APPENDIX—X

AMBEDKAR URGES STATES TO JOIN INDIAN UNION

Says Hyderabad move will lead to Balkanisation

Bombay, June 17, 1947 (A.P.I.)

"The only way by which the Indian States can free themselves from Paramountcy is by bringing about a merger of sovereignty or Suzerainty. This can happen only when the Indian States join the Indian Union as Constituent units, says Dr. B. R. Ambedkar former member of the Viceroy Executive Council and leading Constitution Lawyer in a two thousand words statement opposing the declaration of dependence by certain Indian States.

Dr. Ambedkar declares, 'The States should realise that their existence as Sovereign States will not be worth five years purchase. It is in the interests of the Princes themselves that they should join the Indian Union and become Constitutional monarchs.

To be independent and to hope to get recognition and protection from the United Nations Organisation, says Dr. Ambedkar, "is to live in one's own paradise." Dr. Ambedkar doubts if the United Nations Organisation will give recognition to the Indian States, ignoring the claim by India of Suzerainty over them.

But even if that happens Dr. Ambedkar affirms, the United Nations Organisation will never grant any assistance to an Indian State against external aggression or internal commotion without insisting upon the States first introducing responsible Government.

Dr. Ambedkar in conclusion says, "whatever the choice of the Indian States may be, the duty of the people of India is clear. On their behalf the Interim Government should notify His Majesty's Government that the British Parliament has no right to pass any law abrogating Paramountcy and that any clause to that effect in the forthcoming legislation, conferring Dominion Status on India, should be treated by the people of India as repugnant to their Sovereignty and, therefore, null and void, and to declare that the Government of India will never recognise any Indian State as a Sovereign Independent States."

In the course of the statement Dr. Ambedkar observes :

The announcement by Travancore and Hyderabad that they will declare themselves Independent Sovereign States on 15th August 1947, when India becomes a Dominion and the inclination shown by other States to follow their example has created a new problem which may trun out to be worse than the Hindu-Muslim problem as it is sure to result in the further Balkanization of India.

Basis of Claim

The basis of the claim made by the States for a right to declare themselves Independent lies in the statement of 12th May 1946 issued by the Cabinet Mission in which they say that the British Government could not and will not in any circumstances transfer Paramountcy to an Indian Government which means that the rights of the States which follow from their relationship to the Crown will no longer exist and that all the rights surrendered by the States to the Paramount power will return to the States.

The statement of the Cabinet Mission that the Crown could not transfer Paramountcy is obviously not a statement of political policy. It is statement of law the question is : Is this a correct statement of the Law as it applied to the States ?

"There is nothing original in the proposition set out by the Cabinet Mission. It is a mere repetition of the view propounded by the Butler Committee appointed in 1929 to examine the relationship between the Crown and the Indian States."

The doctrine that Paramountcy cannot be transferred to an Indian Government is a most mischievous doctrine and is based upon an utter misunderstanding of the issues involved.

Paramountcy Defined

The case against the position taken by the Cabinet Mission in regard to Paramountcy can be stated in the following propositions :

(I) Much of the mystery which surrounds paramountcy is due to the fact that most people do not understand what it stands for. Paramountcy merely is another name for what is called the

prerogative of the Crown. It is true that Paramountcy as a prerogative of the Crown differs from the ordinary preogative of the Crown in two respects :

(*a*) The basis of the ordinary prerogative of the Crown lies in Common Law as distinguished from Statute Law while the basis of the prerogative arising from Paramountcy lies in treaties supplemented by usage.

(*b*) The Common Law prerogative of the Crown extends to all the Subjects of the Crown resident in the King's dominions and over aliens temporarily resident therein while Paramountcy as a prerogative extends only over the Indian States. Paramountcy is no doubt a distinct part of the prerogative of the Crown. Notwithstanding these differences the fact remains that Paramountcy is prerogative of the Crown.

(II) Paramountcy being the prerogative of the King, the exercise of Paramountcy is, contrary to the general opinion, not subject to the rules of international law but is subject to that part of the municipal law of the British Empire which is called the Law of the Constitution.

(III) According to the principle of the Constitutional Law of the British Empire while the prerogative vests in the King, the King has no discretion in the exercise of his prerogative. The King cannot exercise it independently of the advice of his Ministers. He can exercise it only in accordance with the advice given to him by the Ministers.

Transfer of Paramountcy

"The different methods of disposing of Paramountcy adopted in the various acts passed by Parliament relating to the Government of India between 1833 to 1935 do not and cannot in any way affect the claim of the Indian people to advise the Crown in the exercise of Paramountcy. Under the Constitutional Law of the Empire, only when a country has become a Dominion that it can claim the

right to advise the Crown, and the fact that before it became a Dominion, the Crown was differently advised is no bar to its claim. Under the 1935 Act India was not granted responsible Government.

There remains for consideration the other part of their statement in which they say that the Crown will not transfer Paramountcy to an Indian Government. According to the Cabinet Mission, Paramountcy will lapse. This is a most astounding statement and runs contrary to another well established principle of the Constitutional Law. According to this principle, the King cannot surrender or abandon his prerogative rights. If the Crown cannot transfer Paramountcy the Crown cannot also abandon it.....

A question may be asked : What happens when India becomes independent ? The Crown disappears and the question of advising the Crown does not remain. Can Independent India claim to inherit the prerogative rights of the Crown ? For an answer to this question, one must look to the provisions of international law relating to Succession among States. Oppenheim admits that a Succeeding State can inherit certain rights of the Preceding State. From Hall's international law, it would appear that among other things property and advantages secured to it by treaty can be inherited by a Succession State. India will be a Succession State. Paramountcy is an advantage which is secured to it by treaty with the Princes. Independent India can therefore make a valid claim for the inheritance of Paramountcy."[1]

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1. : The Bombay Chronicle, dated 18th June 1947.