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On January 24, 1947, the Constituent Assembly appointed an Advisory Committee
(including Sardar) consisting of 50 members, with 10 more members to be nominated thereafter by the President at any time or at different times. Sardar was nominated its Chairman.

Every attempt was made to make the Committee representative. The members were drawn from the Muslims, Scheduled Castes, Sikhs, Anglo-Indians, Parsis and representatives of tribal areas in different parts of the country, as also from the Nepalese settled in India.

The Advisory Committee appointed three special sub-committees:

- (a) Sub-Committee I, dealing with Fundamental Rights and clauses for the protection of minorities;
- (b) Sub-Committee II, dealing with tribal areas on the North-West Frontier;
- (c) Sub-Committee III, dealing with tribal areas on the North-East Frontier and excluded and partially excluded areas.

Sub-Committee I was divided into two sections: one to deal with Fundamental Rights, the other with the protection of minority communities, with Dr. H. C. Mookerjee (later the Governor of West Bengal), a broad-minded and highly patriotic Christian, as the Chairman.

The Advisory Committee, under the Chairmanship of Sardar, met in the last week of July 1947 and took material decisions, the discussions being free and frank. However, the shadow of the coming partition was upon us.

The Sub-Committee's decision to do away with separate electorates for the minorities was accepted by the Advisory Committee by an overwhelming majority. Out of the 58 members present, only 3 opposed *(including Mody)*

When the deliberations on the safeguards commenced, H.C. Mookerjee, speaking on behalf of the Christian community, gave up all claims to safeguards, in the interest of national solidarity, thereby creating the right atmosphere.

Sir Homi Mody, the leader of the Parsis, also announced that his community did not require specific reservation. This announcement added to the strength of the impact made by H.C. Mookerjee.

The Advisory Committee on Minorities, Fundamental Rights etc; in their ~~xx~~ ~~xx~~ report dated August 8, 1947, had recommended certain political safeguards for minorities. These were accepted by the Constituent Assembly during the August 1947 session and were embodied in Part XIV of the Draft Constitution. These included reservation of seats for the minorities in the central and provincial assemblies, with special provisions for Anglo-Indian representation, and reservation

in services and posts, also with special provision for Anglo-Indians; there was a special provision with respect to educational grants for the Anglo-Indians while another Section (299) provided for the appointment of special officers to look after the minorities in the Union and the States.

The Constituent Assembly decided, in accordance with the Report, that there should be no reservation of seats for Anglo-Indians; but the President of the Union and the Governors of Provinces should have the power to nominate representatives of this minority in the Central and the Provincial Legislatures, respectively, if as a result of the general election they failed to secure representation.

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SUB-COMMITTEE ON FUNDAMENTAL RIGHTS

Most members of the Constituent Assembly, other than those owing allegiance to the Muslim League, were from the beginning of the view that a modern democratic constitution, such as the one we were framing, should contain guarantees securing fundamental freedoms to the citizens. Moreover, with the possibility of the Muslim League coming into the Constituent Assembly, most of us felt that, if the Cabinet Mission Plan was implemented, all citizens throughout the country must be guaranteed uniform Fundamental Rights.

The Sub-Committee on Fundamental Rights of the Advisory Committee of the Constituent Assembly consisted of Kripalani, Alladi Krishnaswami Aiyar, Maulana Azad, Sardar Harnam Singh, Ambedkar, K.T. Shah, Rajkumari Amrit Kaur, M.R. Masani

and myself, to which the President nominated Smt. Hansa Mehta and, later K.M. Panikkar and Jairamdas Daulatram.

Before the Sub-Committee met, Sir B.N. Rau had prepared a note containing a survey of Fundamental Rights as guaranteed by the Constitutions of different countries, as also a draft of articles. Ambedkar, K.T. Shah and myself also submitted elaborate notes on the subject.

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At the first session of the Sub-Committee on Fundamental Rights, which met on 27th February 1947, Acharya Kripalani, then the President of the Congress, was elected its Chairman.

We felt the glory of the moment: we were all building up a great and free democratic State and, according to us, everything depended upon the fundamental freedom of its citizens. Naturally we were rather an opinionative group, of course with the exception of Sir B.N. Rau, who never departed from his balanced way of looking at things and always spoke with judicial detachment.

Of us all, K.T. Shah, the born leftist intellectual, was the most bellicose. On 23rd December 1946, he submitted to the President a note, almost a treatise, on Fundamental Rights; it was of such a drastic character that, if it was accepted, no effective government would be possible in this country.

K.T. Shah wanted the abolition of all proprietary rights in the country and the constitutional guarantee to secure to every citizen the right, among others, to free education and the right to be maintained at public expense during periods of illness or temporary disability through accident, or old age, or maternity. He also wanted that every Directive Principle-- Precepts as we then called them-- should be justiciable.

Rajkumari Amrit Kaur, Smt. Hansa Mehta and Bri M.R. Masani formed a group of idealists.

Rajkumari was against making religious freedom justiciable. Smt. Hansa Mehta was interested in establishing complete equality for women, which sometimes led us into interesting discussions.

Masani, supported by Rajkumari Amrit Kaur, Smt. Hansa Mehta and Ambedkar, suggested that a provision should be made for a Common Civil Code applicable to all citizens. The rest of us voted down the suggestion; it was outside the scope of Fundamental Rights; even if it were not so, any attempt to force a Civil Code on the Muslims by a majority vote would shake their confidence and prevent them from adjusting themselves to the new conditions. Even after twenty years, the obstacle still persists.

Panikkar, when appointed to the Sub-Committee, wanted Parliament to be supreme;

even the fundamental freedoms, later cast into Article 19, should not, according to him, be made justiciable.

Alladi Krishnaswami, Jairamdas and Ambedkar - except where his special interests regarding Harijans were concerned - and myself were pragmatists. Sardar Harnam Singh, who took the same view as we did, was particularly interested in the Sikhs' right to wear 'Kirpan'.

Our first step was unanimously to overrule Clause 20 of the Statement of May 16, 1946. We decided that all citizens of the Union and wherever necessary all persons within the territory of the Union should have uniform Fundamental Rights.

There was considerable discussion as to whether the directive principles should be set forth in the Constitution. Alladi Krishnaswami opposed it; so did I. Any Directive Principle prescribed at that stage, we thought, could not meet the needs of changing situations and Parliament should be left to decide its own policy, subject ~~in~~ to Fundamental Rights.

Ultimately, the Sub-Committee decided that the social policy of the Constitution should be divided into justiciable rights, that is to say, rights which can be enforced by legal action, and non-justiciable principles, which are not capable of, or suitable for, enforcement by legal action.

28th April to 2nd May,
1947.

From pg 451 onwards.

Interim Report on Fundamental Rights.

Clause 7 - Rights of Equality.

MRM(Bombay: General) : Mr. President, the amendment of which I have given notice is an amendment to the amendment given notice of by Mr. Santhanam. It reads as follows:

" No title other than one denoting an office or profession shall be conferred by the Union.

No citizen of the Union shall accept any title from any foreign State.

No person holding any office of profit or trust under the State shall, without the consent of the Union Government, accept any present, emoluments, or office of any kind from any foreign State. "

In sentence I, paragraph 1, the words "other than one denoting an office or profession" may be deleted, so that the clause would read "No title shall be ~~conferred~~ by the Union." In paragraph 3 "or title" should be added in the last line of the clause so as to read:

" No person holding any office of profit or trust under the State shall, without the consent of the Union Government, accept any present, emoluments, office or title of any kind from any foreign State."

That is, [^] understand, the consensus of opinion. If the House would permit this modification to be made, it will perhaps become a non-controversial amendment.

Mr. President: Mr. Masani has given notice of an amendment and he just wants the permission of the House to drop a few words in the amendment as he has suggested, so that his amendment would read like this:

" No title shall be conferred by the Union.

No citizen of the Union shall accept any title from any foreign State.

No person holding any office of profit or trust under the State shall, without the consent of the Union Government, accept any present, emoluments, office or title of any kind from any foreign State."

MRM: In commending this amendment to the House, I would point out that changes made in the present clause are in two directions. The first, which is an important one, is that the word "heritable" be dropped. This will mean that the Free Indian State will not confer any titles of any kind, ~~what~~ whether heritable or otherwise, that is, for the life of the incumbent. It may be possible for the Union to honour some of its citizens who distinguish themselves in several walks of life like science and the arts, with other kinds of honours not amounting to titles; but the idea of a man putting something before or after his name as a reward for service rendered will not be possible in a Free India. I think, Sir, the House will support this

principle, because it has been found not only in subject countries but even in so-called free countries, that title become dangerous and a source of corruption both to those who bestow them and to those who accept them. Therefore, relying on patriotism, self-respect and the motive of service, we shall do without titles of any kind.

The other modification is to distinguish between citizens of the Union and those holding office under the State. Citizens of the Union, in the clause as ~~amended~~ as amended, will not be free to accept any title from any foreign State while persons holding any office of profit or trust under the State would be able to accept emoluments or presents from foreign Governments only when their own Govt. permits it. That, Sir, would permit diplomats and others who might be permitted by their own Government to accept tokens of respect or appreciation from foreign Governments. I take it, Sir, that the ~~market~~ meaning of the amendments has been made clear and I do hope that in the interest of equality between human beings and of democracy, the change which drops the word "heritable" will be accepted as well as the other change which I have indicated."

Clause II - Rights of Freedom.

MRM(Bombay: General) : *What vote?*

The amendment was put to the vote. It was adopted.

Mr. President:- I now put the amendment to ^{vote}.

The amendment was adopted.

Mr. President:- This becomes now the amended clause. I put the amended clause to vote.

The clause, as amended, was adopted