

INDIA AND THE BRITISH COMMONWEALTH

FINANCE MINISTER
INDIA

No. 8195-Of/48
New Delhi,
November 19, 1948.

My dear Ambedkar,

Many thanks for sending me your note on India and the British Commonwealth. I have read it with great interest as an able and lucid analysis of a difficult problem.

The note is being returned herewith.

Yours sincerely,
Sd/Illegible

The Hon'ble Dr. B. R. Ambedkar,
Minister for Law, Government of India,
New Delhi.

(See the note overleaf —Editors)

As regards this paper, the then Officer on Special Duty, noted that the paper was found in the record received by the Government from the Administrator General, Maharashtra State in 1979.

The Note of 'India and the British Commonwealth' was sent by Dr. Ambedkar to the Finance Minister of India, which was returned by him with a covering letter from the office. The signature is, however, illegible.—Editors.

India and the British Commonwealth

I. The Necessity for a Link

In considering the question of establishing a link between India and the British Commonwealth there are two questions which arise for decision. First is, should India sever all her connections with the British Commonwealth and assume the status of an independent Sovereign State ? The second is that if India is not to sever all her connections with the British Commonwealth, what should be the relationship between India and the British Commonwealth ?

2. On the first question there seems to be hardly any difference of opinion. Barring a few extremists, the majority are against India severing her connection with the British Commonwealth. It is not that only India is anxious to maintain this link, it is desired by the British Commonwealth. It is in the interest of the Commonwealth that India should not sever her connection with it. The link between India and the Commonwealth is vital to the Commonwealth. The defence of the Commonwealth depends upon its link with India. At the same time it would not do for India to adopt an attitude of indifference. For she too cannot do without link with the Commonwealth. There are two things which India needs and which are vital to her existence as a free country capable of shaping her destiny in her own independent way without dictation from outside and of having an effective voice in the affairs of the world. Free India cannot be free India unless she reaches this position. This position India cannot reach unless her industrialization becomes an accomplished fact and unless she develops in a military strength both adequate for defence as well as for offence. For achieving this objective India must obtain technical equipment which she has not and which she cannot get without outside help. Such outside help can come more readily from the British Commonwealth than from any other quarters. It is, therefore, in the interest of India that she should have a link with the Commonwealth.

II. National Status vs. Dominion Status

3. The solution of the second question is, however, not quite so easy. It raises many problems. India has achieved a national status. Should she exchange it for a Dominion Status ? This is

the first problem we have to tackle. From a purely formal point of view there need be no difficulty. Formally there is no difference between National Status and Dominion status. Dominion Status is not a subordinate status in any manner whatsoever. Each Dominion is not merely autonomous but independent and is equal in status to any other Dominion. In the scheme of the Commonwealth, the United Kingdom is only one of the Dominions. How autonomous and independent each Dominion is, will be found by reference to two events of recent occurrence. One relates to South Africa. King Edward VIII continued to be the King of South Africa for two days after he had ceased to be the King of the rest of the Commonwealth. The other relates to Ireland. In the last war when all the Dominions were at war, Ireland decided to remain neutral. In my opinion no greater proof is necessary to show how real and how effective is the autonomy and independence of each Dominion. It is as good as National Status.

4. Question is, can India now accept Dominion Status after having acquired National Status? I think it cannot. The reasons are obvious. They are both constitutional and psychological. The essentials of Dominion Status are three—(1) Recognition of common loyalty to the King, (2) Recognition of the King as the head of the Dominion acting through the Governor-General appointed by him, (3) Oath of allegiance to the King by members of Dominion Parliament. If the Constitution of every Dominion is examined, it will be found that these three elements are embedded in it.

5. The Draft Constitution for free India which is being considered by the Constituent Assembly does not recognize any of these elements. The preamble of the Draft Constitution describes India as a Sovereign Independent Republic. The use of the word "Republic" is incompatible with the King being at the head of the State. The Draft Constitution makes the President the head of the State and not the King. Nor is the President the Representative of the King. He is the representative of the Indian people. The oath to be taken by the members of Indian Parliament is not an oath of allegiance to the King but to the country and to the Constitution. Thus, the Draft Constitution is fundamentally different from what a Dominion Constitution is required to be. It requires every one of the three essential elements of a Dominion

Constitution. This is one difficulty in the way of India now accepting Dominion Status. To put the car in the reverse gear is always difficult. It is much more difficult to do so when the car has started running down hill.

6. The other difficulty is psychological. Can we adopt an alien King as our own? Is there anything socially and culturally common between Indians and the people comprising the Dominions? Even if the word 'British' was removed from its designation, the Commonwealth will still continue to be British in its loyalty and white in its colour complex. Can India feel at home in such a Commonwealth? However, much one may like that India should maintain a link with the Commonwealth, there can be no doubt that India cannot be at home in the Commonwealth.

III. Amended Form of Dominion Status

7. If the link cannot be established by India becoming a Dominion in *de jure* sense of the term, what is the alternative? The alternative suggested is that proposed in the British Nationality Act of 1948 and the Canadian Nationality Act of 1946. Section 1 of the act reads as follows:—

“British nationality by virtue of citizenship :—

- (1) Every person who under this Act is a citizen of the United Kingdom and Colonies or who under any enactment for the time being in force in any country mentioned in the next following sub-section is a citizen of that country shall, by virtue of that citizenship, have the status of a British subject. Any person having the status aforesaid may be known either as a British subject or as a Commonwealth citizen and accordingly in this Act and in any other enactment or instrument whatever whether passed or made before or after the commencement of this Act, the expression 'British subject' and the expression Commonwealth citizen ' shall have the same meaning.
- (2) The following are the countries hereinbefore referred to, that is to say, Canada, Australia, New Zealand, the Union of South Africa, Newfound land, India, Pakistan, Southern Rhodesia and Ceylon.”

Relevant sections of the Canadian Nationality Act are sections 4, 5 and 26 :—

“4. Born before the commencement of the Act :—A person, born before the commencement of this Act, is a natural born Canadian citizen :—

- (a) If he was born in Canada or on a Canadianship and has not become an alien at the commencement of this Act; or
- (b) if he was born outside of Canada elsewhere than on a Canadianship and his father, or in the case of a person born out of wedlock, his mother—
 - (i) was born in Canada or on a Canadianship and has not become an alien at the time of that person’s birth, or
 - (ii) was, at the time of that person’s birth, a British subject who had Canadian domicile,

if, at the commencement of this Act, that person has not become an alien, and has either been lawfully admitted to Canada for permanent residence or is a minor.”

“5. Born after the commencement of the Act:— A person, born after the commencement of this Act, is a natural born Canadian citizen :—

- (a) if he is born in Canada or on a Canadianship ; or
- (b) if he is born outside of Canada elsewhere than on a Canadianship, and
 - (i) his father, or in the case of a child born out of wed-lock, his mother, at the time of that person’s birth, is a Canadian citizen by reason of having been born in Canada or on a Canadianship, or having been granted a certificate of citizenship or having been a Canadian citizen at the commencement of this Act, and
 - (ii) the fact of his birth is registered at a consulate or with the Minister, within two years after its occurrence or within such extended period as may be authorized in special cases by the Minister, in accordance with the regulations.”

“26. Canadian citizen a British subject :— A Canadian citizen is a British subject.”

8. The scheme underlying these Acts is to create two categories of citizenship— (1) a Commonwealth citizen, and (2) a citizen of a particular Commonwealth. The acquisition of Commonwealth citizenship is automatic. Every person who is a citizen of a particular Commonwealth become, by reason of that fact, a Commonwealth citizen. It is said that if every Dominion did what the British and the Canadian Nationality Acts have done, it will be possible even for a Republic to be a member of the Commonwealth.

9. This proposal requires to be examined from three points of view before we can give our consent to it. Does this proposal make any change in the existing system of citizenship prevailing in the Commonwealth ? If the proposal does involve a change, does India gain or lose by this change ? Thirdly, even if India is desirous of having a link the Commonwealth can she accept this proposal consistently with the provisions contained in the Draft Constitution ?

10. The Commonwealth has suffered from three defects. One defect related to the conduct of its Foreign Affairs. Foreign Affairs have been the most fruitful source of war and yet they were mostly left to be conducted by the Government of the United Kingdom, with no active participation by the Dominions. It is true that the Dominions have the right to remain neutral. But that is no remedy, for it is a remedy which does not mend the Commonwealth. It puts an end to the Commonwealth. The second defect was that there was no remedy for the settlement of inter-dominion disputes. Dominions in relation to one another are not foreign countries. They therefore, cannot take their disputes to the Court of International Justice. And yet there has been no Tribunal to settle inter-dominion disputes. The third defect of the Commonwealth is that there was no common citizenship. A citizen of one dominion is not a citizen of every other Dominion. In fact the Commonwealth has been opposed to a Commonwealth citizenship. It insists that each Dominion shall be free to define who is to be its citizen and shall be free to say that the citizen of another shall not be its citizen. We are here concerned with the

third defect. Does the proposal make any change in this system? As I see it, it makes no change. The Dominions will still continue to have the same right of defining who is and who is not their citizen which have today and will in future as in the past continue to exclude Indians resident in them from the rights of citizenship.

11. Thus India does not stand to gain or lose from this change *vis-a-vis* the Dominions. But India need not consider the case of the other Dominions for it may be taken for granted that they will never confer their citizenship on Indians and India, therefore, will never be called upon to admit them to her citizenship. But the case of India and United Kingdom is different. For under her Nationality Act she is prepared to recognize Indians as her citizens. She expects India to recognize her nationals to be the citizens of India. Can India afford to do so? I am sure India cannot. The reason is obvious. Once a common citizenship is established between India and Great Britain, we shall not be able to discriminate between British and Indian for both will be citizens. We shall be going back to the provisions contained in sections 111 to 121 of the old Government of India Act, 1935, which prevented any such discrimination between British and Indian citizens, from which we have been trying to escape. It is, therefore, quite clear that Commonwealth citizenship is a dangerous method of making India a member of the Commonwealth.

12. Apart from the dangers involved in the proposal, can India accept it as a link between herself and the Commonwealth consistently with the provisions contained in the Draft Constitution to which I have already made a reference? This solution of having a Commonwealth citizenship is recommended on the ground that it avoids reference to the King and this enables even Republics to remain members of the Commonwealth. But does it? To determine this issue one must know what is meant by a Commonwealth citizen. Now citizenship is a matter of rights and duties. If a question is asked what are the rights of a citizen of a Commonwealth, one can easily answer it. The rights of a citizen of a Commonwealth are those that are conferred upon him by the

law of that particular Commonwealth of which he is a citizen. But what are the rights and duties of a Commonwealth citizen ? If this is a new and original concept having substance in it, then we should be able to find and answer to this question in the two Acts— defining nationality—British and Canadian. Both Acts are silent on the subject. A Commonwealth citizen is thus a bogus person with neither should to lose nor a body be kicked.

13. The term Commonwealth citizen is nothing but an empty phrase. It has no juristic content. As compared to it the citizenship of the United States, which is distinct from the citizenship of a State, is a real thing. It has certain privileges and immunities. But there are none which are attached to a Commonwealth citizen. Why then is the term Commonwealth citizen used ? What does it really stand for ? A reference to Section 1 of the British Nationality Act already quoted shows that it is only a substitute for the age old term “British Subject”. Knowing this, can India accept this solution ? If a Commonwealth citizen is merely another name for a British citizen, he must owe allegiance to the King. And as I have pointed out, allegiance to a King is incompatible with a Republic. It is, therefore, clear that this solution— Commonwealth citizenship—cannot be accepted by India if India is to be a Republic.

IV. A New Approach

14. Having regard to her draft Constitution India cannot accept allegiance to the King, or Commonwealth citizenship as a method of remaining in the Commonwealth. We must find out some other way. It seems to me that the proper way to adopt is to follow the lines set out by De Valera in 1921 for the settlement of the Irish question. Those who have followed the controversy know that Mr. De Valera did not want Ireland to be a Constituent State of the Commonwealth having the symbols of a Dominion referred to in paragraph 4 of this note. He wanted Ireland to be an Associate State of the Commonwealth as distinguished from a Constituent State of the Commonwealth. His conception of an Associate State of the Commonwealth was set out by him in a paper which in the history of Irish settlement is known as Document No. 2.

15. I reproduce the following parts of the Document for easy reference as well to give an idea of what Mr. De Valera meant by an Associate State:

“States of Ireland

1. That, the legislative, executive, and judicial authority of Ireland shall be derived solely from the people of Ireland.

Terms of Association

2. That, for purposes of common concern, Ireland shall be associated with States of the British Commonwealth, *viz*: The Kingdom of Great Britain, the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, and the Union of South Africa.
3. That, when acting as an associate the rights, status and privileges of Ireland shall be in no respect less than those enjoyed by any of the component States of the British Commonwealth.
4. That, the matters of “common concern” shall include Defence, Peace and War, Political Treaties, and all matters now treated as of common concern amongst the States of the British Commonwealth, and that in these matters there shall be “between Ireland and the States of the British Commonwealth” such concerted action founded on consultation as the several Governments may determine.
5. That, in virtue of this association of Ireland with the States of the British Commonwealth, citizen of Ireland in any of these States shall not be subject to any disabilities which a citizen of one of the component States of the British Commonwealth would not be subject to, and reciprocally for citizens of these States in Ireland.
6. That, for purposes of the Association, Ireland shall recognise His Britannic Majesty as head of the Association.”

Here is a new way of establishing a link with the Commonwealth. Paragraphs 6, 5 and 4 call for a scrutiny:

Paragraph 6 :—This paragraph 6 can be easily dropped as being quite unnecessary for a link between the Dominions and the Associate State. De Valera himself when he gave effect to the principles underlying this Document by enacting the Executive Authority (External Relations) Act, 1936, dropped it.

Paragraph 5 :—We cannot accept paragraph 5 in the terms in which it stands. If it is found necessary to retain it, we must revise its language carefully. We must make a distinction between disabilities and privileges and immunities. While agreeing not to subject the citizens of the different Commonwealth residents in India to any disabilities, we must not allow them to claim the benefit of privileges and immunities which must be reserved to the citizens of India.

Paragraph 4 :—This paragraph of the Document is the most important part of the Document. It is the best part of the Document. It contains the definition of an Associate State and States clearly how and to what extent it is linked to the Commonwealth. This is enough for our purpose. Our Constitution will not permit us to have a closer link with the Commonwealth. Our needs will not permit us to have a looser link with the Commonwealth.

16. The question is whether association on these terms will be accepted as sufficient for India to be regarded as a member of the British Commonwealth of Nations. As I have stated the provisions of Document No. 2 were incorporated in the Irish Constitution when it was re-enacted in 1937. Question was raised whether with these changes, Ireland still remained a member of the British Commonwealth. In reply to this the British Government on the 30th December, 1937 issued the following statement—

“His Majesty’s Government in the United Kingdom have considered the position created by the new Constitution which was approved by the Parliament of the Irish Free State in June 1937, and came into force on December, 29th.

“They are prepared to treat the new Constitution as not effecting a fundamental alteration in the position of the Irish Free State-in future to be described under the new Constitution as ‘Eire’ or ‘Ireland’-as a member of the British Commonwealth of Nations.

“His Majesty’s Government in the United Kingdom have ascertained that His Majesty’s Government in Canada, the Commonwealth of Australia, New Zealand and the Union of South Africa are also prepared so to treat the new Constitution.”

Having accepted Ireland as a member of the Commonwealth, the British Government is bound to do the same with regard to India especially when the terms in both cases are the same. Neither the British Government nor the Dominions can demand from us for associate membership which is all we need.

V-Nature and Advantages of the New proposal

17. By this new proposal the Commonwealth will consist of two sorts of States—(1) Constituent States, and (2) Associated States. The former will be the old Dominions with the King at the head. The latter will include countries like India who do not acknowledge the King at the head. The proposal has two advantages. It enables India to remain as Republic which she has resolved to be. It enables India and the Commonwealth to obtain reciprocal advantages in fields which are of vital importance to both. And lastly, it enables India to avoid the danger of giving recognition to the proposal of a Commonwealth citizenship which may involve equality of treatment of Indians and Britishers in matters of trade and commerce against which India has fought.

VI-Clarification

18. While making India an Associate Member of the Commonwealth, we must not omit to make two things clear. One is that whether India is a member of the Commonwealth or not must not be made dependent upon the wishes of the Commonwealth. It must be determined entirely by any declaration made by India in this behalf. The other is that the dissociation of India from the Commonwealth must be left to be decided by any declaration made by India in this behalf. Anyone who has studied the case of Ireland will realize the importance of these clarifications. Ireland has been held to be a Dominion even when it was made clear by her in her Constitution that she did not want to be a Dominion. Ireland has not been allowed to go out of the Commonwealth on the ground that the other Dominions have not recognized her as a Foreign State.

19. This clarification has become urgent because of the recent decision of the King's Bench Division in *Murry v/s Parkes* (A.E.R.1942-Volume I. 558.) The question was whether Ireland was or was not a Dominion. The Lord Chief Justice held that Ireland was not a Dominion and gave two reasons in support of his decision—

- (1) That, he was not aware that Eire had ever expressly exercised the right of secessions, and
- (2) That, even if it had, the question would still remain whether secession by Eire could be effective unless and until the other members of the Commonwealth had recognized Eire as a Foreign State.

This is I have no doubt a very mischievous decision. There is in it more politics than Law. We must not, therefore, leave any shadow of doubt on the point that our entry into as well as our exit from the Commonwealth is a matter which entirely depends upon us and the wish and the consent of the Commonwealth is both unnecessary and irrelevant.

VII-Implementation

20. I now come to the question of implementation. There are two questions here which arise for consideration. The form of the declaration and the method of giving it a legal sanction. As to the form of the declaration, I put forth the following Draft—

“India is hereby declared to be an Associate member of the British Commonwealth for the purposes of such concerted action founded on consultation and free will in matters of common concern which shall include trade, commerce, defence, peace and war on the understanding that when acting as an associate rights, status, and privileges of India shall in no respect be less than those enjoyed by any of the other component States of the Commonwealth.”

Such a declaration accompanied by clarifications on points mentioned above should suffice. If such a declaration is made, it does not seem to me to be necessary to amend the Preamble by the substitution of the word ‘State’ for the word ‘Republic’. The word ‘Republic’ may stand.

21. The next question is of implementation. There are two ways of implementing it. One is by a treaty. The other is by introducing an Article in the Constitution. I prefer the latter mode.

22. This statement may appear to run counter to what is suggested by my amendment to the Preamble. I must confess that my attitude has undergone a change. This change is due to the new basis suggested for Dominion Status—namely Commonwealth Citizenship. I was in favour of Dominion Status because of the right it gave to each Dominion to define its Citizens. A common Citizenship seems to me to be dangerous to the economic independence of India. For it may result in taking away the liberty of India to protect her nationals against Commonwealth citizens. The original basis of Dominion Status—namely allegiance to the King—appears to me less dangerous than the new basis of Commonwealth citizenship.

●●