

5406

The following extracts quoted from the book, "The Endless Crisis," edited by Francois Dughene.

Pages 122 to 123.

MRM: I happen to be chairman of the U.N. Sub-committee on Discrimination and Minorities and studied your racial problem here in this country in 1950-52. Let me say that as a student of this subject I find a remarkable amount of advance and change during these years. It may be much less than we would desire, but to feel that integration is not advancing is a mistake. Integration is advancing, even though slowly. There are less and less members of the pure African race in this country, and I can look forward to a day, maybe not in my lifetime, when the United States will catch up with the Brazilian pattern. I had the chance to be ambassador in Brazil and I admired the way in which this process of integration had been carried very much further forward than you have been able to do in this country.

In which part of the world do people have more power to share in determining their destiny than in the United States? I'd be glad to know of such a country. Or is it because the American people by and large do not follow the wishes of some of us that we think they are powerless? According to a Louis Harris poll yesterday in The New York Times, seventy percent of the American people are conservatives, while only seventeen percent are liberals. Would we think they were more powerful if seventy percent had voted liberal and only seventeen percent had voted for a conservative candidate? There's very much more of the organization man in Western Europe and in our countries than in the United States. This very seminar is a testimony to the live debate, the dissent, we find better expressed in American periodicals of a high order than anywhere else in the world.

Page 142.

MRM: I must assure Mr. Peretz that in my country (India) there's no advertising campaign to make people appreciate the virtues of scooters or washing machines or other gadgets. Even the villager, given half a chance, grabs these because there is a real craving for them. But even putting aside the standard of life, I would like to suggest that the United States does not lag in regard to social justice, compassion and other nonmaterial values. Many years ago, Morgan Philips, the secretary of the British Labour Party, said he thought the United States was a better socialist society than Britain or Scandinavia, not to mention the Communist countries. The inequality between the most skilled and least skilled workers in factories is less in America than in my country or Western Europe or the Soviet Union.

Pg.56.

The Advisory Committee was set up on January 24, 1947 with 50 members. MRM among those elected.

Pg.64-65

On 27th February 1947, Vallabhai Patel was elected Chairman and 5 sub-committees were set up. There was the Fundamental Rights Sub-Committee with Acharya Kripalani as Chairman and only 10 members including MRM. The members included (1) Acharya J.B. Kripalani, (2) Mr. M.R. Masani, (3) Professor K.T. Shah, (4) Rajkumari Amrit Kaur, (5) Sir Alladi Krishnaswami Ayyar, (6) Mr. K.M. Munshi, (7) Sardar Harnam Singh, (8) The Hon'ble Maulana Abul Kalam Azad, (9) Dr. B.R. Ambedkar, (10) Mr. Jairamdas Daulatram.

The Minorities Sub-Committee was also set up with Sir H.R. Mody as one of its members.

Pg.114-115.

The Fundamental Rights Sub-Committee met on February 27, 1947 with MRM among those present. It is mentioned that MRM was not in favour of including rights which cannot be enforced by law. He suggested the setting up of an independent supreme judicial authority for pronouncement of judgments on the validity of laws which may infringe the fundamental rights. He also pleaded for the insertion in the Constitution of fundamental rights of 'groups' (of citizens) in addition to the rights of citizens. "In the end, there was a consensus that there should be some rights which were enforceable and others which were to be non-enforceable.

Pg.119.

At a meeting on March 25, 1947, MRM wanted it to be recorded that it shall be open to the citizen, at his option, to use the Roman script as an alternative to Devanagari or Persian script.

Pg.123.

At a meeting on March 26, 1947, it is stated on page 123 that MRM and Professor Shah dissented from the inclusion among fundamental rights of any provision guaranteeing institutions belonging to any religious community. They said that they would submit a note of dissent.

On the same page it is recorded that Prof. K.T. Shah's proposal that the state would be ~~an~~ solely secular organization was not accepted by the sub-committee.

also,

P a g e

125-126.

At The meeting on March 27, 1947, the question of forced labour or 'begar' came up/also compulsory military service. The committee decided by a majority vote that the ~~provision~~ provision should be included prohibiting forced labour, subject to certain exceptions. It was decided by 5 votes to 4 that they should cover specified forms of public service other than service in the armed ~~xxx~~ forces. MRM, Rajkumari Amrit Kaur, Mr. Jairamdas Daulatram and Mrs. Hansa Mehta stated that they would submit a minute of dissent. A separate vote was taken on the proposal whether military service should also be excepted. The proposal was lost by 5 to 4. The dissenting members said that they would submit a minute of dissent.

Quoted

At a meeting on March 28th, 1947, MRM suggested that a provision should be made for a common civil code applicable to all citizens. It was decided by a majority that this was outside the scope of fundamental rights. The minority consisted of Mr. Masani, Rajkumari Amrit Kaur, Mrs. Hansa Mehta and Dr. Ambedkar.

from

Article XI was decided to be dropped.

Page

MRM proposed that a clause in the following form, based on Article 54 of the Swiss Constitution, be included:

No impediments to marriages between citizens shall be based merely upon difference of religion.

128.

The proposal was lost by 5 votes to 4. The minority consisted of MRM, Rajkumari, Amrit Kaur, Mrs. Hansa Mehta and Dr. Ambedkar.

The majority that defeated the proposal for a common civil code and facilities for inter-marriages of citizens, consisted of Acharya Kriplani, Sir Alladi Krishnaswami Ayyar, Mr. K.M. Munshi, ~~Mr. Masani~~ and Mr. Jairandas Laultram.

P.136.

At a meeting on March 31, 1947, it was then decided that the directive principles of social policy should be prefaced by a clause for they should not be cognizable by any court.

The Draft Report of the sub-committee was submitted on April 3, 1947. In this it was mentioned that Fundamental Rights could be divided into 2 classes, namely, justiciable and non-justiciable:-

Quoted

DRAFT REPORT OF THE SUB-COMMITTEE

April 3, 1947.

from

Council House,
New Delhi, the 3rd April,
1947.

Page

To

The Chairman,
Advisory Committee on Minorities,
Fundamental Rights, etc.

Sir,

We, the undersigned, members of the Sub-Committee on Fundamental Rights appointed by the Advisory Committee on the 27th February 1947 have considered the matter referred to us and have now the honour to submit this our report.

2. We recommend that provisions on the lines set out in the Annexure be incorporated in the new Constitution so as to be binding upon all authorities, whether of the Union or the units.

3. We have attempted to divide fundamental rights into two classes:-

(1) Justiciable rights, that is to say, rights which can be normally enforced by legal action, and

(2) Non-justiciable rights, that is to say, those which are not normally either capable of, or suitable for, enforcement by legal

action.

....3/-

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Q U O T E D

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Typical of the former is the right which requires that the State shall not deprive a citizen of his liberty without due process of law. It is obvious that if this right is infringed, the citizen can and should have redress in a court of law, for it is possible for the court to find in a given case whether the right has been infringed or not. Typical of the latter is the right which requires the State to endeavour to secure a decent standard of life for all workers. Obviously, it is as impossible for a worker to prove, as for a court to find, that a general right of this kind has been infringed in a given case. We have, accordingly, put justiciable rights and non-justiciable rights into separate chapters and have made it clear that the latter are intended to be directions for the general guidance of the State and are not cognizable by any court.

(We have, etc.)

Pg.146

A letter written by Rajkumari Amrit Kaur to B.N. Rau putting in a _____ in record to compulsory service, clause 15 and _____, clause 16.

The Minutes of Dissent to the Draft Report on April 14, 1947, MEM was a signatory to all of them:-

MINUTES OF DISSENT TO THE DRAFT REPORT

April 14, 1947.

I

Clauses 8 and 25 give the citizen the option to learn and use the national language through the medium of either the Devanagari or the Persian script. I regret that my colleagues on the sub-committee did not find it possible to agree to the option being extended to the use of the Roman script as a further alternative. While those who have received English education may form a small part of our population, the fact remains that lakhs of Indians are familiar with the Roman script and that those of them, particularly in the South, who are not familiar at the same time with the Nagari or Persian script would find it easier to learn the national language and use it if they were able to do so through the medium of the Roman script. These considerations apply with special force to members of small minorities like the Indian Christians, Anglo-Indians and Jews who know the Roman script alone. So too the Indian Army has so far been successfully imparted training and education through the medium of "Roman Urdu", which means Hindustani in the Roman script. That is a salutary practice which has made it possible for mixed regiments to be taught the national language without distinction of religion or province. If it is now to be abandoned,

...4/-

it will mean that our national army will have to take cognizance of the religious grouping or provincial origin of each of its soldiers, thus making mixed regiments difficult to organize and to educate. I trust, therefore, that the Advisory Committee will add the Roman script to those already specified in clauses 8 and 25.

M.R. MASANI.

II

We are against the inclusion amongst fundamental rights of those embodied in clauses 17 and 21. It is clear that the right freely to profess and practice religion guaranteed by clause 16 and the rights of property guaranteed by clauses 11 and 27 amply safeguard the right of all religious denominations to acquire and administer such property as they wish and to build, establish and maintain places of worship, free from interference. There does not appear to be any necessity to sanctify the property rights of religious denominations any further by such specific recognition. We would, therefore, suggest clauses 17 and 21 be eliminated as redundant and superfluous.

HANSA MEHTA,
M.R. MASANI,
AMRIT KAUR.

III

We are not satisfied with the acceptance of a uniform civil code as an ultimate social objective set out in clause 41 as determined by the majority of the sub-committee. One of the factors that has kept India back from advancing to nationhood has been the existence of personal laws based on religion which keep the nation divided into watertight compartments in many aspects of life. We are of the view that a uniform civil code should be guaranteed to the Indian people within a period of 5 or 10 years in the same manner as the right to free and compulsory primary education has been guaranteed by clause 24 within 10 years. We, therefore, suggest that the Advisory Committee might transfer the clause regarding a uniform civil code from chapter 2 to chapter 1 after making suitable modifications in it.

M.R. MASANI,
HANSA MEHTA,
AMRIT KAUR.

QUOTED

FROM

PAGES

161-162.

IV

We regret that the majority of the sub-committee turned down the proposal to include a clause based on Article 54 of the Swiss Constitution on the following lines:

QUOTED

No impediments to marriage between citizens shall be based merely upon difference of religion.

The Special Marriage Act III of 1872, which governs civil marriages between Indians of different religious faiths, demands from both contracting parties at present the following solemn declaration:

FROM

I do not profess the Christian, Jewish, Hindu, Muhammadan, Parsee, Buddhist, Sikh or Jain religion.

PAGES

Such an impediment to marriage between two Indians is a reflection on our claim to common nationhood. Only as recently as February 26, 1947, Mahatma Gandhi is reported at a prayer meeting to have supported the idea of marriages between persons professing different religious faiths, each retaining his or her own religion without abatement. Unfortunately, such marriages cannot be solemnized in India today. Indians who have desired to marry a fellow-national of another religious faith have had to leave the borders of India in order to get married, without being forced to perjure themselves. It is only possible, however, for those with more than average means and facilities to leave the country for such a purpose and the law has actually prevented several conscientious persons of limited means who were unwilling to comply with its requirements from marrying fellow-nationals of their choice. The incorporation in the Constitution of the proposed clause would render such a primitive law as at present prevails ultra vires of the Constitution. We strongly urge that this clause be inserted at a suitable place.

162-163

AMRIT KAUR,
HANSA MEHTA,
M.R. MASANI.X

These minutes cover Roman script, rights of religion, _____ common civil code and intermarriages.

The report of the sub-committee on Fundamental Rights dated April 16, 1947 is to be found on pages 169 to 171. The distinction between fundamental rights and defective principles is set out on page 169:-

Quoted
from
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169

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When the Committee began its work, it was resolved that a difference should be drawn in the list of fundamental rights between rights which are enforceable by appropriate legal process and provisions which are in the nature of fundamental principles of the social policy that is to regulate the governments concerned. In this respect, the committee has followed the Irish model and adopted a middle course between the one adopted by the framers of the American Constitution and the one pursued in recent European

QUOTED
FROM
PAGE
169.

constitutions which have mixed up the two sets of rights. The committee also were of opinion that while certain human rights must be guaranteed to every resident of the Union, other rights must be confined only to citizens and accordingly it will be noticed that some clauses refer to every person and other clauses to citizens only.

The minutes of dissent to the report of the sub-committee should be found on pages 176-178. The minutes is a _____ except one of them, should be quoted from pages 176-178:-

MINUTES OF DISSENT TO THE REPORT

April 17-20, 1947.

I

Clauses 9 and 24 give the citizen the option to learn and use the national language through the medium of either the Devanagari or the Persian script. We regret that our colleagues on the sub-committee did not find it possible to agree to the option being extended to the use of the Roman script as a further alternative. While those who have received English education may form a small part of our population, the fact remains lakhs of Indians are familiar with the Roman script and that those of them, particularly in the South, who are not familiar at the same time with the Nagari or Persian script would find it easier to learn the national language and use it if they were able to do so through the medium of the Roman script. These considerations apply with special force to members of small minorities like the Indian Christians, Anglo-Indians and Jews who know the Roman script alone. So too the Indian Army has so far been successfully imparted training and education through the medium of "Roman Urdu", which means Hindustani in the Roman script. That is a salutary practice which has made it possible for mixed regiments to be taught the national language without distinction of religion or province. If it is now to be abandoned, it will mean that our national army will have to take cognizance of the religious grouping or provincial origin of each of its soldiers, thus making mixed regiments difficult to organise and to educate. We trust, therefore, that the Advisory Committee will add the Roman script to those already specified in clauses 9 and 24.

....7/-

II

We are not satisfied with the acceptance of a ~~uniform~~ uniform civil code as an ultimate social objective set out in clause 239 as determined by the majority of the sub-committee. One of the factors that has kept India back from advancing to nationhood has been the existence of personal laws based on religion which keep the nation divided into watertight compartments in many aspects of life. We are of the view that a uniform civil code should be guaranteed to the Indian people within a period of 5 or 10 years in the same manner as the right to free and compulsory primary education has been guaranteed by clause 23 within 10 years. We, therefore, suggest that the Advisory Committee might transfer the clause regarding a uniform civil code from Part II ~~and~~ to Part I after making suitable modifications.

M.R. MASANI,
HANSA MEHTA,
AMRIT KAUR.

III

We regret that though the sub-committee was almost evenly divided on it, the majority of the sub-committee turned down the proposal to include a clause based on Article 54 of the Swiss Constitution on the following lines:

No impediments to marriage between citizens shall be based merely upon difference of religion.

The Special Marriage Act III of 1872, which governs civil marriages between Indians of different religious faiths, demands from both contracting parties at present the following solemn declarations:

I do not profess the Christian, Jewish, Hindu, Muhammadan, ~~Parsi~~ Parsi, Buddhist, Sikh or Jain religion.

Such an impediment to marriage between two Indians is a reflection on our claim to common nationhood. Only as recently as February 26, 1947, Mahatma Gandhi is reported at a prayer meeting to have supported the idea of marriages between persons professing different religious faiths, each retaining his or her own religion without abatement. Unfortunately, such marriages cannot be solemnised in India today. Indians who have desired to marry a fellow national of another religious faith have had to leave the borders of India in order to get married without being forced to perjure themselves. It is only possible, however, for those with more than

Quoted from
Pages
176-178

average means and facilities to leave the country for such a purpose and the law has actually prevented several conscientious persons of limited means who were unwilling to comply with its requirements from marrying fellow nationals of their choice. The incorporation in the Constitution of the proposed clause would render such a primitive restriction as at present prevails ultra vires of the Constitution. We strongly urge that this clause be inserted at a suitable place in Part I.

AMRIT KAUR,
HANSA NEHTA,
M.R. MASANI.

Page 210

The Advisory Committee met on April 21 and 22nd, 1947. MRM was not present at those meetings. On 23rd April, the Advisory Committee submitted an interim report to the Constituent Assembly. This was discussed by the Constituent Assembly from April 29th to May 2, 1947. A supplementary report was made on August 30th and was discussed on the same day.

Page 293

The report of the ~~minor~~ Minorities Sub-Committee came up for discussion before the Constituent Assembly on July 28th, 1947. The discussion lasted for 4 days. MRM was present.

Page 403

This report _____ when Mr. Munshi moved that there should be reservation of seats for different recognised minorities in the various Legislatures. To this, MRM moved the following amendment:

QUOTED

FROM

PAGES

404.

That the representation of minorities, whether political or communal, be secured not by reservation of seats but by a system of proportional representation preferably of cumulative voting in multi-member constituencies.

After discussion, the amendment was put to the vote and lost, only three members voting for it. Mr. Munshi's proposition was carried.

Mr. Munshi moved that the reservation shall be for 10 years, the position to be reconsidered at the end of the period. Mr. Sidhwa moved that the clause should read as follows: "The reservation shall be only for 10 years." This was lost by a large majority and the original proposition was carried.

Quoted from
Page

408.

At a meeting on July 30th, 1947, Mr. Munshi moved that cumulative voting should not be permissible in elections to Legislatures. To this, MRM moved the following amendment, namely, "that no decision be recorded on this resolution and that the matter of cumulative or distributive voting be determined when the demarcation of constituencies and the electoral law are decided." MRM's amendment was lost by an overwhelming majority and Mr. Munshi's proposal carried.

Page 411.

On 8th August, 1947, the Advisory Committee submitted a report on the subject of Minority Rights to the President of the Constituent Assembly.

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Parsees: In the Minorities Sub-Committee, Sir Homi Mody had urged that in view of the importance of the Parsee community and the contribution it had been making to the political and economic advancement of the country, Parsees should have adequate representation in the Central and Provincial Legislatures. The sub-committee were of opinion that this claim should be conceded. In view, however, of the opinion expressed to him by several members that an advanced community like the Parsees would be adequately represented in any event and did not need specific reservation, Sir Homi had asked for time to consider the matter.

When the issue came before the Advisory Committee, Sir Homi stated that though the committee had already accepted the Parsee community as a recognised minority entitled to special consideration on the same basis as other minorities in group A, he had decided to follow the traditions which the community had maintained in the past and to withdraw the claim for statutory reservation. He assumed that Parsees would remain on the list of recognised minorities and urged that if, during the period prescribed in the first instance for the special representation of the minorities it was found that the Parsee community had not secured proper representation, its claim would be reconsidered and adequate representation provided, if the separate representation of minorities continued to be a feature of the Constitution. The committee appreciated the stand taken by Sir Homi Mody and agree to his proposal.

Quoted from

Page

708.

On 25th January 1947, Rajaji moved a resolution in the assembly proposing the appointment of a Committee to examine the scope and content of the subjects that should be allocated to the Centre. The Committee came to be known as the Union Powers Committee with an initial strength of 12 members including MRM. The members consisted of: (1) The Hon'ble Pandit Jawaharlal Nehru, (2) Mr. Sarat Chandra Bose, (3) Dr. Pattabhi Sitaramayya, (4) The Hon'ble Pandit Govind Ballabh Pant, (5) Mr. Jairamdas Daulatram, (6) Sir Biswanath Das, (7) The Hon'ble Sir N. Gopalaswami Ayyangar, (8) Bakeshi Sir Tek Chand, (9) Diwan Bahadur Sir Alladi Krishnaswami Ayyar, (10) Mr. D.P. Khaitan, (11) Mr. M.R. Masani, (12) Mr. K.M. Munshi.

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Quoted from

Page

732.

-7- 10-

The Union Powers Committee met on March 2nd, 1947. Jawaharlal Nehru was then elected Chairman. On March 2nd, 1947, "MRM wanted to know who would have the responsibility for the implementation of labour agreements by passing the necessary legislation and Sir Gopalaswami Ayyangar stated that the practice in the United States was that the treaties entered into by them became the law of the land."

QUOTED

The first of the reports of the Union Powers Committee was submitted to the President of the Constituent Assembly on 27th April 1947. It will be seen on Page 747 that the report ~~recommended~~ recommended that the _____ of planning along with some other subjects report, said:

FROM

In addition to the above subjects which, in our view, come within the scope of Union Powers in accordance with the Cabinet Delegation(s) Statement, we hope that the following subjects will also be included in the Union List by agreement:

PAGE

- (1) Insurance;
- (2) Company laws;
- (3) Banking;
- (4) Negotiable instruments;
- (5) Patents, trade marks, trade designs, copyright;
- (6) Planning;
- (7) Ancient and historical monuments;
- (8) Standard weights and measures.

747

Such an arrangement will ensure uniformity throughout the territories of the Union in matters dealing on trade and commerce as has in fact been recognized in many federal constitutions. We have included planning in the above list for the reason that although authority may rest in respect of different subjects with the units it is obviously in their interest to have a co-ordinating machinery to assist them.

It was in this committee, that Jawaharlal Nehru and MRM had an argument during one of the sessions. MRM wanted planning to be a state subject and Nehru had _____.

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Pg.64-65 On 27th February 1947, Vallabhai Patel was elected Chairman and 5 sub-committees were set up. There was the Fundamental Rights Sub-Committee with Acharya Kripalani as Chairman and only 10 members including MRM. The members included (1) Acharya J.B. Kripalani, (2) Mr. M.R. Masani, (3) Professor K.T. Shah, (4) Rajkumari Amrit Kaur, (5) Sir Alladi Krishnaswami Ayyar, (6) Mr. K.M. Munshi, (7) Sardar Harnam Singh, (8) The Hon'ble Maulana Abul Kalam Azad, (9) Dr. B.R. Ambedkar, (10) Mr. Jairamdas Daulatram.

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To

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Advisory Committee on Minorities,
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QUOTED

FROM

PAGE

137.

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Pg.146

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Q U O T E D

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M.R. MASANI.

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F R O M

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P A G E S

HANSA MEHTA,
M.R. MASANI,
AMRIT KAUR.

III

1 6 1 - 1 6 2.

We are not satisfied with the acceptance of a uniform civil code as an ultimate social objective set out in clause 41 as determined by the majority of the sub-committee. One of the factors that has kept India back from advancing to nationhood has been the existence of personal laws based on religion which keep the nation divided into watertight compartments in many aspects of life. We are of the view that a uniform civil code should be guaranteed to the Indian people within a period of 5 or 10 years in the same manner as the right to free and compulsory primary education has been guaranteed by clause 24 within 10 years. We, therefore, suggest that the Advisory Committee might transfer the clause regarding a uniform civil code from chapter 2 to chapter 1 after making suitable modifications in it.

M.R. MASANI,
HANSA MEHTA,
AMRIT KAUR.

IV

We regret that the majority of the sub-committee turned down the proposal to include a clause based on Article 54 of the Swiss Constitution on the following lines:

QUOTED

No impediments to marriage between citizens shall be based merely upon difference of religion.

The Special Marriage Act III of 1872, which governs civil marriages between Indians of different religious faiths, demands from both contracting parties at present the following solemn declaration:

FROM

I do not profess the Christian, Jewish, Hindu, Muhammadan, Parsee, Buddhist, Sikh or Jain religion.

PAGES

Such an impediment to marriage between two Indians is a reflection on our claim to common nationhood. Only as recently as February 26, 1947, Mahatma Gandhi is reported at a prayer meeting to have supported the idea of marriages between persons professing different religious faiths, each retaining his or her own religion without abatement. Unfortunately, such marriages cannot be solemnized in India today. Indians who have desired to marry a fellow-national of another religious faith have had to leave the borders of India in order to get married, without being forced to perjure themselves. It is only possible, however, for those with more than average means and facilities to leave the country for such a purpose and the law has actually prevented several conscientious persons of limited means who were unwilling to comply with its requirements from marrying fellow-nationals of their choice. The incorporation in the Constitution of the proposed clause would render such a primitive law as at present prevails ultra vires of the Constitution. We strongly urge that this clause be inserted at a suitable place.

162-163

AMRIT KAUR,
HANSA MEHTA,
M.R. MASANI.

These minutes cover Roman script, rights of religion, _____ common civil code and intermarriages.

The report of the sub-committee on Fundamental Rights dated April 16, 1947 is to be found on pages 169 to 171. The distinction between fundamental rights and defective principles is set out on page 169:-

ixg

When the Committee began its work, it was resolved that a difference should be drawn in the list of fundamental rights between rights which are enforceable by appropriate legal process and provisions which are in the nature of fundamental principles of the social policy that is to regulate the governments concerned. In this respect, the committee has followed the Irish model and adopted a middle course between the one adopted by the framers of the American Constitution and the one pursued in recent European

QUOTED
FROM
PAGE
169.

constitutions which have mixed up the two sets of rights. The committee also were of opinion that while certain human rights must be guaranteed to every resident of the Union, other rights must be confined only to citizens and accordingly it will be noticed that some clauses refer to every person and other clauses to citizens only.

The minutes of dissent to the report of the sub-committee should be found on pages 176-178. The minutes is a _____ except one of them, should be quoted from pages 176-178:-

MINUTES OF DISSENT TO THE REPORT

April 17-20, 1947.

I

Clauses 9 and 24 give the citizen the option to learn and use the national language through the medium of either the Devanagari or the Persian script. We regret that our colleagues on the sub-committee did not find it possible to agree to the option being extended to the use of the Roman script as a further alternative. While those who have received English education may form a small part of our population, the fact remains lakhs of Indians are familiar with the Roman script and that those of them, particularly in the South, who are not familiar at the same time with the Nagari or Persian script would find it easier to learn the national language and use it if they were able to do so through the medium of the Roman script. These considerations apply with special force to members of small minorities like the Indian Christians, Anglo-Indians and Jews who know the Roman script alone. So too the Indian Army has so far been successfully imparted training and education through the medium of "Roman Urdu", which means Hindustani in the Roman script. That is a salutary practice which has made it possible for mixed regiments to be taught the national language without distinction of religion or province. If it is now to be abandoned, it will mean that our national army will have to take cognizance of the religious grouping or provincial origin of each of its soldiers, thus making mixed regiments difficult to organise and to educate. We trust, therefore, that the Advisory Committee will add the Roman script to those already specified in clauses 9 and 24.

....7/-

II

We are not satisfied with the acceptance of a ~~uniform~~ uniform civil code as an ultimate social objective set out in clause 239 as determined by the majority of the sub-committee. One of the factors that has kept India back from advancing to nationhood has been the existence of personal laws based on religion which keep the nation divided into watertight compartments in many aspects of life. We are of the view that a uniform civil code should be guaranteed to the Indian people within a period of 5 or 10 years in the same manner as the right to free and compulsory primary education has been guaranteed by clause 23 within 10 years. We, therefore, suggest that the Advisory Committee might transfer the clause regarding a uniform civil code from Part II and to Part I after making suitable modifications.

M.R. MASANI,
HANSA MEHTA,
AMRIT KAUR.

III

We regret that though the sub-committee was almost evenly divided on it, the majority of the sub-committee turned down the proposal to include a clause based on Article 54 of the Swiss Constitution on the following lines:

No impediments to marriage between citizens shall be based merely upon difference of religion.

The Special Marriage Act III of 1872, which governs civil marriages between Indians of different religious faiths, demands from both contracting parties at present the following solemn declarations:

I do not profess the Christian, Jewish, Hindu, Muhammadan, ~~Parsi~~ Parsi, Buddhist, Sikh or Jain religion.

Such an impediment to marriage between two Indians is a reflection on our claim to common nationhood. Only as recently as February 26, 1947, Mahatma Gandhi is reported at a prayer meeting to have supported the idea of marriages between persons professing different religious faiths, each retaining his or her own religion without abatement. Unfortunately, such marriages cannot be solemnized in India today. Indians who have desired to marry a fellow national of another religious faith have had to leave the borders of India in order to get married without being forced to perjure themselves. It is only possible, however, for those with more than

Quoted from
Pages
176-178

average means and facilities to leave the country for such a purpose and the law has actually prevented several conscientious persons of limited means who were unwilling to comply with its requirements from marrying fellow nationals of their choice. The incorporation in the Constitution of the proposed clause would render such a primitive restriction as at present prevails ultra vires of the Constitution. We strongly urge that this clause be inserted at a suitable place in Part I.

AMRIT KAUR,
HANSA MEHTA,
M.R. MASANI.

Page 210

The Advisory Committee met on April 21 and 22nd, 1947. MRM was not present at those meetings. On 23rd April, the Advisory Committee submitted an interim report to the Constituent Assembly. This was discussed by the Constituent Assembly from April 29th to May 2, 1947. A supplementary report was made on August 30th and was discussed on the same day.

Page 293

The report of the ~~minorities~~ Minorities Sub-Committee came up for discussion before the Constituent Assembly on July 28th, 1947. The discussion lasted for 4 days. MRM was present.

Page 403

This report _____ when Mr. Munshi moved that there should be reservation of seats for different recognised minorities in the various Legislatures. To this, MRM moved the following amendment:

QUOTED

FROM

PAGES

404.

That the representation of minorities, whether political or communal, be secured not by reservation of seats but by a system of proportional representation preferably of cumulative voting in multi-member constituencies.

After discussion, the amendment was put to the vote and lost, only three members voting for it. Mr. Munshi's proposition was carried. Mr. Munshi moved that the reservation shall be for 10 years, the position to be reconsidered at the end of the period. Mr. Sidhwa moved that the clause should read as follows: "The reservation shall be only for 10 years." This was lost by a large majority and the original proposition was carried.

Quoted from

Page

408.

At a meeting on July 30th, 1947, Mr. Munshi moved that cumulative voting should not be permissible in elections to Legislatures. To this, MRM moved the following amendment, namely, "that no decision be recorded on this resolution and that the matter of cumulative or distributive voting be determined when the demarcation of constituencies and the electoral law are decided." MRM's amendment was lost by an overwhelming majority and Mr. Munshi's proposal carried.

On 8th August, 1947, the Advisory Committee submitted a report on the subject of Minority Rights to the President of the Constituent Assembly.

Q U O T E D

F R O M

P A G E

4 1 4.

Parsees: In the Minorities Sub-Committee, Sir Homi Mody had urged that in view of the importance of the Parsee community and the contribution it had been making to the political and economic advancement of the country, Parsees should have adequate representation in the Central and Provincial Legislatures. The sub-committee were of opinion that this claim should be conceded. In view, however, of the opinion expressed to him by several members that an advanced community like the Parsees would be adequately represented in any event and did not need specific reservation, Sir Homi had asked for time to consider the matter.

When the issue came before the Advisory Committee, Sir Homi stated that though the committee had already accepted the Parsee community as a recognised minority entitled to special consideration on the same basis as other minorities in group A, he had decided to follow the traditions which the community had maintained in the past and to withdraw the claim for statutory reservation. He assumed that Parsees would remain on the list of recognised minorities and urged that if, during the period prescribed in the first instance for the special representation of the minorities it was found that the Parsee community had not secured proper representation, its claim would be reconsidered and adequate representation provided, if the separate representation of minorities continued to be a feature of the Constitution. The committee appreciated the stand taken by Sir Homi Mody and agree to his proposal.

On 25th January 1947, Rajaji moved a resolution in the assembly proposing the appointment of a Committee to examine the scope and content of the subjects that should be allocated to the Centre. The Committee came to be known as the Union Powers Committee with an initial strength of 12 members including MRM. The members consisted of: (1) The Hon'ble Pandit Jawaharlal Nehru, (2) Mr. Sarat Chandra Bose, (3) Dr. Pattabhi Siteramayya, (4) The Hon'ble Pandit Govind Ballabh Pant, (5) Mr. Jairamdas Daulatram, (6) Sir Biswanath Das, (7) The Hon'ble Sir N. Gopalaswami Ayyangar, (8) Bakshi Sir Tek Chand, (9) Diwan Bahadur Sir Alladi Krishnaswami Ayyar, (10) Mr. D.P. Khaitan, (11) Mr. M.R. Masani, (12) Mr. K.M. Munshi.

Quoted from

Page

708.

....9/12/

Quoted from

Page

732.

9-10

The Union Powers Committee met on March 2nd, 1947. Jawaharlal Nehru was then elected Chairman. On March 2nd, 1947, "MEM" wanted to know who would have the responsibility for the implementation of labour agreements by passing the necessary legislation and Sir Gopalaswami Ayyangar stated that the practice in the United States was that the treaties entered into by them became the law of the land."

QUOTED

The first of the reports of the Union Powers Committee was submitted to the President of the Constituent Assembly on 27th April 1947. It will be seen on Page 747 that the report ~~recommended~~ recommended that the _____ of planning along with some other subjects report, said:

FROM

In addition to the above subjects which, in our view, come within the scope of Union Powers in accordance with the Cabinet Delegation's Statement, we hope that the following subjects will also be included in the Union List by agreement:

PAGE

- (1) Insurance;
- (2) Company laws;
- (3) Banking;
- (4) Negotiable instruments;
- (5) Patents, trade marks, trade designs, copyright;
- (6) Planning;
- (7) Ancient and historical monuments;
- (8) Standard weights and measures.

747

Such an arrangement will ensure uniformity throughout the territories of the Union in matters bearing on trade and commerce as had in fact been recognized in many federal constitutions. We have included planning in the above list for the reason that although authority may rest in respect of different subjects with the units it is obviously in their interest to have a co-ordinating machinery to assist them.

It was in this committee, that Jawaharlal Nehru and MEM had an argument during one of the sessions. MEM wanted planning to be a state subject and Nehru had _____.
