

VIEWS OF THE GOVERNMENT OF
UNITED PROVINCES

ON THE

RECOMMENDATIONS MADE BY THE

INDIAN STATUTORY COMMISSION

No. 4949-C.

FROM

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To

THE JOINT SECRETARY TO THE GOVERNMENT OF INDIA,
REFORMS OFFICE.

Dated Naini Tal, August 23, 1930.

SUBJECT:—Recommendations of the Indian Statutory Commission.

SIR,

I AM directed to submit herewith the views of the Government of the United Provinces on the recommendations made by the Indian Statutory Commission in the parts of their Report mentioned in para. 8 of the Government of India's letter no. F. 67-80-R., dated June 24, 1930. As desired by the Government of India this Government have dealt with each matter in the order in which it comes in the Report.

2. As will be seen the local Government have confined themselves to questions which fall within the scheme as presented by the Commission. They have not considered, for instance, the reactions which would result in the provincial sphere from the adoption of any proposal to introduce a measure of responsibility in the Central Government. It is clear that such reactions would be far-reaching, and I am to say that His Excellency the Governor hopes that, should it be decided to bring this matter within the range of discussion, he and other members of his Government who may desire to express an opinion on the subject may be afforded an opportunity of doing so.

PART I.

CHAPTER 2.—THE MECHANISM OF ADVANCE.

3. In this chapter the Commission have pointed out that though the ultimate goal of responsible government is, according to the Preamble of the Government of India Act, to be reached by successive stages, there is no reason why the length of these stages should be settled in advance or why each stage should be marked by a commission of inquiry. The Commission then go on to point out the disadvantages of temporary constitution, and suggest that what is wanted is the introduction of a constitution which will be sufficiently elastic as to be capable of adjustment to the particular needs of any given province at

any given time. The results of fixing a ten-year period in the Government of India Act, 1919, are sufficiently well known, and in the opinion of this Government there can be no question that it is desirable if possible to establish a constitution which, instead of needing to be overhauled after fixed periods, will be capable of natural development to suit the needs of each province and of India as a whole.

CHAPTER 5.—THE NEED FOR SAFEGUARDS.

4. This chapter deals in a general manner with the need for safeguards in a new constitution, and lays down three main propositions, namely,—

- (1) that the Army must be adequate for defence and for many years to come British troops and British officers with Indian troops will be necessary,
- (2) that there must be a power to step in to preserve law and order and maintain the vital services and that this power should vest in the Governor-General or the Governor, as the case may be, and
- (3) that there must be some means of protecting the interests of minorities and that the only practical means of doing so is to vest the Governor-General and the Governor with general powers.

This Government accept all three propositions subject to anything that is said in later portions of this letter, in regard to the means of applying them, and in the case of Nawab Sir Ahmad Sa'id Khan subject also to the views in regard to the Army expressed by him in the extract from a note on that subject which will be found in the appendix to this letter. As the Government of India have not asked this Government for their views on the subject, the other Members of Government do not offer any opinion.

PART II.

CHAPTER 1.—THE PROVINCIAL EXECUTIVE.

Need for Provincial Redistribution.

5. The Commission consider that the present arrangement of provincial areas is not altogether satisfactory and that some re-adjustment is desirable. They recommend that a Boundaries Commission should be set up to investigate the main cases in which provincial re-adjustment seems called for and to endeavour to work out schemes with a view to seeing how far agreement is possible. This is a matter which does not directly concern this province. Though the province is large in area and densely populated, it contains no obvious or natural line of division and constitutes a territory which is fairly homogeneous in regard both to race and language. A smaller unit would perhaps be more easily administered, but no division could be devised that would not give rise to much opposition. Furthermore, there is at present no

public demand for such division. In these circumstances this Government assume that the position of this province would not come within the scope of the Commission's inquiry and on that understanding they do not desire to offer any opinion on the proposal.

Form of Provincial Government.

6. Before the structure of the provincial Government is considered in detail, it is necessary to decide the type of architecture to which it is to conform. Here the broad issue is whether the present dyarchic form of government is to be retained or whether it should, as recommended by the Commission, be replaced by a unitary government in which all division of subjects will be abolished and every subject will be administered by a ministry responsible to the legislative council. The risks involved in the establishment of any system of responsible government in this province are by no means negligible. They have already been described in the memorandum which the Governor in Council placed before the Commission, and it is unnecessary to repeat them here. They have not been lessened by the experiences of the past two years. But, having regard to the opinions expressed on the part of the Governments of other provinces, of the various Provincial Committees, of the Indian Central Committee and of the Commission itself in favour of the abolition of dyarchy and the establishment of a unitary system of government, the United Provinces Government are of opinion that this development must now be regarded as inevitable. They will deal below with the safeguards with which such a system of government must, in their opinion, be accompanied.

Composition of the Ministry and its relation to the legislature.

7. This Government agree with the following proposals relating to the composition of the Ministry and its relation to the legislature—

- (1) That each member of the Ministry should be required to accept responsibility for the whole policy of the Government.
- (2) That it should be open to the Governor, under the restrictions noted below, to include in the Ministry non-officials other than elected members of the legislature.
- (3) That the salaries of Ministers should be fixed by provincial Statute and should only be alterable by a similar provision. (It is presumed that the Statute would deal only with salaries and not numbers of Ministers, the latter being more suitably left to be determined by circumstances.)
- (4) That votes of censure should be admissible only when they apply to the Ministry as a whole.

His Excellency the Governor and the Members of his Executive Council also accept the Commission's view that in the new Governments it may be found useful to include certain minor posts, equivalent to those of Under Secretary in England. His Excellency's Ministers do not see the need for any such posts.

8. The proposal that the Governor should be free to include one or more officials in the Ministry is one on which the opinion of the members of Government is divided. Nawab Sir Ahmad Sa'id Khan and all three Ministers oppose the proposal. Their first objection to it is that it will largely perpetuate the system of Executive Councillors because, as contemplated by the Commission, the official member will not necessarily change with each change of Ministry but may be reappointed as member of one Ministry after another. He will therefore have a different form of tenure from his colleagues. In the second place they feel that the presence of an official member will detract from the solidarity of the Ministry and be a source of weakness to it rather than of strength in the face of the legislature. They fear that just as at present the reserved subjects form a special point of attack in the council, so the matters in the portfolio of an official Minister will be subjected to special criticism, and that this may embarrass the position of the whole Ministry in the legislature. These two objections are explained in greater detail in the extract from a note by Nawab Sir Ahmad Sa'id Khan which will be found in the appendix to this letter. A further objection that has been made is that the inclusion of an official will affect the numerical strength of the Hindus and Muslims in the Ministry. His Excellency Sir Malcolm Hailey and Sir George Lambert consider that the Governor should be given the widest possible latitude in the choice of his Ministry and that there will be sufficient practical limitations on his freedom of choice without the imposition of statutory restrictions. They are not disposed to accept the objections mentioned above as decisive. In their opinion there will be no real comparison between the position of an official Minister and that of an Executive Councillor. In the first place the appointment of such a Minister will depend on the willingness of the other Ministers to work with an official on a basis of joint responsibility; it would be difficult to force him on a Ministry which expressed itself as unwilling to admit him as a colleague, and the decision as to whether there will or will not be an official Minister would not therefore in practice rest with the Governor alone. Again, if this initial difficulty is overcome, then the distribution of portfolios will be a matter of mutual arrangement between the Governor and the Ministers, and it will certainly not be possible for the Governor, even if he wished to do so, to decide that the official should hold charge of one of the portfolios which has up till now been under a member of the Executive Council. I am to add here that Sir Malcolm Hailey adheres to the view which he placed before the Commission as Governor of the Punjab, when putting forward this proposal in a slightly different form, that there should be no convention under which the official member of the Cabinet would hold charge of any definite portfolio such as Home or Finance. Indeed, his own view is that he should hold charge of a portfolio of minor importance so that he may have time to discharge what Sir Malcolm conceives should be his main function, namely, of acting as an expert adviser on administrative matters to the Cabinet generally. The Commission's observations regarding the retention of official Ministers in a new or reconstituted Ministry have been held to justify the

comparison of an official Minister with a member of an Executive Council. But the Commission have themselves expressly repudiated any resemblance between the two and the main object of their remarks in regard to the retention of an official Minister in a new Ministry appears to have been to try to meet the criticism that while non-official Ministers on resignation can retire into private life, the position of officials will be more difficult and resignation from the Ministry may involve also the closing of their careers. On this point all that need be said is that officials must obviously resign with their colleagues and that their inclusion in the new Ministry will depend not on any *fiat* of the Governor but on practical considerations, of which the most important will be the attitude of the other Ministers who will compose the new Ministry and the attitude of the legislature. It may be added that as the number of Ministers will probably be much greater than that of the present strength of Executive Councillors and Ministers combined, and as the salary attached to the post will consequently in all probability be much less than that of an Executive Councillor, it will be much easier for an official member of a Ministry to revert to his previous post than it would be under existing circumstances for a member of an Executive Council. The question whether an official will be a source of strength or of weakness to a Ministry is for the other Ministers to decide. The fear that he will be a source of weakness is hardly an adequate reason for preventing a Ministry which takes a different view from having the advantage of the advice and assistance of an official. Sir Malcolm Hailey and Sir George Lambert believe that the proposal, besides not being open to the objections urged against it, will have positive advantages both for the Ministers and for the Governor. It is inevitable that many Ministers will have no administrative experience, and it is certainly conceivable that some will realize the advantage of having a colleague who with no superiority of status but from the position of an equal will be available, when wanted, to give advice based on a long and intimate experience of administrative problems. It is also probable that the Governor, whose position will be very different from that of a Governor under the present constitution, will feel the need of having in the Ministry some one with administrative experience on whom he can rely to point out to the Ministry in their daily working the implications of decisions which they are contemplating and the probable or possible results of such decisions. The administrative machine is a highly complicated one, and it is not to be expected that persons entirely unacquainted with it will be able to ensure a smooth and efficient working without expert advice. It has been suggested that the appointment of a Principal Secretary, who would also be Secretary to the Cabinet, would secure the advantages expected from the inclusion of an official in the Ministry without being open to the same objections. There is indeed something to be said for this proposal in itself as securing to a Governor the means of acquiring the information which will be necessary to him if he is to carry out his duties under the constitution. His Excellency will not, as now, be associated with the current work of the administration, and it is indeed

doubtful whether the new relations which will exist between the Cabinet and the Secretaries will permit of the latter having (as now) regular access to the Governor. It is easy to secure to him full information as to Cabinet decisions, but a great deal will take place in departmental work of which he will need to be informed if he is to be in a position to assist Ministers with his advice, or indeed to act effectively where his intervention is necessary. His Excellency the Governor and Sir George Lambert would prefer to have an official Minister, but the other Members of the Government consider that a Principal Secretary would be more in keeping with the general scheme of the new constitution.

9. It has been pointed out that the proposal to permit the inclusion of non-elected persons, as made by the Commission, would leave the Governor free—subject to the superintendence and control of the Governor-General—to appoint a Ministry wholly composed of such persons. There are of course practical considerations which would effectively prevent the Governor from doing any such thing, and the Governor in Council sees no need to include in the Statute a provision restricting the number of non-elected persons to be included in a Ministry. Even though this would restrict the Governor's field of choice and would introduce a greater element of rigidity in the constitution, His Excellency's Ministers would prefer to restrict the number by Statute to not more than one.

10. The Commission found themselves unable to recommend the inclusion in the Statute of any provision for the inclusion of members of minority communities in the Ministry. His Excellency the Governor and Sir George Lambert agree with the view taken by the Commission that in most provinces prudence, if not necessity, is likely to cause a Governor, with the full approval of the other Ministers, to include at least one Minister from an important minority community. But Nawab Sir Ahmad Sa'id Khan and His Excellency's Ministers would prefer not to leave this matter to be regulated by practical considerations [see extracts A (ii) and (iii) in the appendix]. They argue that in this province the Muslims will secure no more than 30 per cent. of the elected seats in the legislature and will therefore be in a permanent minority. There is at present little sign that the communal factor will in the future count for less in the formation of parties in the legislature than it has in the past. On the contrary, with a more complete transfer of power from an official Government to a popular legislature, and with the proposed removal of the official bloc, there is every likelihood that it will count for more. Non-Muslims will be in so large a majority that they may on occasion find themselves independent of the Muslim vote, and it may not be difficult to form a purely non-Muslim Ministry which will be able to rely on the support of a majority of the legislature. These Members of Government therefore would like to see some definite provision made in the statutory rules laying on the Governor the obligation of securing in the Ministry some representation of minority communities, and they ask that if it is found impossible to make such a rule, then at least the Governor's responsibility in this

matter should be clearly defined in the Instrument of Instructions. His Excellency's Ministers would like to see Hindus and Muslims represented in the Ministry in the proportion of two-thirds and one-third. The two official members of Government would be glad to find some way of removing the apprehensions of the Muslim minority, for they feel that if this could be effected, the new constitution would start its career in conditions less likely to involve communal discord. But they see more than one difficulty in securing a definite statutory provision for the representation of the minority in the Cabinet. A statutory provision will not be necessary in ordinary circumstances in most provinces and the exceptional circumstances in which it may be needed will be exactly those in which the Governor will find it difficult, if not impossible, to fulfil the obligation laid upon him. Such circumstances will arise when communal feeling is very strong. If the Governor is then in the position of having to insist, for example, on a Hindu Chief Minister including a Muslim in his Cabinet, the only possible result will be the inclusion of a Muslim who will not have the confidence of his own community and will therefore not be in any true sense representative of it. A further consideration is that any statutory provision would have to be drawn in general terms to apply to all provinces, and there may be provinces in the Governments of which up to the present minority communities have not been represented owing to the fact that they are not of sufficient importance to justify representation. It would clearly be anomalous to impose on such provinces a provision requiring representation which has not been thought necessary up to date. The official members would agree that the Instrument of Instructions to the Governor should include an obligation to attempt to secure representation of the minority in the Cabinet, where such minority is in his opinion of sufficient importance to warrant this. But it must of course be recognized that though this may be of some value in itself, it cannot be in the fullest sense mandatory.

11. The Commission, while expressing the view that there should ordinarily be a Chief Minister, whom the Governor would consult before appointing other Ministers, propose that there should be no requirement in the constitution to make such an appointment. This Government are of opinion that in practice the Governor will ordinarily find it advisable to appoint a Chief Minister in the first instance; he would not himself have power to select his colleagues, but the Governor would find it convenient to select other Ministers in consultation with him. The influence of a Chief Minister will make for unity in the Cabinet and will assist the Ministry in its relations with the legislature. Such an appointment will probably be approved by public men as being in consonance with the usual practice in western parliamentary governments. But on the principle of leaving the constitution flexible, where this can be done, so that it may more easily be made to fit the needs of a given province at a given time, there is no objection to the omission of any constitutional provision prescribing the appointment of a Chief Minister.

Cabinet procedure.

12. This Government do not desire to make any comments on the Commission's observations in regard to the part which the Governor should play in the day-to-day work of the Ministry or in regard to his presence at Cabinet meetings. The latter point is one which is best left to be settled by convention. They agree that he should retain his present power of making the rules of business (which would include provision for regulating the class of cases which would require a Cabinet decision) and that it is desirable that Ministers should be encouraged to reach decisions by mutual accommodation rather than by the counting of votes. It is assumed that if decisions are reached by a majority vote, the Governor would not himself exercise a vote. The proposal that a member of the Civil Service should be appointed to a new post of Secretary to the Cabinet, with special access to the Governor, is less acceptable to them [see extracts B (i) and (ii) in the appendix]. The work would clearly be insufficient to occupy the whole time of any officer and the appointment of a permanent official to discharge only the functions suggested by the Commission would be liable to misunderstanding and might give rise to unnecessary difficulties. All that is required is that the Governor should be kept fully informed of the names of the Ministers present and of the decisions reached at meetings from which he himself is absent. The Governor can provide for this himself in the rules of business.

Over-riding powers of the Governor.

13. In accepting the proposal that dyarchy should be abolished and that the new provincial Government should be a unitary one responsible to the provincial legislature, this Government have also agreed to the need for certain safeguards. In the provincial sphere the most important of these are that the Governor should have power to direct action to be taken otherwise than in accordance with the advice of his Ministers (1) in order to preserve the safety and tranquillity of his province and (2) in order to protect the interests of minority communities. This Government attach great weight to these safeguards. It is not without considerable hesitation that they have accepted the proposal to transfer all subjects and they would not have found themselves able to do so, if the Governor were to be in the position of a strictly "constitutional" Governor, bound in all circumstances to accept the advice of his Ministers. It is, however, obvious that the Governor's powers to over-ride his Ministers should not be unrestricted and this Government readily agree first that in all such matters the Governor should be subject to the superintendence, direction and control of the Governor-General, and secondly, that the purposes for which these special powers may be exercised should be clearly stated in the Statute. The Commission have suggested five purposes, two of which are fundamental to the peace and good government of the province, and the other three mainly technical. They have proposed that for those purposes the Governor should be given statutory power—

- (a) in the administrative sphere to direct that action be taken other than in accordance with the advice of his Ministers,

(b) in the field of legislation to secure the passage by means of certification of Bills rejected by the legislature, and

(c) in the financial sphere to restore by means of certification grants rejected by the legislature.

It will be convenient to consider all these special powers at one time as the criticism has been made that taken together they give the Governor considerably wider powers than he has at present and to that extent will actually restrict rather than increase the measure of responsible government in the provinces. It is necessary to consider each sphere separately as it is not essential—though it might be logical—to give the Governor the same power to over-rule the legislature in matters of legislation and finance as he is given to over-rule his Ministers on purely administrative questions.

14. *Administrative sphere.*—(1) This Government are agreed that it is essential that the Governor should have power to over-rule his Ministers "*in order to protect the safety and tranquillity of the province.*"

(2) The second purpose of intervention, as proposed by the Commission, is "*in order to prevent serious prejudice to one or more sections of the community as compared with other sections.*" This Government are agreed that the Governor must be given power to intervene in order to protect the interests of minority communities. They realize the difficulty which a Governor is likely to experience in exercising such a power, and they are impressed by the view that the power is likely to be more effective if his hands can be strengthened by some statutory provision laying a positive obligation upon him. There is good reason to believe that the Muslim community will not be satisfied without some stronger and more effective safeguard than that proposed by the Commission, and this Government feel that every effort should be made to meet the wishes of the Muslims on this point. It is probable that Europeans and Anglo-Indians will share this feeling, if only in view of the fact that the subject of European and Anglo-Indian education, now a reserved subject, will in future lack this protection. The main difficulty lies in drafting provisions which will be at the same time sufficiently general to be suitable for inclusion in a Statute and sufficiently definite to be really effective. The principal matters in which the Muslim community demand safeguards are these,—

(i) use of the Urdu language,

(ii) religious rights and usages,

(iii) personal law,

(iv) educational facilities,

(v) representation in local bodies,

(vi) representation in the public services.

They would like to see provisions included in the Statute which would recognize their special rights in all these matters and state in general

terms the principles on which these rights should be given effect to. They point out that guarantees for the protection of minorities have been included within recent years in the constitutions of certain European States, such as Poland, Czecho-Slovakia and Yugo Slavia, and they are not satisfied that similar guarantees cannot suitably be included in the Statute which will regulate the new constitution in India. The Commission have observed that the provisions in the European constitutions have not been of much practical value, and this Government realize that similar provisions in the Indian constitution will be of little use unless a definite obligation to give effect to them can be laid on some authority and unless there is a definite sanction behind them. The only possible authority will be the Governor, or the Governor-General, as the case may be, as it would be clearly undesirable to make the enforcement of these provisions depend on an appeal to the courts. Such an appeal has been formally provided in some constitutions, e.g., in the British North America Act of 1867 and in the new German constitution, but in India the effort has consistently been to avoid a procedure of this nature, which is likely in practice to prove both contentious and dilatory. The whole matter is clearly one that requires further detailed examination in consultation with the recognized representatives of the principal minority communities, and all that this Government feel called upon to say at this stage is that they would agree to the inclusion in the Statute of provisions of a general nature, provided that the obligation of giving effect to them is definitely laid on the Governor.

(3) The third purpose is "*to secure the due fulfilment of any liability of Government in respect of items of expenditure not subject to the vote of the legislature.*" Some doubt exists whether a power of intervention for this purpose is really required, and it has been suggested that the object could be secured by making provision in the Statute by which all expenditure of the kind referred to will be made a first charge on provincial revenues. It is doubtful, however, whether such a provision would, in the absence of the further power suggested by the Commission, definitely secure the actual payment of these sums.

(4) The fourth purpose is defined by the Commission in these words "*to secure the carrying out of any order received by the provincial Government from the Government of India or the Secretary of State.*" It is presumed that this provision applies primarily to the enforcement of the orders received by the local Government from the Government of India in the matters included in the categories given in para. 182 of the Commission's Report. To this extent this Government agree that the power is necessary; and they also accept the view, advanced by the Indian Members of the Government, that the Statute should make it clear that the powers of the Government of India (and consequently those of the Governor also) in this respect should be limited to matters included in those categories. It is not clear why the Commission have included a reference to orders given by the Secretary of State. As shown at para. 350 of the Commission's Report, the Secretary of State would, in the provincial sphere, issue instructions only on those matters in which

special powers are reserved to the Governor, and it is presumed that instructions on these points would reach him through the Governor-General. They would, as shown above, be defined by Statute, and would not extend to a general power of intervention over the whole sphere of provincial administration save presumably in the circumstances described in paras. 65 and 98 of the Report, i.e., when the normal constitution is suspended. This also is a matter which will require clear definition in the drafting of the Statute.

(5) This Government agree that the Governor must be given special over-riding powers for the fifth purpose, namely, *to carry out any duties which may be statutorily imposed on him personally.*

This Government desire to add that in drafting the Statute care should be taken to distinguish the matters on which the personal powers of the Governor are final from those in which he is to be subjected to the control and directions of the Governor-General. The existing Statute is deficient in this respect. The point will become of considerable importance in the future, owing to the fact that the Governor will exist as a statutory authority apart from the local Government.

The Commission have anticipated the objection that these special powers to be given to the Governor are greater than those at present exercised by him in relation to transferred subjects. The objection has no real foundation. At present a Governor has, under subsection (3) of section 52 of the Government of India Act, an unlimited and uncontrolled power to reject the advice of his Ministers and direct action to be taken otherwise than in accordance with that advice whenever "he sees sufficient cause to dissent from their opinion." Under the Commission's proposal he will be empowered to exercise the special power only for the specified and limited purposes dealt with above.

15. *Legislative sphere.*—In the opinion of this Government the Governor should be given power to secure legislation for the first of the five purposes referred to in the previous paragraph. It is however doubtful if any occasion would arise for his securing legislation under the purpose described as (3), while as regards (4) the Government of India should be able to secure their position by virtue of their power of co-extensive legislation. No occasion seems in practice likely to arise for legislation to secure the purpose described as (5). In regard to the need for an affirmative power of legislation for the second purpose, namely, to secure the protection of minority interests, there is some difference of opinion among the Members of Government. The exercise of the power of the Governor for the protection of minority interests would ordinarily take the form of vetoing legislation prejudicial to such interests or in the alternative, utilizing the power of returning the Bill for reconsideration, or reserving it for consideration by the Governor-General, it being assumed that provisions similar to those embodied in section 81-A of the Act of 1919 will be repeated in the new Statute. His Excellency's Ministers, however, would like to see an

affirmative power of legislation placed in the hands of the Governor. The other Members of Government doubt whether this is a power which the Governor would in practice ever be able to exercise, but they are quite prepared to agree that it should be given him (subject to its being found possible to secure a suitable form of definition) if important minority communities press for it generally. It must, however, be realized that it would give to the Governor a somewhat wider power than he has at present, since he could not, under his present powers, secure by certification the passage of a Bill relating, for example, to Muslim or depressed class education, whereas under the Commission's proposal he would be able to do so "in order to prevent serious prejudice" to either of these communities as compared with other communities. In para. 43 below this Government make a new suggestion for the protection of minority communities from discriminatory legislation, namely, that a provision on the lines of section 67(2) (b) of the Government of India Act should be applied to legislation in provincial legislatures.

16. *Financial sphere.*—This Government agree that the Governor should have the power of restoring rejected grants for the first, second, fourth and fifth of the purposes mentioned in para. 14 above. This power is not necessary for the third purpose which refers only to items of expenditure not subject to the vote of the legislature. They also agree that he should have the full financial powers conferred by proviso (b) of section 72-D(2) of the Government of India Act for exercise in the case of emergency. A reference to para. 65 of the Report would seem to show that it is intended that this emergency power should only be utilized after a statutory declaration by the Governor that a state of affairs has arisen under which the government of the province could not be carried on under the ordinary constitution provided in the Statute. That declaration would be reported to Parliament. In effect, the Governor would in these circumstances replace the Cabinet for all purposes and a question arises whether the terms used in the present Act, viz., "for the carrying on of any department" would in that case be sufficiently comprehensive. They would probably prove to be so if the Statute gave him final power to define the expenditure necessary for this purpose, but some variation of the language used might perhaps be found desirable, for it might happen that—if the period of this special use of power were prolonged—he might have to meet a considerable variety of expenditure, including non-effective charges, grants to local bodies and even payment of loans to which the local Government stood committed. It is certainly desirable that the Statute should make it clear that the Governor's declaration of the existence of a state of emergency should be final, and not open to question in the courts.

17. The Commission recommend that the Governor should have a power of emergency legislation by ordinance over the whole provincial field. A comparison of paras. 98 and 65 shows that it is intended that this power should come into being only in the circumstances described above, i.e., after a declaration of the suspension of the normal

constitution. It is of course intended that in issuing such ordinances the Governor should act under the supervision and control of the Governor-General, but it is not made clear whether the ordinances would be made subject to the procedure which now prevails in regard to Regulations (section 71 of the Act). If that procedure is enforced, it must be assumed that the authority of the Governor-General would be substituted for that of the Governor-General in Council, since the Governor will in this case take the place of the local Government. It may be open to some doubt whether the ordinance-making power need actually extend "over the whole provincial field"; it would probably prove sufficient if the Governor were given the same power in regard to emergency ordinances as in regard to emergency expenditure.

18. The Commission have not proposed to give the Governor any power of intervention to secure the financial stability of the province. They consider that so wide a power of intervention would hinder the growth of responsibility, and that the Government of India's power to control the provincial Government's borrowing will provide a sufficient corrective. On this point the view of this Government is that although intervention might perhaps be most usefully exercised before any question of borrowing arises, a power to intervene in the interests of financial stability would be so wide that it might be difficult to justify it. Perhaps the best guarantee of financial stability would be secured by a convention that the authority controlling borrowing (para. 54 below) should refuse to sanction loans designed to meet expenditure other than that of a true capital or productive nature.

CHAPTER 2.—THE PROVINCIAL LEGISLATURE.

19. In dealing with this chapter of the Report I am to state in the first place those recommendations with which this Government agree and in regard to which they have no comments to make, and thereafter to deal with those proposals which do not admit of such summary disposal. This Government are prepared to accept the following proposals:—

- (1) That the normal statutory life of provincial legislatures should be extended to five years and that the Governor's power of extending this statutory period should be limited to the purpose indicated in para. 135 of the Report, namely, to bring the life of the council to an end at the same time as the life of the Federal Assembly.
- (2) That the size of the legislative councils should be increased. His Excellency's Ministers would prefer a council with a membership not exceeding 200. The other Members of Government would not object to the present membership being doubled.
- (3) That separate electorates for Europeans should be retained and that the present proportion between the number of European general seats and the number of Indian general seats should be maintained.
- (4) That the present proportion of Muslim representatives should be maintained.

- (5) That the official bloc should be removed and that the new Statute should make provision for the presence of officials, or other experts, without a right to vote, in committees of the legislature.
- (6) That no special arrangement should be made to secure the election of women members either by prescribing that a certain number of seats must be filled by women or by reserving seats for women, but that women candidates should be given "a fair field and no favour."
- (7) That if the Ministry includes non-elected members such as Ministers should become *ex officio* members of the legislature.

This Government also accept the proposal that subject to the safeguards recommended in para. 95 the legislative council should be empowered after a period of ten years to pass constitutional resolutions providing for changes in the arrangement of constituencies, in the franchise and methods of representation. His Excellency's Ministers think such resolutions should not apply to methods of representation (see extract C in the appendix). Their colleagues see no need for the exclusion of methods of representation provided that the "two-thirds" majority suggested by the Commission will be two-thirds of the actual number of members in each case and not two-thirds of the members voting. An obligation would of course fall on the Governor to exercise a discretion where the interests of a community represented by small numbers in the council were affected, such for instance as the European or Anglo-Indian community. But the proposals of the Commission make provision for the exercise of this discretion.

20. This Government also accept the Commission's proposals in regard to the representation of Anglo-Indians and commercial bodies with the slight modifications explained below. In the case of Anglo-Indians they would prefer to increase the representation in proportion to the increase in the total membership of the council. It seems undesirable to increase the number of European and Indian Christian seats in proportion to the increase in the total membership of the council and at the same time to leave Anglo-Indians with their existing representation of only one member. In the case of the two commercial constituencies, on the other hand, they would retain the existing number of members. The commercial bodies represent an interest rather than a community, and the important thing is that the interest should have a means of voicing its views in the council. The three seats which are at present given are sufficient for this purpose and this Government see no need to increase them to six.

Communal representation.

21. This Government are not concerned with the representation of Sikhs, non-Brahmins or Mahrattas, and in their consideration of this question of communal representation propose to confine themselves to the cases of Muslims, Indian Christians and depressed classes. They

are in full agreement with the view of the Commission that the subject of communal representation is pre-eminently one which the rival communities should settle among themselves, but that in the absence of any new agreement between Hindus and Muslims communal representation for the latter community must be continued in this province for the present. The Commission have considered three different methods of securing such representation, namely, (1) by means of a system of reserved seats, (2) by means of a system of reserved seats combined with a system of previous selection of candidates by Muslim electors alone, and (3) by means of a system of proportional representation. They have rejected the first and third of these methods, and this Government agree with their view that the first would be entirely unacceptable to the Muslim community generally and that the third is at present impracticable. The Commission have suggested that the second method, called by them the system of "primaries," should be further considered by both communities to see if it provides a basis of agreement. This Government are not yet in a position to state what the views of the Muslim community generally are likely to be on this question, but I am to say that Nawab Sir Ahmad Sa'id Khan and all His Excellency's Ministers are opposed to the introduction of this system of election, and that this Government have reason to believe that that view would be endorsed by a majority of Muslims in this province. The Government as a whole accept the view that in the absence of agreement between the two great communities separate Muslim electorates must be continued.

Representation of depressed classes.

22. At present the Governor nominates one member to represent classes which in his opinion are depressed classes. In his report to the Commission the Governor in Council recommended that in future the Governor should nominate five persons to represent depressed and backward classes. The Committee of the United Provinces legislative council agreed that representation of both these classes should be by nomination and recommended that the number of representatives should be fifteen. The Commission have gone far beyond these recommendations. They reject the system of nomination on the ground that it provides no opportunity for training these classes in politics. They also reject separate electorates on general grounds of principle and also on two special grounds, namely, (1) that exact definition would be difficult and (2) that such electorates are likely to militate against the rise of these classes in the social scale. They therefore propose that seats should be reserved in the non-Muslim constituencies to be filled by the votes of the non-Muslim general electorates, and that the Governor should be required to certify which candidates are authorized to seek election. They realize that difficulty may for some time be experienced in finding sufficient suitable candidates among the depressed classes themselves, and suggest that, if this difficulty does arise, the Governor should for ten years, and in respect of half the number of reserved seats only, have the power either (1) to allow

other than members of such classes to stand for election on their behalf, or (2) to nominate such other persons to reserved seats. Finally, the Commission recommend that the number of reserved seats should be fixed on the following principle—the proportion of the number of reserved seats to the total number of seats in all the Indian general constituencies should be three-fourths of the proportion of the depressed class population to the total population of the electoral area of the province. The Government of India will not expect this Government at the present stage to enter into a detailed and exhaustive examination of this difficult question. The matter is one which will require careful investigation by the Franchise Committee which the Commission recommend. This Government therefore confine themselves to an expression of opinion on the main principles involved.

23. The Commission's proposal, as understood by this Government, would result in the return to the legislature of this province of about forty representatives of the depressed classes. The basis of this proposal is not the probable electoral strength of these classes but their total strength. The Commission have made no attempt to estimate their electoral strength. All that they say on this subject is that "there are, even with the present restricted franchise, a sufficient number of depressed class voters to make methods of election possible, at all events, in many areas." This Government have not the necessary information to enable them to say whether that statement is or is not accurate so far as this province is concerned. Their own opinion is that if the term "depressed classes" is defined with some strictness and held to include only the members of those castes which follow an occupation which is generally regarded as degrading, the number of persons belonging to those classes who are at present enfranchised will be found to be comparatively small. Even if the franchise be lowered, so long as the main qualification is the payment of rent for land or of land revenue, the number is likely to remain comparatively small, for the reason that the main occupation of these castes is not cultivation. Speculation in a matter of this kind is however useless and actual facts must be ascertained. The Governor in Council is not prepared to accept the proposal that the representation of these classes should be based on their total strength. This would give them a representation out of all proportion to their political importance. It is therefore essential to find out what the probable voting strength of these classes will be on whatever franchise is to be fixed for the general electorate—for there can be no question of a special franchise—and thereafter to consider what number of representatives can suitably be allotted. This Government propose therefore to initiate inquiries immediately so that they may have some material which they can put before the Franchise Committee and which may form a basis for their own proposals.

24. This Government also disagree with the Commission in regard to the method of election. They agree that it is desirable to introduce some system of election in place of nomination, but they dislike the proposal that the election should be made by the

non-Muslim electorate to a number of reserved seats. As explained in the extract which will be found in the appendix, from a note by Raja Bahadur Kushalpal Singh, this is not what the depressed class leaders themselves ask for, and it is not likely to satisfy them. The Commission themselves admit that separate electorates are more likely to secure the return of an adequate number of persons who enjoy the confidence of the depressed classes. That admission suggests the vital objection to their proposal, namely, that in the general non-Muslim constituencies the depressed class voters will be far outnumbered by the other voters and the members returned will be those who are supported by the majority of voters, as distinct from the depressed class voters. The Commission's proposal will not in fact give the depressed classes members who will be trusted by them to represent their special interests. The alternative is separate electorates. These no doubt have their own disadvantages, but if the initial difficulty of creating an electorate can be overcome, this Government consider that these classes should not, on a purely theoretical ground, be denied a privilege which has already been given to Muslims and Europeans and which it is proposed to give to Indian Christians and Anglo-Indians. The objection that such an electorate will involve stigmatizing each elector and will militate against his rise in the social scale is not one that is likely to weigh with those principally concerned, and if the representatives in the legislature must be stigmatized, and even the Commission's proposal involves this, there seems no reason why the voters should not be. It is at least arguable also that the position of these classes is more likely to be improved by securing real representation in the local legislature than by the ineffective form of representation suggested by the Commission. The real difficulty lies in forming an electorate. This Government are not at present prepared to say more on this point than that they propose to investigate the matter in the hope that they may be in a position to put concrete proposals for an electorate before the Franchise Committee.

Indian Christian representation.

25. The Indian Christian community is at present represented in this province by one nominated member. The Commission propose that representation should in future be by election, they prefer a system of reservation of seats to separate electorates and they recommend that the number of representatives be increased from one to two. The total number of Indian Christians in this province at the census of 1921 was 169,000. The number of electors, even with the extended franchise, will therefore be comparatively small. No figures are at present available showing the distribution of Indian Christians among the various districts of the province, but it can be said with confidence that it will not be possible in this province to make a satisfactory arrangement whereby two seats will be reserved for Indian Christians. If nomination is to be substituted by election, then it seems practically inevitable that a separate electorate should be established. This Government have no objection to the increase in the number of representatives from one to two.

University representation.

26. The Commission obviously are not convinced of the desirability of retaining university representation and have confined themselves to a halting expression of opinion that the existing university seats should be retained. There is some division of opinion on this subject among the Members of this Government. His Excellency the Governor and the two Members of the Executive Council see no advantage in retaining the one university seat in this province. University members do not represent any special interests and the university electors undoubtedly receive adequate representation through the general constituencies. His Excellency's Ministers feel some difficulty in agreeing to the withdrawal of a privilege at present enjoyed. They would therefore prefer to retain the existing seat. They would not, however, confine it to the Allahabad University, but would either have a joint electorate formed from the three provincial universities of Allahabad, Lucknow and Agra, or in the alternative they would allow each university to elect the member in turn.

Representation of labour.

27. Labour at present receives no special representation in this province. The Commission recommend that the duty of drawing up rules for securing labour representation should be imposed on the Governor and they would leave it to him to resort to nomination if he considers a system of election impossible. As regards the number of labour representatives, they content themselves with expressing the view that, if suitable members are available, the proportion of labour representation should be increased. The position in this province in regard to the representation of labour interests was fully explained in this Government's report to the Commission, and I am to say that this Government do not anticipate that a system of election will be possible. In the absence of any labour organizations which are capable of putting up a panel of candidates from whom selections could be made, this Government at present see no alternative to a system of nomination pure and simple, and they are prepared to accept the Commission's proposal which will probably result in the Governor nominating one or two labour representatives.

Representation of great landholders.

28. The great landholders of this province have special electorates which return six members to the legislative council. On the ground that their standing and reputation and the influence which they exert in their own localities have enabled them to share a large number of seats in the general constituencies and are therefore such as to render special protection unnecessary, the Commission have, subject to a certain safeguard to secure them their present representation, recommended the withdrawal of their special representation. This Government are unable to endorse the Commission's recommendation. Though all the Members of Government hold the same views on the general principles involved, I am to refer the Government of India to the extracts E(i) and (ii), which will be found in the appendix, from notes by Nawab

Sir Ahmad Sa'id Khan and His Excellency's Ministers. Government hold that the representation which the great landholders have been able to secure has not been disproportionate to their political importance in present conditions. It is almost inevitable that as the electorate gains political experience, it will tend to prefer representatives drawn from sources other than the great landed families, and the need for special representation is likely to increase rather than decrease. It is peculiarly unfortunate that the Commission have singled out this one class to be deprived of a privilege at present enjoyed, while at the same time recommending the grant of special representation on a wider scale for some classes of little political importance and the retention of the special representation of another class—university graduates—to which the arguments used in the case of the landholders apply with even greater force. This Government are unanimously and strongly in favour of the retention of the special representation of the great landholders at the existing ratio, and the Governor in Council desires to repeat the recommendation placed before the Commission, which was that the number of representatives be increased to twelve, seven to be elected by Agra landholders, four by the Oudh taluqdars and one by the Oudh landholders other than taluqdars, and that all these representatives except the last be elected by proportional representation on the system of the single transferable vote. His Excellency's Ministers would go further and give the landholders sixteen representatives, as recommended by the Indian Central Committee, but, differing in this from that Committee, would allot ten seats to be filled by the Agra Province Zamindars' Association, five to be filled by the British Indian Association, and one by Oudh landholders other than taluqdars. I am to add also that the Ministers consider that similar bodies of equal status in other provinces should also return their own representatives by separate electorates to both chambers of the provincial councils and also to the Federal Assembly and the Council of State.

Nominated members.

29. The Commission propose that, apart from a power to nominate members representative of certain special classes where election is impossible or fails to give a specified amount of representation, the Governor should have a discretionary power of nomination which should be used particularly to ensure more adequate representation of women and labour. They would fix the number of members who may be nominated at between 5 and 10 per cent. of the total fixed seats. In a council of 250 this would give the Governor power to nominate between 12 and 25 members. Apart from officials the Governor in this province now has power to nominate only five members and of these three must be representatives of special interests. There are, in the opinion of the Governor in Council, obvious disadvantages in leaving the Governor so general a power as the Commission propose. However defensible such a power is under the existing constitution, it will clearly become more and more anomalous as the constitution approaches one of complete responsible government. His Excellency in Council is therefore in favour of

retaining the power of nomination only to a very restricted extent and in order to secure the representation of definite interests. He sees no reason to grant any special power of nominating women as such. If this Government's proposals in regard to the representation of great landholders are accepted, then there will be no need for nomination in their case. This Government also hope that it will be possible to secure the representation of Anglo-Indians, Indian Christians and depressed classes by election. The only special interest which it will not be possible to get represented by election is that of labour, and this Government have already agreed above to the nomination of one or two labour members. The Commission have said nothing about the nomination of expert members. This Government consider that the Governor should have the power at present conferred by proviso (b) to sub-section (2) of section 72-A. of the Government of India Act to nominate not more than two persons having special knowledge or experience of the subject matter of any Bill which is before the legislature. Such persons would not necessarily be officials but might, to take one example, in the case of a Bill to regulate religious and charitable endowments, be persons who have had actual experience of the management of such endowments. This Government would also allow the Governor to nominate one person (who would generally be an official) to act as legal adviser to the Government and to assist in dealing with the drafting of Bills during their progress through select committees and the like. The Governor in Council would therefore prefer to restrict the Governor's power of nomination to the following three purposes :

- (1) to secure representatives of labour interests,
- (2) to secure the assistance of experts, and
- (3) to secure the assistance of a legal adviser and draftsman.

His Excellency's Ministers would, however, have no objection to the Commission's proposal to give the Governor power to nominate members up to 5 or 10 per cent. of the total membership, on the understanding that he would not be restricted to use this power to secure the representation of any special interests such as those of women or labour.

Powers of legislation and finance.

30. The special powers of the Governor in relation to legislation and finance have been dealt with in paras. 15 to 17 above. This Government accept the remaining proposals in regard to legislation and finance contained in paras. 96 to 98 of the Report.

CHAPTER 3.—THE FRANCHISE.

31. After referring to the variety of views held in India in regard to the extension of the franchise and to the way in which the views held by various classes and communities are influenced by the manner in which each such class or community is likely to be affected by extension, the Commission have rejected adult franchise as impracticable at the present stage and have recommended that a Franchise

Committee should be appointed with instructions to frame schemes which would enfranchise about 10 per cent. of the total population. They have further suggested that a special literary qualification should be introduced and also a special qualification for wives and widows of persons qualified for the franchise. Finally, as a complement to their proposal that the legislative council should be permitted to revise the franchise by constitutional resolutions, they have recommended that after an interval of fifteen years a second Franchise Committee should be appointed to review progress and, if 20 per cent. of the population have not by then been enfranchised, to devise means to accelerate progress. The views of this Government on each of these proposals are explained in the following paragraphs.

Proposals for extension.

32. The Commission base their proposed extension of the franchise on the following grounds:—

- (1) That the existing franchise is too limited to provide the material from which to build an adequate scheme of representative government.
- (2) That many of those who are at present below the line of qualification are as fit to exercise the vote as those who are above it, and, even if they do not ask for it, the vote must be regarded as an instrument of political education and as a source of political influence.

In this section of their Report the Commission have not referred to the size of constituencies. But they have done so in paras. 205 and 206 of volume I, and it would appear that one of the reasons which influenced them in proposing so large an extension of the franchise was that such an extension would render possible a reduction of the size of constituencies and a closer touch between members of the legislature and the voters who return them. Their ideas on this point are the outcome of their own experience derived from a country which is predominantly industrial. It may be questioned whether they apply with the same force to a country which is predominantly agricultural and in which 90 per cent. of the people live in an immense number of villages scattered over the country-side. For practical purposes it can make little difference in the relations between the member and his electors whether the constituency contains 2,000 villages or 1,000, and any reduction in the size of constituencies that is within the bounds of possibility is not going to make any real difference from this point of view, nor give either the member or voter a more accurate appreciation of the true meaning of representation. While therefore this Government are not opposed to some extension of the franchise in the hope that the vote may in time prove to be an instrument of political education and a source of political influence, they see no adequate reason for so large an immediate extension as that proposed by the Commission. This Government stated to the Commission that the great majority of the electorate in this province are not only illiterate but also ignorant of and without interest in the affairs

of the province as a whole. They do not, however, deny that there is some force in the argument that many of those who are at present without the vote are as fit to exercise it as the majority of existing voters. It is therefore not unreasonable to extend the franchise to a considerable extent, but care must be taken not to make it so large as to place an undue strain on the polling machinery. This Government have not immediately available all the information which they would like to possess before expressing a considered opinion in regard to the extent to which the franchise can be widened, and for that reason they desire to confine themselves to a provisional expression of opinion on this point. According to figures collected in 1920 the lowering of the principal rural qualifications to a payment of not less than Rs. 25 rent in the case of tenants and not less than Rs. 10 land revenue in the case of landholders will add about $1\frac{1}{2}$ million to the rural electorate and thus double the number of persons enfranchised by virtue of rent or revenue paying qualifications. This Government are not at present disposed to recommend any larger extension than this. But they would agree to the lowering of the other rural qualifications and also of the urban qualifications, where this can suitably be done, to such a degree as to qualify roughly double the present number of electors. It may be objected that the increase thus proposed is only 100 per cent. instead of the 200 per cent. recommended by the Commission. The reply to that objection is, firstly, that, as already stated, the argument that smaller constituencies will bring member and voter into close touch does not apply to Indian conditions with the same force as it does to English conditions; secondly, that the franchise necessary to secure this Government's 100 per cent. increase will be approximately the same as that required for the Commission's higher increase with the exception of the special women's qualification which this Government for reasons given below are not prepared to accept; and, thirdly, that it would be unwise to lower the qualifications still further at the present stage.

Literary qualification.

33. This Government are divided in their views on the proposed literary qualification. His Excellency the Governor and the Members of the Executive Council are opposed to this innovation. His Excellency's Ministers accept the principle of the Commission's proposal, but two of them would prefer that the actual qualification should be somewhat different. Hitherto the main principle of the franchise has been based on some property qualification, and until it is shown that it is impossible to retain that principle and at the same time widen the franchise to the extent desirable, the Governor in Council would prefer to have no purely literary qualification. The Commission suggest two reasons in support of their proposal, namely, that it would bring in voters of better education, and that it would provide for an increase in the number of electors in proportion to the spread of education. In reply to these reasons it can be argued that the test proposed is so low that it will not bring in really educated men and that the majority of men who are educated have, and in future may be expected to continue

to have, a property qualification of some kind or other. It is, however, true that the present qualifications disenfranchise many members of joint Hindu families, and for this, as well as for general reasons, the Ministers would like to see a literary qualification introduced. Nawab Muhammad Yusuf and Maharaj Kumar Mahijit Singh would extend the franchise to those who have passed the matriculation or other equivalent examination or a recognized proficiency examination in a vernacular or classical language. Raja Bahadur Kushalpal Singh would accept the qualification proposed by the Commission.

Special qualification for women.

34. The Commission have expressed considerable concern at the small number of women who are enfranchised and a desire to see a substantial increase in the present ratio of women to men voters. In order to effect this they have suggested that it may be found possible to add to the present qualifications two others, namely, (i) being the wife, over 25 years of age, of a man who has a property qualification to vote, and (ii) being a widow over that age whose husband at the time of his death was so qualified. In addition they would apply their proposed educational qualification to women over 21 years of age as well as to men. These proposals are of a far-reaching nature and must be considered in relation to existing facts. In this province the great majority of the voters are ignorant and illiterate villagers. Whatever can be said of their competency as voters it can hardly be questioned that the wives of most of them are even more ignorant and illiterate and that many of those who are of a better status would be prevented by social customs from exercising the vote. The practical result of the proposal would indeed be to give to the low caste Hindu voter, whose wife is able to go to the poll, a second vote and thus give him twice the voting power of many of the higher caste Hindus and also of many of the Muslims. In the opinion of this Government the means of extending the women's franchise can best be left to be dealt with by the people themselves under the powers which it is proposed to grant to the new legislative councils.

Election expenses.

35. The Commission recommend that suitable limits should be defined and enforced for election outlay. The existing electoral rules for this province require every candidate to make a return of his election expenses under certain specified heads, but they lay down no limits and it is well known that these returns afford no true indication of the actual expenditure incurred by candidates. The Commission consider that the absence of limits gives an unfair advantage to candidates who can afford to spend freely and is an obvious encouragement to corruption. It is notorious that some candidates have spent very large sums on elections and that much of such expenditure has been of a nature which might be described as illegal. As regards legitimate expenditure the position is that there is undoubtedly room for a considerable increase in expenditure on such matters as election literature, meetings, canvassing, etc., and Government have not at

present sufficient material on which to base proposals for the imposition of limits. This Government, therefore, consider that further experience should be awaited before any attempt is made to impose such limits.

CHAPTER 4.—SECOND CHAMBERS.

86. The Commission were not able to agree on the subject of second chambers in the provinces. Three provincial Governments have approved and five opposed the establishment of such chambers. The Indian Central Committee, while opposing the introduction of second chambers generally, have recommended the creation of such a chamber in this province tentatively for a period of ten years. The United Provinces Provincial Committee unanimously recommended the creation of a second chamber in this province. The question is therefore one on which there is considerable difference of opinion. The Members of this Government are however unanimously in favour of the establishment of a second chamber in this province. Nawab Sir Ahmad Sa'id Khan and His Excellency's Ministers have recorded separate notes in favour of the proposal from which extracts will be found in the appendix. The following are the grounds on which the proposal can be justified :—

- (1) The natural development of the provincial constitution will result in an increasing restriction of the special powers of the Governor until these powers ultimately disappear. So long as these powers remain there may not be a complete case for the establishment of a second chamber, but with the gradual disappearance of these powers the case will become increasingly strong. It is clearly undesirable to wait until the Governor's powers have completely disappeared before creating such a chamber, as the result of this would be that minority communities might be deprived of the protection of the Governor before being given any other form of protection. Furthermore, the whole principle of the new constitution, as proposed by the Commission, is that its future development should be natural and gradual and not by well-defined stages. There is thus no future revision of the constitution in contemplation at which the introduction of a second chamber might be further considered. It is therefore desirable that such a chamber should be created now when the constitution is under revision.
- (2) A second chamber may in certain circumstances obviate the use of the Governor's special powers. In so far as it does so, the extent of the autonomy enjoyed by the province will be increased and the position of the Governor will at the same time be strengthened. The more the Governor is able to keep himself outside of the government machine and the more he can avoid

intervention the stronger will his constitutional position become and the more effective his intervention when the need for it arises.

- (3) A wide extension of the franchise is likely to cause a very natural apprehension among those who have a large stake in the affairs of the province and with whom in the past has lain the predominant share of political power. These classes fear that they will not be able to obtain adequate representation in future conditions. It is important for the welfare of the province that the legitimate interests of these classes should be protected and that they should have a feeling of security and of confidence in the administration. The establishment of a second chamber may not achieve all that they expect of it, but it will, in the opinion of this Government, be a stabilizing influence and assist in securing general confidence in the new constitution.

Another point which, if not exactly a reason for introducing a second chamber, is an important practical consideration is that there are in this province classes from which such a chamber can suitably be constituted. The exact constitution of the chamber must be left for future consideration, but the provisional view of this Government is that the chamber should have a total membership not exceeding 50 and should contain a majority of elected members who should be directly elected on a high franchise. The same communal proportions would be applied to the upper as to the lower chamber. In the opinion of the Governor in Council there should be no representation of special interests, for example, great landholders or commercial bodies, in the second chamber but His Excellency's Ministers would give special representation to great landholders. No official element will be possible as it would obviously be impracticable to allow officials freedom of vote, and if the upper chamber is to exercise a moderating influence, the presence of officials voting in accordance with the views of Ministers would not help to achieve this object. The relations between the two Houses should be those at present existing between the two Houses of the Indian legislature. It will be desirable that the upper House should be represented in the Ministry and this Government hope that if such a House is created the Governor will always find it possible to secure to it some representation in the Ministry, though they do not consider that it would be possible to make any statutory provision to this end.

Expert revising body.

37. This Government would like to have had before them a fuller exposition of the exact composition and functions of the small expert body which the Commission suggest should be created "to report on the final drafting of measures and to call attention to any points of conflict with existing legislative or administrative arrangements." They agree that there is much room for improvement in the drafting of provincial legislation and also that there is need for the better

understanding of the exact implications of legislation by the members of the legislature. But they are of opinion that what is really required to secure better drafting is that the provincial Government should have a trained draftsman who would not only make the initial drafts of Bills but would also be a member of the legislature and thus available to follow every stage of the Bill in its progress through the legislature. To secure the second object which the Commission appear to have had in mind expert knowledge of administration rather than of drafting would seem to be required, and the presence of experts on select committees, suggested by the Commission in para. 86, might be made use of to bring out the real effect of proposed legislation and the administrative considerations involved by its passage.

PART IV.

CHAPTER 1.—THE CENTRAL LEGISLATURE.

38. No part of the Commission's scheme involves a more radical departure from existing arrangements than their proposals for the constitution of the Lower House of the Central Legislature. Put briefly, these proposals are that that House should be called the Federal Assembly, should have a fixed life of five years, and should be composed of from 250 to 280 members as follows,—

- (1) the members of the Governor-General's Executive Council *ex officio*,
- (2) not more than twelve other official members nominated by the Governor-General,
- (3) members elected on a system of proportional representation by the legislative councils of Governors' provinces, each council electing approximately one member for every million inhabitants of the province,
- (4) eight members elected or nominated to represent minor provinces, and
- (5) eleven members nominated by the Governor-General to represent backward tracts, and possibly two to represent Anglo-Indians.

This Government agree with the proposals that the Assembly should have a fixed life of five years and that the representation of each province should be determined on the basis of population. In regard to other points in the scheme proposed by the Commission there is some difference of opinion. Nawab Sir Ahmad Sa'id Khan and His Excellency's Ministers approve of the increase in the membership of the Assembly to 250 or thereabouts. But His Excellency Sir Malcolm Hailey and Sir George Lambert are unable to find in an Assembly of the size suggested, with an official representation amounting to twelve nominated official members, any promise of that stable Central Government which the Commission predicated (Report, para. 178) nor any recognition of the fact that "it is on the strength of the central

administration that the peace and safety of India ultimately depend" (para. 29). The picture which they see is that of an executive which must inevitably be in a position of pathetic impotence within the legislature, and a legislature which is bound to be in perpetual quest of means to reduce and, if possible, to nullify the authority of the executive. So far from gaining in strength or stability by the change proposed, the central administration will occupy a position inferior to the markedly unfavourable situation in which it stands at present. It may be that the Commission felt the difficulty of giving it the position which on their own showing it ought to occupy, but the reasons advanced for advocating a change which must involve a worsening of that position are entirely unconvincing. When we are told that it is desirable to provide at least one member for each million inhabitants, the reply can only be that this number itself is already in the region of the astronomical, and there is no greater reality of representation if the figure is fixed at one million than if it is fixed at two million. The Commission are once again obsessed by the fallacies of an analogy drawn from a compact area closely inhabited by a people largely of an urban and industrial character. In regard to the system of election this Government are also unable to make a joint recommendation. His Excellency Sir Malcolm Hailey adheres to the view taken by him as a member of the Franchise Committee, now strengthened by ten years experience of the existing system both as a Member of the Government of India and as the Governor of two separate provinces, that election should, as proposed by the Commission and for the reason given by them, be indirect. Under the existing system of direct election the members of the Assembly may have illustrated types of Indian opinion, but they have not reflected the views held by majority parties in the provincial legislatures. In a federal constitution it is imperative that the provincial representatives should be made to realize that they sit in the Federal Assembly solely to represent the interests of their provinces and there is much more hope of this end being achieved by indirect rather than by direct election. Sir George Lambert shares this view. Nawab Sir Ahmad Sa'id Khan has no personal objection to indirect election, but feels that it is strongly opposed to Indian sentiment. The views of His Excellency's Ministers are explained in extract G in the appendix. They would prefer a system of direct election; but they recognize the force of the Commission's arguments against such a system in a federal constitution and, if a system of indirect election is considered inevitable, they would like to give it a broader basis than the Commission propose.

39. If the system of direct election is retained, the existing system of communal representation must also be retained. If a system of indirect election is introduced then proportional representation becomes a possible alternative to the communal system. The argument advanced in favour of proportional representation is that it is likely to secure to the principal minority communities an adequate share of representation without placing an open emphasis on religious or racial differences.

All the provincial representatives will be answerable to the same constituents, and they may thus be expected to have a feeling of unity which communal representation cannot give. Those who are opposed to the system argue that it is uncertain in its results and that it will not really mitigate religious and racial animosities, since each group in the provincial legislature will necessarily give their first votes for their own men. There is a real fear among Muslims that the system will not secure to them what they consider to be their due share of representation. A further disadvantage of the system is the difficulty of filling up casual vacancies. Nomination by the Governor is not a method which this Government could accept and it would be difficult to devise any system of election which would not be open to objection on one ground or other. This Government are therefore inclined to the view that the advantages of the system are not sufficient to outweigh its disadvantages and that on the whole it is preferable to retain the existing well-tried system of communal representation.

40. There are two further matters on which this Government disagree with the Commission's proposals. The first is the suggestion that it will be possible for an individual to retain membership of both the Federal Assembly and the provincial council. If the two bodies always met at different times there would be no objection to such dual membership. But it has been customary for the Legislative Assembly and most of the provincial councils to hold their most important session about the same time, namely, in February and March. As that is the most suitable time for the introduction and discussion of the budget, it seems likely that the central and provincial legislatures will continue to meet during these months. In these circumstances it will not be possible for any individual to discharge in a satisfactory manner the duties of membership of both the Assembly and a provincial council, and this Government consider that any individual elected to both bodies should be required to resign from one or the other. The second matter is the proposal that the allowances of provincial representatives in the Federal Assembly should be a charge on provincial revenues. This Government are not aware of any justification for this proposal. The Federal Assembly will be a central body, the Governor-General will regulate its sessions and the Government of India should bear all expenses connected with them.

The Council of State.

41. Though they consider that the Council of State will in theory be something of an anomaly in the constitution which they have proposed, the Commission recommend its retention on practical grounds. They would also retain the present number of members (60) and the present proportions of elected to non-elected members (33 to 27). They would extend the life of the Council to seven years and for the present system of direct election would substitute an indirect one. They make only very tentative suggestions as to the exact composition of the Council and the qualifications for membership. This Government agree that the Council should be retained with a membership of about the present number and also that its period of life should be

extended to seven years. They disagree with the Commission in regard to the method of election. They do not consider that in the case of the Council of State there are the same reasons for indirect election as there are in the case of the Assembly, and even though they are in favour of a second chamber in this province they would prefer a system of direct election to the Council of State to one of indirect election by the members of the provincial second chamber. Although the constituencies must, as at present, be large in area, the electorate will be small and it will not be difficult for members to keep in touch with their electors. Direct election to the Council of State has not been unsuccessful and there are not sufficient reasons for making a change. But this Government would extend the franchise by including all persons paying not less than Rs. 3,000 (instead of Rs. 5,000) land revenue as at present. The Ministers would also like to see the large landholders in this and other provinces given special representation.

Powers of the legislature.

42. The Commission do not recommend any immediate change in the legislative powers of the central legislature, though they contemplate that as the constitution develops there will be a gradual change in the range of its duties. This Government agree generally with the view taken by the Commission, but desire to make some suggestions in regard to the treatment of measures affecting social and religious usages. The first suggestion is designed to give to provinces a somewhat larger measure of autonomy in regard to such legislation. The Commission anticipate that legislation which affects British India only—and measures affecting religious and social usages will fall within this category—will tend to be left more and more to the provincial legislatures, but they also suggest that a more extended use should be made of enabling Statutes which would be passed by the central legislature and be subject to adoption by provincial legislatures. This Government hope that the Commission's anticipations will prove correct, but they themselves would like to suggest that provincial legislatures should be given a larger measure of control over legislation affecting religious and social usages by being given the power of requiring by resolution that any such legislation under consideration in the Federal Assembly shall be purely enabling so far as individual provinces are concerned. This would give the provincial legislature power to prevent a Statute which it considered unsuitable to the conditions of its own province from being applied to that province. Provision would have to be made for securing that such a resolution would have effect only in cases in which the proposed legislation actually affected religious and social usages, and the most convenient method would be the grant of a statutory power to the Governor-General to make a declaration to this effect. It would be of further advantage from the provincial point of view if enabling Statutes could be so drawn as to permit a local legislature to adopt them with such modifications as might be required to suit the particular conditions of its own province.

43. The Commission have been unable to devise any statutory protection for minorities against discriminatory legislation and have come

to the conclusion that the only practical means of providing safeguards is to retain an impartial power in the hands of the Governor-General and Governor and to give these authorities a specific mandate to use that power in all proper cases. This Government have sought for a more satisfactory conclusion but without success. They have a strong preference for some statutory provision which would make it possible for the representatives of any main community by a two-thirds majority to prevent the passage of legislation detrimentally affecting the community. But they appreciate the difficulty of making any such provision, and if this difficulty is found to be insuperable then they agree that the only alternative is to leave the safeguards in the hands of the Governor-General and Governors. In that case the safeguards would in their opinion be made more effective if—

(1) the terms of section 67(2)(b) of the Government of India Act could be widened so as to include social as well as purely religious usages,

(2) a provision similar to section 67(2)(b) could be introduced requiring the previous sanction of the Governor in the case of legislation in Governors' provinces, and

(3) the Governor-General or a Governor should, when approached by any community to do so, be required to give a formal decision whether any Bill does or does not affect the religion or religious or social usages of the community and to pronounce his decision under the power held by him by virtue of (2) above. The Governor-General, or the Governor, should be authorized to require that, as evidence of the desire of the community for a decision on this question, the memorial should be signed by two-thirds of its representatives in the central or provincial legislature or to prescribe any other test which he considered suitable.

44. The powers of the central legislature in relation to provincial finance are dealt with in a later part of this letter. This Government desire to say nothing on the Commission's proposals relating to the other financial powers of the central legislature.

CHAPTER 2.—THE GOVERNOR-GENERAL IN COUNCIL.

45. The Government of India have not asked this Government for any expression of opinion in regard to the constitution of the Central Executive; and the members of Government do not therefore state their views on this question. I am, however, to invite a reference in this connection to the request put forward in para. 2 of this letter.

CHAPTER 4.—RELATIONS BETWEEN CENTRE AND PROVINCES.

46. The question of financial relations between the centre and the provinces will be considered in the later section of this letter dealing with Part VIII of the Report. In this section I am to deal only with

proposals in regard to the control over Governors in the exercise of their special powers and the control over provincial Governments in respect of those matters in which a provincial Government is held by Statute to be subject to superintendence and direction by the Central Government. This Government agree with the Commission that there must be some authority empowered to control Governors in the exercise of their special powers. The Governor will exercise these powers as the agent of Parliament, and so long as the Governor-General in Council is also the agent of Parliament, it might perhaps be held that in theory there would be no constitutional impropriety in the control being vested in the Governor-General in Council. But there are practical objections to this arrangement and the Commission have preferred to take the long view and to anticipate a change in the position of the Governor-General in Council by vesting this power in the Governor-General, who not only is, but must always remain, subject to the control of Parliament through the Secretary of State. This Government accept the Commission's proposal.

47. Under the existing constitution, while the Government of India and the Secretary of State have an unfettered power of control over the administration of reserved provincial subjects, their power in regard to transferred subjects is strictly defined and limited by rule. Under the Relaxation of Control Rules the power of the Secretary of State and the Secretary of State in Council is limited to five purposes, namely,—

- (i) safeguarding the administration of central subjects ;
- (ii) deciding disputes between two provinces ;
- (iii) safeguarding Imperial interests ;
- (iv) determining the position of the Government of India on questions arising between India and other parts of the Empire ; and
- (v) safeguarding the due exercise and performance of certain powers vested in the Secretary of State in Council by Statute or Statutory rules.

Under Devolution Rule 49 the power of control of the Governor-General in Council is limited to the first, second and fifth of these purposes. In addition, however, the Government of India have under sub-section (1) of section 45 of the Government of India Act and Devolution Rule 5 a right to require from local Governments information on the administration of any provincial subject, and under the Local Government (Borrowing) Rules the power to control the issue of loans by provincial Governments. The proposal of the Commission is that the Governor-General in Council should have as wide a power of control as the Secretary of State, though he would, of course, exercise it subject to the Secretary of State's control, and that that power should extend to the purposes nos. (i), (iii), (iv) and (v) above for which the Secretary of State can at present exercise his power, the supply of information, the raising of loans, and in addition the following two purposes, one of

which is an extension of an existing purpose and the second is new—(a) regulating matters which may, in the opinion of the Governor-General, essentially affect the interests of any other part of India and (b) implementing international obligations. Subject to the limitations explained below this Government accept the Commission's proposals, though they would suggest that there will be some advantage if in drafting the Statute the number of separate categories is reduced as far as possible.

(i) At present the Government of India can exercise control over a provincial Government in relation to a transferred subject in order to decide questions arising between two provinces in cases where the provinces concerned are unable to agree. The Commission have explained at some length why they do not consider that that rule goes far enough. It does not give the Central Government any power to secure co-operation between the provinces in matters which are of vital concern to more than one part of India. Furthermore, it has been authoritatively held that under the existing rules it is not permissible to incur expenditure from central revenues on any provincial subject, except in so far as the expenditure represents payment for services rendered. That there is scope for co-operation, specially in such matters as Public health and Medical administration, admits of no reasonable doubt. But the method of securing co-operation is not free from difficulty. There is strong objection to the extension of the power of control by the Government of India in regard to the transferred subjects. There is a natural desire that the provinces should be as free as possible from central control. This Government, being satisfied that some further power of control is likely to be in the best interests of the province and realizing that over the whole field of administration the controlling power of the Central Government is being greatly reduced, are prepared to accept the principle of the Commission's proposal, subject to the understanding that the Government of India will be restricted to use their powers principally for the purpose of collecting information, giving advice, and settling a common policy, and not for the purpose of interfering in the actual details of administration in any province. In particular the Government of India should not use the system of grants-in-aid to secure control in provincial matters. The action taken in regard to the distribution of the proceeds of the petrol tax may perhaps reflect the desire of the Legislative Assembly rather than that of the Government of India to utilize the system of grants to effect control, but it has already created some apprehensions in provincial quarters. There are also indications of the same tendency in the proceedings of the Central Board of Agriculture.

(ii) It should be made clear that the Government of India's powers in relation to the all-India services should be restricted to control over the strength of the cadre to be employed in a province, and should not extend to such matters as transfers, promotions, etc., though there would be a right of appeal to the Government of India in certain service matters prescribed by statutory rule.

48. The Commission have proposed an important alteration in the present classification of central and provincial subjects so as to secure to the Central Government some control over the organization of the Criminal Intelligence Department in the provinces. As this Government understand the proposal the provincial Government would continue to control and pay for the C. I. D, but the Central Government would have the power to require it to maintain an organization which would fit into and co-operate with the Central Intelligence Department. His Excellency the Governor and Sir George Lambart agree that the Government of India should have some control, but they feel some hesitation on the subject since they anticipate that if it is expressed in the terms suggested by the Commission a provincial Government would, if it so desired, have little difficulty in rendering it nugatory. The other members of Government take the view that the C. I. D. is so essential a part of the machinery of Government that no Ministry will wish to reduce its efficiency and therefore no central power of control is required.

PART VIII.

FINANCE.

49. The Commission have observed (para. 158) that many of the suggestions contained in Sir Walter Layton's report go somewhat beyond the range of their constitutional inquiry. They have therefore confined themselves to an expression of opinion on the more strictly constitutional features of the proposals, and have withheld any opinion on such matters as the estimates of future revenue and the suggestions for fresh taxation. This Government may be expected to go somewhat further than the Commission in this matter, as they are concerned not only with the general suitability of the proposals from a constitutional point of view but also with their practical effect on the finances of this province during the next stage of constitutional development. For this reason I am to deal first with the constitutional aspect of Sir Walter Layton's scheme and thereafter with its practical application to the province.

50. The basis of the proposals can be summed up in the following propositions :—

- (i) there is no prospect of existing provincial revenues expanding sufficiently to meet necessary expenditure within the next ten years;
- (ii) the Central Government possess all the expanding sources of revenue and central expenditure should be capable of gradual reduction so as to leave a substantial surplus which will be available for meeting provincial needs;
- (iii) the surplus so obtained will not be sufficient to meet all provincial needs and must be supplemented by new taxation which should be uniform all over India and

centrally collected, but the responsibility of imposing which must rest on the representatives of the provincial legislatures; and

- (iv) the distribution of the revenues to the provinces should be made partly on the basis of origin and partly on that of population.

This Government are prepared to give general acceptance to the first and the last two of these propositions. They are fully satisfied that the existing revenues of this province are not capable of sufficient expansion to meet necessary expenditure within the next ten years. They see little possibility of raising any substantial amount of fresh taxation on a provincial basis and they welcome the suggestion of central taxation and agree that the distribution of its proceeds partly according to origin and partly according to population will be as fair a method of distribution as can be devised. They particularly desire to emphasize the point that the method of distribution must rest on some such automatic basis as is afforded by figures of population; they are entirely averse from any method of distribution based on presumed needs or on standards of expenditure previously adopted in regulating provincial expenditure. While they agree with Sir Walter Layton that the Government of India possess the expanding sources of revenue, this Government can naturally express no opinion on the ability of that Government so to reduce expenditure as to leave a substantial amount available for transfer to the provinces.

51. The proposed method of allocating the Government of India's surplus gives rise to no difficulty. One half of income-tax on personal incomes will be credited to the province in which it is collected and the proceeds of the salt tax will be credited to provinces on the basis of population. The introduction of this arrangement will be more difficult. This Government realize that the Government of India are not likely to be in a position to surrender a large amount of revenue immediately on the introduction of the Reforms and that the transfer will have to be gradual. All that they would ask for is that as much as possible should be given to the provinces as soon as possible and that as accurate an estimate as possible should be provided as to the amount that the provinces will get each year so that they may know where they stand and be able to budget accordingly.

52. The supplementary method of increasing provincial resources is more complicated. The proposal is that new taxation should be imposed and collected centrally and should be distributed on a basis of origin or population according to the nature of the tax. We are not here concerned with the nature of the proposed taxation—that will be considered later—but only with the machinery for its imposition. The proposal made by Sir Walter Layton and endorsed by the Commission is that a Provincial Fund should be instituted which will be fed by the proceeds of the new taxes. These new taxes will be voted by a Federal Assembly representing provincial units and sitting in special session and they will be collected centrally. A demand for such new taxation

will be laid before the Federal Assembly in the form of a Bill by the Finance Member of the Government of India after the Finance Ministers of at least three provinces have at an inter-provincial conference asked for the taxation. The Finance Member of the Government of India, although responsible for introducing the necessary legislation, will not be bound to support it and may even oppose it. The Finance Ministers of the provinces will have the right to speak in the Assembly either in support of or in opposition to the Bill. The Federal Assembly's vote in a special session will then be decisive. These proposals may perhaps be open to criticism on theoretical grounds. An accepted principle of taxation is that no government should take from the tax-payer more money than it actually requires for public purposes. Under this scheme, however, if a single province happens to require additional funds and can induce, say, the Finance Ministers of two other provinces to support it in the inter-provincial conference and a majority of members to support it in the Federal Assembly, then a tax will be imposed on the whole of British India. The force of this objection is no doubt weakened by the practical consideration that, during the next ten years at least, there will be few, if any, provinces that will not require all the additional funds that they can secure. The procedure in the Federal Assembly is also open to criticism. The spectacle of the Finance Minister of one province opposing in open assembly a tax desired by the Finance Minister of another province would not be altogether edifying, particularly if the Ministers concerned belonged to different parties. The party in power in one province might well be in opposition in another and the effect of a decision in the Federal Assembly going against the party in power in a province would obviously have the unfortunate effect of strengthening the Opposition in that province. A further objection, and this time of a practical nature, is that it will be very difficult, if not impossible, to avoid the disclosure of new taxation imposed by this procedure long before the time when the necessary legislation is actually introduced in the legislature. While pointing out these objections, this Government do not suggest that they are decisive. They believe that in practice the need of all provinces for additional resources will be so keenly felt for some time to come that there is no possibility of taxation being imposed in excess of the needs of any province. At the same time the objections to the scheme would be lessened if an absolute majority of Ministers in the inter-provincial conference was required before legislation for the imposition of any new tax was placed before the Federal Assembly. This would have the advantage of precluding any effective opposition in the Assembly, though it may be urged against it that it would make it harder for any individual province to obtain additional funds.

53. I am now to make some observations on the practical application of the Layton scheme. It will be admitted that its author has taken an unduly optimistic view not only of the probable surplus in central revenues but also of the possibility of new taxation. The surplus will depend on a number of uncertain factors of which trade conditions, foreign relations and the internal political situation are all

of first importance. All that can be said with any certainty is that given favourable conditions, a moderate expansion of the proceeds of existing taxation can be relied on, and that, if the Government of India can secure some reduction of expenditure, there will be a certain surplus for allocation to the provinces. It is possible to be somewhat more definite in regard to some of the proposed new taxes, particularly the tax on agricultural incomes and the terminal tax. Nawab Sir Ahmad Sa'id Khan in his separate note (extract I in the appendix) has given expression to the very strong feeling among the land-holding class in this province against the proposal to tax agricultural incomes. Landholders already feel with justice that the burden which falls on them in the shape of land revenue (and it is impossible nowadays to persuade those affected to regard this otherwise than as a tax) is out of proportion to that which is borne by the commercial and industrial tax-payers. It is not necessary to recite here all the arguments against the tax; it is enough to say that the proposal is one that is full of difficulties and this Government would not be prepared to support it; they in any case consider that this form of taxation should certainly not be imposed on this province by the Government of India on the vote of the central legislature. It is eminently a form of taxation which should only be imposed by a responsible government on the vote of the provincial legislature. The terminal tax is objectionable on other grounds and this Government regard it as wholly impracticable. Such a tax is at present a source of municipal revenue to many towns in this province and is much more suitable as a municipal than as a provincial tax. This Government see no serious objection to Sir Walter Layton's other proposals for new taxation. They are not in a position at present to give any estimate of the extent to which the proposals taken as a whole are likely in practice to benefit the revenues of this province. The preparation of such an estimate will require information which is not in the possession of this Government. I am, however, to remind the Government of India that the lack of sufficient resources has been a very serious handicap to practically all provincial Governments since the introduction of the first stage of the Reforms in 1921, and to say that this Government endorse the Commission's observation that it is vital to the success of the next stage in the development of Indian self-government that the provinces should command adequate resources.

Borrowing.

54. Sir Walter Layton's proposals can be summarized as follows. Provincial loans must be subject to standard regulations. The raising of such loans must be co-ordinated. For this purpose a provincial loan council consisting of the Finance Member of the Government of India and the Finance Members of the provinces should be constituted. This council would establish a borrowing programme, prescribe standard regulations and generally be responsible for advising on all matters relating to the service of debt. At first this council would be purely advisory, though Sir Walter Layton contemplates that it would ultimately become an independent body with full powers.

The Commission deal with these proposals in para. 189 of their Report, but it is not clear to what extent they endorse them. They make no mention of the provincial loan council and merely state that "certain corrective powers should reside in the Central Government through a right to control borrowings by the provincial Governments," while they add that "the Central Government should be in a position either to refuse a loan required by a province to meet a deficit or if need be to impose discriminatory rates of interest in respect of any such loans as it grants." The construction which this Government put on the Commission's observations is that they propose to maintain the present arrangement and either do not approve of the proposed council or else regard it as a purely advisory body with no constitutional powers beyond advice. If that construction is correct, then this Government prefer the proposal of the Commission to that of Sir Walter Layton. They recognize the need for an authority to control and co-ordinate provincial borrowings, but they would prefer that that authority should be the Government of India, as at present, rather than a loan council constituted as proposed by Sir Walter Layton. If such a council were created then the borrowing proposals of any single province would be judged by a body composed of its own rivals in the money market. In theory this body would be purely advisory, but in practice the Government of India would find it very difficult, if not impossible, to reject its advice. The result might well be that the council might so use its power as to prejudice the interest of those provinces which possess no local money market of their own. It is again inadvisable that loan programmes should be discussed in circumstances which make secrecy difficult, if not impossible. There must be a controlling and co-ordinating authority, but that authority should be independent of all provinces and not a body composed of persons who have, either directly or indirectly, an interest in the proposals which come before it. Such a body ought also to have not merely advisory but real powers, since the only other authority whose voice could be decisive in the matters dealt with by the council, namely, the Government of India, is itself a potential competitor with the provinces. It is probably impossible at the present stage of political development to constitute such a body, and in all the circumstances this Government would be quite content to leave the Government of India the power of controlling provincial borrowings to the extent described by the Commission in para. 189.

Provincial balances.

55. This Government agree with Sir Walter Layton's proposal that the present arrangements in regard to provincial balances should be maintained. Sir Walter has further suggested that the Government of India should perform banking services for the provinces on a commercial basis and should not attempt to make undue profits out of the business for the benefit of the central budget. This Government readily endorse this suggestion and express the hope that if the proposal is finally accepted they will be consulted in regard to the services rendered to the Government of India at treasuries and sub-treasuries and in regard to

the other details which will have to be taken into consideration in evaluating the gain which accrues to the Government of India from the provincial balances.

PART IX.

THE FUTURE OF THE SERVICES.

56. There are at present four purely civil services in this province which are still recruited on an all-India basis, namely, the Indian Civil, the Indian Police and the Indian Forest Services and the Indian Service of Engineers (Irrigation Branch). The first question for consideration is whether any of these services should continue to be recruited as an all-India service. The Commission have made no final recommendation in regard to the two latter services, but have recommended that recruitment for the Indian Civil and Indian Police Services should continue to be made by the Secretary of State. The three reasons given for this decision are (1) that this is the only means by which the best class of recruits will be obtained, (2) that the ultimate responsibility for the preservation of peace and order is to rest with the Governor, and (3) that the retention of these all-India services will facilitate the staffing of central posts. This Government agree with the Commission's recommendation. In their opinion all considerations point to the continued need for the recruitment of Europeans to these two services and the necessity of getting the best Europeans available. They agree with the Commission that the present proportions of European and Indian recruitment should be retained in each of these two services. In the case of the Indian Civil Service one half and in that of the Indian Police Service over three-fifths of the total direct recruitment is still European, and it is advisable that this recruitment for both services should be made by the authority that can be relied on to get the best class of European recruit. That authority is undoubtedly the Secretary of State, who is in close touch with the sources of supply. This Government therefore approve of the retention of the two services on an all-India basis and of the continuance of recruitment by the Secretary of State. I am, however, to say that Nawab Sir Ahmad Sa'id Khan (see extract K in the appendix) would prefer that while the all-India nature of the services is retained recruitment should be placed in the hands of the Government of India. He is not convinced that that Government will not be able to attract the present class of European recruit, and he feels that it will be in keeping with other constitutional developments to transfer recruitment from an authority in England to an authority in India. His reasons for not going further and recommending the provincialization of both services are that he is advised that it will be difficult to obtain European recruits of a suitable class for a provincial service and that he considers that the retention of the cadre on an all-India basis will facilitate the staffing of posts under the Central Government. I am also to add that this Government contemplate that the strength of these two security services will come under review from time to time as the constitutional situation develops; their present

recommendation does not involve the assumption that it will be necessary to retain either service permanently. Furthermore, they assume that the provincial Governments will retain their present powers in regard to the posting, promotion, etc., of officers of these services and that the powers of the Government of India will, in addition to appellate powers, be confined to determining the number of officers of the services to be employed in a particular province at any time.

57. The position of the Forest and Irrigation Services differs from that of the two security services. This Government agree with the Commission that some advantage would be derived by retaining these services as all-India services, but they do not consider that the advantage is sufficient in this case to outweigh the objections which will be felt on constitutional grounds. The main question of forest administration in the future will be the preservation of the forests. That is mainly a question of policy which will be determined by the provincial Government, and no service, however constituted, will be able to conserve the very valuable property which this province possesses in its forests except in pursuance of a definite policy of the local Government. On the other hand, there is no reason to suppose that given a wise policy of forest conservation a provincialized service will not be able to carry it out with a reasonable degree of efficiency. Irrigation affects the interests of the people more intimately and has more affinity to a security service. There is perhaps no department of Government in which a high standard of efficiency and impartiality is of greater importance to a vast number of the rural population. The existence of a European element in the department is undoubtedly a source of strength to it; but the proportion of European recruitment has already been reduced to such a low figure—25 per cent.—that this Government do not consider that the advantages to be derived from the retention of such recruitment are a sufficient reason for continuing the service in this province on an all-India basis. They are therefore prepared to agree to its provincialization. The existing members of both the Indian Forest Service and the Indian Service of Engineers should, of course, retain all their existing rights and privileges as members of all-India services, and should receive any general concessions which in future may be granted to services which are retained on an all-India basis.

58. This Government agree with the Commission that the success of the changes proposed by them will depend to a large extent on the retention in service of existing members of the all-India services, and that effective measures should be taken to discourage premature retirement. The present position in regard to such retirement is that the existing officers of the all-India services fall into one or other of the two categories, namely,—

- (1) those who at present have a right to retire prematurely and will retain that right until the action to be taken on the Statutory Commission's Report is known, and
- (2) those who will obtain a right, to continue for one year only, to retire prematurely when the departments in which they

are employed are transferred to the control of Ministers responsible to the legislature.

Many officers included in the first category will, if the proposals for the transfer of all subjects are accepted, also come into the second category. All existing members of the all-India services in the province therefore have, or, if all subjects are transferred, will obtain, a right to retire prematurely. Under the existing rules this right will be exercisable in the case of some officers when action to be taken on the Statutory Commission's Report is known, and in the case of others within one year of the transfer of their departments. The Commission propose that these officers should not be required to exercise the option of retirement within any fixed period, but should be given a continuing right to retire. With the experience of the last ten years before them this Government have no hesitation in accepting that proposal as the best method of retaining officers in the service: to prescribe a date beyond which the option cannot be exercised will undoubtedly lead to the early retirement of a number of officers who might otherwise be content to stay on in the service. These retirements will in turn react on the prospect of obtaining recruits in the future. This Government also agree that the safeguards provided for members of all-India services in the Government of India Act should be maintained and that the consent of a majority of the Council of India should continue to be required to any rules or changes in the rules affecting the conditions of service in these services.

59. The Commission have referred to the anxiety of officers in regard to the security of their pensions and of provident and family pension funds in the event of a transfer of financial control from the Secretary of State in Council to the Government of India. They point out that they are not in fact proposing any such transfer, but they nevertheless adopt and confirm the view expressed by the Lee Commission that in the event of such transfer of control adequate provision should be made for safeguarding service pensions. This Government agree with the view taken by both Commissions, and they also desire to bring to the notice of the Government of India the anxiety of European officers in regard to the rate of exchange at which their provident fund contributions may be transferred to England on their retirement. The United Provinces Association of European Government Servants and the Inspector-General of Police have recently addressed this Government on the subject. It appears that both that Association and the Indian Police Association have approached the Government of India in the matter and have received replies which they consider unsatisfactory. The fear of officers is that the present rate of exchange may be lowered, and their savings thereby materially reduced. This Government appreciate the difficulty of meeting the apprehensions of officers in this matter, but bring it to the notice of the Government of India since the anxiety in regard to the future rate of exchange may counterbalance the good effect of keeping open the right to premature retirement by inducing officers to go while exchange is still favourable to them.

60. The Commission propose that future recruits to all-India services should be given all the rights, privileges and safeguards which they recommend for existing members of these services with one important exception, namely, the right of premature retirement. This is mainly, if not entirely, a question of supply and demand. If the Secretary of State can obtain recruits of satisfactory quality, and in adequate numbers, on these terms, then there will clearly be no justification for offering better terms. But having regard to the uncertainty of the future conditions in which members of the services will have to work and to the impossibility of foreseeing what these conditions may be, there is some reason to fear that it may not be possible to obtain European recruits without giving them some prospect of being able to retire on reasonable terms before the completion of the ordinary period of service. It is not perhaps necessary to give the option of retirement on precisely the same terms as at present, but the conditions of service might be altered so as to give definite rights of retirement after fixed periods of service as in the case of the Indian Army. The period on completion of which the earliest pension should be admissible might be twelve years and higher pensions might be offered on completion of longer periods of service. It seems doubtful whether the somewhat vague safeguard contemplated by the Commission, namely, a moral obligation on the part of the Secretary of State, will be regarded by those principally concerned as sufficient. I am, however, to add that Nawab Sir Ahmad Sa'id Khan is strongly opposed to the provision of a right of premature retirement among the conditions of service of new recruits, and considers that it would be preferable to do without European recruits altogether if they cannot be obtained without such an inducement.

61. This Government accept without comment the Commission's recommendations in regard to the medical treatment of European officers, additional pensions for Governors, and the establishment of provincial Public Service Commissions. They desire, however, to bring it to the notice of the Government of India that the recommendation of the Commission in regard to the medical treatment of European officers will not be operative, unless effective steps can be taken to secure the services of the sanctioned cadre of European officers of the Indian Medical Service. If the present conditions continue, this province will in a few years have no European Medical officers of that service. His Excellency's Ministers desire to make their approval to the establishment of Public Service Commissions subject to the condition that the interests of the minority communities will be safeguarded by a definite scheme providing for the due representation of such communities in the provincial and subordinate services.

PART X.

THE HIGH COURTS.

62. In this part of their Report the Commission propose to achieve uniformity in the administrative position of High Courts (including the Chief Court of Oudh and the Courts of Judicial

Commissioners) by placing them all under the executive control of the Government of India. As desired by the Government of India, this Government have obtained the views of the Hon'ble Chief Justice and Hon'ble Judges of the High Court at Allahabad and of the Hon'ble Chief Judge and the Hon'ble Judges of the Chief Court of Oudh on this proposal, and a copy of these views is enclosed with this letter. The Government of India will observe that while the Chief Justice and two Judges of the High Court disagree with the Commission's proposal, the remaining Judges of the High Court and Chief Judge and all the Judges of the Chief Court support it. For the reasons given below this Government consider it desirable that the existing relations between these Courts and the provincial Government should be maintained.

63. The Commission lay much stress on the need for uniformity. That argument is a two-edged one. At present the anomaly lies in the position of one Court only, the High Court at Calcutta, and even if it be admitted that there is a need for uniformity, the natural way to achieve that would be by altering the position of the one Court at Calcutta rather than by altering that of the remaining seven Courts. It is not for this Government to express any opinion on the possibility of altering the position of the High Court at Calcutta, but even if it be found impracticable to bring that Court into the same relative position to the local Government as the other Courts occupy, this Government would deprecate the anomalous position of the Court at Calcutta being made a ground for making a change which they consider unnecessary in the position of the High Court at Allahabad and the Chief Court of Oudh. His Excellency Sir Malcolm Hailey and his Government are in full agreement in desiring that the complete independence of the High Courts in judicial matters should be maintained and that these Courts should be kept free from local political influence, but they are not convinced that the achievement of these objects necessarily involves the removal of the Courts from the executive control of the local Governments. It is reasonable to anticipate that such removal may be construed as a definite mark of distrust in the reformed local Governments. The underlying principle of the new constitution which the Commission propose for the provinces is to give the Ministry and the legislature responsibility for the whole range of provincial administration. That range naturally includes the administration of justice. It is therefore unfortunate that the Commission should at the same time propose to limit the field of provincial responsibility by removing the High Courts from the executive control of the local Governments. The Commission have argued with some force that the result of retaining any subjects as reserved subjects would be to focus criticism on these subjects. The same result is likely to follow the removal of the High Courts from the provincial sphere. The change will not protect matters relating to the Courts from discussion in the provincial legislative council so long as the whole judicial administration, other than the High and Chief Courts, remains a provincial subject. If the council wishes to discuss such matters it will have no difficulty in doing so when the demands for

grants for the ordinary judicial administration are presented to it. The relations between the High Courts and the district courts must remain intimate and many of the demands placed before the legislature will continue to be based on recommendations made by the High Courts. It is difficult to see how discussion regarding the High Courts can be avoided when such demands come before the councils.

64. It is of the highest importance that the relations between these Courts and the local Government should be those of mutual trust and confidence. The local Government must rely to a large extent on the High and Chief Courts for the maintenance of a high standard of efficiency in the district courts. These Courts, on the other hand, cannot maintain such a standard without the support of the local Government. It follows that the closer and more intimate are the relations between these Courts and the local Government, the more satisfactory is the judicial administration of the province likely to be. The Hon'ble Sir Grimwood Mears has pointed out that it would not be physically possible for any successor of his to maintain such close relations with the Government of India as he has had with this Government. This Government would regret any decision which is likely to deprive the future Government of this province of the advantages which the local Government have in the past derived from its close association in administrative matters with the High and Chief Courts.

65. The Commission have suggested that the change will secure the more complete independence of the Courts from local political influence and will simplify and accelerate business. On these two points I am to say that this Government endorse the views expressed by Mr. Justice King that no change is necessary to secure the independence of the Courts and that the change proposed will hinder rather than accelerate the despatch of business.

66. If the ultimate decision should be that the High Courts are to be removed from the executive control of the local Governments, then some of the existing administrative arrangements between the High Court at Allahabad and the Chief Court of Oudh and this Government will require revision. This Government do not wish to urge this as a reason for not accepting the Commission's proposal, but think it right to refer to it as the necessary changes will involve legislation. At present, for example, the High Court is empowered to remove a munsif without reference to this Government. That is a power which the local Government could hardly be expected to leave in the hands of a Court which is in administrative relations with the Central Government. The Chief Court of Oudh has power to dismiss or otherwise punish the ministerial staff of any court subordinate to it. Here again it would be anomalous to allow servants of the local Government to be dismissed by an order of a Court which was under the executive control of the Government of India. These and other similar anomalies will no doubt be capable of adjustment, but it is right that it should be recognized from the first that adjustment will be necessary and that they will involve legislation. I am to add that this Government assume that,

(44)

even if the Courts are centralized, the Governor will continue to be consulted before appointments of Judges are made. There are in making appointments of Judges other matters to be taken into consideration than those based merely on the legal attainments of the persons nominated.

I have the honour to be,

SIR, .

Your most obedient servant,

T. SLOAN,

For Chief Secretary.

ENCLOSURE 1.

Copy of a letter no. 3732, dated July 22, 1930, from the Registrar, High Court of Judicature at Allahabad, to the Secretary to Government, United Provinces, Reforms Department.

SUBJECT.—Recommendation of the Indian Statutory Commission that the administration of High and Chief Courts should be transferred to the Central Government.

In reply to G. O. no. 2-R., dated June 30, 1930, I am directed to say that Sulaiman, Mukerji, Banerji, Young, Sen, Niamatullah, Bennet and Kisch, Judges, agree with the proposals relating to the High Court contained in Part X of the Report of the Indian Statutory Commission, in which the Commission have recommended that the administration of High and Chief Courts should be transferred to the Central Government. The opinions recorded by the Hon'ble Chief Justice and other Hon'ble Judges are enclosed herewith.

Opinions of the remaining Honourable Judges.

HON. C. J.—“I am of opinion that there should be no change. I have had over ten years' experience of the working of the present system and have been in association with four Governors. The present system affords an opportunity for discussion between the Governor and other members of the local Government and the Chief Justice, the importance of which can hardly be over-estimated. This personal association would be lost, or at all events made more difficult, by reason of distance, if the transfer were made to the Government of India.

Further, the Chief Justice of this Court could not establish the same personal relationship with a high official resident at Simla or Delhi. Moreover, it is an advantage to the local Government and the High Court that the appointments be made by a local Government, who have, or can easily obtain, personal knowledge of men from whom selection must be made.

Throughout all the time I have been here it has been the practice of the local Government to ask the opinion of the Judges when appointments were under consideration and this has done much to maintain the good relations which exist between the local Government and the High Court and in my opinion also has benefited the people of this province. There are moreover times when an urgent decision has been necessary and on all these occasions the local Government and the High Court are enabled to act promptly.

I know the working of the present system and I am content with it. I do not want it to be changed, and my opinion is impersonal because in any event I shall have ceased to be Chief Justice before the proposed change can come into operation.”

KENDALL J.—“I can see nothing in favour of the proposal. As regards establishment: It is true that the local Government have not been treating us generously of late, but I do not anticipate anything better from the Government of India, which will receive demands from a large number of High Courts without any knowledge of the facts. The local Government at least knows

something of our needs, and is much more accessible. In personal matters it is much easier and quicker to get leave, etc., from the local Government, which will have to nominate the officer to officiate in a vacancy even if it has nothing further to do with the appointment.

No doubt it will be more convenient for the Government of India to deal with the High Court of Calcutta and Assam, for the reasons stated in the Report, But there is no reason why the position of those Courts should not continue to be 'anomalous.' I do not think it will hurt any of the other High Courts to continue their relation with the local Governments."

KING J.—"The proposal is to put all High Courts under the administrative control of the Central Government.

There may be good reasons for the proposed change but the reasons given in the Report seem to me distinctly weak. It is pointed out that the High Court of Calcutta is under the administrative control of the Central Government, while all other High Courts are under their respective provincial Governments. The Calcutta system is shown to be unsatisfactory. No attempt is made to show that the system in force for all other High Courts is unsatisfactory. I do not find even an expression of opinion to that effect. This being the position, the argument that uniformity of treatment is desirable would logically lead to the conclusion that the Calcutta High Court should, so far as possible, be brought into line with all the other High Courts. Even if it is impossible to attain absolute uniformity, because the Calcutta High Court exercises jurisdiction over Assam as well as Bengal, no good case is made out for altering the system which has been in force for all other High Courts for many years and is not said to be unsatisfactory. A doctrinaire desire for uniformity is not an adequate reason for altering administrative systems which have stood the test of time and have not been found wanting.

The only reasons or justifications given for the proposed change, apart from the desire for uniformity, are as follows:—

- (1) There is reason to believe that it would carry out the real intention of the Feetham Committee. On this I cannot express an opinion as I do not know what their recommendations were, or how far they should be considered authoritative.
- (2) Representations were made from several sources in favour of the change.

As the grounds of the representations are not stated, one cannot form any opinion whether they are well founded.

- (3) The importance of maintaining the complete independence of the High Court bench . . . in controversies in which the local administration may be involved.

The complete independence of the bench is no doubt a matter of great importance, but I think the Judges are completely independent under the present system. They are appointed by His Majesty or by the Government of India. The provincial Government cannot transfer them or take any sort of disciplinary action against them. Their salaries are non-votable. The only 'administrative control' which the provincial Government exercise over the Judges personally consists in granting leave, but I believe there has never been a Judge who feared that the provincial Government might refuse to grant leave on account of being displeased with him or whose judicial impartiality and independence were in the slightest degree affected by any such consideration. I do not know what sort of 'controversies' are referred to. Judges have to decide cases. It is no part of their duty to enter into controversies. If it is intended to suggest that Judges are apt to show favour towards the provincial Government, owing to the fact that the

High Court is under the administrative control of the provincial Government, I think the suggestion is quite unfounded. I do not see how the proposed change will make the Judges more independent. It is inconceivable that a Judge's impartiality or independence will be affected by the facts (a) that his salary is paid from central funds instead of from provincial funds, (b) that his applications for leave are dealt with by the Central Government instead of by the provincial Government and (c) that the High Court budget is under the control of the Central Government instead of the provincial Government.

(4) The change will simplify and accelerate business.

I think the change will have precisely the opposite effect. Correspondence will be addressed to Delhi or Simla instead of to the provincial capital or provincial summer head-quarters. This will, at the outset, involve more or less delay in all cases. The Central Government on receiving the communication will in many cases have to refer to the provincial Government before replying. This would be necessary in the case of applications for leave when a temporary Judge has to be appointed. It would also probably be necessary if the High Court required any additions, alterations or repairs to buildings, and in many other classes of requirements. The Central Government would never be in a better, and usually would be in a worse, position than the provincial Government to decide whether the requirements are justified. Hence the necessity for frequent reference by the Central Government to the provincial Government and great delay in transacting business.

Although the reasons given for the proposed change strike me as weak and unconvincing, I do not wish to be understood as condemning the proposal entirely. I do not think there is much to be said *against* the proposal except that the new system does not seem to possess any substantial advantage over the present system and that it will involve delay in the transaction of business. There is no reason to fear that the High Court Judges 'will be removed too far from the provincial Government.' The High Court will continue to supervise the subordinate courts and advise the provincial Government regarding the appointment, promotion or dismissal of the subordinate judiciary. This will keep the High Court in close touch with the provincial Government.

As for the High Court Judges themselves I think the proposed changes will make no difference. They will be neither more nor less independent than they were before. I cannot express any opinion on the financial aspect of the proposed changes. I presume that the High Court fees will not be earmarked for meeting the expenses of the High Courts in such a way that the amount available for expenditure will depend upon the amount of income derived from fees. If the budget grants are on the same scale as hitherto the High Court will neither suffer nor benefit financially from the proposed change."

ENCLOSURE 2.

Copy of a letter no. 1885/XIV—144-21, dated July 15, 1930, from the Registrar, Chief Court, Oudh, Lucknow, to the Secretary to Government, United Provinces, Reforms Department.

WITH reference to your letter no. 3-R, dated June 30, 1930, I am directed to submit the following opinion of the Court on the subject.

The Court agrees with the authors of the Report that the Chief Court of Oudh should be placed under the control of the Central Government for administrative purposes. There are some points, however, to which the Court desires to draw special attention. In para. 343 of the Report, it is observed—"Permanent Judges are appointed by His Majesty." This is so in respect of the Chartered High Courts, and statutory provision sanctioning such procedure is to be found in section 101 of the Government of India Act; but permanent Judges of the Chief Court of Oudh are not appointed by His Majesty but by the Governor-General in Council as is provided by section 4 of the Oudh Courts Act (U. P. Act IV of 1925). The Court thinks that in the new Government of India Act, provision should be made to remove this anomaly. As regards Additional Judges the appointment will be made under the Oudh Courts Act, 1925, by the Governor-General in Council, but in the same Act provision is made for the appointment of Judges in temporary vacancies by the provincial Government. In the matter of the former appointment the Court is of opinion that the law should remain as it is, that is to say, power should vest as it vests today in the Governor-General in Council for the appointment of Additional Judges for a period not exceeding two years. In the matter of temporary vacancies the Report observed that "the appointment of temporary Judges should be made by the Governor-General, but only after consulting the provincial Governor." The Court entirely agrees with the first part of the recommendation. As regards the necessity for consulting the provincial Governor in the matter of the appointment of temporary Judges, the Court thinks that this recommendation may be looked at from two points of view, viz.,—(a) the appointment of such persons as are members of the Indian Civil Service or of the Provincial Civil Service, and (b) the appointment of such persons as are not members of either of those services. In the former case the Court is of opinion that the provincial Governor should be consulted. The necessity for such consultation is greater in these provinces for the reason that there exist two High Courts in the same province—one at Allahabad and the other at Lucknow. In the latter case the Court thinks that there is no need for consultation with the provincial Governor. In such cases the recruitment is generally made from the Bar and the High Court is in the best position to make nominations for appointment by the Governor-General.

APPENDIX.

[Extracts from notes by HON. CAPTAIN NAWAB SIR AHMAD SA'ID KHAN
and His Excellency's Ministers.]

A

Composition of the Ministry.

(i)

I HAVE not been able to understand the position of the official Ministers. In practice these official Ministers are bound to prove a great weakness, instead of strength, to the constitution. Suppose a vote of censure is carried against the Ministry and the Ministry resigns on the ground of joint responsibility. When the new Ministry is formed these official Ministers are again included in it. Will it not bring about another vote of censure for this very reason, that the members of the outgoing Ministry were taken into this new Ministry? I know there may be occasions when a certain action of an individual Minister may be responsible for the vote of censure; but in that case not only the official Ministers but even the non-official Ministers, if included in the new Ministry, will be quite safe. But whenever there is a question of broad policy which is the cause of the motion of censure I do not think there will be any chance for the official Ministers to be able to command the confidence of the house if they are included in the new Cabinet. One can understand the position of the Executive Council on the Reserved side; it is straight and frank. It indicates from the very beginning that the Reserved side is beyond the authority of the legislature. But to make the whole thing Transferred and to keep Ministers who are practically irremovable is a very illogical proposal. It is quite likely that the cause of the vote of censure may be the policy advocated by the official Ministers inside the Cabinet, and in fact, it is more often than not that it will be so. Will it be logical to remove the elected members of the house for a policy with which they had the misfortune to agree and to allow those to be included in the new Cabinet from whom it originated. I think such a proposal will be a constant cause of friction between the legislature and the Governor, and I am unable to understand what will be the fate of such official Ministers except that they will be made to retire on higher pension and others will be selected who will meet with the same fate in a short time and so on—(Sir Ahmad Sa'id Khan).

(ii)

The second point on which the Muslims laid great stress was their inclusion in every Cabinet. I know it is difficult to include such a provision in the Statute; but I think statutory rules can be framed saying that no Cabinet should be composed of members of only one community—(Sir Ahmad Sa'id Khan).

(iii)

It is obvious that the Commission is not opposed to the idea of guaranteeing representation in the Ministry for the important minorities, but they feel that they cannot do so in the Statute. We are of opinion that there should be a provision in the Statute or statutory rules which may guarantee that the representation of the non-Muslims and the Muslims in the Cabinet would be in the proportion of two-thirds and one-third—(Honourable Ministers' joint note).

B

Cabinet procedure.

(i)

It is proposed that there should be an I. O. S. Secretary to record the minutes and that he should have direct access to the Governor "so that whether His Excellency was present at a given meeting or not he would be kept impartially and fully informed of the course of business." I regard this as a very unfortunate proposal. What will be the effect of this proposal on the mentality of the Ministers? They will regard this Secretary as a spy on them. From the very beginning it will mean that the Governor has not got full confidence in his Ministers. In fact, the new Constitution will start in an atmosphere of suspicion and mistrust, while for the success of the Constitution, as far as my experience goes, it is necessary that there must be team-working which cannot be had unless all colleagues have full trust in each other. I will go even a step further; I think for a successful Cabinet there should be among the members a sort of feeling of being members of the same family. It is then and then only that the best can be had out of the men. It seems to me sufficient if the record of the minutes of every meeting of the Cabinet should be submitted to His Excellency for his perusal. I think we can take it for granted that those who will be appointed as Ministers will be honest enough not to misrepresent a case before His Excellency.—(Sir Ahmad Sa'id Khan).

(ii)

We endorse the recommendations of the Commission with regard to the procedure at the meetings of the Ministry generally. We agree that ordinarily such work should be disposed of at the meetings of the Ministers without the Governor being present. We do not think that there should be any official who could be in a position to advise independently the Governor against any of the decisions of the Cabinet. The Governor after reading the proceedings of the meeting may discuss any particular matter with the Ministers and may, if he thinks incumbent upon him to do so, over-ride any decision in the interest of law and order and the interests of the minorities. However, we recognize the necessity of some independent agency which would keep the Governor informed with regard to all matters of the administration carried on by the Ministers without having any power whatsoever, except that which may be necessary for and consistent with his duties to gather information for the Governor from the different departments.—(Honourable Ministers' joint note).

C

Constitutional resolutions.

The proposal that the provincial legislature should have a power to carry "constitutional resolution" providing for—

- (a) changes in the number, distribution or boundaries of constituencies or in the number of members returned by them;
- (b) changes in the franchise or in the method of election; or
- (c) changes in the method or representation of particular communities,

introduced to avoid the necessity of a fresh Act of Parliament before these resolutions can be made. So far as (c) is concerned we are of opinion that the Ministers will not agree to the proposal as they would like permanently to have a system of separate special electorate to send their representatives to the council. In view of the proposal, we think, in spite of the safeguard provided for the minorities,

namely, that a constitutional resolution must be carried by two-thirds of the votes of the legislature and "as part of this majority" by two-thirds of the members representing the community affected may not be acceptable to the Muslims who would not be prepared to give up the present right of separate election till they feel they should give it up of their own accord—(*Honourable Ministers' joint note*).

D

Depressed classes.

THE importance of the depressed classes lies in the fact that they include within their fold lakhs of humble tillers of the soil and also real agricultural castes such as Kachhis, Lodhas, Kurmis, Murao, Koeri, Tharus, Bhuksas, etc. Had it not been for Tharus and Bhuksas the cultivable land of the Tarai would have remained uncultivated . . . The importance of the depressed classes will fully appear from the following very pertinent observations of Sir Tej Bahadur Sapru :—

"I do say what is my most sincere conviction, that unless you are able to solve your own social problems about the depressed classes and the untouchables, I do not see any real prospect for real genuine constitutional advance, and any Constitution that you may get will certainly not arouse any interest in me, because I do feel, howsoever good, howsoever perfect, howsoever ideal your Constitution may be, unless you have got the support of the minorities and unless you command the confidence of those whom in your vanity you may describe as depressed classes, your Constitution will not be worth a day's purchase."

So far as my information goes, suitable representatives of the depressed classes will be forthcoming to fill 40 seats on the Council.

The Simon Commission admit that most of the depressed class associations which appeared before them favoured separate electorates with seats allocated on the basis of population. The United Provinces Adi-Hindu (Depressed Classes) Leaders' Conference was held at Allahabad on July 23. "This Conference while thanking the members of the Indian Statutory Commission for taking a keen interest in the cause of the depressed classes, strongly protests against their recommendation of a joint electorate system and is of opinion that nothing short of a separate electorate would ameliorate the social and political status of the depressed classes." The Simon Commission concede that "Separate electorates would no doubt be the safest method of securing the return of an adequate number of persons who enjoy the confidence of the depressed classes." But they are averse from recommending separate electorates for them on the ground that separate electorates will prevent their political amalgamation with other Hindus. They have ignored one important fact. The depressed classes are not a homogeneous body. They consist of a large number of heterogeneous clans which are socially distinct and are kept apart from one another by a spirit of rigid exclusiveness and separation. They entirely lack cohesion and are scattered all over the province. Although according to our *Shastras* as interpreted by the Calcutta High Court the various sub-divisions of the Shudra caste can intermarry but in actual practice intermarriage between them is impossible. The depressed classes have been divided into separate clans by very sharply defined boundaries over which it is impossible for one to pass to another. Ethnologically they are so many tribes and clans, with separate histories and customs. There should be two distinct stages in the process of their political amalgamation with the high caste Hindus. The first stage should be that they should be brought together and welded into one political unit. Their unification into one political unit will be seriously retarded if the system recommended by the Simon Commission is adopted. Their voting strength will be much smaller than

that of the high caste Hindus. A member of the depressed classes who wants to get himself elected will look rather to the ease with which he can secure election to the council than to the political education of his order. He will naturally solicit the support of the high caste Hindus who will be both numerous and influential When such a candidate is returned to the council, he will be a servile follower of the high caste Hindus and will be more concerned to keep their favour than to represent the interests of his own order If the system recommended by the Simon Commission is adopted, the candidates returned to council will not only show no interest in the welfare of the depressed classes but will regard themselves as members of the high castes and in no way allied to the depressed classes. The result will be that the concession proposed by the Simon Commission instead of being a blessing will be a veritable curse to them —
(Raja Bahadur Kushalpal Singh).

E

Representation of great landholders.

(i)

THE chief reason that they have given for the abolition of the special representation of the zamindars is that they have been able to capture enough seats in the legislatures through the general electorates. That is true; but it is equally true in the case of other special constituencies. For instance, graduates, professors, teachers and ex-teachers come into the councils through the general electorates and yet the universities are given representation. Similarly, men of business and commerce in the Assembly and the councils have often been elected through the general constituencies. Is there any reason why they should be given special seats, while the special seats of the landlords should be taken away? If we compare the number of landlords returned to the council in the election of 1924 with those returned in the election of 1927, we find that while in 1924, according to the memorandum of the United Provinces Government, there were 51 landlords, their number has come down to 45 in 1927. With the widening of the franchise I am sure that the chances of the landlords of getting into the councils from the general constituencies will be greatly reduced. But this is not all. The real point is this; that the landlords elected by the general constituencies will perforce try to represent the views of their constituencies in the legislature. Again and again I have noticed in the legislative council that while the landlords representing the special constituencies boldly took a line of their own in regard to a particular proposal, the other landlords, in spite of their sympathy with the proposal, opposed it because they were afraid of their constituencies. A landlord elected by a general constituency will never be able to go against the wishes of his constituents—(Sir Ahmad Sa'id Khan).

(ii)

We are bound to say that the withdrawal of the rights of the zamindars and landlords to be represented through their own associations is a very retrograde and unjustifiable recommendation. The arguments advanced by the Commissioners that the Montagu-Chelmsford Report contemplated only as a temporary arrangement to give representation to the zamindars through a separate special electorate of their own and that they did not desire it to be a permanent feature cannot be accepted as incontrovertible. While it may be arguable on the basis of a certain expression which occurs in the recommendations of the Montagu-Chelmsford Report, namely, "we must give them special measure of representation, if they need it *at the outset*, but it may be that their political education like the ryots will come mainly by pressure of events" that it was not meant to be a permanent

feature. It cannot be denied that the power of the zamindars, as has been found all over the world, is bound to decline gradually, and if special representation to zamindars was found necessary to be given from the very beginning, it is even more necessary now when the working of the Reforms have shown that the majority of the zamindars has decreased after every general election under the Reforms. The alternative suggested that the Governor may nominate zamindars in the legislature if the representation is not adequate according to the representation guaranteed to them under the present Constitution is, in our opinion, extremely unsatisfactory and cannot be acceptable to the zamindars . . . We are of opinion that at least sixteen seats should be allotted to the Agra Province Zamindars' Association and the British Indian Association of Oudh to return their representatives to the council, as has been recommended by the Indian Central Committee or even more proportionately to the total strength of the council—(*Honourable Ministers' joint note*).

F

Second Chambers.

(i)

As far as this province is concerned I am strongly in favour of a second chamber. This was recommended by the committee elected by our legislature to co-operate with the Simon Commission; it was recommended by the Central Committee also. The Simon Commission has recommended the federal system of government for India. In the majority of cases where there is the federal system different states which form part of that Federation possess their own second chambers. This is a well-recognized form; it has been used in many places as a brake on the democracy and I do not see any reason why we should be deprived of this. Looking ahead one feels that whatever be the form of the Constitution in the near future ultimately the powers of the Governors are bound to disappear, the pressure for their abolition will continue and sooner or later Government will have to modify them. Therefore, the argument used in the Simon Commission's Report, that the existence of this second chamber will be used as an argument to curtail the powers of the Governor is not really a strong argument. That demand will always be made by Nationalist India, and when that time comes people will realize that after all it is a blessing to have a second chamber. I should like to suggest that the future Governors should be directed in the Instrument of Instructions to include a certain number of members of the second chamber in the Cabinet. This will ensure the presence of conservative element there—(*Sir Ahmad Sa'id Khan*).

(ii)

The Commission has discussed the question of a second chamber in the provinces at length and has not given its definite opinion one way or the other. We are of opinion that in view of the provincial autonomy to be established, it is absolutely necessary that there should be a second chamber in the provinces where it is pressed for . . . Specially in the United Provinces the necessity of a second chamber should be recognized. We think that the second chamber should consist of members mainly elected by the recognized landholders' associations, such as the British Indian Association of Oudh and the Agra Province Zamindars' Association and similar bodies in other provinces. Other interests entitled to representation should also be represented. The percentage of the representation of Musalman by separate electorate in this chamber should be the same as that in the lower house. Thirty per cent. representation of the Musalman in the second chamber should be on the basis of 30 per cent. of the elected members in the

chamber including the representatives of the depressed classes. Of course this body will necessarily have to be a much smaller body than the lower house. This house should consist wholly of non-officials and nominated members.

Some of the Cabinet members should also be drawn from the second chamber in the provinces—(*Honourable Ministers' joint note*).

G

System of election to Federal Assembly.

We are definitely of opinion that the direct system of election to the Federal Assembly should continue as it has existed hitherto. But if we are to recognize the force of argument that in a federal system probably it would be better to resort to indirect election, we will say that the system of election may be partly direct and partly indirect. It may be indirect in so far that the representatives of the Hindus and Muslims may be elected in each constituency by an electorate consisting of the Hindu or Muslim members of the upper and lower house of the provinces residing in each constituency, the Hindu or Muslim members of district municipal boards, residing in each constituency and also other Hindus or Muslim representatives representing special constituencies and other bodies existing in each constituency. Other minorities may be represented by nomination from the Government or by direct election from the different bodies representing different interests. We think that if our suggestion is adopted, it is likely to be more effective and probably be accepted more readily by various interests and communities. However, our colleague, Hon. Raja Bahadur Kushalpal Singh, is opposed to this proposal as he thinks the urban element and influences under the present scheme will predominate. Representation by proportional representation would not be acceptable to the Muslims as it is likely to decrease their representation in the Federal Assembly. Moreover, the proposal has not even the merit required for the mixed electorate with reservation of seats for Muslims. Thirty per cent representation of the Muslims in this house should be on the basis of 30 per cent of the elected members in the house including the representatives of the depressed classes. We are strongly of opinion that the recognized ~~landholders'~~ 'landholders' associations should have the right to send an adequate number of representatives directly to the Federal Assembly. The British Indian Association at Lucknow, the Agra Province Zamindars' Association at Allahabad, and similar bodies in other provinces, should have a right of electing their representatives to the Federal Assembly according to their demands or even more proportionately to the total strength of the Assembly. These bodies should be treated as separate special electorates to return their representatives to the Federal Assembly. Landholders should continue to retain the right to stand from general constituencies also.

It cannot be said that the zamindars have no vital interests to protect in the Federal Assembly. It will have to be recognized that the zamindars in the Federal Assembly have certain vital interests to protect, such as their share in the postal, aerial and railway services, not to mention the services in the different departments under the Government of India—(*Honourable Ministers' joint note*).

H

The Army.

UNDER this head I wish to deal with the proposals made by the Committee about the Commander-in-Chief and the Indian Army. The changes proposed will definitely reduce the power of the Central Legislature as far as the Army is concerned. First of all, I shall deal with the position of the Commander-in-Chief.

In para. 170 of volume II the Commission has recommended that the Commander-in-Chief should not in future be a member of the Executive Council, and if any question arises in the Indian legislature it will be dealt with by a civilian or perhaps by one of the members of the Executive Council. The effect of the Commission's recommendation is to put the Army under the control of the Viceroy instead of the Government of India with the object, as they say, of assisting "in removing from the path of Indian constitutional progress an obstacle which otherwise threatens to block it for an indefinite time." I admit the Army question is an all-important one, and there is nothing further from my mind than to make any suggestion for any radical change in that direction. I agree that the Army should be treated as a Reserved subject. I agree that the legislature should not be allowed to have too much interference with the Army Budget. I believe this is the present position. The Assembly can only discuss the Budget, and the members during the discussion can only make suggestions, and it is not necessary for the Government of India to accept any cut or to act on any suggestions made by the Assembly. They are quite free to do as they like. In the recommendations of the Commission it is proposed that Indians should not be allowed even to associate themselves with the question of the Army and with the problems of the defence of their country. The Indian members of Government, although they are not in charge of the Army, as members of Government, I believe, discuss the question of the Army and their suggestions carry some weight with the Commander-in-Chief. But as it is proposed, they will have nothing to do with the Army in future and the whole thing will be dealt with by the Commander-in-Chief in consultation with His Excellency the Viceroy. I am aware of the importance of this question, and I do not wish to make any suggestions for a radical change. The present system has worked perfectly well for a long time, and I see no danger if we allow it to continue instead of accepting the recommendations of the Commission—(Sir Ahmad Sa'id Khan).

I

Taxation on Agricultural incomes.

THE question of taxing agricultural incomes is one which may have very far-reaching effects. It deals with the life blood of the agricultural community of India. Apart from the theory whether revenue is rent or tax, there can be no denying the fact that whatever increase is proposed, either as tax or as rent, it will be a further burden on land. The question whether those who wish to impose the tax regard it as rent or tax does not interest the person who will have to pay it. To him it matters little by what name you levy the impost; what interests him is—how much is left for him and his children. Therefore I think that what applies to Government land revenue policy can apply to the taxation of agricultural incomes. Here I may make two quotations giving the views of expert officers on the land revenue policy. These may sound irrelevant because we are dealing with a tax on agricultural incomes; but, as I have said, I treat both in the same light and therefore they are applicable here. Sir Charles Metcalfe observed:—

"I believe that the happiness of the bulk of the inhabitants of the Western Provinces depends more on revenue settlement than on any other thing whatever."

Sir Alfred Lyall once observed that—

"Few human beings could cause so much misery to so many people as a settlement officer who over-assessed a district."

Here I may mention that whatever be the name, tax or rent, it is a further burden on land and it will be passed on to the cultivator in time to come, if not immediately.

Now, coming to the vexed question whether land revenue is a tax or rent, I know that opinions differ, but the arguments put forward by the Indian Taxation Inquiry Committee, who were an expert body in dealing with a question like this, are interesting and illuminating. They have dealt with this question in para. 78 of their Report. They have dealt with the practice before the British occupation in the time of Muslim and Hindu rule. They have quoted many eminent writers, and I will only quote from them the conclusions arrived at by the Bombay High Court in a case from Kanara which are as follows :—

“This review of the authorities leads us to the conclusion arrived at also (after careful discussion of the question) by Professor H. H. Wilson, that the proprietary right of the sovereign derives no warrant from the ancient laws or institutions of the Hindus and is not recognized by modern Hindu lawyers as exclusive or incompatible with individual ownership.”

As to Muslim rule, they have quoted Colonel Galloway, who was the greatest authority on the Hanifan school of Islam. He says :—

“The soil was the property of the cultivator as much as it could be. Law gave no power, policy gave no motive to remove him or to disturb him, so long as he paid his taxes. When he did not, his lands could be attached; and so can those of the first Peer holding by the firmest tenure of the English law. The right of the Indian husbandman is the right of possession and of transfer; and the rate of his land tax was fixed; often indeed the amount. In what respect, then, is his right of property inferior to that of the English landholders?”

So far it deals with the times before the British *raj*. On page 64 they have quoted two decisions by the Privy Council. They were of course about Bengal. There the Lord Chancellor stated :—

“Considering with the best attention in my power these papers, they confirm most strongly the opinion I should have derived from the permanent Regulations, namely, that the proprietor of the soil had a permanent interest in it at the time when the English established themselves in that settlement.”

It is admitted that the proprietors of the soil had a permanent interest in the soil when the English established themselves. It may be argued that all this was said of those who live in the permanently-settled districts. But this argument has no force. The members of the Taxation Inquiry Committee agreed on page 66 that “in the generality of cases the zamindars and ryots are respectively the possessors of the proprietary right subject to the payment of land revenue.” Therefore, those who think that land revenue is a tax have got a strong ground to stand upon.

Now, let us take the practical side of the case. It will be very difficult to find out the real sum to be assessed. As we know, landlords do not generally keep accounts, and it will be a great hardship for them to do so; they pay most of their wages in kind; and I do not see any means of finding out exactly what is the income to be assessed, unless it be by some rule providing for taking into consideration, in assessing the tax, the rent of a tenant. We know that the settlements, although they are made in the districts after every forty years, create great disturbance in the life of the village. But this will have to be done annually, and the settlement process on a minor scale will continue in the villages to upset the village life. Then there are suspensions and remissions, and from year to year a fairly large staff will be engaged to find out the real amount that should be assessed.

As to political objections, the Committee themselves have in para. 268 of their Report. I am sure further taxation on agriculture is wrong. It will bring down the price of the land a good deal and create great economic distress. And the political effect of it in future will be such that the income so derived will hardly be worth the bitter feeling that this is sure to create.

In short, the position in the districts which have periodical settlements is that the proprietor of the land has to pay 40 per cent. of his income as land revenue and 10 per cent. as cesses. The question then remains whether there is any justice in taxing him further. If he is to be taxed on the top of this the position will be simply intolerable and to revolutionize the whole structure of rural India he is to be taxed instead of land revenue. It is not clear that it will not be worthwhile to do so—
(Sir Ahmad S)

K

The Services.

As to the security services, i.e., the I. C. S. and the I. P. S., I hold the same view which I expressed in 1924 as Minister, i.e., they should be kept as all-India services, recruitment should be made not by the Secretary of State but by the Government of India, and they should have the right of appeal to the Government of India in cases of their promotion, supersession, etc. My reason for proposing this change is that with the further advance of responsible government in this country the services should be responsible to some authority within India and not to an authority outside the country. I know there are certain important points where the control of the Secretary of State should be kept—points of military importance or of Imperial interest; but I do not think that the question of the services is of such importance that the Secretary of State should be responsible for their recruitment. The reason why I did not propose to provincialize these services is this. A certain number of members of these services will always be required for the Central Government, and the present arrangement has worked excellently. They select officers from various provinces, and if the services are provincialized they will either have to recruit separately for the centre or to take officers on deputation from the provinces. In the former case, the efficiency of the central cadre will be very much reduced by the fact that they will have no experience of the provinces. At present irrespective of the views of the local Government the Government of India can benefit a lot from the experience of such officers belonging to the various provinces who happen to be there. In the latter case, i.e., in the case of deputation, there will always be difficulties in their promotions, and they will always look back to their provincial Governments as their masters instead of looking up to the Government of India. Besides this, I agree that it will be desirable to continue recruitment of Europeans in these two services for some time to come. I understand it will be difficult to get recruits if the services are provincialized. It should be easier to get European recruits if the Government of India will give them a guarantee about their pay, pension and prospects. I am told that European recruits would not like to come out unless the services are controlled by the Secretary of State. I do not see why the guarantee given by the Government of India, which is as much part of the British Empire as any other country, should not be regarded as sufficient to induce European recruits to join the Indian services—(Sir Ahmad Sa'id Khan).