

the thing as I see it. You know in the White Paper there is one condition laid down for the inauguration of the Federation: that is the joining of a certain number of Indian States. Then for the transfer of finance an important condition is laid down, and that is the introduction of the Bank. What I want to ask you is this: Would the Princes be prepared to join the Federation if finance was not a transferred subject?

Mir Maqbool Mahmood: I have no definite instructions on that question, but I do not think that, considering the trend of their discussions, they would be prepared to.

3001. *Dr. B. R. Ambedkar*: They would not be prepared to join the Federation if finance was not a transferred subject?

Mir Maqbool Mahmood: I do not think so.

3002. *Dr. B. R. Ambedkar*: Coming to other matters, in the course of the evidence that you gave last time, Mir Maqbool, you stated that in case all the Princes did not join the Federation at once you would like to have a system introduced whereby those Princes who would join the Federation should be allowed to have the benefit vicariously of the votes of those who did not join. I have put it correctly?

Mir Maqbool Mahmood: That represents only one aspect of the position.

3003. *Dr. B. R. Ambedkar*: That is the position you take?

Mir Maqbool Mahmood: That is half the truth, not the full truth. We contemplate two aspects of the position.

3004. *Dr. B. R. Ambedkar*: I know your Confederation?

Mir Maqbool Mahmood: Not that: One is, that States which are entering will do so on the assumption that the States' position in the Federation would be 40 per cent. in the Upper House and one-third in the Lower House; that is with regard to the States which entered, individually; the other is in regard to those States which are outside, that they are also affected by the decisions of Federation. Those are the two aspects, and I understood your question referred to the second.

3005. *Dr. B. R. Ambedkar*: I just want you to concentrate your attention, if you please, on this point: I thought I understood from you, last time, that you wanted to lay down as one of the conditions, that if all the States did not enter the Federation at once in the beginning, and that if only some entered and other kept out. you would like a system of weightage, so to say, in which those Princes who entered the Federation would claim, or cast, votes vicariously, those which were the share of those which did not enter. That is the position?

Mir Maqbool Mahmood: Yes.

3006. *Dr. B. R. Ambedkar*: Now what I want to ask you with regard to that, is this: What would be the position of those States which would not enter the Federation at the start, but whose votes were used by those who did enter *vis-a-vis* the Federation, with respect to taxation and with respect to Federal Legislation? Would Federal Legislation be operative in

those States which did not enter, but whose votes were used ?

Mir Maqbool Mahmood : It would, substantially, be the same as it is now.

3007. *Dr. B. R. Ambedkar* : No ; my point is this : Would the Federal law be operative in those States which did not enter the Federation, but whose voting strength was used by States which did enter the Federation ?

Mir Maqbool Mahmood : In certain matters of taxation, it would apply in spite of it. In other matters it would apply by negotiation.

3008. *Dr. B. R. Ambedkar* : Would they be regarded as member States of the Federation ?

Mir Maqbool Mahmood : No.

3009. *Dr. B. R. Ambedkar* : They would not be? *Mir Maqbool Mahmood* : No.

3010. *Dr. B. R. Ambedkar* : And yet their votes would be used ?

Mir Maqbool Mahmood : Yes. In the same way as under Article 147 of the Canadian Constitution, Nova Scotia and New Brunswick exercised the votes of Edward Island in the Senate that the latter formed the Federation.

3011. *Dr. B. R. Ambedkar* : Now I want to ask some questions about nationality. I do not know which of you gentlemen would address yourself to that matter. I think it is common ground that the subjects of the Indian States are aliens, so far as British India is legally concerned ?

Mr. K. M. Panikkar : They are British protected people, but, in law, they are aliens.

3012. *Sir Hari Singh Gour* : They are not British subjects ?

Mir Maqbool Mahmood : They are not British subjects.

3013. *Dr. B. R. Ambedkar* : They come within what is known as the Foreigners' Act in British India ?

Mir Maqbool Mahmood : I do not think so.

3014. *Dr. B. R. Ambedkar* : You can take it from me, that they do. Anyhow, it is common ground, that they are not British subjects, and you do not propose, I suppose, to regularise the position which would be most compatible and consistent with All-India Federation, to have one common Indian nationality ?

Mir Maqbool Mahmood : That is not contemplated.

3015. *Dr. B. R. Ambedkar* : So I take it that the result of this will be that if the situation which obtains now continues, aliens (I mean subjects of the Indian States) would be entitled to the franchise, would be entitled to stand as members of the Federal and the Provincial Legislatures, and would be entitled to hold office of trust under the Crown, without being subjects of the Crown ?

Mir Maqbool Mahmood : That is possible, even now.

3016. *Dr. B. R. Ambedkar* : I know it is possible.

Mir Maqbool Mahmood : It has happened, even now.

3017. *Dr. B. R. Ambedkar* : But what I want to ask is this : Do you not regard that as an anomalous thing ?

Mir Maqbool Mahmood : We do not think so.

3018. *Dr. B. R. Ambedkar* : Can you cite to me any Constitution in which an alien is entitled to the franchise, is entitled to stand as a member of the Legislature, and is further entitled to hold office of trust ?

Mir Maqbool Mahmood : Even here our distinguished Delegate, Sir P. Pattani, was a member of the Executive Council.

3019. *Dr. B. R. Ambedkar* : I know that, but what I am trying to impress upon you is that that is an anomalous thing, something which is not found in any other Federation ?

Mir Maqbool Mahmood : I cannot cite an instance at the moment.

3020. *Dr. B. R. Ambedkar* : You think it is a very wide system in which a subject of an Indian State may hold an office of trust under the Crown, and yet may be subject to what is known as the Foreigners' Act ?

Mir Maqbool Mahmood : So long as he takes the Oath of Allegiance to the Constitution.

3021. *Dr. B. R. Ambedkar* : Do you think that would take him out of the purview of the Foreigners' Act ?

Mir Maqbool Mahmood : If it is necessary for you to reconsider that Act, you might do so.

3022. *Dr. B. R. Ambedkar* : That is the point I am putting. Would it, therefore, not be desirable to have a common Indian nationality ?

Mir Maqbool Mahmood : I am afraid we have not considered the legal implications of this position.

3023. *Mr. Jayakar* : Has this question of a common nationality been considered by the Princes at all ?

Mir Maqbool Mahmood : Yes.

3024. *Dr. B. R. Ambedkar* : And they do not approve of it ?

Dr. P. K. Sen : The Princes have not denied the allegiance of their subjects to the British Crown, subject to their allegiance to the Rulers of the States themselves. That is, a supplementary allegiance has always been considered in that sense, and therefore they have always been allowed, in Provinces of India the same privileges as British Indians.

3025. *Dr. B. R. Ambedkar* : I am talking about the legal position as it would be ?

Mir Maqbool Mahmood : I do not think, if I may say so with respect, that analogy would help us very much in a case of this kind, because the position as regards the States in India and their relationship with the Crown is undoubtedly unique, and you cannot, therefore, draw much help by analogies of that description ; but as a matter of fact, the question of nationality is preeminently important, and I dare say some proper solution could be arrived at after consideration, but it is hardly possible to give a definite answer with regard to the legal position and all the implications arising therefrom, in

evidence. I said that in a matter like this it is very difficult to derive any help from analogy. What is, or is not, present in other parts of the world will not very much help us, because the position of the States in regard to the British Crown is very unique and, therefore, we have it here (it may be anomalous) that whereas the State subject owes allegiance to his own Ruler, he also owes allegiance to the Crown, and in order to adjust the legal position and all the implications arising therefrom, the matter has got to be considered in all its bearings. It is hardly possible to give an answer in the course of evidence as to what should be the legal implications of such a position.

3026. *Mr. Jayakur* : Therefore, may I take it that no final and unalterable decision upon this point has been arrived at by the States ?

Mir Maqbool Mahmood : No.

3027. *Dr. B. R. Ambedkar* : I am satisfied that you regard the position as anomalous and worthy of consideration ?

Mir Maqbool Mahmood : It is, undoubtedly, worthy of consideration.

3028. *Dr. B. R. Ambedkar* : Now I want to ask you a question about this Federal Court. Will you look at paragraph 155 of the White Paper ? You will see there that there is no provision made for a Federal Court having any jurisdiction in a dispute arising between a citizen from an Indian State *versus* a British Indian Province, or a citizen of a British Indian Province *versus* an Indian State. Do you not agree that it is necessary to provide a forum whereby a British Indian subject having a cause of action arising out of a Federal law against an Indian State should have a forum wherein he could vindicate his right ?

Mir Maqbool Mahmood : As I understand the White Paper, it is contemplated that Section 155 would apply only to certain special cases where the parties are State and State, or State and Province, or State and Federation, or Province and Federation. As regards a particular individual having a cause of action against a British Indian Province or a State, there is really no provision that the Federal Court will have jurisdiction. It is evidently implied that the cause of action arises or the place of residence of the defendant, as is ordinarily the case according to the Code of Civil Procedure, will determine the forum where the litigation will take place.

3029. *Dr. B. R. Ambedkar* : That is not the question. The question is this : Whether the Federal Court would have jurisdiction ?

Mir Maqbool Mahmood : No, it is not contemplated that the Federal Court will have jurisdiction.

3030. *Dr. B. R. Ambedkar* : Supposing a dispute arises out of a cause of action out of a Federal Legislation, the ultimate forum, wherever the original suit may lie, certainly must be the Federal Court ? May we not first look at the original litigation, the suit itself ?

Mir Maqbool Mahmood : It evidently contemplates that the suit will lie, either in British India or in the State, as the case may be. Then we come to the question of appeal.

3031. *Dr. B. R. Ambedkar* : But the suit may be of such a large character that the jurisdiction may lie with the Federal Court itself?

Mir Maqbool Mahmood : I do not think so.

3032. *Dr. B. R. Ambedkar* : All that I want to draw your attention to is this, that in the provisions contained in paragraph 155, there is no provision made for a private citizen to vindicate his rights arising out of Federal Legislation against a Native Indian State, or a citizen of an Indian State against an Indian Province?

Mir Maqbool Mahmood : Evidently.

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3036. *Dr. B. R. Ambedkar* : Will you please refer to paragraph G of your Memorandum, Document 21, sub-paragraph (c) ?

Mir Maqbool Mahmood : Yes.

3037. *Dr. B. R. Ambedkar* : At the end of that paragraph you suggest that in case a particular State fails to enforce the decree of the Federal Court powers should be given to the Viceroy to do so?

Dr. P. K. Sen : Yes.

3038. *Dr. B. R. Ambedkar* : Why do you want to give this power to the Viceroy and not to the Governor-General or to the Federal Ministry? The Federal Court is part of the Federal Constitution?

Dr. P. K. Sen : In the event of a particular order of the Federal Court not being carried out by the State unit, it seems that the appropriate person to see that it is carried out is the Viceroy.

3039. *Dr. B. R. Ambedkar* : Why Viceroy? Why not the Governor-General or the Federal Ministry? Why the Viceroy?

Dr. P. K. Sen : Because the Viceroy is in touch with the State in his position as representative of the paramount power to see that a particular function which the State ought to fulfil is fulfilled.

3040. *Dr. B. R. Ambedkar* : No, I take a different view, and I want to put that view to you. The Federal Court is part of the machinery of the Federal Government, and it is the Governor-General who, under the White Paper proposals would be the person who would represent the Federation and not the Viceroy. The appropriate party therefore to have this power, if anyone is to have it, is the Governor-General and not the Viceroy?

Dr. P. K. Sen : The question is whether the Governor-General as Governor-General, and as head of the Federal Executive, will be able to bring to book, if I may so use the expression, or, rather, to enforce the particular order in the State.

3041. *Dr. B. R. Ambedkar* : My point is that he should be able to do it, not the Viceroy. The Viceroy represents the Crown in relation to para-mountcy in these things?

Dr. P. K. Sen : What is the sanction for the Governor-General? We apprehend that it would be the Viceroy who would have that particular

relationship of control as representative of the paramount power to bring it into effect.

3042. *Dr. B. R. Ambedkar* : I do not know whether I have made myself clear. My point is that the Federal Court is part of the Federal Constitution ?

Dr. P. K. Sen : Undoubtedly.

3043. *Dr. B. R. Ambedkar* : And the head of the Federal Constitution will be the Governor-General and not the Viceroy ?

Dr. P. K. Sen : Yes.

3044. *Dr. B. R. Ambedkar* : Consequently, the enforcement of the decisions of the Federal Judiciary, which is part of the Federal Constitution, properly belongs to the Governor-General and not to the Viceroy, and therefore it is the Governor-General who ought to have the power of enforcement ?

Dr. P. K. Sen : All I can say is that it seems that the proper procedure would be for the Governor-General to proceed through the Viceroy.

3045. *Dr. B. R. Ambedkar* : I will not pursue that point further. Mr. Panikkar, in reply to a question put by Mr. Jayakar, you said that it would be necessary to have the prior consent of the Indian States before the subjects which are going to be reserved at the centre are transferred, especially the Army. Have I represented you correctly ?

Mr. K. M. Panikkar : Quite correctly.

3046. *Dr. B. R. Ambedkar* : Do I understand you to say that if the States assent, at the next time when a question for discussion arises, that the Army should not be a transferred subject, it would not be transferred ?

Mr. K. M. Panikkar : Presumably so.

(4)

Sir Michael O'dwyer, G.C.I.E., K.C.S.I.

*3356. *Dr. B. R. Ambedkar* : In your evidence I find that you make a very sharp distinction between what are called the intellectual classes, or intelligentsia and the masses. I want to ask you this : Do you make any difference in the situation when the intellectuals which you have in mind are drawn from one particular stratum of society and the situation in which the intellectuals are drawn from the different strata of society ?

Sir Michael O'dwyer : I do. I think if they are drawn from different strata they will have a wider outlook.

3357. *Dr. B. R. Ambedkar* : Do not you think in the present circumstances in India the intellectual class is really a composite class not merely drawn from the Brahmins but from the non-Brahmins, the Muslims, the Depressed Classes ?

Sir Michael O'dwyer : It varies very much in the different parts of India. In the North of India the intellectual classes are predominantly Hindu out-

*Minutes of Evidence, Vol. II-A, 29th June 1933, pp. 406-07.