
Appendix I**EXPLANATORY NOTES***Preamble*

The Preamble gives constitutional shape and form to the Resolution on objectives passed by the Constituent Assembly on Wednesday the 22nd January 1947.

ARTICLE I—Section I*Clauses 1 to 4*

The admission of the six hundred and odd Indian States into the Union raises many difficult questions. The most difficult of them is the one which relates to their admission into the Union. Every Indian State is claiming to be a Sovereign State and is demanding to be admitted into the Union in its own right. The Indian States fall into different classes from the view of size, population, revenue and resources. It is obvious that every State admitted into the Union as a State must have the capacity to bear the burden of modern administration to maintain peace within its own borders and to possess the resources necessary for the economic advancement of its people. Otherwise, the United States of India is likely to be encumbered with a large number of weak States which, instead of being a help to the Central Government, will be a burden upon it. The Union Government with such small and weak States as its units will never be able to pull its full weight in an emergency. It is therefore obvious that it would be a grave danger to the future safety of India if every Indian State were admitted into the Union without any scrutiny of its capacity to bear the burden of modern administration and maintaining internal peace. To avoid this danger, the Article proceeds to divide the Indian States into two classes: (1) Qualified Indian States and (2) Unqualified Indian States. It proposes that a list of Qualified Indian States should be drawn up as a first step in the procedure to be followed for the admission of the Indian States into the Union. A Qualified Indian State will be admitted into the Union on an application for admission and the fulfilment of the provisions of the Enabling Act which the Union Legislature is authorized to pass for the purpose of requiring an appropriate form of internal Government set up within the State which will be in consonance to the principles underlying the Constitution of the United States of India. The territory in the occupation of the Unqualified Indian States will be treated as the territory of the United States of India and will be reorganized into States of suitable sizes by the United States of India. In the meantime those who are rulers of the territory shall continue to administer the territory under the supervision of the United States of India. The Act also declares that the Indian territory whether in the occupation of British Indian Provinces or of the Indian States is one and integral and will be so even though an Indian State has not entered into the Union.

Clause 4 provides that once a State is admitted into the Union, its integrity shall be maintained and it shall not be liable to sub-division except in accordance with the provisions contained in the clause.

ARTICLE I—Section II

Clauses 1 and 2

Clause 1 permits the United States of India to incorporate States which are independent but which are on the border and which desire to join the Union.

Clause 2 enables the United States of India to acquire territory and to incorporate it or to treat it as separate territory.

ARTICLE II—Section I

The inclusion of Fundamental Rights in the Constitution requires no justification. The necessity of Fundamental Rights is recognized in all Constitutions old and new. The Fundamental Rights included in the Article are borrowed from the Constitutions of various countries particularly from those wherein the conditions are more or less analogous to those existing in India.

ARTICLE II—Section II

Clause 1

Rights are real only if they are accompanied by remedies. It is no use giving rights if the aggrieved person has no legal remedy to which he can resort when his rights are invaded. Consequently when the Constitution guarantees rights it also becomes necessary to make provision to prevent the Legislature and the Executive from overriding them. This function has been usually assigned to the judiciary and the Courts have been made the special guardians of the rights guaranteed by the Constitution. The clause does no more than this. The clause proposes to give protection to the citizen against Executive tyranny by investing the Judiciary with certain powers of inquisition against the abuse of authority by the Executive. This power takes the form of issue of writs. The High Courts in India possess these powers under the Government of India and under their letters patent. These powers are however subject to two limitations. In the first place the powers given by the Letters Patent are available only to the High Courts in the Presidency Towns and not to all. Secondly these powers are subject to laws made by the Indian Legislature. Thirdly the powers given by the Government of India Act, 1935 are restricted and may prove insufficient for the protection of the aggrieved person. The clause achieves two objectives : (1) to give the fullest power to the Judiciary to issue what under the English Law are called Prerogative Writs and (2) to prevent the Legislature from curtailing these powers in any manner whatsoever.

Clause 2

It is difficult to expect that in a country like India where most persons are communally minded those in authority will give equal treatment to those

who do not belong to their community. Unequal treatment has been the inescapable fate of the Untouchables in India. The following extract from the Proceedings of the Board of Revenue of the Government of Madras No. 723 dated 5th November, 1892. illustrates the sort of unequal treatment which is meted out to the Scheduled Castes by Hindu Officers. Says the report :

“134. There are forms of oppression only hitherto hinted at which must be at least cursorily mentioned. To punish disobedience of Pariahs, their masters—

- (a) bring false cases in the village Court or in the criminal Courts;
- (b) obtain, on application, from Government, waste lands lying all round the paracheri, so as to impound the Pariahs' cattle or obstruct the way to their temple;
- (c) have mirasi names fraudulently entered in the Government account against the paracheri;
- (d) pull down the huts and destroy the growth in the backyards;
- (e) deny occupancy right in immemorial sub-tenancies;
- (f) forcibly cut the Pariahs' crops, and on being resisted charge them with theft and rioting;
- (g) under misrepresentations, get them to execute documents by which they are afterwards ruined;
- (h) cut off the flow of water from their fields;
- (i) without legal notice, have the property of sub-tenants attached for the landlords' arrears of revenue.”

“135. It will be said there are civil and criminal Courts for the redress of any of these injuries. There are the Courts indeed; but India does not breed village Hampdens. One must have courage to go to the Courts; money to employ legal knowledge, and meet legal expenses; and means to live during the case and the appeals. Further most cases depend upon the decision of the first Court; and these Courts are presided over by officials who are sometimes corrupt and who generally for other reasons, sympathize with the wealthy and landed classes to which they belong.”.

“136. The influence of these classes with the official world can hardly be exaggerated. It is extreme with natives and great even with Europeans. Every office, from the highest to the lowest, is stocked with their representatives, and there is no proposal affecting their interests but they can bring a score of influence to bear upon it in its course from inception to execution.”

The Punjab Land Alienation Act is another illustration of unequal treatment of the Untouchables by the Legislature.

Many other minority communities may be suffering from similar treatment at the hands of the majority community. It is therefore necessary to have

such a provision to ensure that all citizens shall have equal benefit of Laws, Rules and Regulations.

The provisions of Clause 2 are borrowed from Civil Rights Protection Act, 1866, and of March 1st, 1875 passed by the Congress of the United States of America to protect the Negroes against unequal treatment.

Clause 3

Discrimination is another menace which must be guarded against if the Fundamental Rights are to be real rights. In a country like India where it is possible for discrimination to be practised on a vast scale and in a relentless manner Fundamental Rights can have no meaning. The Remedy follows the lines adopted in the Bill which was recently introduced in the Congress of the U.S.A. the aim of which is to prevent discrimination being practised against the Negroes.

Clause 4

The main purpose behind the clause is to put an obligation on the State to plan the economic life of the people on lines which would lead to highest point of productivity without closing every avenue to private enterprise, and also provide for the equitable distribution of wealth. The plan set out in the clause proposes State ownership in agriculture with a collectivised method of cultivation and a modified form of State Socialism in the field of industry. It places squarely on the shoulders of the State the obligation to supply capital necessary for agriculture as well as for industry. Without the supply of capital by the State neither land nor industry can be made to yield better results. It also proposes to nationalize insurance with a double objective. Nationalized Insurance gives the individual greater security than a private Insurance Firm does inasmuch as it pledges the resources of the State as a security for the ultimate payment of his insurance money. It also gives the State the resources necessary for financing its economic planning in the absence of which it would have to resort to borrowing from the money market at a high rate of interest. State Socialism is essential for the rapid industrialization of India. Private enterprise cannot do it and if it did it would produce those inequalities of wealth which private capitalism has produced in Europe and which should be a warning to Indians. Consolidation of Holdings and Tenancy Legislation are worse than useless. They cannot bring about prosperity in agriculture. Neither Consolidation nor Tenancy Legislation can be of any help to the 60 millions of Untouchables who are just landless labourers. Neither Consolidation nor Tenancy Legislation can solve their problem. Only collective farms on the lines set out in the proposal can help them. There is no expropriation of the interests concerned. Consequently there ought to be no objection to the proposal on that account.

The plan has two special features. One is that it proposes State Socialism in important fields of economic life. The second special feature of the

plan is that it does not leave the establishment of State Socialism to the will of the Legislature. It establishes State Socialism by the Law of the Constitution and thus makes it unalterable by any act of the Legislature and the Executive.

Students of Constitutional Law will at once raise a protest. They are sure to ask : Does not the proposal go beyond the scope of the usual type of Fundamental Rights ? My answer is that it does not. If it appears to go beyond it is only because the conception of Fundamental Rights on which such criticism is based is a narrow conception. One may go further and say that even from the narrow conception of the scope of the Constitutional Law as comprising no more than Fundamental Rights the proposal can find ample justification. For what is the purpose of prescribing by law the shape and form of the economic structure of society ? The purpose is to protect the liberty of the individual from invasion by other individuals which is the object of enacting Fundamental Rights. The connection between individual liberty and the shape and form of the economic structure of society may not be apparent to everyone. None the less the connection between the two is real. It will be apparent if the following considerations are borne in mind.

Political Democracy rests on four premises which may be set out in the following terms :

- (i) The individual is an end in himself.
- (ii) That the individual has certain inalienable rights which must be guaranteed to him by the Constitution.
- (iii) That the individual shall not be required to relinquish any of his constitutional rights as a condition precedent to the receipt of a privilege.
- (iv) That the State shall not delegate powers to private persons to govern others.

Anyone who studies the working of the system of social economy based on private enterprise and pursuit of personal gain will realize how it undermines, if it does not actually violate, the last two premises on which Democracy rests. How many have to relinquish their constitutional rights in order to gain their living ? How many have to subject themselves to be governed by private employers?

Ask those who are unemployed whether what are called Fundamental Rights are of any value to them. If a person who is unemployed is offered a choice between a job of some sort, with some sort of wages, with no fixed hours of labour and with an interdict on joining a union and the exercise of his right to freedom of speech, association, religion, etc., can there be any doubt as to what his choice will be. How can it be otherwise ? The fear of starvation, the fear of losing a house, the fear of losing savings if any, the fear of being compelled to take children away from school, the fear

of having to be a burden on public charity, the fear of having to be burned or buried at public cost are factors too strong to permit a man to stand out for his Fundamental Rights. The unemployed are thus compelled to relinquish their Fundamental Rights for the sake of securing the privilege to work and to subsist.

What about those who are employed? Constitutional Lawyers assume that the enactment of Fundamental Rights is enough to safeguard their liberty and that nothing more is called for. They argue that where the State refrains from intervention in private affairs—economic and social—the residue is liberty. What is necessary is to make the residue as large as possible and State intervention as small as possible. It is true that where the State refrains from intervention what remains is liberty. But this does not dispose of the matter. One more question remains to be answered. To whom and for whom is this liberty ? Obviously this liberty is liberty to the landlords to increase rents, for capitalists to increase hours of work and reduce rate of wages. This must be so. It cannot be otherwise. For in an economic system employing armies of workers, producing goods *en masse* at regular intervals some one must make rules so that workers will work and the wheels of industry run on. If the State does not do it the private employer will. Life otherwise will become impossible. In other words what is called liberty from the control of the State is another name for the dictatorship of the private employer.

How to prevent such a thing happening ? How to protect the unemployed as well as the employed from being cheated out of their Fundamental Rights to life, liberty and pursuit of happiness ? The useful remedy adopted by Democratic countries is to *limit* the power of Government to impose arbitrary restraints in political domain and to *invoke* the ordinary power of the Legislature to restrain the more powerful individual from imposing arbitrary restraints on the less powerful in the economic field. The inadequacy may the futility of the plan has been well-established. The successful invocation by the less powerful of the authority of the Legislature is a doubtful proposition. Having regard to the fact that even under adult suffrage all Legislatures and Governments are controlled by the more powerful an appeal to the Legislature to intervene is a very precarious safeguard against the invasion of the liberty of the less powerful. The plan follows quite a different method. It seeks to limit not only the power of Government to impose arbitrary restraints but also of the more powerful individuals or to be more precise to eliminate the possibility of the more powerful having the power to impose arbitrary restraints on the less powerful by withdrawing from the control he has over the economic life of people. There cannot be slightest doubt that of the two remedies against the invasion by the more powerful of the rights and liberties of the less powerful the one contained in the proposal is undoubtedly the more effective. Considered

in the light of these observations the proposal is essentially a proposal for safeguarding the liberty of the individual. No Constitutional Lawyer can therefore object to it on the ground that it goes beyond the usual scope of Constitutional Law.

So far as the plan has been considered purely as a means of safeguarding individual liberty. But there is also another aspect of the plan which is worthy of note. It is an attempt to establish State Socialism without abrogating Parliamentary Democracy and without leaving its establishment to the will of a Parliamentary Democracy. Critics of State Socialism even its friends are bound to ask why make it a part of the Constitutional Law of the land? Why not leave it to the Legislature to bring it into being by the ordinary process of Law. The reason why it cannot be left to the ordinary Law is not difficult to understand. One essential condition for the success of a planned economy is that it must not be liable to suspension or abandonment. It must be permanent. The question is how this permanence can be secured. Obviously it cannot be secured under the form of Government called Parliamentary Democracy under the system of Parliamentary Democracy, the policy of the Legislature and of the Executive is the policy of the majority for the time being. Under the system of Parliamentary Democracy the majority in one election may be in favour of State Socialism in Industry and in Agriculture. At the next election the majority may be against it. The anti-State Socialism majority will use its Law-making power to undoing the work of the pro-State Socialism majority and the pro-State Socialism majority will use its Law-making power to doing over again what has been undone by their opponents. Those who want the economic structure of society to be modelled on State Socialism must realize that they cannot leave the fulfilment of so fundamental a purpose to the exigencies of ordinary Law which simple majorities—whose political fortunes are never determined by rational causes—have a right to make and unmake. For these reasons Political Democracy seems to be unsuited for the purpose.

What is the alternative ? The alternative is Dictatorship. There is no doubt that Dictatorship can give the permanence which State Socialism requires as an essential condition for its fructification. There is however one fact against Dictatorship which must be faced. Those who believe in individual freedom strongly object to Dictatorship and insists upon Parliamentary Democracy as a proper form of Government for a Free Society. For they feel that freedom of the individual is possible only under Parliamentary Democracy and not under Dictatorship. Consequently those who want freedom are not prepared to give up Parliamentary Democracy as a form of Government. However, much they may be anxious to have State Socialism they will not be ready to exchange Parliamentary Democracy for Dictatorship eventhough the gain by such an exchange is the achievement of State Socialism. The problem therefore is to have State Socialism

without Dictatorship, to have State Socialism with Parliamentary Democracy. The way out seems to be to retain Parliamentary Democracy and to prescribe State Socialism by the Law of the Constitution so that it will be beyond the reach of a Parliamentary majority to suspend, amend or abrogate it. It is only by this that one can achieve the triple object, namely, to establish socialism, retain Parliamentary Democracy and avoid Dictatorship.

The proposal marks a departure from the existing Constitutions whose aim is merely to prescribe the form of the political structure of society leaving the economic structure untouched. The result is that the political structure is completely set at naught by the forces which emerge from the economic structure which is at variance with the political structure. Those who want socialism with Parliamentary Democracy and without Dictatorship should welcome the proposal.

The soul of Democracy is the doctrine of one man, one value. Unfortunately, Democracy has attempted to give effect to this doctrine only so far as the political structure is concerned by adopting the rule of one man, one vote which is supposed to translate into fact the doctrine of one man, one value. It has left the economic structure to take the shape given to it by those who are in a position to mould it. This has happened because Constitutional Lawyers have been dominated by the antiquated conception that all that is necessary for a perfect Constitution for Democracy was to frame a Constitutional Law which would make Government responsible to the people and to prevent tyranny of the people by the Government. Consequently, almost all Laws of Constitution which relate to countries which are called Democratic stop with Adult Suffrage and Fundamental Right. They have never advanced to the conception that the Constitutional Law of Democracy must go beyond Adult Suffrage and Fundamental Rights. In other words, old time Constitutional Lawyers believed that the scope and function of Constitutional Law was to prescribe the shape and form of the political structure of society. They never realized that it was equally essential to prescribe the shape and form of the economic structure of society, if Democracy is to live up to its principle of one man, one value. Time has come to take a bold step and define both the economic structure as well as the political structure of society by the Law of the Constitution. All countries like India which are late-comers in the field of Constitution-making should not copy the faults of other countries. They should profit by the experience of their predecessors.

ARTICLE II—Section III

Clause 1

In the Government of India Acts of 1919 and 1935 the model that was adopted for framing the structure of the Executive in the Provinces and

in the Centre was of the British type or what is called by Constitutional Lawyers Parliamentary Executive as opposed to the American type of Executive which in contradistinction of the British type is called Non-Parliamentary Executive. The question is whether the pattern for the Executive adopted in the two Acts should be retained or whether it should be abandoned and if so what model should be adopted in its place. Before giving final opinion on this issue it would be desirable to set out the special features of the British type of the Executive and the consequences that are likely to follow if it was applied to India.

The following may be taken to be the special features of British or the Parliamentary Executive :

- (1) It gives a party which has secured a majority in the Legislature the right to form a Government.
- (2) It gives the majority party the right to exclude from Government persons who do not belong to the Party.
- (3) The Government so formed continues in office only so long as it can command a majority in the Legislature. If it ceases to command a majority it is bound to resign either in favour of another Government formed out of the existing Legislature or in favour of a new Government formed out of a newly elected Legislature.

As to the consequences that would follow if the British System was applied to India the situation can be summed up in the following proposition :

- (1) The British System of Government by a Cabinet of the majority party rests on the premise that the majority is a political majority. In India the majority is a communal majority. No matter what social and political programme it may have the majority will retain its character of being a communal majority. Nothing can alter this fact. Given this fact it is clear that if the British System was copied it would result in permanently vesting Executive power in a Communal majority.
- (2) The British System of Government imposes no obligation upon the Majority Party to include in its cabinet the representatives of Minority Party. If applied to India the consequence will be obvious. It would make the majority community a governing class and the minority community a subject race. It would mean that a communal majority will be free to run the administration according to its own ideas of what is good for the minorities. Such a state of affairs could not be called democracy. It will have to be called imperialism.

In the light of these consequences it is obvious that the introduction of British type of the Executive will be full of menace to the life, liberty and pursuit of happiness of the minorities in general and of the Untouchables in particular.

The problem of the Untouchables is a formidable one for the Untouchables to face. The Untouchables are surrounded by a vast mass of Hindu population which is hostile to them and which is not ashamed of committing any inequity or atrocity against them. For a redress of these wrongs which are matters of daily occurrence, the Untouchables have to call in the aid of the administration. What is the character and composition of this administration ? To be brief, the administration in India is completely in the hands of the Hindus. It is their monopoly. From top to bottom it is controlled by them. There is no Department which is not dominated by them. They dominate the Police, the Magistracy and the Revenue Services, indeed any and every branch of the administration. The next point to remember is that the Hindus in the administration have the same positive anti-social and inimical attitude to the Untouchables which the Hindus outside the administration have. Their one aim is to discriminate against the Untouchables and to deny and deprive them not only of the benefits of Law, but also of the protection of the Law against tyranny and oppression. The result is that the Untouchables are placed between the Hindu population and the Hindu-ridden administration, the one committing wrong against them and the other protecting the wrong-doer, instead of helping the victims.

Against this background, what can Swaraj mean to the Untouchables ? It can only mean one thing, namely, that while today it is only the administration that is in the hands of the Hindus, under Swaraj the Legislature and Executive will also be in the hands of the Hindus. It goes without, saying that such a Swaraj would aggravate the sufferings of the Untouchables. For, in addition to an hostile administration, there will be an indifferent Legislature and a callous Executive. The result will be that the administration unbridled in venom and in harshness, uncontrolled by the Legislature and the Executive, may pursue its policy of inequity towards the Untouchables without any curb. To put it differently, under Swaraj the Untouchables will have no way of escape from the destiny of degradation which Hindus and Hinduism have fixed for them.

These are special considerations against the introduction of the British System of Executive which have their origin in the interests of the minorities and the Scheduled Castes. But there is one general consideration which can be urged against the introduction of the British Cabinet System in India. The British Cabinet System has undoubtedly given the British people a very stable system of Government. Question is will it produce a stable Government in India ? The chances are very slender. In view of the clashes of castes and creeds there is bound to be a plethora of parties and groups in the Legislature in India. If this happens it is possible, nay certain, that under the system of Parliamentary Executive like the one that prevails in England under which the Executive is bound to resign upon an

adverse vote in the Legislature, India may suffer from instability of the Executive. For it is the easiest thing for groups to align and realign themselves at frequent intervals and for petty purposes and bring about the downfall of Government. The present solidarity of what are called the Major Parties cannot be expected to continue. Indeed as soon as the Problem of the British in India is solved the cement that holds these parties together will fall away. Constant overthrow of Government is nothing short of anarchy. The present Constitution has in it Section 93 which provides a remedy against it. But Section 93 would be out of place in the Constitution of a free India, Some substitute must therefore be found for Section 93.

Taking all these considerations together there is no doubt that the British type of the Executive is entirely unsuited to India.

The form of the Executive proposed in the clause is intended to serve the following purposes :

- (i) To prevent the majority from forming a Government without giving any opportunity to the minorities to have a say in the matter.
- (ii) To prevent the majority from having exclusive control over administration and thereby make the tyranny of the minority by the majority possible.
- (iii) To prevent the inclusion by the Majority Party in the Executive representatives of the minorities who have no confidence of the minorities.
- (iv) To provide a stable Executive necessary for good and efficient administration.

The clause takes the American form of Executive as a model and adapts it to Indian conditions especially to the requirements of minorities. The form of the Executive suggested in the proposal cannot be objected to on the ground that it is against the principle of responsible government. Indians who are used to the English form of Executive forget that this is not the only form of democratic and responsible Government. The American form of Executive is an equally good type of democratic and responsible form of Government. There is also nothing objectionable in the proposal that a person should not be qualified to become a Minister merely because he is elected to the Legislature. The principle that a member of the Legislature before he is made a Minister should be chosen by his constituents was fully recognized by the British Constitution for over hundred years. A member of Parliament who was appointed a Minister had to submit himself for election before taking up his appointment. It was only lately given up. There ought therefore to be no objection to it on the ground that the proposals are not compatible with responsible Governments. The actual proposal is an improved edition of the American form of Government, for the reason that under it members of the Executive can sit in the Legislature and have a right to speak and answer questions.

Clause 2

The proposal cannot be controversial. The best remedy against tyranny and oppression by a majority against the minority is inquiry, publicity and discussion. This is what the safeguard provides for. A similar proposal was also recommended by the Sapru Committee.

Clause 3

Social boycott is always held over the heads of the Untouchables by the Caste Hindus as a sword of Democles. Only the Untouchables know what a terrible weapon it is in the hands of the Hindus. Its effects and forms are well described in the Report made by a Committee appointed by the Government of Bombay in 1928 to investigate the grievances of the Depressed Classes and from which the following extracts are made. It illuminates the situation in a manner so simple that everybody can understand what tyranny the Hindus are able to practise upon the Untouchables. The Committee said:

“Although we have recommended various remedies to secure to the Depressed Classes their rights to all public utilities we fear that there will be difficulties in the way of their exercising them for a long time to come. The first difficulty is the fear of open violence against them by the orthodox classes. It must be noted that the Depressed Classes form a small minority in every village, oppose to which is a great majority of the orthodox who are bent on protecting their interests and dignity from any supposed invasion by the Depressed Classes at any cost. The danger of prosecution by the Police has put a limitation upon the use of violence by the orthodox classes and consequently such cases are rare.

The second difficulty arises from the economic position in which the Depressed Classes are found today. The Depressed Classes have no economic independence in most parts of the Presidency. Some cultivate the lands of the orthodox classes as their tenants at will. Others live on their earnings as farm labourers employed by the orthodox classes and the rest subsist on the food or grain given to them by the orthodox classes in lieu of service rendered to them as village servants. We have heard of numerous instances where the orthodox classes have used their economic power as a weapon against those Depressed Classes in their villages, when the latter have dared to exercise their rights, and have evicted them from their land, and stopped their employment and discontinued their remuneration as village servants. This boycott is often planned on such an extensive scale as to include the prevention of the Depressed Classes from using the commonly used paths and the stoppage of sale of the necessities of life by the village Bania. According to the evidence,

sometimes small causes suffice for the proclamation of a social boycott against the Depressed Classes. Frequently it follows on the exercise by the Depressed Classes of their right to use the common well, but cases have been by no mean rare where a stringent boycott has been proclaimed simply because a Depressed Class man has put on the sacred thread, has bought a piece of land, has put on good clothes or ornaments, or has carried a marriage procession with a bridegroom on the horse through the public street”.

This was said in 1928. Lest it should be regarded as a phase which has now ended I reproduce below a copy of a petition by the Untouchables of the village Kheri Jessore in the Punjab addressed to the Deputy Commissioner of the Rohtak District in February 1947 and a copy of which was sent to me. It reads as follows :

“From

The Scheduled Caste People (Chamars),

Village Kheri Jessore, Tehsil and District Rohtak.

To

The Deputy Commissioner,

Rohtak District, Rohtak.

Sir,

We, the following Scheduled Caste (Chamars) of the Village Kheri Jessore, beg to invite your kind attention to the hard plight, we are put to, due to the undue pressure and merciless treatment by the Caste Hindu Jats of this village.

It was about four months back that the Jats of the village assembled in the Chopal and told us to work in the fields on a wage in kind of one bundle of crops, containing only about one seer of grains per day per man instead of food at both times and a load of crops, and annas 8 in addition which we used to get before above announcement was made. As it was too little and insufficient to meet both ends, we refused to go to work. At this they were enraged and declared a Social Boycott on us. They made a rule that our cattle would not be allowed to graze in the jungle unless we would agree to pay a tax not leviable under Government for the animals, which they call as “Poochhi” They even do not allow our cattle to drink water in the village pool and have prevented the sweepers from cleaning the streets where we live so that heaps of dust and dirt are lying there which may cause some disease if left unattended to. We are forced to lead a shameful life and they are always ready to beat us and to tear down our honour by behaving indecently towards our wives, sisters and daughters. We are experiencing a lot of trouble of the worst type. While going to the

school, the children were even beaten severely and in a merciless manner.

We submitted an application detailing the above facts to yourself but we are sorry that no action has been taken as yet.

It is also for your kind consideration that the Inspector of Police and Tehsildar of Rohtak, whom we approached in this connection, made a careless investigation and in our opinion, no attention was paid to redress the difficulties of the poor and innocent persons.

We, therefore, request your good self to consider over the matter and make some arrangement to stop the merciless treatment and threats which the Jats give us in different ways. We have no other approach except to knock at your kind door and hope your honour will take immediate steps to enable us to lead an honourable and peaceful life which is humanity's birth-right.

We beg to remain,
Sir,
Your most obedient servants,
Scheduled Caste People
(Chamars),
of Village Kheri Jessore,
Tehsil and District Rohtak.
Thumb Impressions.

* * * * *

Copy forwarded to the Hon'ble Dr. B. R. Ambedkar,

Western Court, New Delhi.

Received on 1st February 1947."

This shows that what was true in 1928 is true even today. What is true of Bombay is true of the whole of India. For evidence of the general use of boycott by the Hindus against the Untouchables one has only to refer to the events that occurred all over India in the last elections to the Provincial Legislatures. Only when boycott is made criminal will the Untouchables be free from being the slaves of the Hindus.

The weapon of boycott is nowadays used against other communities besides the Scheduled Castes. It is therefore in the interests of all minor communities to have this protection.

The provisions relating to boycott are taken bodily from the Burma Anti-Boycott Act, 1922.

Clause 4

Such a provision already exists in Section 150 of the Government of India Act, 1935.

ARTICLE II—Section IV**PART I—CLAUSE I**

There is nothing new in this clause. The right to representation in the Legislature is conceded by the Poona Pact. The only points that require to be reconsidered relate to (1) Quantum of Representation, (2) Weightage and (3) The System of Electorates.

(1) Quantum

The quantum of representation allowed to the Scheduled Castes by the Poona Pact is set out in Clause I of the Pact. The proportion set out in the Pact was fixed out of the balance of seats which remained after (i) the share of the other communities had been taken out; (ii) after weightage to other communities had been allotted, and (iii) after seats had been allocated to special interests. This allotment of seats to the Scheduled Castes has resulted in great injustice. The loss due to seats taken out as weightage and seats given to special interests ought not to have been thrown upon the Scheduled Castes. The allotment of those seats had already been made by the Communal Award long before the Poona Pact. It was therefore not possible then to rectify this injustice.

(2) Weightage

There is another injustice from which the Scheduled Castes have been suffering. It relates to their right to a share in weightage.

As one can see the right to weightage has become a matter of double controversy. One controversy is between the majority and the minorities, the other is a matter of controversy between the different minorities.

The first controversy relates to the principle of weightage. The majority insists that the minority has no right to representation in excess of the ratio of its population to the total population. Why this rule is insisted upon by the majority it is difficult to understand. Is it because the majority wants to establish its own claim to population ratio so that it may always remain as a majority and act as a majority ? Or is it because of the fact that a minority no matter how much weightage was given to it must remain a minority and cannot alter the fact that the majority will always be able to impose its will upon it. The first ground leads to a complete negation of the basic conception of majority rule which if rightly understood means nothing more than a decision of the majority to which the minority has reconciled itself. This cannot be the intention of the majority. One must put a more charitable construction and assume that the argument on which the contention of the majority rests is the second and not the first. That a minority even with weightage will remain a minority has to be accepted in view of the insistence of a Communal Majority to remain a majority

and to claim the privileges of a political majority which it is not. But surely there is a difference between a defeat which is a complete rout and a defeat which is almost victory though not a victory. Cricketers know what difference there is between the defeat of a team by a few runs, a defeat by a few wickets and a defeat by one whole innings. The defeat by one whole innings is a complete frustration which a defeat by a few runs is not. Such a frustration when it comes about in the political life of a minority depresses and demoralizes and crushes the spirit of the minority. This must be avoided at any price. Looked at from this point of view there is no doubt that the rule of population—ratio—representation insisted upon by the majority is wrong. What a minority needs is not more representation but effective representation.

And what is effective representation? Obviously the effectiveness of representation depends upon its being large enough to give the minority the sense of not being entirely overwhelmed by the majority. Representation according to population to a minority or to the minorities combined may be effective by reason of the fact that the population of a minority where there is only one or of the combined minorities where there are many is large enough to secure effective minority representation. But there may be cases where the population of a minority or of the minorities combined is too small to secure such effective representation if the population ratio of a minority is taken as an inflexible standard to determine its quantum of representation. To insist upon such a standard is to make mockery of the protection to the minority which is the purpose behind the right to representation which is accepted as the legitimate claim of a minority. In such cases weightage which is another name for deduction from the quantum of representation which is due to the majority on the basis of its population becomes essential and the majority if it wishes to be fair and honest must concede it. There can therefore be no quarrel over the principle of weightage. On this footing the controversy becomes restricted to the question, how is the magnitude of weightage to be determined ? This obviously is a question of adjustment and not of principle.

There can therefore be no manner of objection to the principle of weightage. The demand for weightage is however a general demand of all the minorities and the Scheduled Castes must join them in it where the majority is too big. What is however wrong with the existing weightage is unequal distribution among the various minorities. At present, some minorities have secured a lion's share and some like the Untouchables have none. This wrong must be rectified by a distribution of the weightage on some intelligible principles.

(3) *Electorates*

1. The method of election to the seats allotted to the Scheduled Castes is set out in clauses (2) to (4) of the Poona Pact. It provides for two

elections : (1) Primary election and (2) Final election. The Primary election is by a separate electorate of the Scheduled Castes. It is only a qualifying election and determines who is entitled to stand in the Final election on behalf of the Scheduled Castes for the seats reserved to them. The Final election is by a joint electorate in which both caste Hindus and the Scheduled Castes can vote and the final result is determined by their joint vote.

2. Clause 5 of the Poona Pact has limited the system of Primary election to ten years which means that any election taking place after 1947 will be by a system of joint electorates and reserved seats pure and simple.

3. Even if the Hindus agreed to extend the system of double election for a further period it will not satisfy the Scheduled Castes. There are two objections to the retention of the Primary election. Firstly, it does not help the Scheduled Castes to elect a man who is their best choice. As will be seen from Appendix III, the Scheduled Caste candidate who tops the poll in the Primary election fails to succeed in the Final election and the Scheduled Caste candidate who fails in the Primary election tops the poll in the Final election. Secondly, the Primary election is for the most part a fiction and not a fact. In the last election, out of 151 seats reserved for the Scheduled Castes there were Primary elections only in 43. This is because it is impossible for the Scheduled Castes to bear the expenses of two elections—Primary and Final. To retain such a system is worse than useless.

4. Things will be much worse under the system of joint electorates and reserved seats which will hereafter become operative under the terms of the Poona Pact. This is no mere speculation. The last election has conclusively proved that the Scheduled Castes can be completely disfranchised in a joint electorate. As will be seen from the figures given in Appendix III, the Scheduled Caste candidates have not only been elected by Hindu votes when the intention was that they should be elected by Scheduled Caste votes but what is more the Hindus have elected those Scheduled Caste candidates who had failed in the Primary election. This is a complete disfranchisement of the Scheduled Castes. The main reason is to be found in the enormous disparity between the voting strength of the Scheduled Castes and the caste Hindus in most of the constituencies as may be seen from figures given in Appendix III. As the Simon Commission has observed, the device of the reserved seats ceases to be workable where the protected community constitutes an exceedingly small fraction of any manageable constituency. This is exactly the case of the Scheduled Castes. This disparity cannot be ignored. It will remain even under adult suffrage. That being the case, a fool-proof and a knave-proof method must be found to ensure real representation to the Scheduled Castes. Such a method must involve the abolition of—

- (i) the Primary election as a needless and heavy encumbrance; and

- (ii) the substitution of separate electorates.

5. One of the issues which has embittered the relations between the Hindus and the Scheduled Castes in the political field is the issue of electorate. The Scheduled Castes are insisting upon separate electorates. The Hindus are equally insistent on opposing the demand. To arrive at a settlement on this issue—without which there can be no peace and amity between the Hindus and the Scheduled Castes—it is necessary to determine who is right and who is wrong and whether the opposition is based on rational grounds or is based on mere prejudice.

6. The grounds which are generally urged against the demand of the Scheduled Castes for separate electorates are :

- (i) that the Scheduled Castes are not a minority;
- (ii) that the Scheduled Castes are Hindus and therefore they cannot have separate electorates;
- (iii) that separate electorates will perpetuate untouchability;
- (iv) that separate electorates are anti-national; and
- (v) that separate electorates enables British Imperialism to influence the communities having separate electorates to act against the interests of the country.

7. Are these arguments valid ?

- (i) To say that the Scheduled Castes are not a minority is to misunderstand the meaning of the word 'minority'. Separation in religion is not the only test of a minority. Nor is it a good and efficient test. Social discrimination constitutes the real test for determining whether a social group is or is not a minority. Even Mr. Gandhi thought it logical and practical to adopt this test in preference to that of religious separation. Following this test, Mr. Gandhi in an editorial under the heading. 'The Fiction of Majority' in the *Harijan* dated 21st October 1939 has given his opinion that the Scheduled Castes are the only real minority in India.
- (ii) To argue that the Scheduled Castes are Hindus and therefore cannot demand separate electorates is to put the same argument in a different form. To make religious affiliation the determining factor for constitutional safeguards is to overlook the fact that the religious affiliation may be accompanied by an intense degree of social separation and discrimination. The belief that separate electorates go with separation in religion arises from the fact that those minorities who have been given separate electorates happen to be religious minorities. This, however, is not correct. Muslims are given separate electorates not because they are different from Hindus in point of religion. They are given separate electorates because—and this is the fundamental fact—the social relations between the Hindus and the

Musalman are marked by social discrimination. To put the point in a somewhat different manner, the nature of the electorates is determined not by reference to religion but by reference to social considerations. That it is social considerations and not religious affiliation or disaffiliation which is accepted as the basis of determining the nature of the electorates is best illustrated by the arrangements made under the Government of India Act (1935) for the Christian community in India. The Christian community is divided into three sections—Europeans, Anglo-Indians and Indian Christians. In spite of the fact that they all belong to the same religion, each section has a separate electorate. This shows that what is decisive is not religious affiliation but social separation.

- (iii) To urge that separate electorates prevent solidarity between the Untouchables and the Caste Hindus is the result of confused thinking. Elections take place once in five years. Assuming there were joint electorates, it is difficult to understand how social solidarity between the Hindus and the Untouchables can be promoted by their devoting one day for voting together when out of the rest of the five years they are leading severally separate lives ? Similarly, assuming that there were separate electorates it is difficult to understand how one day devoted to separate voting in the course of five years can make for greater separation than what already exist ? Or contrariwise, how can one day in five years devoted to separate voting prevent those who wish to work for their union from carrying out their purposes. To make it concrete, how can separate electorate for the Untouchables prevent inter-marriage or inter-dining being introduced between them and the Hindus ? It is therefore futile to say that separate electorates for the Untouchables will perpetuate separation between them and the Hindus.
- (iv) To insist that separate electorates create anti-national spirit is contrary to experience. The Sikh have separate electorates. But no one can say that the Sikhs are anti-national. The Muslims have had separate electorates right from 1909. Mr. Jinnah had been elected by separate electorates. Yet, Mr. Jinnah was the apostle of Indian Nationalism up to 1935. The Indian Christians have separate electorates. Nonetheless a good lot of them have shown their partiality to the Congress if they have not been actually returned on the Congress ticket. Obviously, nationalism and anti-nationalism have nothing to do with the electoral system. They are the result of extra electoral forces.
- (v) This argument has no force. It is nothing but escapism. Be that as it may, with free India any objection to separate electorates on such a ground must vanish.

8. The reason why the arguments advanced by the opponents of separate electorates do not stand the scrutiny of logic and experience is due entirely to the fact that their approach to the subject is fundamentally wrong. It is wrong in two respects :

- (i) They fail to realize that the system of electorates has nothing to do with the religious nexus or communal nexus. It is nothing but a mechanism to enable a minority to return its true representative to the Legislature. Being a mechanism for the protection of a minority it follows that whether the electorate should be joint or separate must be left to be determined by the minority.
- (ii) They fail to make any distinction between the demand for separate electorates by a majority community and a similar demand made by a minority community. A majority community has no right to demand separate electorates. The reason is simple. A right by a majority community to demand separate electorates is tantamount to a right to establish the Government of the majority community over the minority community without the consent of the minority. This is contrary to the well-established doctrine of democracy that government must be with the consent of the governed. No such evil consequence follows from the opposite principle namely that a minority community is entitled to determine the nature of the electorates suited to its interests, because there is no possibility of the minority being placed in a position to govern the majority.

9. A correct attitude towards the whole question rests on the following axioms :

- (i) The system of electorates being a device for the protection of the minority, the issue whether the electoral system should be the joint electorate or separate electorate must be left to the wishes of the minority. If it is large enough to influence the majority it will choose joint electorates. If it is too small for the purpose, it will prefer separate electorates for fear of being submerged.
- (ii) The majority, being in a position to rule can have no voice in the determination of the system of electorates. If the minority wants joint electorates, the majority must submit itself to joint electorates. If the minority decides to have separate electorates for itself the majority cannot refuse to grant them. In other words, the majority must look to the decision of the minority and abide by it.

PART I—CLAUSE 2

This demand may appear to be outside the Poona Pact in as much as the Poona Pact made no provision for it. This would not be correct. As a matter of fact, if no provision was made, it was because there was no need to make such a provision. This was due to two reasons : *Firstly*, it

was due to the fact that at the time when the Poona Pact was made no community was guaranteed by Law a specific quantum of representation in Executive, *Secondly*, the representation of the communities in the Executive was left to a convention which the Governor by his instrument of instructions was required to see observed. Experience has shown that the quantum of representation of the Scheduled Castes in the Executive should now be fixed.

PART I—CLAUSE 3

This is not a new demand. Clause 8 of the Poona Pact guarantees to the Scheduled Castes fair representation in Public Services. It does not, however, define the quantum of representation. The demand has been admitted by the Government of India as legitimate and even the quantum of representation has been defined. All that remains is to give it a statutory basis.

PART II—CLAUSE 1

This is not a new demand. Clause 9 of Poona Pact guarantees that an adequate sum shall be earmarked for the education of the Scheduled Castes. It does not define the quantum. All that the demand does is to define the quantum of liability the State should take. In this connection reference may be made to Section 83 of the Government of India Act, 1935, which relates to the education of the Anglo-Indians and Europeans and to the grants made to the Aligarh and Benaras Hindu Universities by the Central Government.

PART II—CLAUSE 2

This a new demand but is justified by circumstances. At present, the Hindus live in the village and the Untouchables live in the Ghettoes. The object is to free the Untouchables from the thralldom of the Hindus. So long as the present arrangement continues it is impossible for the Untouchables either to free themselves from the yoke of the Hindus or to get rid of their Untouchability. It is the close knit association of the Untouchables with the Hindus living in the same villages which marks them out as Untouchables and which enables the Hindus to identify them as being Untouchables. India is admittedly a land of villages and so long as the village system provides an easy method of marking out and identifying the Untouchables, the Untouchable has no escape from Untouchability. It is the system of the Village plus the Ghetto which perpetuates Untouchability and the Untouchables therefore demand that the nexus should be broken and the Untouchables who are as a matter of fact socially separate should be made separate geographically and territorially also, and be settled into separate villages exclusively of Untouchables in which the distinction of the high and the low and of Touchable and Untouchable will find no place.

The second reason for demanding separate settlements arises out of the economic position of the Untouchables in the villages. That their condition is most pitiable no one will deny. They are a body of landless labourers

who are entirely dependent upon such employment as the Hindus may choose to give them and on such wages as the Hindus may find it profitable to pay. In the villages in which they live they cannot engage in any trade or occupation, for owing to Untouchability no Hindu will deal with them. It is therefore obvious that there is no way of earning a living which is open to the Untouchables so long as they live in a Ghetto as a dependent part of the Hindu village.

This economic dependence has also other consequences besides the condition of poverty and degradation which proceeds from it. The Hindu has a Code of life, which is part of his religion. This Code of life gives him many privileges and heaps upon the Untouchable many indignities which are incompatible with the dignity and sanctity of human life. The Untouchables all over India are fighting against the indignities and injustices which the Hindus in the name of their religion have heaped upon them. A perpetual war is going on every day in every village between the Hindus and the Untouchables. It does not see the light of the day. The Hindu Press is not prepared to give it publicity lest it should injure the cause of their freedom in the eyes of the world. The existence of a grim struggle between the Touchables and the Untouchables is however a fact. Under the village system the Untouchables have found himself greatly handicapped in his struggle for free and honourable life. It is a contest between the Hindus who are economically and socially strong and the Untouchables who are economically poor and numerically small. That the Hindus most often succeed in suppressing the Untouchables is due to many causes. The Hindus have the Police and the Magistracy on their side. In a quarrel between the Untouchables and the Hindus the Untouchables will never get protection from the Police and justice from the Magistrate. The Police and the Magistracy naturally love their class more than their duty. But the chief weapon in the armoury of the Hindus is economic power which they possess over the poor Untouchables living in the village. The proposal may be dubbed escapism. But the only alternative is perpetual slavery.

PART III—CLAUSE 1

No country which has the problem of Communal majority and Communal minority is without some kind of an arrangement whereby they agree to share political power. South Africa has such an understanding. So has Canada. The arrangement for sharing political power between the English and the French in Canada is carried to the minutest office. In referring to this fact Mr. Porritt in his book on the *Evolution of the Dominion of Canada* says :

“Conditions at Ottawa, partly due to race and language, and partly to long-prevailing ideas as to the distribution of all government patronage, have militated against the Westminster precedent of continuing a member in the chair for two or three parliaments, regardless of the fortunes of political parties at general elections. There is a new speaker at Ottawa

for each new House of Commons; and it has long been a custom that when one political party continues in power for two or three parliaments, if the speaker in one parliament is of British extraction the next one shall be a French-Canadian.

“It is a rule also that the offices of speaker and of deputy speaker can at no time be held by men of the same race. If the speaker is a French-Canadian, the deputy speaker, who is also Chairman of committees, must be an English-speaking Canadian ; for the rule of the House is that the member elected to serve as deputy speaker shall be required to possess the full and practical knowledge of the language which is not that of the speaker for the time being.

The clerkship and the assistant clerkship of the House, and the offices of sergeant-at-arms and deputy sergeant-at-arms—all appointive as distinct from elective offices—are, by usage, also similarly divided between the two races.

Nearly all the offices, important and unimportant, connected with parliament, with the Senate as well as with the House, are distributed in accordance with these rules or usages. A roll call of the staffs of the two Houses, including even the boys in knicker-bockers who act as pages, would contain the names of almost as many French-Canadians as Canadians of British ancestry.

The rules and usages by virtue of which this distribution of offices is made are older than Confederation. They date back to the early years of the United Provinces, when Quebec and Ontario elected exactly the same number of members to the Legislature, and when these were the only provinces in the union.

Quebec today elects only 65 of the 234 members of the House of Commons. Its population is not one-fourth of the population of the Dominion. Its contribution to Dominion revenues does not exceed one-sixth. But an equal division of the offices of the House of Commons is regarded by Quebec as necessary to the preservation of its rights and privileges ; and so long as each political party, when it is in power, is dependent on support from French-Canada, it will be nearly as difficult to ignore the claim of Quebec to these parliamentary honours and offices as it would be to repeal the clause in the British North America Act that safeguards the separate schools system.”.

Unfortunately for the minorities in India, Indian Nationalism has developed a new doctrine which may be called the Divine Right of the Majority to rule the minorities according to the wishes of the majority. Any claim for the sharing of power by the minority is called communalism while the monopolizing of the whole power by the majority is called Nationalism. Guided by such a political philosophy the majority is not prepared to

allow the minorities to share political power nor is it willing to respect any convention made in that behalf as is evident from their repudiation of the obligation (to include representatives of the minorities in the cabinet) contained in the Instrument of Instructions issued to the Governors in the Government of India Act of 1935. Under these circumstances there is no way left but to have the rights of the Scheduled Castes embodied in the Constitution.

PART III—CLAUSE 2

This is not a new demand. It replaces Clause 6 of the Poona Pact which provides that the system of representation for the Scheduled Castes by reserved seats shall continue until determined by mutual consent between the communities concerned in the settlement. Since there is no safe method of ascertaining the will of the Scheduled Castes as to how to amend and alter the safeguards provided for them it is necessary to formulate a plan which will take the place of Clause 6 of the Pact. Provisions having similar objectives to those contained in the proposal exist in the Constitution of Australia, America and South Africa.

In dealing with a matter of this sort two considerations have to be borne in mind. One is that it is not desirable to rule out the possibility of a change in the safeguards being made in the future by the parties concerned. On the other hand it is by no means desirable to incessant struggle over their revision. If the new Union and State Legislatures are to address themselves successfully to their responsibilities set out in the preamble it is desirable that they should not be distracted by the acute contentions between religions and classes which questions of change in the safeguards are bound to raise. Hence a period of twenty-five years has been laid down before any change could be considered.

PART IV

The object of this prevision is to see that whatever safeguards are provided for the Scheduled Castes in British India are also provided for the Scheduled Castes in the Indian States. The provision lays down that an Indian State seeking admission to the Union shall have to satisfy that its Constitution contains these safeguards.

PART V—INTERPRETATION

Whether the Scheduled Castes are a minority or not has become a matter of controversy. The purpose of First Provision to set this controversy at rest. The Scheduled Castes are in a worst position as compared to any other minority in India. As such they required and deserve much more protection than any other minority does. The least one can do is to treat them as a minority.

The purpose of Second Provision is to remove the provincial bar. There is no reason why a person who belongs to Scheduled Castes in one Province should lose the benefit of political privileges given by the Constitution merely because he happens to change his domicile.