

ASSURANCE WILL NOT BE LOSS TO GOVERNOR ; NOR IT WILL BE GAIN TO CONGRESS.

Bombay, April 8, 1937.

“Dr. B. R. Ambedkar, Barrister-at-Law, has issued the following statement on the constitutional *impasse* in India :

“Having lost the field to the Congress I did not think it necessary to express my views on the situation that has arisen, as a result of the refusal of the Governors to give an undertaking to the Congress leaders in terms of the All-India Congress Committee resolution. But as some friends pressed me to say what I think of the situation, I have persuaded myself to enter into the controversy.

I cannot understand why Congressmen blame the Governor for framing what are called interim Ministries, and I am somewhat surprised to find that Congressmen who are so unwilling to accept offices and whose programme was to wreck the Constitution, instead of having a sigh of relief at the installation of the interim ministries, should be so glamorous and indignant at the loss of the chance, that one begins to suspect that their cry of wrecking the Constitution was a mere pose.

Governor not to Blame

When a party which has a majority refuses to accept office, it is the duty of the Governor to offer it to those who can give him the assurance that they can secure the majority in the Legislature to support their policy. The persons to blame are not the Governors, but the men who have accepted offices. It is for those who have accepted offices to consider, whether they would not be held guilty of deceiving the Governor, should they fail to produce the necessary majority on the floor of the House. The Governors will come in for blame only if they were to use their special powers under the Constitution to keep in office ministers who have lost the confidence of the majority of the Legislature, because under the Instrument of Instructions issued to them, the Governors have been

enjoined to be studious so to exercise their powers, as not to enable their Ministers to rely upon their special powers in order to relieve themselves of the responsibilities, which properly belongs to ministers.

Situation not Arisen

That situation has not yet arisen, and before passing any criticism upon the action of the Governor, we have to wait and see what he does, when the Ministers who are now in charge are defeated by the adverse vote of the Legislature.

Assurance demand

The principal question, however, is whether the Congress was justified in asking an undertaking from the Governor before accepting office, to which they are by reason of their majority entitled to. It is admitted by Congressmen that they do not want an amendment of the Statute. It is the contention of Congressmen that the Governors could have given the undertaking they want, without in any way abrogating the provisions of the Government of India Act, and the question is whether such an undertaking can be given without the abrogation of the Statute.

King and Governor

Both Mr. Bhulabhai Desai and Mr. C. Rajagopalachari in championing the position taken by the Congress have stated in so many words that there is nothing in the Act to prevent the Governors from giving the undertaking and that if the Governors did not give the undertaking it was because they did not wish to give it.

The question we are concerned with, is whether without affecting the provisions of the Government of India Act, it is possible for the Governors to agree to suspend their special powers. The view taken by Mr. Bhulabhai Desai appeals to be founded on the belief that there is no difference between the special power given to the Governor under the Government of India Act and the veto powers of the King. But I contend that the power of individual judgment of individual discretion vested in the Governor is of a totally different character from the power of veto possessed by the King under the English Constitution.

The power of veto gives to the King the right to reject the advice of a Minister of his Cabinet that a certain course of action may be pursued. But it does not give the King the right to act in a particular way without the advice of a Minister to take responsibility for it.

The power of individual judgment and individual discretion not only gives the Governor the right to reject the advice of a Minister but it also gives him the right to act without the Minister's advice in support of that. In fact, contrary to the advice of the Minister, the King must have some Minister to support the action he proposes to take. The Governor need have no Minister to support the action he takes. That is the difference between the power of veto and the power of individual judgment.

Limited Ministry

Mr. Rajagopalachari's claim that the Ministers in India are entitled to the same treatment which Ministers under the Parliamentary system of popular government are entitled to, disclose a complete misunderstanding of the system of Government embodied in the Government of India Act. The system of Government embodies in the Government of India Act is a system of limited Ministry. It is not a system of limited monarchy. In a limited monarchy the authority of monarchy is limited by the power of the ministry. In the limited ministry system, the power of the ministers is limited by the authority of the Governor. If these distinctions which I have tried to point out, the distinction between veto power and individual judgment and the distinction between limited ministry and limited monarchy, are borne in mind, it will be easy to understand why the King can suspend his power of veto and the Governor cannot. The Governor cannot give up his special powers. Under the law, he is responsible for whatever is done by the Ministry should the action of the Ministry result in evil consequences. One may quarrel with the constitution and insist that the responsibility should be on the Ministry and not on the Governor but one cannot ignore it. Taking the Constitution as it is and marking the difference that exists between it and the English Constitution, there is no question in my mind that the legal inability of the Governors to abandon their special powers is real and that they cannot have abdicated their functions without violation of the

Constitutional law which by their Instrument of Instructions they are bound to carry out. To put it in simpler form one can give up power if there is no responsibility, but, one cannot give up power, if there is responsibility.

The existence of special powers in my judgment could never be urged as a serious ground of objection to the working of the Constitution.

Mahatma's Reason

Mahatma Gandhi has given quite a different reason for demanding the assurance. The ground is so insubstantial that one wonders whether it could have been urged by any one who knows how constitutions are worked. He says : "a strong party with a decisive backing of the electorate could not accept to put itself in the precarious position of being all the time in dread of interference at the will of the Governor ;" self-respecting Minister conscious of his absolute majority. One would have thought that a Ministry conscious of its electoral strength instead of its electoral strength instead of cringing for an assurance would enter the field and defy the Governor and use their powers against him. "Surely if an undertaking is necessary at all, it is for a weak Ministry which has no electoral strength behind it to ask for it. An undertaking is not necessary for a strong Party like the Congress. Why are Congressmen begging for an assurance from the Governor of good behaviour. They can compel him to behave.

Governors can give Assurance

Could not the Governors have treated the Congressmen as we treat naughty children and stopped them from creating trouble by giving them an assurance for which they were crying? Reading the resolution of the A.I.C.C. and taking note of the fact that they were asking for an assurance in terms of that resolution. I believe that nothing would have been lost, if such an assurance had been given. It seems to me that as the Congress Ministers were giving an undertaking to act within the Constitution and this undertaking is quite explicit in their formula there was apparently no reason why the Governors should have refused to give the reciprocal undertaking that they would not exercise their special powers.

No Gain or Loss

But the question that I would like to ask all Congressmen is this. What is it that they would have gained if the Governor had given the undertaking in the terms of the A.I.C.C. resolution? It seems to me that the important question is who is to determine whether the occasion for the exercise of the Special Powers by the Governor had arisen or not. There would have been something achieved, if the Congressmen were asking for an undertaking that whether the occasion for the use of special powers had arisen or not was to be determined by the Cabinet. Such an undertaking would have been of real value, but such an undertaking was not demanded. The undertaking demanded by Congressmen was inconsequential, that in spite of it and without violating it, the Governor would have been left free to interfere on the plea that in doing a particular thing the Ministry was acting in such a manner that in his judgment the occasion for the use of Special Power had arisen. I have been therefore trying to find out what would have been lost by the Governor if he had given the assurance and what would have been gained by the Congressmen if the Assurance had been given.”¹

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¹ :The Bombay Chronicle, dated 9th April 1937.