

3

IN SUB-COMMITTEE No. II (PROVINCIAL CONSTITUTION)

First Sitting—4th December 1930

†*Dr. Ambedkar*: I propose to divide my remarks under three heads : (1) provincial autonomy, (2) responsibility in the provinces, (3) provincial services. I make a distinction between provincial autonomy and provincial services. It seems to me that the question of provincial autonomy raises the definition of the relations of the provincial Executive and Legislature *vis-a-vis* the Central Government and the Central Legislature. The first remark I would offer with the attitude of those who hold that the time has arrived when the provincial Governments ought to be left with as complete an autonomy as is possible under the circumstances, and they should be free from such control as the Central Government now exercises. But, Sir, I cannot help making this further observation, that viewing the problem of provincial autonomy from the standpoint of the particular class I represent in this Conference and of the interests of India as a whole and the working classes in particular, I think that in any future constitution that we propose to devise for endowing the Provinces with provincial autonomy we must take into consideration certain facts which are bound to limit the character of that autonomy.

The first limiting factor in the provincial autonomy is that it must be made subject to such questions of a provincial character which are, although provincial in nature, also of an All-India character. The Provinces may have their say with regard to these subjects, and yet the Central Government should not be excluded from its jurisdiction with regard to them. For instances, I would like to draw an illustration from labour legislation, legislation affecting tenants and affecting agriculture. These, no doubt, in a country like India, must become provincial subjects yet I do not think they can be viewed entirely from such a small compass. They cannot be

† Proceedings of the Sub-Committee No. II (Provincial Constitution), Government of India, Central Publication Branch, Calcutta, 1931, pp. 18-22.

The terms of reference to this Committee were as under:—

- (1) "The powers of the Provincial Legislature."
- (2) "The constitution, character, powers and responsibilities of the Provincial Executive."

regarded as entirely provincial and without an All-India character. The Central Government must have some jurisdiction over subjects of this character, notwithstanding that it cuts across provincial autonomy.

Secondly, I should state that in dividing the powers of Government between the Central and the Provincial Governments in the future constitution of India with a view to giving the Provinces as complete an autonomy as possible, it will also be necessary that such powers as remain undefined must be left with the Central Government. Well, I do not think that there is no other view on that point. But I say that in the present situation in India, where the separatist tendency exists to such an extent as we all know it, where provincial and local parochialism is more dominant than national feeling, while we are building up a Federated India with complete autonomy of the units, we still have the problem of making India as a whole a strong and united country. I would make this further observation, namely, that I do not think that the reservation of powers in the Central Government is likely to affect the autonomy of the Provinces. The reservation of powers as interpreted by the Judicial Committee of the Privy Council in the case of Canada has not had this over-riding effect. It means a power that comes into existence in an emergency in a field not specifically allotted to the Provinces. I do not think that the Provincial autonomy should be really affected.

The second thing I should like to observe in connection with this question of Provincial autonomy is that that autonomy must be limited by the affording of protection for the interests of the minorities and of the Depressed Classes. As I visualise the situation in India as it will result from the new constitution, I find there will be certain Provinces in which some communities will be in a majority, but in all the Provinces the Depressed Classes, whom I represent, will be in a minority. They will be in a minority in every Province. I cannot understand how we can at this state permit the Provincial majorities to have a complete uninterrupted and undiluted sway over the destinies of these poor people, without any right of appeal being given to the latter in regard to mal-administration or neglect of their interests. There must be some authority somewhere, over and above the Provincial Government, which will be in a position to intervene and rescue them from any adverse position in which they may be placed by the Provincial majorities.

These are the three things which, in my opinion at any rate must limit the autonomy of the future Provincial Governments of India.

Coming to the question of the character of responsibility in the Provincial Governments, my first observation is that the whole question of responsibility in the Provincial Legislature is entirely dependent upon the kind of Legislature that you are going to get in the Provinces. If the Legislature that you are going to get in the Provinces is a Legislature which is going to be a mirror of the whole population of the Province, if it is going to be

thoroughly representative and not merely representative as a museum is, where there are a few specimens of every species for the observation of the general onlooker; if every minority and every class which fears its existence will be jeopardised is placed on a position to make its influence felt, then I think in a Legislature of that sort there will be no harm in conceding the principle that Provincial responsibility may be introduced to the fullest extent. That is my first observation.

Making that a condition that the Legislatures shall be fully and adequately representative of all the classes, I see no objection to the subjects which are now reserved being transferred to popular control.

Coming to the question of whether the responsibility in the Provinces should be joint or should be individual I have not the slightest hesitation in saying that the responsibility not only should be joint but must be joint. I have been a member of Legislative Council, and I have seen how Ministries in the Provinces have worked. It has been a most painful experience for me, as it has been the experience, I believe, of many of those who have had the misfortune or the good fortune to be members of a Legislative Council, to find that Ministries have been working as a kind of loose confederation, without having any complete or unanimous view on a particular policy which they adopted. There have been divided counsels, and cases of Ministers not being very willing to support each other.

What has been the result? The result is this, that in no instance have we had any considered policy put forward by the Cabinet as a whole, worked out in detail and placed before the Legislative Council Things have been done by fits and starts, and I do not think we want our responsibility in future to be bungled in that fashion.

Turning now to the question of communal representation in the Cabinets, I must confess that I am not very much drawn to the suggestion which is often made that there should be communal representation in the Cabinet I am not, of course, oblivious of the fact; in fact, I am very conscious of it that if the minority communities are not represented in the Cabinet it is very possible, and even very likely, that in matters of administration which affect their daily lives their interests may be affected very prejudicially by the policy of Ministers whose dominant interest is communalism. I do not forget that for a moment, but my submission is that there is a better way of dealing with that sort of evil, and it seems to me that if the minorities could get constitutional and statutory guarantees laid down in the Constitutional Act itself against anything likely to injure their interests being done or left undone by the Cabinet, the danger which most of us apprehend from the fact that the Cabinets may be communally dominated, will vanish, and we shall not have much cause to insist on communal representation in the Cabinet

Although I am very desirous that the Chief Minister, whoever he is,

should recognise or should be made to recognise the interest of having most of the important minorities represented in the Cabinet, we cannot for the moment forget that, after all, a Cabinet office is a very responsible office. A Cabinet Minister has not merely to look after the interests of the minorities ; he has to see to the safety and interest of the Province as a whole. That demands ability and competence ; it does not merely demand a communal outlook, and it is from that point of view that I look at the matter. I should like to have the interests of the minorities and the Depressed Classes safeguarded in such a manner that constitutionally it would be impossible for Ministers drawn from the majority communities to do anything prejudicial to the minorities or to neglect their interests.

Coming to the question of the relations between the Governor and his Ministry, I think one thing is obvious, namely that no constitution, if it is really to embody full responsible Government and collective responsibility, can permit the Governor the power to interfere in the day-to-day administration of the country. That would run quite across the system of responsible Government and collective responsibility. The Ministry must be allowed to carry on the day-to-day administration on the basis of joint responsibility.

When we come to the question of the emergency powers which it is suggested should be left with the Governor. I find myself in a somewhat difficult position, because I do not understand exactly what is meant. Is it meant that when an emergency arises the Governor should simply dismiss the Ministry and have nothing to do with it, and should promulgate whatever laws, ordinances or measures he thinks are necessary to meet the situation, notwithstanding the fact that they are opposed by the Ministry? I do not know what is wanted. I can quite understand the Governor should have the absolute, undoubted and unrestricted power of dismissing a Ministry which he thinks is not acting in the best interests of the country, but I cannot understand how there can be responsible Government in a Province in which the Governor is allowed to do a thing without a Ministry. It is one thing to say that the Governor should have a Ministry with which he agrees in a particular emergency, but it is quite a different thing to say that when an emergency arises the Governor should simply disregard the Ministry altogether. I think this point will have to be worked out in some deal, for, as I say, I do not quite understand it.

Coming to the question of the Services, there is one observation I am bound to make. I quite agree in principle that with provincial autonomy the power of regulating the Services in a Province should belong to that Province, and that the Provinces should have full liberty to Indianise the Services as they desire and according to their means and circumstances. The observation which I feel bound to make, however, is this : I cannot forget that Indians are communal minded. We do hope it is only a hope that a time will come when all Indians will cease to look at problems from a communal

point of view in administering matters which are left to their charge, but that is only a hope; it is not a fact. The fact is that Indians do discriminate between class and class, community and community, in administering such discretion as is left to them in their administration of the law. That is a fact I cannot get over; it is a fact from which I have suffered immensely. My fear with regard to the future constitution of India is that having regard to the present position of the depressed classes, having regard to the fact that education is not widely spread amongst them, and having regard to the fact that there is hardly a single individual holding a gazetted post in the Bombay Presidency for instance,—

A Member: There is one.

Dr. Ambedkar: Yes, there is one, and that is the exception which proves the rule. You know how much trouble I had to get him in. I very much fear that this Indianisation may work out as a tyranny, and therefore, from my particular point of view, I should like to emphasise that at any rate for some time it will be necessary to maintain a British element in the Services. I do not say there should be no Indianisation, but I do say that, having regard to our interests, it should be rather slower than some people desire it to be.

These are the general remarks that I wish to offer from our point of view.

Third Sitting—8th December 1930

†*Dr. Ambedkar:* May I make a suggestion? It seems to me this question of Second Chambers is so important that it cannot be discussed properly and adequately by being tacked on to the series of heads we are now discussing. In my opinion a special day ought to be allotted to this subject. I see very little connection between the subject of Second Chambers and that of the protection of minorities, or any of the other matters enumerated in items 1 and 2. It seems to me this is a very important question. I find nothing in this list of heads dealing with the composition of the Legislature; if you were to add a head “Composition of the Legislature” we should have a proper opportunity of discussing the whole subject.

Chairman: I cannot see how you can separate this whole subject and split it up.

Dr. Ambedkar: The question of Second Chambers can certainly be separated from that of minorities.

Chairman: Not entirely. Whether there is to be a Second Chamber or not affects almost every other subject that comes up, the powers of the Governor *vis-a-vis* the Executive and the Legislature, the powers of the

† Proceedings of Sub-Committee No. II (Provincial Constitution), p. 56.

Legislature and so on. I think you had better let us go on, and if at the end we find the discussion has not been adequate, we will try to arrange for a further discussion on this subject by itself.

Fourth Sitting—9th December 1930

†*Dr. Ambedkar*: It may be, but I am taking these two communities for the moment because they are important. It seems to me that any argument which is based upon that fact is an argument which leads to a conclusion which will never enable us to transfer law and order. Therefore it seems to me that that is an argument which ought not to be adopted or accepted. It seems to me also that the noble Marquess assumes that although a Muhammadan or a Hindu will be in charge of the department of law and order, he will be entirely subject to the whims of the particular community to which he belongs. My submission, Sir, is this, that assumes that the future of political parties in India will be so constituted that they will be divided on religious lines and not on the lines of political or economic differences. As I view the situation it seems to me that in the future constitution of India the Executive will be so divided that we shall see less of the religious and racial distinctions coming to the surface and we shall find a Hindu Minister having a party and a following containing a large element of Muhammadans, and a Muhammadan Minister with a following of Hindus in his group. If that happens, and I take it is almost a certainty that it will happen, I do not understand how, for instance, a Hindu Minister who is in charge of law and order could administer law and order in such a manner as to offend the susceptibilities of a part of the group which supports him in office. It seems to me therefore that the fears so far as this particular aspect of the matter is concerned are rather unfounded.

The second thing which seems to be agreed upon more or less is this, that not only should the Executive be a unified Executive but that the responsibility of this unified Executive should be joint and not several. With these conclusions, Sir, I agree, but the points of difference that have arisen in the course of the debate to which we have listened largely relate to the composition of the Executive and it seems to me that there arise three different questions for our consideration in connection with the composition of the Executive. The first question is : should the Executive be confined to members of the Legislature or should it be open to individuals who are officials or non-officials and who are outside the Legislature? The second question is : should it consist of members of the minority communities ? The third question is : whether the Governor should have the responsibility of appointing the Ministers himself or whether he should appoint the Chief Minister and leave the matter of the selection of his

† Proceedings of the Sub-Committee No. II (Provincial Constitution), pp. 95-102.

colleagues to that Chief Minister.

Now, Sir, on all these three questions my answer is in the affirmative. Personally, I do not see why the membership of the Cabinet should be rigorously restricted and confined to the members of the Legislature. I also do not see why there should not exist some provisions whereby the Executive should not be made as representative as possible of all the communities that are represented in the Legislature. Thirdly, regarding the power of the Governor to compose his Ministry, it seems to me that we must admit that it is his prerogative right to constitute the Ministry and that you must have discretion left to him in the matter of selecting his men. But, Sir, when I say that I answer these three questions in the affirmative, namely, that the Executive need not be confined to the members of the Legislature, that some provision should exist whereby different communities may be represented in the Cabinet, and that the Governor should have left with him abundant discretion in order to form his Cabinet, I say when I make these admissions I make them subject to one supreme condition. That supreme condition is that however the Executive is composed, it shall abide by one principle, namely that it shall accept joint responsibility. If, for instance, this principle of joint responsibility is made obligatory upon the Executive, it seems to me that the importation of a foreign element into the Cabinet will not be a disturbing factor as it is supposed to be. If, for instance, the new-comer who does not belong to the Legislative Council comes into the Cabinet and accepts joint responsibility along with the Cabinet, I do not see any reason why such a procedure should not be permitted. It was pointed out that it may so happen that when a Ministry is censured and it goes out, the official or the one who does not belong to the Legislature will remain while the other members of the Cabinet will go out; that when a new Ministry is formed, he will be again tacked on to the Ministry and that he will be perpetually in the Council. It seems to me with all respects that that is a somewhat fallacious view, because, unless the members who are drawn from the Legislature to form the Ministry are prepared to take him along with them and are prepared to bear the responsibility of his actions, they will not consent to work with when he accepts their advice and they accept his advice. If, for instance, a Prime Minister were so situated that he could safely take an outsider into his Cabinet and at the same time maintain the confidence of the House, I do not see why the Chief Minister should be prevented from having that privilege accorded to him.

In the same way, Sir, if, for instance, it was found possible that the Governor should have powers to see that the different minority communities are represented in his Cabinet, and if at the same time it is made perfectly clear that whoever is appointed to the Cabinet must accept joint responsibility with the others, then I submit there is no harm in allowing this sort of thing. It seems to me therefore that the point Which it is

necessary to emphasize is that the Governor may have the power which as I say belongs to him as of right to compose the Ministry in any way he likes provided that the Ministry does not violate in its operation the principle of its being, namely, that it is to work on the principle of joint responsibility.

Now the next question to which I will address myself, Sir, is how best to achieve this result, how best to bring out a responsible and unified Executive. It seems to me there are two ways open to us. One way is to define in the constitution itself the character of the Executive by law ; the other is to leave to convention the constitution of the Executive. Both these ways are adopted, as you all know. We all know that in the Dominions of Canada, South Africa and Australia, responsible Government of a unified character is entirely a matter of convention. Everyone of us knows that in the Canadian Act or in the Acts of South Africa or Australia the words "responsible Government" do not arise. It is not even mentioned in the Canadian Act, as I found to my great surprise, that the Ministers who are to advise the Governor are to be members of the Legislature, although as a matter of fact they are. On the other hand, as we know, in the constitutions of Ireland, Malta and Rhodesia this is a subject which is not left to convention, it is something which is incorporated in law. In Ireland we know that the Prime Minister is a creature of statute, the joint responsibility is also defined by law.

I therefore think that we shall have to make our choice between the two, and in making the choice I for one would be guided by two considerations. I fully realise that when a matter is left to convention it is possible that the convention may be wrongly worked, that it may be abused, and may be abused with impunity. The danger of matters being left to convention in a country like India seems to me to be greater because there are no parties in India which have a keen eye on the way in which the constitution works and we may have Ministers less interested in working the constitution in the right spirit than in maintaining their seats in the Cabinet. On the other hand it seems to me that where matters are defined by law it must necessarily take away all the discretion that must necessarily be left to a Governor. In a country like India where the political field with all its communal and racial difficulties is an absolutely uncharted sea, it seems to me that we must so contrive that sufficient discretion will be left with the Governor. My concrete suggestion therefore is this, that joint responsibility of the Executive should be prescribed by law and that everything else should be left to the discretion of the Governor, so that we shall have satisfied both the conditions: we shall have provided that whatever responsibility there is, is joint responsibility and that the composition of the Executive is at the same time not hampered in such a manner that the communities which do require to be represented in the Cabinet may be represented or that the necessity which Prime Minister may feel of

having a non-official, I mean an outsider, in his Cabinet is provided for. If we do that, if we insist by law, not leaving it to the discretion of the Governor, that the Executive shall be a joint Executive with joint responsibility, I think all other matters may be left without any fear of abuse to the choice of the Governor.

Now Sir, the next topic which I will take for consideration is that of the powers of the Governor *vis-a-vis* his Executive. The present relations between the Governor and the Minister, as well we all know, are defined in section 52, sub-clause 3. That clause says that in all transferred matters—and all matters will now be transferred, none being reserved—the Governor shall be guided by the advice of his Ministers; and it adds a further proviso that if he sees sufficient cause to dissent from the advice of his Ministers he may cause action to be taken otherwise than in accordance with that advice. With all due respect to those who framed that clause, and they did it with the best intention of providing responsible Government, I cannot help saying that this clause as it now stands is a perversion of responsible Government; it makes responsible Government a matter of convenience, a matter which may be accepted and followed when it suits the Governor, whereas as a matter of fact what we want is that responsible Government should be a matter of obligation. If responsible Government means anything it means this, that in whatever action the Governor takes in any field he has the support of a Ministry which has the confidence of the House. That is a fundamental proposition which we cannot ignore. It does not of course mean that a Governor must always accept the advice of his Ministry; it leaves it open to the Governor to throw out the Ministry, to say he will not abide by their advice; but then if the Governor chooses to differ from his Ministry his obligation is not to act on his own initiative but to find some other Ministers who will support his action. So that the proposition is that at all times when the Governor takes action he takes action which is in conformity with the views of Ministers who have the confidence of the House. My submission therefore is that this clause, namely section 52, must be so altered as to make it plain that unless specific provision is made to the contrary by statute there may be cases which, I will come to a little later, the Governor shall always act upon the advice of the Ministers.

Now, Sir, I do readily agree that there may be cases in which it is necessary to provide the Governor with over-riding powers, powers in respect to which he will not be obliged to follow the advice of his Ministers but will have the right of independent action. Those cases are mentioned in paragraph 50, page 36 of Volume 2 of the Report of the Simon Commission. The first is that he should have over-riding powers in order to preserve the safety and tranquillity of the Province; secondly, he should have over-riding powers in order to prevent serious prejudice to one or more sections of the community as compared with other sections; and then lastly it mentions certain cases where the Governor may have fixed

upon him specific responsibility as apart from the responsibility of the whole of the Executive, in which case it says that he should also have over-riding powers.

With regard to these items my first submission is this, that if you are going to give the Governor to over-ride his Ministers to preserve the peace, safety and tranquillity of the Province, it seems to me you are taking away a very large part of responsible Government in the Provinces. After all, what we are striving for is that the Provinces shall be governed in all matters, including even the peace, safety and tranquillity of the Province, by a Governor on the advice of his Ministers ; and, if you reserve powers to the Governor to act contrary to their advice, it seems to me you are to a very large extent nullifying the powers of responsible Government. I should not, therefore, give the Governor over-riding powers in a matter of this sort, unless some way could be found whereby this large formula, which seems to me to eat-up the whole situation, might be very narrowly defined.

Coming to the other question, namely prejudice to one section of the community as compared with the others, my own view is that although this is a very salutary thing my preference is that such matters as are likely prejudicial to affect the interests of any particular community should be governed by statute ; it should not be left to the sweet will of the Governor. I say that for this very good reason. After all, a Governor has to keep in touch with a Cabinet which is supported by a majority in the Legislature. He can never work at cross purposes with the Cabinet ; the greatest amity must prevail between them, and I am not sure the Governor would always be so minded as to quarrel with a Cabinet which represented a majority in the House merely in order to protect a minority which, in his eyes, might not be very important. Although, therefore, I agree with the underlying suggestion there. I rather prefer that the interests of the minorities should be protected in a firmer manner than is suggested, and for myself I should be prepared to delete this clause.

Regarding the other items 3, 4 and 5, I agree that in cases of this sort the Governor must have over-riding powers, because they are cases where he personally is made responsible for the administration of those subjects.

Coming to the next subject, the powers of the Governor *vis-a-vis* the Legislature, I will divide my remarks under three heads. There is first of all budgetary legislation; secondly, ordinary legislation and thirdly, emergency legislation. The Governor has today powers of certification with regard to the provision for reserved subjects, and that will necessarily go with the abolition of anarchy. Secondly, the Governor has authority to authorise expenditure for the safety and tranquillity of the Province. It seems to me that if you are going to leave questions of peace and tranquillity to be settled by a responsible ministry, the Governor should not possess this power of authorising expenditure for the safety and tranquillity of the

Province. In the next place, he has the power of certifying Bills, which are of two sorts. He may certify that a particular Bill which is being discussed in the Legislature shall not be discussed because it affects the safety and tranquillity of the Province, and he has also the power to certify a Bill which is in the interests of the safety and tranquillity of the Province even though the Legislature may not desire to pass it in the ordinary course. It seems to me both these powers should go ; they will not be necessary in the future constitution of India.

He has also powers of previous sanction; certain subjects have to be previously sanctioned by him before they can be discussed, and in my opinion this power should go.

Sir Ahmad Sayed Khan: Discriminatory legislation ?

Dr. Ambedkar : That should be dealt with by Statute ; I should not leave it to the Governor. The Governor must have the power of veto, and in view of the fact that there will be no Second Chamber in those Provinces which do not want it, it is very necessary that the Governor should have the power of veto. The Governor today has also the power of returning a Bill to the House for reconsideration. This is a very useful power which exists in the constitutions of the various Dominions, and I think it should be retained. The Governor has also power to reserve a Bill for the consideration of the Governor-General and the cases in which he should do so are defined by Statute. That is a matter, I think which might be more conveniently considered when we consider the relations of the Provincial Governments to the Central Government, but I should like to make one observation on this subject. We should so endeavour to contrive our Provincial constitution that it will function independently, as far as possible of the interference of the Central Government in those domains which have been transferred to its control. We must make a constitution under which there will be no occasion for constant intervention by the Central Government, either administratively or legislatively by the reservation of Bills.

With regard to the question of safeguards for Law and Order and for minorities, I have already stated that Law and Order should be transferred, but I am prepared to make one suggestion, for what it is worth. In cases of emergency, when Law and Order are being jeopardised, I suggest the Governor should have power to pass orders finally, without respect to the advice of the Ministry, regarding the posting and transfer of Police officers. I think that is very necessary ; it is essential.

Sir Cowasji Jehangir: In case of emergency only ?

Dr. Ambedkar: Yes, but not in other cases.

Mr. Paul: Not in normal times ?

Dr. Ambedkar: Not in normal times, no, but in cases of emergency when a riot has taken place or a disturbance has occurred, it is very necessary that an impartial officer like the Governor, who is not swayed by what is happening in the Cabinet, should have the ultimate power to see

that people are not transferred from one place to another to suit one community or the other community when a riot is actually proceeding. It seems to me that it gives him sufficient power for the purpose of safeguarding the administration of Law and Order.

With regard to the question of minorities, it was suggested by some speakers that a Second Chamber would afford protection to minorities, and my friend Mr. Wood threw out the suggestion that I had not carefully considered the position of the Depressed Classes in relation to a Second Chamber. I should like to assure my friend that I have given the matter most careful consideration, and I thoroughly agree with my friend Mr. Paul that these Second Chambers, far from being a protection to minorities, will be really milestones round their necks.

There is one subject I did not touch on before, but which I should like briefly to mention now, namely, the relation of the Governor to his Cabinet. Should he preside over the Cabinet as a matter of right or should he not? Should there be the system which prevails in this country where the Cabinet holds its meetings without the King being there, and if so what should be the means of communicating the results and decisions arrived at by the Cabinet to the Governor? I do not know if that arises on this item; if it does not, I will not waste time in discussing it.

Chairman: We have generally discussed the whole question, so that if you desire to continue I shall not object.

Dr. Ambedkar: In that connection I want to say one thing. The Simon Commission has suggested that a Cabinet Secretary should be appointed who would be of the same status as an I.C.S. Officer, and who would act as the liaison officer of the Cabinet to the Governor. In throwing out that suggestion the Commission says it has drawn on the practice that has now become prevalent in this country, namely, that the Cabinet now always has a Secretary, which formerly it did not have. I should like to submit, however, that it is one thing to say that the Cabinet should have a Secretary, but it is a totally different thing to say that that Secretary should have access to the Governor over the heads of the Ministers. In this country the practice does exist, probably, of appointing a Secretary, but I do not think any Cabinet or Prime Minister in this country would consent to that Cabinet Secretary having access to His Majesty over the heads of the Ministers or over the head of the Prime Minister; such a thing would be intolerable. We know that in this country the Cabinet throughout all its history has laid emphasis on the fact that the persons who will be near to His Majesty should be persons who will bear the same complexion as the Ministry, and we know that that has been carried so far that even the Ladies of the Chamber who wait upon the Queen are required to be nominated by the Prime Minister and the Cabinet. The situation suggested, therefore, seems to me almost impossible. I do not think any Cabinet which is working on the principle of joint responsibility

will consent to have a Secretary of this kind attached to it.

On the other hand, if the Governor is given the power to preside over the Cabinet when it is discussing its policy, I doubt very much whether that will work, because although the Ministry may, and indeed must, communicate to the Governor the decisions at which it has arrived, I do not think the Ministry will consent to disclose to the Governor the reasons which have led it to come to those decisions. The reasons may be very particular and very delicate, and you all know that the Cabinet is very jealous not to let the Governor know the reasons why it has arrived at a particular decision. The explanation of that is that the Governor holds in his hands a tremendous power for undoing the Ministry for he may not agree to the Ministry's advice to dissolve the House, but may instead of being embodied in a Statute, the matter should be left to the Instrument of Instructions, which may provide that the Governor can attend if he desires to do so, but it should not be obligatory at all. On the other hand, it should be made obligatory for the Cabinet to communicate to the Governor all the recommendations at which it arrives at its meeting. That is all I desire to say on that point.

*

*

*

*

*

†*Dr. Ambedkar*: We should like to say one thing on that point that the Second Chamber should not be constituted first, and then its abolition should be left to constitutional resolution requiring a certain majority. What we suggest is that if the situation is such that it should be left as a matter of discretion in certain Provinces, then first of all a resolution might be passed by the Provincial Legislature expressing its desire for a Second Chamber, and then that the Second Chamber should be constituted. It should not be first imposed on the Provincial Legislature by the constitution.

Fifth Sitting—15th December 1930

‡*Dr. Ambedkar*: Sir, I should like to make one or two observations on the amendment which the noble Marquess has moved. I should like to state at once that the position which he has taken up seems to me to be absolutely logical. In this report we are going to provide that certain interests and minority groups may be represented by nomination in the Legislative Council. At the same time we are also making provision in this report that the Governor shall be given an obligation to endeavour to secure that his Cabinet shall be representative of all interests and of all minorities. Now, Sir, unless you provide that in the making up of this Cabinet, the Governor shall also have the right to include members who represent certain important interests by nomination, it seems to me that you are creating an absolutely illogical position. Either you must provide

† Proceedings of Sub-Committee No. II (Provincial Constitution), p. 133.

‡ *Ibid.*, pp. 156-57.

that there shall be no nomination to the Legislative Council at all, that all interests, no matter how minute, shall be secured by election to the Legislative Council, or, if there is to be nomination then you must provide that a nominated member shall have the right to be in the Cabinet if his colleagues are prepared to work with him on the principle of joint responsibility. There is no escape from one or other of those positions.

Now, Sir, it is stated by friends who are sitting on this side that if we accept this principle, that a nominated member shall be a member of the Cabinet, or at least that there shall be no ban upon him, it will run counter to the principle of responsibility. I really cannot understand that position. These gentlemen who are saying it will run counter to the principle of responsibility are prepared to take the votes of nominated members. I am taking the report as it stands. I do not know what future amendments there will be. Supposing the report as it stands is carried, that there shall be certain members in the Legislative Council who shall be nominated. Is it the position of these gentlemen that their votes are illegal? If those who form the Cabinet who are drawn from the elected portion of the House can validly use the votes of members who are nominated to the Legislative Council, if those votes can logically become the basis of the policy of a Government, I cannot see how a member who is one of that nominated group should not become a member of that Cabinet. I fail altogether to understand it. If, as I say, they can take these votes of nominated members and utilise them for their own purposes. I cannot understand what objection there can be to the inclusion of a member from the nominated group in the Cabinet. I therefore say the position of the noble Marquess is perfectly logical. It seems to me we have to make a choice whether we shall make a provision of the sort suggested by the noble Marquess in his amendment, or whether we shall agree to the other proposal which my friends say they will move at a later stage, that there shall be no nominative element in the Legislative Councils at all. Personally I would much rather have the whole Legislative Council elected with no trace of nomination at all. From that point of view I am not very much in favour of the amendment suggested by the noble Marquess ; but if in this Committee or at any later stage nomination remains, then I think I shall have to agree with the noble Marquess and accept the amendment he has proposed.

Diwan Bahadur Ramachandra Rao: I must express my surprise at the speech to which I have just listened.

Dr. Ambedkar: You may, but you cannot have it both ways.

Diwan Bahadur Ramachandra Rao : He knows very well that even under the existing system nominated members are not eligible for appointment as ministers. Section 52 clearly lays it down that no minister shall hold office for a longer period than six months unless he is an elected member of the local Legislature.

Dr. Ambedkar: That is in the melting pot.

* * * * *

Opposition to Co-option in Legislature

†*Dr. Ambedkar:* I am afraid I shall have to oppose this amendment. First of all, such experience of co-option as we have had in Bombay is not very encouraging. It has developed into the worst sort of scandal; the amount of corruption and bribery that take place are such that I for one should not like to introduce this principle in the constitution of the Legislature of Bombay.

A further objection is this. If the various communities that do not find themselves elected at the polls are to get representation of a real sort, representation which is independent of the influence of any other community, I think co-option is a principle which is certainly not going to help them, for it may very well happen that when representatives of the various communities stand for co-option only those will be in fact co-opted as may happen to be subservient to and willing to play into the hands of the majority. It seems to me this would be worse than no representation at all, and I am afraid on that ground I must oppose the amendment. But I submit, Sir, that this Sub-Committee ought to make a recommendation that the future constitution of the Provincial Legislatures should be such that there should be no nominated members at all.

Diwan Bahadur Ramachandra Rao: That is far better, of course.

Dr. Ambedkar: That is my own view of the matter. I am certainly opposed to co-option.

Diwan Bahadur Ramachandra Rao: I agree that some statement that the Legislature should be wholly elected ought to be inserted in this report, and unless some such indication is given of the views of this Sub-Committee the nominated element will continue, though I believe it is the desire of most of our members that it should disappear. A statement to that effect ought to find a place in the report. I have no doubt whatsoever that everyone of us is quite alive to the evils of nomination, and we are anxious it should disappear as early as possible. Under these circumstances I am not prepared to support the amendment, and I would favour the proposal made by my friend, Dr. Ambedkar.

Chairman: What was the proposal? I have no words here.

Dr. Ambedkar: We should say it is the view of the Sub-Committee that hereafter the Legislative Councils in the Provinces should be wholly elected.

Chairman: That is another amendment altogether, you will have to send it in writing if you want to move that.

* * * * *

‡*Chairman:* I will take your decision on this point.

Raja Narendra Nath: I support Sir A. P. Patro. I think the power of

† Proceedings of Sub-Committee No. II (Provincial Constitution), p. 194.

‡ *Ibid.*, p. 196.

nomination should be strictly confined to the representation of interests which cannot be given by election.

Dr. Shafa'at Ahmad Khan: Yes.

Raja Narendra Nath: There may be in certain Provinces some communities, such as the one to which Dr. Ambedkar belongs, for which it would be impossible to arrange election.

Dr. Ambedkar: I should not have anything to do with a constitution which did not provide the franchise for my community.

Raja Narendra Nath: The franchise will have to be arranged on a very different basis if it is to be provided for the community to which Dr. Ambedkar belongs, and therefore a limited power of nomination should be provided.

Chairman: It seems to me the majority of the Sub-Committee is in favour of clause (c) as it stands in the Report.

COMMITTEE OF THE WHOLE CONFERENCE

†Comments on the Report of Sub-Committee No. II (Provincial Constitution)—16th December 1930

Mr. Chintamani opposed the institution of 2nd Chamber in Provinces. He said, it would be a costly luxury and not an institution of public utility. In U.P. demand for 2nd Chamber comes from a small section of the community, which according to Simon Commission, is over-represented in the Provincial Legislature. He therefore considered this proposed 2nd Chamber as absolutely unnecessary and undesirable either in U.P. or any other Province in India for any length of time, in whatever conditions Dr. Ambedkar said,— “I shall like to associate myself with the remarks which have just fallen from Mr. Chintamani”.

Chairman :..... The discussion is now on paragraph 5(b).

(This paragraph deals with the procedure of appointment of Ministers.)

Dr. Ambedkar: It was moved in the Sub-Committee that the word “elected” (Elected members of the Provincial Legislature) should be dropped in view of the recommendation made by the Committee in another part of the Report that probably some part of the Legislature might have to be composed of nominated members. It was then decided that if the Committee which would be constituted to discuss the composition of the Legislature came to the conclusion that there should be a nominated member, the word “elected” should be dropped.

Chairman: The word used is “ordinarily” (“The Ministers should ordinarily be drawn”) I think that covers the point. It indicates the possible necessity of extraordinary action.

† Proceedings of the R.T.C., p. 314.

4

IN SUB-COMMITTEE No. III (MINORITIES)

Second Sitting—31st December 1930

†*Dr. Ambedkar:* Mr. Chairman, I am sure you will readily agree that the task which has fallen upon me to represent the case of the Depressed Classes is a heavy one. I think it is for the first time that the case of the Depressed Classes from the political point of view has come to be considered. The disabilities of the Depressed Classes were mentioned in almost every despatch that was recorded by the Government of India in connection with the political advancement of the country; but the despatches only mentioned the difficulties and never attempted to give any solution of those difficulties. The problem was just allowed to rest there. In view of that, and in view of other matters, namely, that in a Committee consisting of so many members we are only two to voice the grievances of 43 millions of people, and grievances which the Committee will agree are unparallel by the case of any other community that exists in India, I submit that the task is really an enormous one, and I should have expected more latitude in the matter of time allowed to me for presenting this case. But I anticipated that probably such would be the fate that would befall me, as it did, of course, at the Plenary Session; and, in anticipation of that, I and my colleague, Rao Bahadur Srinivasan, thought it advisable to submit to this Conference a written memorandum‡ giving in clear-cut language what the Depressed Classes desire by way of political safeguards in the future constitution of India. That memorandum has already been submitted and circulated among the members of this Committee, and I hope everyone of them has received it. In view of this fact, that the case of the Depressed Classes is in the possession of the members of this Committee, I do not wish to ask indulgence from the Chairman for a larger period to present the case. I will therefore summarise, only to emphasize, what I have stated in the memorandum which is

† Proceedings of the Sub-Committee No. III (Minorities), Government of India, Central Publication Branch, Calcutta, 1931, pp. 73-80.

The terms of reference to the Sub-Committee were as under:—

“The provision to be made to secure the willing co-operation of the minorities and the special interests.”

‡ The memorandum is appended at the end of this chapter as Appendix I, pp. 546-54.

already in the hands of the members of the Committee.

Sir, the first observation that I will make is this, that although there are various minority communities in India which require political recognition, it has to be understood that the minorities are not on the same plane, that they differ from each other. They differ in the social standing which each minority occupies *vis-a-vis* the majority community. We have, for instance, the Parsee community, which is the smallest community in India, and yet, *vis-a-vis* its social standing with the majority community, it is probably the highest in order of precedence.

On the other hand, if you take the Depressed Classes, they are a minority which comes next to the great Muslim minority in India, and yet their social standard is lower than the social standard of ordinary human beings.

Again, if you take the minorities and classify them on the basis of social and political rights, you will find that there are certain minorities which are in enjoyment of social and political rights, and the fact that they are in a minority does not necessarily stand in the way of their full and free enjoyment of those civic rights. But if you take the case of the Depressed Classes, the position is totally different. They have in certain matters no rights, and, where they have any, the majority community will not permit them to enjoy them.

My first submission to this Committee, then, is that it should realise that although, to use an illustration, the minorities are all in the same boat, yet the most important fact to remember is that they are not all in the same class in the same boat; some are travelling in "A" Class, some in "B" Class and some in "C", and so on. I have not the slightest doubt in my mind that the Depressed Classes, though they are a minority and are to that extent in the same boat as other minorities, are not even in "C" or "D" Class but are actually in the hold.

Starting from that point of view, I agree that, in some respects, the position of the Depressed Classes is similar to that of the other minorities in India. The Depressed Classes, along with the other minorities, fear that under any future Constitution of India by which majority rule will be established and there can be no shadow of doubt that that majority rule will be the rule of the orthodox Hindus—there is great danger of that majority with its orthodox Hindu beliefs and prejudices contravening the dictates of justice, equality and good conscience, there is a great danger that the minorities may be discriminated against either in legislation or administration or in the other public rights of citizenship, and therefore it is necessary to safeguard the position of the minorities in such a manner that the discrimination which is feared shall not take place.

From that point of view, however, what is asked is that the minorities shall have representation in the Legislature and the Executive, that they shall have representation in the public services of the country, and that the constitution shall provide that there shall be imposed on the future

legislatures of India, both Central and Provincial, certain limitations on their legislative power which will prevent the majorities from abusing their legislative power in such a manner as to enact laws which would create discrimination between one citizen and another. I say, this circumstance—this danger of discrimination is common to all minorities, and I, as a representative of the Depressed Classes, join with the demand which the other minorities have made in this regard.

Now, Sir, I will come to those circumstances which mark off the Depressed Classes and the other minority communities in India. I will at once say that the way in which the position of the Depressed Classes differs from the position of the other minority communities in India is this, that in the first place the Depressed Classes are not entitled, under present circumstances, to certain civic rights which the other minorities by law enjoy. In other words, in the existing situation the Depressed Classes suffer from what are called civic disabilities. I will give you just one or two illustrations, because I know I have not much time at my disposal.

Take the case of employment in the Police or in the Army. In the Government of India Act it is provided that no subject of His Majesty shall be deprived of the right of being employed in any public service by reason of his caste, creed or colour. Having regard to that, it is obvious that every member of the Depressed Class community who is capable, who is in a position to satisfy the test laid down for employment in any public department, should have the right to enter that public department. But what do we find ? We find this. If a Depressed Class man applies for service in the Police Department today, he is told point blank by the executive officers of the Government that no member of the Depressed Classes can be employed in the Police Service, because he is an untouchable person. In the case of the Military the same situation obtains. Up to 1892 practically the whole of the Madras Army and the whole of the Bombay Army consisted of members drawn from the Depressed Classes. All the great wars in the history of India have been fought with the help of sepoys drawn from the Depressed Classes, both in the Bombay Presidency and in Madras. Yet in 1892 a rule or regulation was made which debarred the Depressed Classes from entry into the Military Service, and even today, if you ask a question in the Legislative Council as to why this is done, the answer is that the bar of untouchability does create insuperable difficulties in the recruitment of these classes.

I am quite sure that this disability is as effective as it was imposed by law, and the section in the Government of India Act, which says that all His Majesty's subjects shall have free entry into employment provided they are otherwise fit, is altogether set at naught.

I can cite many other cases. For instance, there is the difficulty the Depressed Classes find in getting themselves accommodated in public inn when they are travelling, the difficulty they find in being taken in an omnibus

when travelling from one place to another, the difficulty they find in securing entry to public schools to which they have themselves contributed, the difficulty they find in drawing water from a well for the building of which they have paid taxes, and so on. But I need not go into all these cases. The one circumstance which distinguishes the position of the Depressed Classes from that of the other minorities is that they suffer from civic disabilities which are as effective as though they were imposed by law.

The second and, in my opinion, the most hideous distinction which marks the Depressed Classes is that the Depressed Classes are subject to social persecution unknown in any other part of the world. In that connection I want to read to the Sub-Committee a small extract from the Report of a Committee appointed by the Government of Bombay in the year 1928 to investigate into the position of the Depressed Classes. That Committee tried to find out whether there were any impediments in the way of the Depressed Classes enjoying such rights as the law gave them in common with other citizens of the State :

“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, opposed 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 lands, 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 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 the use of the common well, but

cases have been by no means 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 the bridegroom on the horse through the public street.

“We do not know of any weapon more effective than this social boycott which could have been invented for the suppression of the Depressed Classes. The method of open violence pales away before it, for it has the most far-reaching and deadening effects. It is more dangerous because it passes as a lawful method consistent with the theory of freedom of contact. We agree that this tyranny of the majority must be put down with a firm hand if we are to guarantee the Depressed Classes the freedom of speech and action necessary for their uplift.”

A third thing which the Depressed Classes fear more than any other community is that whatever representation they may be granted in the new legislature, they will always be in a very small minority, and consequently, having regard to the apathetic attitude of the orthodox classes towards the Depressed Classes, there is always the danger of the interests of the Depressed Classes, being neglected altogether, or some action taken which may ultimately prove to be prejudicial to their interests.

As against these special circumstances which affect the Depressed Classes, we propose the following safeguards. First of all, we want a fundamental right enacted in the constitution which will declare “untouchability” to be illegal for all public purposes. We must be emancipated, so to say, from this social curse before we can at all consent to the constitution ; and secondly, this fundamental right must also invalidate and nullify all such disabilities and all such discriminations as may have been made hitherto. Next, we want legislation against the social persecution to which I have drawn your attention just now, and for this we have provided in the document which we have submitted by certain clauses which are based upon an Act, which now prevails in Burma. I need not go into that detail just for the moment. Then what we want is this, that liability of the executive officers of the Crown for acts of tyranny or oppression shall be made effective. Today under sections 110 and 111 of the Government of India Act that liability is not real. And lastly, what we want is a right to appeal against acts of neglect or prejudice to the Central Government and failing that, to the Secretary of State and a Special Department in the Government of India to take charge of our welfare.

This is, in general, the cases for the Depressed Classes, and the safeguards that they want. Let me just say a word or two as regards the most important of them—namely, their right to adequate representation in the legislature. Now, on the question of the granting of representation of the Depressed Classes, we are absolutely unanimous that that representation shall be by election and not by nomination. The system of nomination has

produced in the case of the Depressed Classes, results which we all say are abominable. The system has been abused in a manner in which it was never expected that it would be abused, and it has never given the Depressed Classes the real and independent representation which they must have as their safeguard. Under no circumstances, therefore, will the Depressed Classes accept representation by nomination.

As to the question of joint or separate electorates, our position is this—that if you give us adult universal suffrage the Depressed Classes, barring a short transitional period which they want for their organisation, will be prepared to accept joint electorates and reserved seats; but if you do not give us adult suffrage, then we must claim representation through separate electorates. That is our position.

Now regarding the question of the number of seats, it is not possible, of course, for us to state definitely what that number should be, except to state that we will not tolerate any invidious discrimination. We insist upon equality of treatment. But the whole question, in my opinion, is entirely a relative question : it is a question that can be determined only in connection with and by taking into account, the seats that will be allotted to the other minority communities ; but I will make two observations in this connection. The first observation that I will make is this—that we, the Depressed Classes, demand a complete partition between ourselves and the Hindus. That is the first thing. We have been called Hindus for political purposes, but we have never been acknowledged socially by the Hindus as their brethren. They have taken to themselves all the political advantage with our numbers, with our voting strength, have given to them, but in return we have received nothing. All that we have received is a treatment which is worse than the treatment that they themselves have accorded to other communities whom they do not call Hindus. That must be the first thing, therefore, that we want to be done.

The second thing that I will say concerns the question of weightage. Now, this system—I will be plain, to my mind has been abused. I am not against the principle of weightage. I do not accept the principle that in all circumstances every minority must be confined to its population ratio. A minority may be so small that its population ratio may give a representation which may be wholly inadequate for the purpose of its protection. It may be a representation which may be of no consequence at all. If, therefore, you want to protect a minority adequately and really, then in certain circumstances the principle of weightage will have to be conceded. But the distribution of weightage must be subject to some uniform and intelligible principle. In our opinion weightage is to be conceded because a minority is weak, either in numbers, or because its social standing is low, or its educational standing is backward as compared with others, or because its economic strength is not sufficient to place it on a fighting par with other communities.