constitutional Government. The reason is quite obvious. The past Constitutions of India did not treat India as a Dominion. The future Constitution will proceed on the assumption that India will be a Dominion. The breakdown clause or the possibility of Government stepping in, when Constitutional Government has failed, can be reconciled in the case of a country, which has no Dominion Status. But the two are irreconcilable in the case of a Dominion. In the case of a Dominion or for the matter of that in the case of any free country, there is either a Constitutional Government or a Rebellion.

What does this mean ? It means that it is impossible to frame a Constitution for an Indian Dominion with a possibility of a breakdown. To put the same thing in a different language the Constitution must be so made that it will not only command the obedience but also the respect of all ; and all or if not all, at any rate, all important elements in the national life of India shall be prepared to uphold it and to give it their support. This can happen only

if the Constitution is framed by Indians for Indians and with the voluntary consent of Indians. If the Constitution is imposed by the British Government and is not accepted by one section and is opposed by another, there will arise in the country an element, hostile to the Constitution, and which will devote its energies not to working the Constitution but to breaking it. The anti-Constitution party may look upon destroying the Constitution as its only duty and may engage itself in "pronouncing" against a party working the Constitution in the real Latin American fashion.

It is useless for the British to frame a Constitution for India which they will not remain to enforce. The same result will ensue if the Constitution is imposed by one powerful section or a combination of such sections on other sections. I am, therefore, firmly of opinion that if Indians want Dominion Status, they cannot escape the responsibility of framing their own Constitution. The position is thus inescapable.

III

CONSTITUENT ASSEMBLY

The second question that I wish to raise is : Should there be a Constituent Assembly, charged with the function of making a Constitution ? Constituent Assembly is on the lips of everybody. The Congress parties in their resolutions, passed before the Congress ministries resigned, demanded that the Constitution for India should be made by a Constituent Assembly composed of Indians. A Constituent Assembly was included in the Cripps proposals. The Sapru Committee has followed suit.

I must state that I am wholly opposed to the proposals of a Constituent Assembly. It is absolutely superfluous. I regard it as a most dangerous project, which may involve this country in a Civil War. In the first place, I do not see why a Constituent Assembly is at all necessary. Indians are not in the same position as the Fathers of the American Constitution were, when they framed the Constitution of the United States. They had to evolve ideas, suitable for the constitution for a free people. They had no constitutional patterns before them to draw upon. This cannot however be the case for Indians. Constitutional ideas and constitutional forms are ready at hand. Again, room for variety is very small. There are not more than two or three constitutional patterns to choose from. Thirdly, there are hardly any big and purely constitutional questions about which there can be said to be much dispute among Indians. It is agreed that the future Indian Constitution should be Federal. It is also more or less settled what subjects should go to the Centre and what to the Provinces. There is no quarrel over the division of Revenues between the Centre and the Provinces, none on Franchise and none on the relation of the Judiciary to the Legislature and the Executive. The only point of dispute, which is outstanding, centres round the question of the residuary powers—whether they should be with the Centre or with the Provinces. But that is hardly a matter worth

bothering about Indeed, the provision contained in the present Government of India Act could be adopted as the best compromise.

Having regard to this I cannot see why a Constituent Assembly is necessary to incubate a constitution. So much of the Constitution of India has already been written out in the Government of India Act, 1935, that it seems to be an act of supererogation to appoint a Constituent Assembly to do the thing ever again. All that is necessary is to delete those sections of the Government of India Act, 1935, which are inconsistent with Dominion Status.

The only function which could be left to a Constituent Assembly is to find a solution of the Communal Problem. I am quite positive that whatever be the terms of reference of the Constituent Assembly, the Communal Question should not form a part of them. Consider the composition of the Constituent Assembly as suggested by the Sapru Committee. The total membership is fixed at 160. The election is by joint electorates by members of the Provincial Legislative Assemblies under a system of proportional representation and the decision is to be by three-fourths of the members present and voting. Can a minority accept this Constituent Assembly as a safe body, in the impartiality of which it can place implicit confidence? The answer to this question must depend upon what answers one can give to two other questions: Does it guarantee that the representatives of a minority elected to the Assembly will be its true representatives? Secondly, does it guarantee that the decision of the Assembly with regard to the claims of any particular minority will not in fact be an imposition on the minority? On neither of these two questions can I confidently say that a minority need have no cause for fear.

Before taking up these questions, let me point out what differences there are between the Cripps Constituent Assembly and the Sapru Constituent Assembly. They may be stated as follows:

- (i) The total number for the Constituent Assembly fixed by the Sapru Committee is 160. Sir Stafford Cripps had not fixed any number. But the provision contained in his proposal that the Constituent Assembly shall consist of ten per cent of the total number of members of the Provincial Legislatures virtually fixed the number to about 158—a difference of only 2.
- (ii) The method of election to the Constituent Assembly by the Sapru Committee is by joint electorate under the system of proportional representation. In this there is no difference between the Cripps plan and the Sapru plan for the composition of the Constituent Assembly.
- (iii) Under the Cripps plan, there was no communal reservation. The Sapru plan departs from the Cripps plan in this respect, in as much as it reserves seats for particular communities in prescribed

proportions. This difference is only normal. For, though the Cripps plan did not in terms fix the number, the scheme of proportional representation would have in fact resulted in such reservation. The difference in the quota of representation under the two schemes will be seen from the following table :

Communities and Interests	Quota of seats in the Constituent Assembly	
	Under Cripps'	Under Sapru's
Hindus	77	51
Muslims	50	51
Scheduled Castes	15	20
Sikhs	3	8
Indian Christians	2	7
Anglo-Indians	1	2
Europeans	6	1
Aboriginal Tribes	2	3
Special Interests		16
Others	2	1
	<u>158</u>	<u>160</u>

The Sapru Committee has not only fixed the numbers for each Community in the composition of the Constituent Assembly but it has offered the Muslims equality with the Hindus. For this departure the Committee's plea is that in consideration for this offer it has demanded joint electorate as a basis for election to the Constituent Assembly. In this, the Committee must be said to have entirely misunderstood the Cripps proposals. Joint-Electorates were already provided for in the Cripps proposals one clause of which reads—"The members of the Lower Houses of the Provincial Legislatures are to form a single Electoral College". This is simply another way of saying that the election shall be by joint-electorate. It has given something for nothing to one element and thereby put the other Communities in a hazard.

- (iv) Under the Cripps proposal the decision of the Assembly was to be by majority of those present and voting, Under the Sapru proposal the decision is to be by a majority of 3/4th of those present and voting.

Now to revert to the two questions. How does the position stands with regard to the first question ? To give one's opinion on it, it is first necessary

to know the communal distribution of the membership of the Provincial Legislative Assemblies. The following table sums up the position :

Distribution of Seats by Communities in the Provincial Legislative Assemblies*

Communities		General	Women	University	Trade Unions	Com-merce	Land lords	Total
1		2	3	4	5	6	7	8
1. Hindus	..	651	26	7	33	31	22	770
2. Muslims	..	482	10	1	5	6	13	517
3. Scheduled Castes.		151	..	..	..	..	..	151
4. Indian Christians.		20	1	..	..	..	..	21
5. Anglo-Indians	..	11	1	..	..	..	..	12
6. Sikhs	..	34	1	..	..	..	1	36
7. Europeans	..	26	..	..	..	19	1	46
8. Aborigines	..	24	..	..	..	..	..	24
Total	..	1,399	39	8	38	56	37	1,577

Has the communal reservation made by the Sapru proposal, and which is not to be found in the Cripps proposal, any value? That depends upon how far one community will be able to influence the election of the members of the other communities? What are the prospects in this regard? Let me give another table :

Voting strength in relation to seats

Communities	Voters for Constituent Assembly	Quota of seats in the Constituent Assembly	Number of votes required for electing the quota	(+)Excess of voters over (-)Deficiency of voters below requirement
1. Hindus	.. 778	51	561	+ 217
2. Muslims	.. 561	51	517	+ 44
3. Scheduled Castes	.. 151	20	220	– 69
4. Indian Christians	.. 21	7	77	– 56
5. Sikhs	.. 36	8	88	– 52
6. Europeans	.. 46	1	11	+ 35

From this table the following conclusions emerge :

- (i) Taking the total votes to be 1577 and the total number to be elected 160, the quota under the proportional system of representation would roughly come to $10 + 1 = 11$.

*The distribution of seats for (1) Universities; (2) Trade Unions, (3) Commerce and (4) Landlords among the communities does not stand for an exact figure. It is based on guess as to how they may be divided among the communities having regard to the relative position.

- (ii) Taking 11 as the quota, the Hindus will have 217, the Muslims 44 and the Europeans 35 votes to spare, while the Scheduled Castes will be short by 69, the Indian Christians by 56 and the Sikhs by 52 votes.

To put the same thing in a different way :

- (i) The Hindus with their excess of 217 votes can elect 20 non-Hindus, who would be dependent upon them ; the Muslims with their excess of 44 votes can elect 4 non-Muslims, who would be dependent upon them and the Europeans with their excess of 35 votes would be able to elect 3 non-Europeans, who would be dependent upon them.
- (ii) The Scheduled Castes with a shortage of 69 votes will be able to elect only 13 members on the stock of their own votes and for 7 seats they will have to depend upon Hindu, Muslim or European voters. The Indian Christians with a shortage of 56 votes will be able to elect only 2 seats on the stock of their own voters. For the rest of the 5 seats they will have to depend upon Hindu, Muslim or European voters. Similarly the Sikhs with a shortage of 52 will be able to elect only 3 seats on the stock of their own voters. For the rest of the 5 seats they will have to depend upon Hindu, Muslim or European voters

Such is the position. It is evident that the excess representation granted to the smaller minorities is only an eye-wash. Their representation is made so dependent that in no sense can it be called a real representation.

Let me now take the second question. Is the rule of decision adopted by the Sapru Committee for the Constituent Assembly a safe rule ? The Cripps proposal had adopted the rule of bare majority. This was an absurd proposition which no sensible man could have proposed. I know of no case where questions relating to the constitution were left to be decided by a simple majority.

The Cripps proposals sought to excuse the adoption of the majority rule on the ground that there was to be a further provision for safeguarding the interest of the minorities. The provision was to take the form of a Treaty between the British Crown and the Indian Constituent Assembly, before Parliament was to relinquish its sovereignty and make India free. The proposal of a Treaty would have had some sense, if the Treaty was to override the constitution. But the proposal was impossible as under the Cripps scheme India was free to become a Dominion or an Independent country as she pleased. For once India became a Dominion it would *ipso facto* acquire all the legal power necessary to pass an enactment declaring that the Treaty shall not override the constitution. In that case the Treaty would have been no better than a calendar which members of the minorities might, if they wished, hang on the walls of their houses. This

was exactly what happened to the Irish Treaty. The Irish Treaty continued to override the Irish Constitution so long as Ireland was not a Dominion. But the moment Ireland became a Dominion the over riding power of the Treaty was taken away by a short and simple enactment of the Parliament of the Irish Free State and the British Parliament did nothing, for it knew that Ireland was a Dominion and therefore it could do nothing. How so absurd a provision came to be put forth by so eminent a person to assure the minorities, I am unable to understand.

The provisions contained in the Sapru proposals appear to be an improvement. But are they really an improvement? I am sure they are not. A three-fourths majority of 160 means that a view to prevail must have the support of 120 members. Before accepting this as an improvement, one has to have some idea as to how this group of 120 is likely to be formed. If the Hindus and the Muslims combine they will together make up 102 and will need only 18 more to make up 120. Most of the special seats and a few more from others may easily fall into the hands of this combine. If this happens the decision of the Assembly will obviously be an imposition upon the Scheduled Castes, the Sikhs, the Indian Christians etc. Similarly, if the Muslims are isolated the decision will not be a joint decision but an imposition upon the Muslims by non-Muslims. These possibilities of permutation and combination for the purpose of check-mating or out-manoeuvring of some communities by others, I am sorry to say, have not been taken into consideration by the Sapru Committee. There would have been some safety, if the Sapru Committee had provided that the three-fourths majority shall at least include 50 per cent of each element.

Following upon the procedure adopted in the making of the constitution of the United States, the Sapru Committee could have added a further provision for the ratification at any rate of the communal part of the decision of the Assembly by the representatives of the minorities outside the Assembly. None of these provisions finds a place in the plan of the Constituent Assembly as designed by the Sapru Committee. Consequently the Constituent Assembly has become a snare.

There are many other arguments against the plan of a Constituent Assembly. I may mention one, which I confess has influenced me greatly. When I read the history of the Union between Scotland and England, I was shocked at the corruption and bribery that was practised to win the consent of the Scottish Parliament. The whole of the Scottish Parliament was bought. The chances of corruption and bribery being used in the Indian Constituent Assembly to buy over members to support decisions desired by interested groups are very real. Their effects, I am sure, cannot be overlooked. If this happens, it will not only make mockery of the Constituent Assembly but I feel quite certain that any attempt made to enforce its decisions will result in a civil war. It is my considered opinion that the proposal of Constituent Assembly is more dangerous than profitable and should not be entertained.

IV

NECESSITY OF A NEW APPROACH

I shall be asked that if the Constituent Assembly is not the correct approach, what is the alternative? I know I shall be confronted with such a question. But I am confident in my view that if the Communal Question has become difficult of solution it is not because it is insoluble, nor because we had not yet employed the machinery of Constituent Assembly. It has become insoluble because the approach to it is fundamentally wrong. The defect in the present approach is that it proceeds by methods instead of by principles. The principle is that there is no principle. There is only a series of methods. If one method fails another is tried. It is this swing from one method to another which has made the Communal Problem a jig-saw puzzle. There being no principle there is no guide to tell why a particular method has failed. There being no principle there is no assurance that the new method will succeed.

The attempts at the solution of the Communal Problem are either in the nature of a coward's plan to cow tow to the bully or of bully's plan to dictate to the weak. Whenever a community grows powerful and demands certain political advantages, concessions are made to it to win its goodwill. There is no judicial examination of its claim; no judgement on merits. The result is that there are no limits to demands and there are no limits to concessions. A start is made with a demand for separate electorate for a minority. It is granted. It is followed by a demand for a separate electorate for a community irrespective of the fact whether it is a minority or majority. That is granted. A demand is made for separate representation on a population basis. That is conceded. Next, a claim is made for weightage in representation. That is granted. It is followed by a demand for statutory majority over other minorities with the right for the majority to retain separate electorates. This is granted. This is followed by a demand that the majority rule of another community is intolerable, and therefore without prejudice to its rights to maintain majority rule over other minorities, the majority of the offending community should be reduced to equality. Nothing can be more absurd than this policy of eternal appeasement, it is a policy of limitless demand followed by endless appeasement.

Frankly, I don't blame the community that indulges in this strategy. It indulges in it because it has found that it pays, it pursues it because there are no principles to fix the limits and it believes that more could be legitimately asked and would be easily given. On the other hand, there is a community economically poor, socially degraded, educationally backward and which is exploited, oppressed and tyrannized without shame and without remorse, disowned by society, unowned by Government and which has no security for protection and no guarantee for justice, fair play and equal opportunity. Such a community is told that it can have no safeguards, not

because it has no case for safeguards but only because the bully on whom the bill of rights is presented thinks that because the community is not politically organized to have sanctions behind its demand he can successfully bluff.

All this differential treatment is due to the fact, that there are no principles, which are accepted as authoritative and binding on those who are parties to the Communal Question. The absence of principles has another deleterious effect. It has made impossible for public opinion to play its part. The public only knows methods and notes that one method has failed another is being suggested. It does not know why one method has failed and why another is said to be likely to succeed. The result is that the public, instead of being mobilized to force obstinate and recalcitrant parties to see sense and reason, are only witnessing the discussions of Communal Questions whenever they take place is mere shows.

The approach I am making for the solution of the Communal Problem is therefore based upon two considerations :

- (1) That in proceeding to solve the Communal Problem it is essential to define the governing principles which should be invoked for determining the final solution, and
- (2) That whatever the governing principles they must be applied to all parties equally without fear or favour.

V

PROPOSALS FOR SOLUTION OF THE COMMUNAL PROBLEM

Having made my position clear on certain preliminary points, I will now proceed to deal with the subject.

The Communal Problem raises three questions :

- (A) The question of representation in the Legislature ;
- (B) The question of representation in the Executive; and
- (C) The question of representation in the Services.

A. REPRESENTATION IN PUBLIC SERVICES

To take the last question first. This can hardly be said to be a subject of controversy. The principle that all communities should be represented in the Public Services in a prescribed proportion and no single community should be allowed to have a monopoly has been accepted by the Government of India. This principle has been embodied in the Government of India Resolutions of 1934 and 1943 and rules to carry it out have been laid down. It has even prescribed that any appointment made contrary to the rules shall be deemed to be null and void. All that is necessary is to convert administrative practice into statutory obligation. This can be done by adding a Schedule to the Government of India Act, which will include the provisions contained in these Resolutions and similar provisions for the different provinces and make the Schedule a part of the Law of the Constitution.