

GOVERNMENT OF INDIA WILL NOT RECOGNISE ANY PRINCELY STATE AS SOVEREIGN INDEPENDENT

There was a move for declaring India as an Independent Sovereign Country and there was a question, what would be the position of the Princely States? The Princely States were of the opinion that they will also have Independent Sovereign States, as they are also under the control of British Govt. 'Travancore' and 'Hyderabad' were the main Princely States. The Cabinet Mission also upheld this view but Dr. B. R. Ambedkar opposed the view and issued a statement showing how the Cabinet Mission's view was wrong for the nation. He further stressed that all the Princely States should be merged in India, in the interest of the sovereignty of the country. The statement read as follows: Editors.

"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's Executive Council and a leading constitutional lawyer, in a statement opposing the declaration of independence by certain States. The Indian States, Dr. Ambedkar says, will be sovereign to the extent they are, but they cannot be independent so long as they remain under the suzerainty, as they must, of the Crown, if India becomes independent. The States should realise, he adds, that their existence as Sovereign Independent States will not be worth fine years' purchase. Dr. Ambedkar goes on, the basis of the claim made by the States for a right to declare themselves independent lies in the Statement of May 12, 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.

Mischievous Doctrine

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 issue involved. After the passing of the Statute of Westminster, which earned out Canada, Australia, South Africa, and Ireland as separate dominions, the Crown, in the exercise of its prerogative rights, acts on the advice of the Cabinet of the Dominion concerned. It is bound to do so. It cannot do otherwise, it follows that when India becomes Dominion, the Crown will be bound to act in the exercise of its prerogative rights; namely Paramountcy on the advice of the Indian Cabinet. The protagonist of the theory that Paramountcy cannot be transferred to the Government of India rely on the omission from the Government of India Act, 1935, of the provisions of Section 39 of the Government of India Act, 1833 (they were reproduced in Section 33 of the Government of India Act, 1915-19) according to which the civil and military Government of India (as distinguished from the civil and military Government of British India) is vested in the Governor-General-in-Council and argue that the omission is evidence in support of the conclusion that Paramountcy could not be transferred to an India Government.

Under the Constitutional Law of the Empire, it is only when a country has become a Dominion that it can claim the right to advise the Crown and the fact that before it becomes a Dominion the Crown was differently advised is no bar to its claim. The fact the Government of India was not in the past permitted to advise the Crown in the exercise of its rights of Paramountcy does not mean that there is any inherent constitutional incapacity which disentitles her from claiming the right to advise.

Paramountcy Cannot Lapse

So far as, I have dealt with one part of the Cabinet Mission's statement where they say that the Crown could 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 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. The validity of this principle was admitted by the Privy

Council in the *Queen vs Edulji Byramji* case, decided in 1840 and reported in 5 Moore's Privy Council cases (p. 276) wherein they said (p. 294) that the Crown could not even by charter part with its prerogative. It is, therefore, obvious that the statement by the Cabinet Mission that the Crown will not exercise Paramountcy is contrary to the Constitutional Law by which the Empire is governed.

Ultimate Sanction

Again, a statute passed by the Parliament of Great Britain abrogating Paramountcy would be improposed. The reason is obvious. The army is the ultimate sanction for Paramountcy. This Army has been the India Army for which British India has paid all long. Without the aid of this powerful army maintained by British India and placed at the disposal of the Crown through the agent, the Viceroy and the Governor-General of India, the Crown would never have been able to build up and conserve the powers of Paramountcy. These powers are of the nature of a trust held by Crown for the benefit of the people of India, and it would be a gross abuse of power on the part of the British Parliament to pass a Statute destroying that trust.

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 States 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 Sovereign Independent. ^{1*}



¹ : The Times of India, dated 18th June 1947

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* For comments on the Statement see Appendix-IX and X.