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HYDERABAD

FEDERATION

Memorandum submitted to the Joint Select Committee by Sir Akbar Hydari.

The purpose of this paper is to state shortly the views of the Hyderabad representative on Federation and his comments on the White Paper. It is hoped that a concise, although not perhaps exhaustive, statement of this kind may be of use to the Joint Select Committee in its deliberations.

PART I.—GENERAL.

1. The object of the State is and always has been whilst preserving the sovereignty of H.E.H. the Nizam to co-operate to the best of its ability in furthering the interests and political development of All India under the aegis of the British Crown. In our opinion, this object can be achieved, and perhaps only achieved, by the establishment of an Indian Federation on the general lines discussed during the past three years, provided always that certain fundamental conditions are satisfied. It is not without interest to note in this connection a Memorandum written by Sir Akbar Hydari, on the 2nd October, 1930, entitled "Federal Scheme for India," which will be found at n. 13 of the Annexure hereto. This shows clearly the general lines upon which the State has approached the problem from the outset.

2. It is hardly necessary to say that one of the fundamental conditions referred to above is that the Federal Government in favour of which the States will be parting with some of their existing powers shall have responsibility in the exercise of such powers. Responsibility to a substantial extent is also necessary, so that the States will be able to exercise a real influence through the representation which they will have in the Federal Legislature. Another condition is that the Provinces, and not only the States, should possess a sufficient degree of autonomy. Law and Order is not made a federal subject in the White Paper and it is essential that it should remain a unit subject. This matter is also dealt with in Sir Akbar Hydari's Memorandum dated 28th May, 1931, and entitled "Memorandum on Central Subjects," which begins at p. 17 of the Annexure hereto. The White Paper as it stands is in general accord with the State's views on these points.

3. Another fundamental condition is that the Governor-General and the Governors shall be appointed by His Majesty on the advice of his Ministers in the United Kingdom. This is, of course, the intention under the White Paper, and no doubt it will be clear under the provisions of the Act. The same remark applies to the Commander-in-Chief and the Judges of the Federal Court.

4. It is vital that the relations of the State with the Crown in the United Kingdom should be safeguarded and preserved. The White Paper deals with this point (a) by the reservation of Defence and external affairs to the Governor-General acting in his discretion and under responsibility to the Secretary of State, and, through him, to Parliament; and (b) by the exclusion of these relations from the Federal sphere except in so far as acceptance by the State of Federal powers and jurisdiction brings them within that sphere.

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[Continued.]

By acceding to the Federation the State would be consenting to a given state of things and no other. It would be acceding to a written Constitution containing certain specific provisions, and any fundamental or major alteration in these provisions unless made with the State's consent should set it free from the obligations it had undertaken. In particular it will be remembered that throughout the discussions preceding the White Paper Defence was treated as a Crown subject outside the Federal Sphere. Although in the White Paper this proposal is modified, at any rate in form, the State places reliance upon the fact that the effective reservation of Defence to the Crown is an integral part of the proposed Constitution and that no modification could at any time be made in this regard without a fundamental change in the Constitution. The last thing the State would wish would be that the dissolution of the Federation should be contemplated as a practical eventuality, and it does not seem desirable expressly to provide for a formal right of secession. On the other hand, the position indicated above should, in our view, be established as a matter of law. Further, in view of the extreme importance to the State of its engagements with the Crown in the United Kingdom, and in particular those touching Defence, it would be necessary to provide effectively, and independently of the Constitution Act, for the continuance in force of the military guarantees under existing treaties notwithstanding any alteration in the Constitution and for the revival of any treaty obligations affected by the accession of the State to the Federation in the event of such accession lapsing.

5. It may be desirable to refer briefly to the subject of Paramountcy. As the State understands the White Paper scheme, this contemplates that certain powers now exercised by the Crown in the name of Paramountcy will pass over to the Federal sphere for exercise by Federal organs by virtue of the State's agreement to that effect, whilst the remaining Paramountcy powers will continue in the hands of the Crown in the United Kingdom acting, in India, through the Viceroy. (See Introduction, para. 7, 8, 9; Proposals 1, 2, 3, 7.) It is clear that once a Paramountcy power passes to the Federal sphere it must become in all respects a Federal power, identical in nature and in the manner of its exercise with any other Federal power. There cannot, it seems, be any doubt that this is the intention, but the point should be borne in mind when drafting the Constitution Bill. Moreover there should be no room for the exercise of Paramountcy powers for the enforcement of Federal duties unless and until there is a decision of the Federal Court to which the State has failed to give effect.

6. Another and different question connected with Paramountcy may be referred to. It is obviously necessary that the Viceroy should have the means of implementing his duty for the discharge of the functions of the Crown in and arising out of its relations with the Rulers of Indian States. As regards finance this is covered by Proposal 49 (iii) of the White Paper, but it is not clear how the matter stands in other respects, e.g., as regards the use of the military forces. Proposal 6 suggests that the use of the army in India might be held to be limited to Federal purposes.

7. In its examination of the White Paper Proposals it has been increasingly borne in upon the State that some provision should be made in the Constitution to ensure that legislation on Federal Subjects shall be fairly framed and applied as between the different parts of the Federation. There are certain particular heads under which provisions for this purpose are especially appropriate and necessary. As regards Railways, the conditions

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applicable to which are well-known, legislative precedent exists in England and elsewhere making it possible to put forward concrete clauses of a somewhat elaborate character based upon actual experience, and the State is submitting proposals to deal with that particular subject. But there are other heads which cannot be approached in the same way. For example, air navigation is a matter which seems clearly to call for safeguards analogous to those applicable to railways, and yet the comparative paucity of experience and the impossibility of forecasting future developments render it impracticable to proceed on the same detailed lines. Again, take the wide and somewhat indefinite subject described as development of industries. Some protection from unfair discrimination seems clearly advisable although it is difficult and probably undesirable to attempt to provide specifically for each particular instance that may arise. Other subjects where equality of treatment is obviously necessary are, for example, customs, excise, and other taxation. These are perhaps the most striking illustrations of the need for safeguards of the nature under discussion, but they are not exhaustive. The possibility of unfair discrimination exists under most of the heads in Appendix VI, List I, of the White Paper.

As at present framed the only provision made in the White Paper with regard to legislative discrimination is under Proposals 122-124. These provisions are strictly limited both as regards the nature of the prohibited acts, and the ground on which they are based (religion, descent, caste, etc.), and they are also limited as regards territorial operation. They only apply in British India.

The State proposes that the Constitution should contain a provision of a broader kind in addition to Proposals 122-124. It is conscious of the need not unduly to shackle the Federal legislature and Government by constitutional restrictions, but it considers that a clause such as it desires should not have this result. Taking certain provisions of the Australian Constitution as a general guide the State would suggest that the clause to be inserted in the Indian Constitution Act should provide in substance that the Federation shall not by legislative or administrative action give undue or unreasonable preference to one part of India over another part, or to one Unit over another Unit or discriminate unfairly between one part of India and another part or one Unit and another Unit. The Federal Court would, of course, decide in case of dispute whether any particular case came within the clause.

8. In the State's view the successful working of the Federal Constitution will depend to a very large extent upon the Federal Court. This institution is, as it were, the corner stone of the edifice. Out of its judicial wisdom will grow the constitutional Common Law which will shape the day-to-day working of the central and local organs. A combination of absolute impartiality as between the different interests involved and outstanding legal and statesmanlike qualities will be required of the members of the Court. With these considerations in mind, the State views with concern any proposal which may tend, whether now or in the future, to blur the true function of the Federal Court as the interpreter and guardian of the Constitution. The State appreciates the desirability of uniformity in the interpretation of Federal laws and would be prepared to consider favourably any proposal limited to this particular extension in the jurisdiction of the Federal Court as laid down in the White Paper, provided it were carried out in such a way as to secure that the intervention of the Federal Court was limited to the giving of an opinion on the construction of Federal statutes, the decision of cases being retained by the State Courts.

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[Continued.]

But the State feels strongly that any alteration of the present scheme in the direction of allowing a combination of the functions of the Federal Court with those of a Supreme Court would be unacceptable.

9. We are not dealing in this Memorandum with the important subject of Railways, because a separate Memorandum on this head is being laid before the Committee.

10. One more general question requires consideration. It would be impossible for the State to accede to the federation unless it was plain beyond doubt from the constitutional documents that the sovereign status of H.E.H. the Nizam was fully maintained and preserved. One illustration of this is to be found in the question of administration. Throughout the Round Table Conferences the discussion as to the division of powers between the Federation and the units proceeded upon the basis of a clear cut distinction between policy and legislation on the one hand and administration on the other. The first eight subjects in Appendix VI, List I, of the White Paper were, of course, then treated as outside the federal category, but leaving those subjects aside for the moment, most of the subjects which now appear in the federal list were described as being federal "for policy and legislation" only, and it was on this footing that the State envisaged the question of accepting any given subject as federal. The distinction has been dropped in the White Paper, but the State desires to make it plain that it adheres to the substance of the conception and desires that it should, as far as possible, be realised in practice, whatever form the constitutional provisions may take. While the State is prepared to agree that Federal legislation on certain subjects shall have effect in the State, the State could not agree to a provision for the formal cession or transfer of administration to the Federation. Administration falls, broadly, into the following parts: (1) The laying down of detailed regulations for giving effect to a statute and the activities of a central department or office, including the issue of explanatory circulars and other written matter; this may be described as central administration. (2) The actual carrying out on the spot of legislation and regulations by means of officials and otherwise; this may be called local administration. (3) The functions of inspection. Whilst (1) may properly be the function of a central authority the State wishes, generally speaking, to keep (2) completely in its own hands in regard to the subjects which it accepts as Federal. With respect to (3) it would not object to normal routine inspection, by arrangement with the State, on behalf of the Governor-General acting in his discretion.

Other illustrations of a different kind, where the sovereign position of the Nizam is involved, are found in the subjects in which the State will have to reserve to His Exalted Highness the right to mint his own coinage and issue his own stamps. These examples are not, of course, intended to be exhaustive but they are given in order that the Committee may have an indication of points in which the sovereignty of His Exalted Highness is manifestly concerned. As to such matters in particular the State would wish the Committee to be in no doubt as to the attitude of the State.

PART II.—DETAILED COMMENTS ON WHITE PAPER.

These are dealt with below under the numbers of the White Paper Proposals. Proposals 2 and 3.

The State refers to the Secretary of State's answer to Question 7895 in his evidence before the Joint Select Committee and reserves its right to comment on the drafting of these Proposals. The same observation applies to Proposal 7.

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[Continued.]

In Proposal 3, third line, delete the words "or otherwise." The State understand that this is accepted—(Vide Question 7705).

The State asks that the Preamble to the Act should mention explicitly that the rights of the States and their relations with the Crown remain outside the Federal sphere and subject to the present regime except in so far as alteration is effected by the State's acceptance of Federal authority—(Vide Question 7738).

In the last sentence of Proposal 3 it is suggested that the "obligations" of the Crown should be referred to as well as the "powers."

Proposal 18 (e).

The scope of this special responsibility should be made clear. Having regard to paragraph 29 of the Introduction it appears to be the intention that Proposal 18 (e) should cover, and cover only, discrimination of the character defined in Proposals 122-124. As drafted, however, Proposal 18 (e) is wider as regards space and persons and possibly narrower as regards the limitation introduced by the word "commercial."

Proposal 18 (f).

The State asks for the addition of the words "and vital interests" after "rights" in White Paper Proposals 18 (f) and 70 (e). It understands that this has been accepted—(Vide Question 8669).

Proposals 24 and 27.

The State refers to White Paper Proposal 24 and to the Secretary of State's answer to Question 7199 that the Ruler of a State may vacate the seat of a member of the Council of State appointed by him. The State desires this to be so, but it is not clear that the White Paper Proposals do in fact enable a member of the Council of State to retire or the Ruler of a State to vacate the seat of his nominee.

The State suggests that a new Proposal should be inserted after 27:—

"27a. A member of the Council of State appointed by a Ruler of a State shall vacate his seat if called upon so to do by notice in writing from the Ruler of such State."—(Vide Question 7199).

The State has the same comments to make with regard to the retirement of a nominee to the Assembly appointed by a Ruler of a State and suggests the insertion of a new Proposal 30a as follows:—

"A member of the Assembly appointed by a Ruler of a State shall vacate his seat if called upon so to do by notice in writing from the Ruler of such State."

Proposal 26—With regard to the strength of the Federal Legislature.

For "260" substitute $\frac{100}{60}$, for "150" substitute $\frac{60}{36}$, and for "100" substitute $\frac{40}{24}$.

Delete the last two lines from "and not more" and substitute a clause providing that any deficiency in the full number of members appointed by the Rulers of Indian States will be made up partly by members nominated by the Rulers of the acceding States and partly by the Governor-General in his discretion.

The State is submitting a separate Memorandum on this subject—(See page 25 of the Annexure hereto).

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[Continued.]

Proposal 29.

Substitute "150" for "375," "100" for "250," and "50" for "125."
Add at the end a similar clause to that suggested under Proposal 26 above.

Proposal 34.

Insert in Proposal 34 (*f*) after the word "having" the words "otherwise than as a member of the public." Further it does not seem clear as the Proposal is drafted what it is to be the effect of disclosure or when or to whom it is to be made.

The same points arise under Proposal 84 (*f*).

Proposal 102.

Insert "(a)" after the words "to make rules" and insert at the end of the first paragraph:—

"(b) prohibiting, save with the prior consent of the Governor given at his discretion, the discussion of or the asking of questions on matters connected with any Indian State."

The State understands that this suggestion is accepted—(Cf. Proposal 52 and Questions 8670, 8671).

Proposal 110.

The State refers to this Proposal and reserves its right to comment on the words in brackets when it sees what is proposed—(Vide Question 8673).

Proposal 111.

The State refers to this Proposal and to the words "(exclusively federal)" following the words "List I" in Appendix VI.

The State understands that it is the intention of the White Paper Proposals that the States shall have concurrent powers of legislation with respect to subjects in Appendix VI, List I. It therefore seems necessary to delete the word "exclusively" from the heading of this List on p. 113, and it would also be advisable to delete the same word from the heading of List II. The mutually exclusive character of the powers of the Federal and Provincial Legislatures with respect to the two lists are sufficiently provided for by Proposals 111 and 112.

The sentence in Proposal 111 beginning "Federal laws will be applicable" calls for consideration. It is thought that the words "Federal laws" are intended to cover any Federal law validly made with respect not only to a subject in List I, but also to a subject in List III. Whether this is so or not, the position should, it is submitted, be made plainer. Further, it is presumably intended to convey by the word "applicable" merely that the Federal laws in question are to be personally binding upon British subjects and servants of the Crown within any part of India outside British India, and upon Indian subjects of His Majesty anywhere outside India, so that if and when they return to British India they can be held answerable for any breach of the law committed outside. Just as it is obviously not meant that Federal laws would be operative as the law of the land, or enforceable, outside India, e.g., in France, so also it cannot be intended that Federal laws with respect to a subject not accepted as Federal in the Instrument of Accession should be so operative or enforceable in a State. But it might be held that by acceding to a Constitution containing a clause of this character a State undertook, as regards British subjects and servants of the Crown, to apply, or allow the enforcement of, all Federal laws without distinction. The State thinks that the language of this passage

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should be reconsidered, and suggests that if the point just raised is not otherwise met a proviso should be added to the effect that nothing in the clause shall be deemed to confer upon the Federation any right, or to impose upon a State any obligation, to give effect in a State to any Federal law not operative in the State under the preceding sentence in Proposal 111.

Proposal 117.

For "subject" in line 2 substitute "matter" and delete the words "a" and "subject" in line 4.

Proposal 118.

The State suggests that this Proposal should be deleted. It is to be noted that the Proposal as drafted applies only as between Federal Acts and Provincial Acts, inasmuch as the question of exclusive powers does not arise as between the Federation and the States. Apart from this point, if a time limit of this sort is laid down an impasse might result if e.g., the Federal Legislature acting within its powers dealt with the same subject as the invalid but unimpugnable Provincial Act in a manner inconsistent with it. It must be possible to challenge validity at any time.

Proposal 128.

Insert after "Governor-General" in lines 1 and 6 the words "acting in his discretion." In line 4 substitute "by" for "through the agency of" and "Federal legislation" for "any Federal purpose." Add at the end: "The provisions of any agreement made in pursuance of this Proposal shall, so long as the agreement remains operative, have the same force and effect as the provisions of the Constitution Act."

Proposals 131 and 132.

The effect of these Proposals would apparently be to transfer to the Federal and Provincial Governments and to the Governor-General and Provincial Governors all State property, and all powers in relation thereto now exercised by the Secretary of State, subject to the exceptions laid down with regard to railways and property outside the Federal and Provincial spheres. Presumably the property and powers transferred will include military works and other property pertaining to Defence. As the Proposals stand they would appear to place the property and powers in question in the hands of the Federal and Provincial Governments as such without qualification. It appears necessary to indicate that property and powers appertaining to the Reserved Departments are vested in the Governor-General in a special capacity and subject to his discretion.

Proposal 134.

It would be preferable that the last few words of this paragraph should read "on all the Federal and Provincial revenues of India."

Proposal 136.

Read:

"Revenues derived from sources mentioned in Appendix VI, Lists II and III, will be allocated as provincial revenues.

"Revenues derived from sources mentioned in Appendix VI, List 1 (but in the case of States only in so far as they have accepted such sources as federal) will be allocated as federal revenues; but in the cases," etc.

The purpose of this amendment is to avoid use of the words "exclusive power" which are incorrect as regards States.

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[Continued.]

Proposal 139—Allocation of Revenues between Federation and Provinces.

In the Marginal Note, for "taxes on the income of companies" substitute "corporation tax."

In the first paragraph delete the words: "less than 50 per cent. nor" and substitute "50" for "75."

In the last sentence beginning "But the Governor-General" insert after "discretion" the words "from time to time and for such period as he thinks fit" and substitute for "these reductions" the words "the programme of reductions."

Proposal 141.

Add at the beginning:

"If at any time the Governor-General having exercised his powers of suspension under Proposal 139 is of opinion in his discretion that all reasonably possible economies have been made and that further indirect taxation is not in the public interest and that Federal expenditure cannot be met from the resources available to the Federal Government he may declare a state of financial emergency and thereupon during the continuance of such emergency"

In the last sentence beginning "But the States" for the words after "counterpart to" substitute: "any addition to taxes on income in force from time to time above the level prevailing immediately before September, 1931, and not exceeding in rate the special addition imposed in September, 1931: though the special addition imposed in September, 1931, will in other respects be deemed to be Federal surcharges."

"*Prescribed basis*": Reference is made to the Secretary of State's answer to Question 8401 and the right is reserved to comment on the basis to be prescribed when formulated. It is suggested that in fixing the contributions of the States regard should be had to the population of the States and the known superior taxable capacity of the Provinces. In any case it would be desired that the basis prescribed should not involve investigations into the taxable capacity of individuals.

Proposal 142.

For the words: "taxes on the income or capital of companies" and "taxes on companies" substitute in each case "corporation tax."

For the last sentence beginning "Any taxes so imposed" substitute: "If any State so elects the liability for corporation tax attributable to companies in the State will be assumed by the State and the amount of such tax will be collected directly from the State by the Federal Government and not from the company."

Add at the end:

"The profits or income of a trade or business carried on by or on behalf of a State-member, including the profits or income of a company owned and controlled by a State-member, shall not be liable to or be taken into account for the purpose of the calculation of corporation tax."

Insert in a general interpretation clause the following definitions:

"'Corporation tax' means a super tax (being an additional duty of income tax above the standard rate of income tax for the time being in force) on the income of companies. 'Income tax' and 'taxes on income' do not include corporation tax."

Proposal 150.

Insert after the words "provision will be made" the words "in the Constitution Act."

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Proposal 151.

Substitute "65" for "62."

As already stated the State assumes that the members of the Federal Court will be appointed by His Majesty on the advice of his United Kingdom Ministers. The terms used in the Act should make this clear.

Proposal 153.

Insert after the words in (a) "has been for at least five years a Judge of a Chartered High Court" the words "or of the High Court of a State."

Delete the words in (e) "of any High Court or of two or more High Courts in succession" and substitute "of any Provincial or State High Court or of any two or more of such High Courts in succession."

Proposal 155.

In the fourth line after the word "Act" insert the words "or of any Instrument of Accession."—(Vide Question 8676.)

At the end of sub-paragraph (ii) insert the same provision as to parties as appears under sub-paragraph (i)—(See Questions 14124 and 14125).

Proposal 156.

In lines 2 and 3, for the words "or any State Court" substitute the words "or from any State Court of ultimate jurisdiction" and in lines 6 and 7 for the words "or of the High Court of the Province or State" substitute the words "or of such Provincial or State Court."

Proposal 158.

For this Proposal substitute "an appeal will lie without leave to the King in Council from any decision or opinion (see Proposal 161) of the Federal Court."

Proposal 160.

Insert at the end the words "the enforcement of the Orders or Judgments of the Federal Court within a State will, unless the Instrument of Accession otherwise provides, remain with the State." In line 5 insert after "Federal Court" the words "and decisions of the King in Council on appeal from the Federal Court." In line 6 insert after "Federal Court" the words "and of the King in Council on appeal from the Federal Court."

Proposal 161.

Delete the word "justiciable."—(Vide Questions 8678, 8679.)

In the State's view it is desirable that the valuable power here provided for should operate in the same way as, e.g., under Section 55 of the Canadian Supreme Court Act. The hearing should be public and the opinion of the Court should be a reasoned judicial pronouncement. Anything in the nature of private advice to the Governor-General would be clearly inconsistent with the dignity and character of the Tribunal contemplated.

Proposal 192.

Insert in the first line after the word "authority" the words "in British India."

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[Continued.]

APPENDIX VI, LIST I*.

Subject 3.

This subject should be amended by the addition at the end "other than naval, military and air works of the armed forces maintained by Rulers of Indian States."

Subject 5.

This subject should be amended by the addition at the end of the words "in the Provinces."

Subject 7.

The State suggests that a general definition should be included in the Act as follows:—

"Ecclesiastical Affairs" means affairs relating and incidental to the provision of Christian religious ministrations for persons in the service of the Crown in India.

Subject 9.

The State suggests the following amendment:—

Add after "into India" the words "(other than immigration of persons entering India for the purpose of taking up employment in and by a State)."

Subject 12.

The State suggests the following amendment: Insert in paragraph (a) after "of the State," "construction of Railways otherwise than by or on behalf of the State."

The State further submits with regard to the Federal Railways and its own Railways a separate Memorandum entitled "Railways under the Federal Constitution. Proposals of the State of Hyderabad," from which the constitutional provisions desired by the State on this subject appear.

Subjects 14 and 17.

The State suggests that these two subjects should be combined and should provide:—

"Navigability of, and navigation by mechanically propelled vessels on, inland waterways passing through or between two or more units."

The State suggests that a clause should be inserted in the Act providing for freedom of navigation on the lines adopted in other Constitutions. Disputes under such a clause might either be determined by the Federal Court or by a tribunal of the kind indicated by the Secretary of State to the Joint Select Committee in answer to Question 12,861.

Subject 25.

The State asks that this head should be amended so as to make it plain that it does not apply to charitable or municipal corporations or other non-trading or public or semi-public bodies. This would be met if the words "and other" were omitted.

* This Note only deals with the amendments which the State suggests. It does not deal with the reservations which the State may desire to make.

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[*Continued.*]

Apart from this point, the State is in considerable uncertainty as to what the word "regulation" would be held to cover and feels that this subject should be further considered and defined.

Subject 28.

The State thinks that it should be made clear by re-drafting that this head does not cover control of production, supply and distribution, which are included in Provincial Subject 37, but merely such matters as safety regulations.

Subject 29.

The State suggests that this head should be amended by the insertion of the word "Private" at the beginning.

Subject 33.

Uncertainty is felt as to what this head is intended to cover. The State thinks it should be made clear that this head only relates to driving licences, and, if desired, to licences merely allowing motor vehicles to use the roads.

Subject 41.

The State suggests that, in order to make the position clearer, head 41 should be made to read: "Census and statistics for the purposes of the Federation."

Subject 46.

The State submits that this subject should either be omitted or re-drafted. If it is merely intended to cover rights of property incidental to the exercise of Federal powers, or such matters as fiscal immunity, it appears to be unnecessary. As it stands it is difficult to determine the scope of this head.

A. HYDARI.

1st November, 1933.

ANNEXURE

Memorandum by Sir Akbar Hydari, dated 2nd October, 1930, and entitled "Federal Scheme for India."

The whole field of administration of Greater India, meaning thereby British India and Indian States, India may be divided into three circles:—

- (1) Administration of a series of autonomous Indian Provinces each governed by a Governor appointed by the Crown and a congeries of Indian States, each ruled by a hereditary Ruler recognised by the Crown.
- (2) Administration of subjects which the Indian States and the British Indian Provinces make over to a Federal Executive responsible to a Federal Assembly and which are of common concern for the well-being of Greater India.
- (3) The sovereignty of the Crown, which is responsible for (a) administration of defence, political relations with the Indian States and foreign relations; (b) the fulfilment of financial obligations and maintenance of general financial stability; (c) general oversight over all the Provinces of British India to ensure good government, tranquillity, peace and order; (d) dispensation of honours, titles, etc.; (e) appointment of its representatives, viz., the Viceroy, Governors of Provinces, etc.; (f) administration of Backward Tracts.

British Indian Provinces will enjoy full autonomy in all subjects except (a) such as are made over by Statute, as subjects of concern to Greater India, for administration through a Federal Executive responsible to a Federal Council, and (b) such as have been reserved for the Crown. "Law and Order" in British India must come under the administration of the Provinces, but it is important that the head of the Police has certain statutory powers, which really the head of every large department should possess if he does not possess them already, namely, of appointment and control, with the right of appeal to the Governor.

In the Statutory Commission Report, the circle of Federal subjects (see page) is narrower than that of Central subjects which the Commission propose to bring under a Federal Assembly at the Centre, and the so-called Federal Assembly has really been implemented for controlling the British Indian Provinces from the Centre, rather than for dealing with subjects of common concern to British India and the States. This is from the Federal point of view highly undesirable. The Federal Assembly is thereby made lopsided, with a composition varying according as it is dealing at the time with purely British Indian subjects or with Greater Indian subjects, i.e., truly Federal subjects. It tends to make the domination of British India over Indian States more pronounced than it must in any case be from the fact that British India will have a larger number of representatives on the Federal Council than the Indian States. In the annexure an attempt is made to classify the present Central subjects into Crown, Federal and Provincial subjects, according to their nature. Such a division, which is purely tentative, obviates the necessity of having a hybrid Federal Assembly with the dual function of dealing at one time with subjects common to the Provinces and to the States and at another with subjects which are common only to the Provinces.

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MEMORANDUM BY SIR AKBAR HYDARI.

[Continued.]

The constitution of the Federal Council should, so far as is fair and reasonable, conform to the principle of equal representation for each Federal unit. It might consist of 36 representatives for the provinces, elected by the provincial Legislature on the principle of proportional voting, 24 from Indian States and 12 nominated by the Crown. The Federal Executive might consist of a Minister for Finance, a Minister for Transport, a Minister for Commerce, a Minister for Labour, and a Law Member. Special Statutory powers should be reserved for the Finance Member to ensure the stability of the Indian Finances, and the Crown nominations must make adequate provision for the due representation of the interests of capital and very minor (in number) communities, like European. There will be a Federal Court for seeing that the different bodies and administrations remain within their constitutional field, also for adjudicating disputes between the Federal units *inter se*, or between an Indian State and the Federation or a Federal unit. after co-opting if necessary a representative from each of the two parties.

The Crown will be assisted in the performance of its duties (see Annexure A) by the Commander-in-Chief and a Secretariat of Expert Advisers for (a) Home, (b) Political, (c) Foreign and (d) Finance matters.

A. HYDARI.

“ S.S. Ranchi,”

2nd October, 1930.

A.—CROWN SUBJECTS.

1. Oversight over Provinces and States for ensuring good government, tranquillity and peace and order of British India and Indian States.
2. Defence of India.
3. External Relations.
4. Relations with States in India.
5. Political Charges.
31. Central Police Organisation.
42. Territorial changes.
43. Ceremonial, titles, orders, precedence and civil uniform.
44. Immovable property at present in the possession of the Governor-General in Council.
15. Indian Audit Departments.
34. Ecclesiastical Administration.
40. All-India Services.
45. Public Service Commission.

Note.—The Indian States should be indifferent in which category they are placed, whether Crown or Provincial or Federal.

N.B.—The numbers given refer to the numbers in the Devolution Rules, Schedule I.

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[Continued.]

B.—FEDERAL SUBJECTS.

5. Communications :
 - Railways and extra-Municipal Tramways.
 - Aircraft.
 - Inland Waterways.
 6. Shipping.
 7. Lighthouses.
 8. Port quarantine.
 9. Major Ports.
-
10. Posts, Telegraphs and Telephones.
 11. Taxation :
 - Customs.
 - *Cotton Excise Duties.
 - *Income Tax.
 - Salt and Opium.
 - *And other sources of All-India Revenue.
 12. †Currency.
 14. Savings Banks.
 17. Commerce, including Banking and Insurance.
-
22. Stores and Stationery for Federal Departments.
 23. Control of Petroleum and Explosives.
 32. Arms and Ammunition.
 27. Inventions and Designs.
 28. Copyright.
 29. Emigration and Immigration and Indians Overseas.
 39. Census and Statistics.
 46. Benares and Aligarh Universities and Chiefs' Colleges.

C.—PROVINCIAL SUBJECTS.

- 46 & 47. All matters not specifically included among Crown or Federal subjects.

* Special convention in the case of those States which do not have any of these taxes in their fiscal system.

† Special convention in the case of those States which have their own Post Offices and Currency.

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[Continued.]

D.—SPECIAL SUBJECTS BY CONVENTION.

A.—*Crown.*

13. Public Debt of India.

(With regard to the past debt of India the responsibility for its proper liquidation should rest with the Crown. With regard to future borrowings, the responsibility must rest with the agency which requires the debt except that the mode, time, etc., should be for the decision of the Finance Member and the Viceroy.)

B.—*Federal.*

I.—*Legislation.*

16. Civil Law.

30. Criminal Law.

41. Special Provincial Legislation.

(There should be a special Convention dealing with these. The initiative might come from the Crown or from any of the Provinces or States to have a legislative measure discussed either in the Federal Council or in special Conventional Assembly consisting of representatives of such Provinces and such Indian States as may be prepared to have legislation on identical lines introduced into their States with such minor reservations as they may at the time announce.)

II.

19. Control of production, supply and distribution of special articles.

20. Development of special industries.

25. Control of Mineral development.

(These might be Federal but any Indian State or groups of States could claim exemption if it had enjoyed exemption before and could command one third minimum voting strength of the Federal Council to permit the exemption.)

III.

24. Geological Survey.

26. Botanical Survey.

33. Central Research Agencies and Institutions.

36. Archæology.

37. Zoology.

38. Meteorology.

(These could be made Federal with a Convention similar to that with regard to legislation in case Indian States desire to participate in and pay for any of the Surveys.)

C.—*Provincial.*

18. Trading Companies.

Memorandum by Sir Akbar Hydari on Central Subjects (28th May, 1931)

The Federal Structure Committee came to the tentative conclusion that non-provincial subjects might fall into one of two categories, namely, Federal and Central. The problem with which it was then faced and for which the Committee did not find a final solution was the manner in which these two classes of subjects could be legislated for and administered.

2. The course that first suggests itself is to have two separate Governments; one a Federal Legislature and Executive for the Federal subjects and the other a British Indian Executive and Legislature for the Central subjects. But this is open to the objections that the presence of two Executives and two Legislatures working side by side would lead to friction and that it would complicate the administrative machine. At the same time, it was generally recognised by the Federal Structure Committee that there must be some supervising authority capable of co-ordinating and finally directing policy in Central subjects where co-ordination is in the interests of British India and that whatever device was adopted so far as a Legislature was concerned, for dealing with Central subjects there could only be one Executive. Prominent among the subjects proposed to be classed as Central is Law and Order which should ordinarily be included in a Home Minister's portfolio. Assuming for the moment that instead of an irremovable Home Member a Home Minister is appointed and that the Central subjects are dealt with by the British Indian representatives in the Federal Legislature alone, what would happen if a vote of no-confidence in the Home Minister is brought forward in the Central Legislature so formed, and is carried? The principle of joint-cabinet responsibility would necessitate the fall of the Federal Executive, though the matter that brought about its fall would be one that exclusively concerned British India. If, on the other hand, the vote of no-confidence is moved in the Federal Legislature and the States representatives vote on it, the States will be placed in the invidious position of voting on matters in which they had no direct concern and possibly of helping to maintain in office a Home Minister who had lost the confidence of the representatives of British India in the Federal Legislature. Of the two alternatives the former is probably the least unacceptable to the States but both are open to objection. Is there no third course?

3. When such a radical change is contemplated in the polity of a country so diversely populated as India and so unversed through lack of previous experience and tradition in the running of a democratic constitution as India, it is of paramount importance to the success of any constitutional experiment that the new constitution should be simple and straightforward. Arrangements like those proposed in paragraph 2 above would be the reverse. But they are not the only alternatives. There are other ways of dealing with Central subjects which might on further examination be found to be less beset with difficulties than they are and which will have the dual advantage of co-ordinating action and of providing a safeguard against possible irresponsibility.

Take Law and Order. In the first few years it is possible that there may be times when the intervention of the Crown as represented by the Viceroy may be required for the maintenance of Law or the preservation of Order. The Viceroy cannot act without advice. Therefore if Law and Order is to be classed as a Central subject, he must be given either a Home Member not subject to the vote of the Federal Legislature (or of the British India representatives voting alone) or a Home Minister who would be so subject.

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[Continued.]

What are the implications of the first proposal? They are that in times of emergency when the popular mind all over India (for it would have to be a question transcending provincial boundaries to justify the Viceroy's interference) is troubled, the Viceroy would be compelled to give directions to popularly elected and responsible Provincial Ministers on the advice of an official at headquarters not in close touch with the currents of provincial feeling and not owing his position to popular selection. There would immediately arise a demand that he should give place to a Minister responsible to the Legislature. This would be a demand which could not for long be resisted so that in a short space of time the safeguard that an irremovable Home Member would supply would disappear.

4. If on the other hand, there is, as some desire, a Home Minister responsible to the Central Legislature, the Crown as represented by the Viceroy will have to abide by his advice or face the resignation of the Federal Ministry. The powers of the Crown will in so far be restricted in the exercise of its supervisory functions. Such a Home Minister will advise the Viceroy in accordance with the dictates of the dominant party in the Legislature. It is precisely against such dictates when actuated by communalism, racialism or demagogism, that it is desirable in the initial stages of the constitution to have safeguards. The experience of the Montagu-Chelmsford Reforms shows that Provincial Legislatures are more accurate mirrors of popular feeling than the Central Legislature. The former are nearer realities than the latter. In the maintenance of Law and the preservation of Order the Provincial ministers of the Interior are the appropriate advisers of the Viceroy.

5. Since the inception of the Montagu-Chelmsford Reforms political history in India provides any number of instances of the resentment caused in provinces, which are as yet only partially autonomous, to any direction from the Central Government, so that even now the Government of India have to proceed by way of consultation and not by way of dictation. In the circumstances why have in the new constitution a Home Member or Minister at all? Granted that the Viceroy must act on advice. Let him do so on the advice of Provincial Ministers of the Interior. Times of emergency are not by their very nature of frequent occurrence and with the increasing facility of communications and rapidity of travel it would not be difficult for a Viceroy to obtain within probably 24 hours all the advice he needs. The Viceroy has at present a Secretariat of his own apart from the Government of India Secretariat. It could possibly be slightly enlarged to cope with the increase of work.

From what has been said above it would appear that no lack of co-ordination or loss of strength will result if Law and Order is not classed as a Central subject. On the contrary, the Viceroy would in any action he might desire to take be fortified by the advice of responsible Ministers of the Provinces most affected and having taken a decision could implement it with all the authority which, apart from his position as the King's representative, he would in the final resort have as head of the Army. In this manner also a contentious subject and one which might cause an endless amount of friction would be removed from the purview of Federal politics. Law and Order, if centrally administered, would be bound to have an influence and not a happy one on Federal politics.

6. Then there are technical subjects like the Railways which may be Federal as regards policy but need be neither Central nor Provincial in regard to administration. The administration of Railways might be left

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[Continued.]

to a Statutory Body representative of the interests concerned which would function undisturbed by the interplay of party politics and unassailed by provincial jealousies because it would be representative of all interests. Similarly other subjects might be left to *ad hoc* bodies representative of the various interests concerned and constituted by Statute. In the domain of Agricultural Research this experiment has been tried and has worked with increasing success so far. Since Agriculture was made a Transferred subject under the Montagu-Chelmsford Constitution provinces went their own way in the matter of agricultural development. The results were so discouraging that it led the Royal Commission on Agriculture to recommend the formation of an Imperial Council of Agricultural Research. It has on it representatives of the Central Government of the Provinces and of such of the Indian States as wish to join. It has the management of large sums of money voted in lump by the Indian Legislature. This money in turn finds its way in the shape of grants to Provincial Departments of Agriculture and some of it also to Indian Universities. Being in a position to spend money and representative as it is of all provinces the Council is gradually beginning to direct agricultural development all over India. This is being achieved by the very nature of its constitution without any friction. Something similar could be done in the case of Railways and in that of other technical departments where there was need for co-ordination of effort.

7. The above lines of possible advancement seem worthy of closer study. *Prima facie* these proposals while providing ample safeguards against action whether arising from emotion or fear or racial or communal discrimination would offend less against the self-respect of a self-governing India, operating as they would by way of consultation and not as injunctions of some central authority (the Home Member or Minister), than if there were a number of Central subjects with safeguards whose object, viz., as a curb on irresponsibility, would be scarcely veiled. They also provide against centrifugal tendencies because the more opportunities there are for the various interests, provincial, communal or racial, to take counsel and act together the less likelihood will there be of such interests falling apart. The concentration of power in a Central Executive need not necessarily lead to unity. It might very possibly lead to disruption. Unity is achieved not by the forms of a constitution however nicely balanced and adjusted but by the realisation by different interests that the way to progress and safety lies in common action tempered by a spirit of compromise. And this in a country at present so diversely constituted as India can, it is submitted, best be achieved by providing as many opportunities as possible for the different interests to come together without always relating their meetings to current politics.

A. HYDARI.

28th May, 1931.

Memorandum by Sir Akbar Hydari on the Size and Composition of the Federal Legislature

1. For the Committee's purposes it seems to me fruitless to go over the history of the struggle between those who, like myself, were in favour of a unicameral Federal Legislature or, if a bicameral Legislature was desired, of a small bicameral Legislature, and those whose views found favour with the Lothian Committee. Nor do I think it profitable to elaborate my conviction that, before the Lothian Committee came to conclusions in regard to the strength of the Federal Legislature so far as British India was concerned, which inevitably affected the size of the Federal Legislature as a whole and materially altered the proportion of the strength of its two houses from 2:3 to 2:4½, the Committee should have called the representatives of the States, who were the other party concerned, into consultation. Let us start with the problem as the White Paper in this regard presents.

2. Two reasons have contributed to the large numbers proposed in the White Paper for the Federal Legislature. One is the desire to establish effective contact between the electors and the elected. The other is to meet as far as possible the claims of the Chamber of Princes—and I would like to point out that the Chamber of Princes does not represent all the Princes of India—to individuality of representation in the Upper House of the Federal Legislature.

These two reasons have been responsible for a progressive increase in the proposed size of the two Houses of the Federal Legislature from that suggested at the First Round Table Conference to that proposed in the White Paper via the compromise effected at the Second Round Table Conference, but broken by the Lothian Committee in their Report.

3. The White Paper proposals do not, in my view, satisfy either of the two considerations on which large Federal Houses have been sought to be justified. "If responsible government," wrote the Lothian Committee, "is to develop properly, the Federal system must make it possible for the candidate and member to get and keep in touch with the constituents, and we think that from this point of view an increase in the British Indian seats to 300 is necessary." (Paragraph 405 Franchise Committee Report.)

Now under the Lothian Committee's proposals, if separate electorates are maintained, as they will be, for Moslems and Sikhs and if account is taken of the town constituencies, the seats allotted to women, labour, and special interests, the constituencies under their proposals, while varying greatly in size, will, in the country districts, average between 5,000 and 10,000 square miles. I would in this connection invite the Committee's attention to paragraphs 243 and 244 of Volume I of the Report of the Simon Commission. I concede that one cannot draw an exact parallel between English and Indian conditions; but the very respects in which the parallel fails are those which strengthen my argument. Our people are not so literate as the people of England; our communications are not so extensive as those in England. The means at the disposal of candidates to get into touch with the electorate are neither so numerous nor so effective as are the means at the disposal of the English Parliamentary candidate.*

* It has been suggested that the development of broadcasting, now in its infancy in India, will provide an effective means of contact between the candidate and the electorate. The candidate will doubtless in that event be able to speak to large sections of his electorate, but not *vice versa*. There will thus not be that effective contact which is possible only when the candidate and electors meet face to face.

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And yet the constituencies which the Lothian Committee propose for British India are far more extensive than any which obtain in these Islands.

In so far as the proposals in the White Paper have reduced the numbers recommended, to that extent has the size of the constituencies been still further enlarged. If the object of establishing direct contact with the constituencies is to be achieved, a Legislature of far greater size than either that proposed by the Lothian Committee or in the White Paper is required. We are therefore driven to the conclusion that the problem of the size of the Federal Legislature must be approached from an entirely different angle so far as British India is concerned.

4. The other consideration which led the framers of the White Paper to suggest the numbers they have proposed was the desire to meet as far as possible the claims of Indian States to individuality of representation. It is interesting to look at the history of this demand. The Committee of Ministers presided over by me and having as its members Sir Mirza Ismail (Mysore), Sir V. T. Krishnama Chari (Baroda), Sir Manubhai Mehta (Bikanir), Sir Prabhashankar Pattani (Bhavnagar), Sir K. N. Haksar (Chamber of Princes Special Organisation), and Mr. K. C. Neogi (Oriya States), set up by the Princes in 1930 before they made their declaration for Federation, decided upon a unicameral Federal Legislature. There was also a considerable body of States' opinion which was in favour of Confederation and for a small Upper House if the Legislature was to be bicameral. Later, the medium States urged that in the Federal Legislature the Indian States should have equality of representation in the Upper House with British India, or in other words a 50-50 representation; and so far as the States *inter se* were concerned, they demanded equality and individuality of representation. The larger States agreed with British India that this demand on the part of the States was excessive and ultimately all the States agreed that they should have 40 per cent. representation in the Upper House and 33½ per cent. in the Lower House. Even then the medium States tried for equality of representation among all the States *inter se*, and when they failed they insisted upon at least individuality of representation. They have pressed this demand at the expense of the larger States, with the result that if their demands are met the larger States will obtain a representation in either House which it would be unfair to ask them to accept.

5. I would point out that representation in the Federal Legislature is demanded by the medium States individually and not collectively as representing particular areas or particular forms of polity. The Federal Legislature is, however, not meant to be an ornamental Assembly where salutes and precedence should predominantly affect the interests of the people, interests which will be determined by the decisions of this Legislature. Any undue weightage, therefore, given to a State beyond what it is entitled to by virtue of its population, area, and above all the federal content which it brings to the Federal pool, cannot be justified on any ground of public policy or political ethics. While, on the one hand, the States have claimed and have been given weightage *vis-à-vis* British India, it is not fair to ask the larger States, on the other hand, to accept a representation less even than what they would be entitled to if there had been no weightage for the States and they had been treated exactly as British Indian Provinces. Even the numbers which the White Paper allots to the States, viz., 104 out of an Upper House of 260, and 125 out of a Lower House of 375, cannot give absolute individuality of representation; but even this approach to individuality of representation for the smaller States can only be obtained at the expense of the larger States and by treating them

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worse than British Indian units of corresponding size, population and resources.

6. The demand of the larger States is not that each should get a large number of seats, absolutely speaking, but that each of them should not get a disproportionate number of seats; disproportionate when their quota is compared to what is given to British Indian units of corresponding size, population and resources, and much more disproportionate when they are compared in respect of these factors with the medium and smaller States.

7. I suggest to the Committee that it is desirable to bear in mind certain facts and figures in order to guard against the danger of thinking of the States in terms of numbers. There are in all, according to an official publication entitled "The Indian States" (1929), no less than 560 States in India. Of these 119 are what are called Salute States and 441 non-Salute States. Of the latter:—

170 have an area of less than 10 square miles each;

169 have a revenue of less than £750 per annum;

160 have a population of less than 1,000.

But let us take even the 119 Salute States. There are only 13 of these with a population of 1 million and over and 12 with a revenue of £750,000 per annum and over. As against these there are 56 States with an area of less than 1,000 square miles each; 57 with a revenue of less than £75,000 per annum; and 47 with a population of less than 100,000.

The 13 States with a population of 1 million and over account for 57.38 per cent. of the total Indian States population; the remaining 106 out of the 119 Salute States have between them a population of less than 28 per cent. of the total Indian States population, the balance of 14.62 per cent. representing the population of 441 Non-Salute States.

Briefly speaking, excluding Gwalior—which is under a minority administration—the first ten States have more than 50 per cent. of the population and revenue of the whole. It is amongst these States that the strongest objection is found to the numbers in the White Paper or the allocation of seats proposed on the basis of these numbers. It is easy to get the majority of the States to accede to Federation if the medium and smaller States are given an amount of representation out of proportion to their population, area and federal content at the expense of the large States. If the Committee and Parliament are looking to the States to provide one of the elements of stability in the new Constitution, it is not to the numbers of States which accede to the Federation to which attention should be paid, but to the quality in terms of federal content which they bring, of the States which do.

8. I should like to place before the Committee the reasons for which I and those who think like me have urged a small Federal Legislature:—

(1) The Federal Legislature, unlike the Legislature of a Centralised State such as the present Government of India, will have a much more restricted sphere of activity than the present Indian Legislature has.

(2) The Federation, having to deal with what must be called technical subjects, like communications, commerce, and currency, will necessarily require in its members a high level of experience and knowledge. It is in the highest degree desirable that the Federal

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Legislature should represent provincial and State wisdom and experience in their best form.

The problems which will affect the Indian citizen in his everyday life will be dealt with very largely in the provincial legislatures, which under the White Paper proposals will have been considerably enlarged and made more democratic than they are at present. I would in this connection invite the Committee's attention to paragraphs 154 and 155 of Volume II of the Report of the Statutory Commission. The Commission are there envisaging a Central Legislature for British India only and full provincial autonomy; under Federation the powers of the Federal Legislature will be, if anything, still further restricted.

The attention of the Committee has been drawn to the large list of concurrent subjects, List III, Appendix VI of the White Paper; but if this list is examined it will be seen that, in the field of civil and criminal law, codes of law are already in existence, so that it is unlikely that their amendment will keep the Federal Legislature very active. It should be remembered that Law and Order will in future be a provincial subject and legislation pertaining to it will more appropriately have to be undertaken in the Provinces. This applies to some extent to social legislation also, which must have its roots in provincial necessity, later to be translated into a practicable measure of uniformity by Federal legislation. The concurrent field exists for securing uniformity of laws; but by far the greater and the most important field of original legislation will, under provincial autonomy, remain with the Provinces.

(3) It is obvious that a large legislature (there will be 635 legislators in Delhi under the White Paper proposals) will cost more than a small one, but more important even than this consideration is the need for economy in personnel. India is not in a position at present adequately to man eight or nine provincial legislatures—some of them bicameral—plus a Federal Legislature of the size contemplated in the White Paper; that is, 635 more.

Economy in personnel is an even more important factor so far as Indian States are concerned than it is in British India. In their present stage of development anyone who knows Indian States would probably agree that they will find it extremely difficult to spare from the work of their own Administrations as many as 104 suitable representatives for the Upper and 125 for the Lower House.

9. I stress the word "suitable." If the British Parliament is looking to the Princes to provide an element of stability in the new Constitution, the sort of representatives which they will be able to send—if their number is as large as that proposed in the White Paper—will in my opinion not achieve that purpose. Furthermore, such representatives will not in most cases be able to speak with the authority and weight—if any of them, however able, happen to have as their constituencies small States with perhaps one vote out of 100 State votes—that they would have if they spoke for a group of States representing one vote out of 24 or even 40 State votes.

The time has come for decision and I would beg the Committee to look upon the question of the size and composition of the Federal Legislature, not merely as one of the questions among many with which the Committee has to deal in deciding upon the Federal structure, but as the most important factor which will govern, in my opinion, the success or otherwise of the Federal scheme.

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Great care is being taken in designing safeguards and seeing that they are adequate. I consider that a small, efficient and responsible Federal Legislature to be a great and fundamental institutional safeguard, and it is for this reason that I attach the greatest possible importance to its proper constitution.

10. I propose therefore that for the Federal Legislature the indirect should be substituted for the direct system of election. The direct must lead to an unmanageable and expensive Legislature and yet in the rural constituencies of British India not ensure that direct contact between the candidate and the electorate which is one of its main justifications.

Indirect election will not mean a denial of the democratic principle. It will only mean its adaptation to the problem which the vast size and population of British India provides.

I would invite a perusal of paragraph 137 of Volume II of the Report of the Simon Commission, which is a masterly summing up of the question of the constitution of this Legislature. "Representative institutions," say the Simon Commission, "were devised as a means of getting over the difficulty created by the expanding size of States, and it appears to us to be in strict accordance, both with the theory of representation and with the requirements of commonsense, to say that, when the total area to be provided for is so huge that direct election would involve either impossibly large constituencies or an impossibly numerous Assembly, the solution is to be found through 'Election by the Elected'—which is all that indirect election means."

I suggest that the Lower House should be elected by the provincial legislatures, which themselves, under the scheme of the White Paper, will be elected by direct election and on a wide franchise. In paragraph 138 (Volume II) of their Report, the Simon Commission say: "If the Central Government of British India is to develop on Federal lines the adoption of a method which will represent the Provinces as such at the Centre is extremely desirable." I commend the paragraph as a whole to the consideration of the Committee.

11. The Upper House should consist, in my view, of the nominees of the States and of Provincial Governments. Everywhere we are confronted with the necessity of bringing the Governments of the Units into liaison with that of the Federation.

12. For the time being I would start with a Lower House of 150 and an Upper House of 60, which is about the strength of the present Legislative Assembly and the Council of State. In place of the present nominated official and non-official bloc I would substitute the representatives of the Princes, which would give them 50 seats in the Lower and 24 seats in the Upper House.

This would leave the structure of the White Paper scheme with regard to the relative powers of the two Houses undisturbed except to the small extent of reducing the Indian States quota in a joint session from 36 to 34 per cent., a result which British India at any rate would welcome and one to which the Indian States, on their side, would probably not object in view of the greater suitability of the mode of election to the Lower House from their point of view.

There is another alternative. If you do not wish to disturb even to this extent the scheme in the White Paper, the strength of the Lower House might be kept, as at present, at 150—that is, 100 elected from British India

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as at present, and 50 nominated by the Indian States in the place of the nominated official and non-official bloc. The Upper House could be of 100, giving to British India its present number of 60 and adding 40 seats for the Indian States. In this manner you would leave the structure of the White Paper in regard to the two Houses entirely unaffected.

The proposals which I have made regarding the method of election to the Lower House have been criticised by those who favour the White Paper proposals in respect of the size of the Legislature, on two grounds: that as the electorate for each provincial quota for the Federal Lower House will be very small there will inevitably be corruption; and secondly, that if any members for the Federal Legislature are to be selected from the members of the provincial legislatures there will be a crop of bye-elections at the inception of each new provincial legislature. The critics forget that this method of election is proposed in the White Paper for the Upper House of the Federal Legislature, to which British India will send as many as 156 members, while under my proposals the numbers sent to the two Houses from British India will not exceed this number, and the objections in question will apply equally to the White Paper proposals for the constitution of one House alone.

13. It has been assumed in recent discussions that the practicable alternatives are only two—namely, a Federal Legislature of the size contemplated and composed in the manner suggested in the White Paper, and a small Upper House of 60 and a Lower House of 150, the one nominated by the Governments of the Units and the other elected by provincial legislatures. And it has been suggested to the Committee that if Parliament adopts the latter alternative it will be a retrograde step and will be throwing away the fruits of discussions of the Round Table Conferences.

I will take the second point first. The compromise arrived at on this subject at the Round Table Conferences was an Upper House of 200 and a Lower House of 300. By recommending numbers beyond these the Lothian Committee imperilled and the White Paper proposals broke the compromise thus arrived at. Those therefore who support these proposals cannot appeal to the Committee on the ground that by accepting some alternative proposals the Committee and Parliament might lay themselves open to the charge of upsetting a compromise laboriously arrived at.

As for the first reason: is not the Committee being asked to pay homage to catchwords and not to what is required by the facts of the Indian situation? Even a highly responsible British Indian leader has admitted that if the Federal Legislature were to be unicameral—and I for one would welcome and always have welcomed a unicameral legislature and consider such a Federal Legislature to be quite feasible*—he would not object, given such a

* *Vide* paras. 147, 148 of Volume II of the Report of the Simon Commission. Such a Legislature would have all the elements of stability together in one House without creating the risk of a clash between two Houses, one supposed to be Popular and the other Conservative. It would also give a larger number of seats for distribution among the Indian States which at present have to be duplicated in the two Houses for the same State Units. If considered necessary, there might, in addition to this unicameral Legislature, be a small Council of Greater India representing the Governments of about thirty members constituted as in para. 236 of the Simon Report (Vol. II).

16° Novembris, 1933.] HYDERABAD—FEDERATION—
MEMORANDUM BY SIR AKBAR HYDARI.

[Continued.]

legislature, to indirect election. Therefore, even according to a distinguished spokesman of British India, election by the mere fact of its being indirect is not necessarily a retrograde step.

If British India, or rather large sections of British India, are anxious for direct election and are not bothered by the manifold disadvantages and dangers of huge constituencies, extensive in area and excessive in population, they are welcome to have direct election to either or both houses of the Federal Legislature. To my way of thinking direct election is not necessarily advance, nor indirect retrogression, but if store is set on the fact that British India has "enjoyed" direct election for the past few years and wishes the principle to be retained, let that be conceded; but for the present only to the extent to which direct election has so far been enjoyed. It should not be extended to a point after which reconsideration in the light of experience of the question of direct versus indirect election for the Federal Legislature has been made impossible. What I am most anxious about is that the numbers of the Federal Legislature should be small, at any rate to start with. The present Central Legislature is partly nominated and partly directly elected and its total strength is 210. There is no need to increase it at one step from 210 to 635.

14. Those of us who have pleaded for a stable Legislature at the Centre have compromised and yet again compromised since the beginning through successive Round Table Conferences. We have given up the idea of a unicameral Legislature; we are prepared to give up the idea of an indirect system of election to the Federal Legislature. But we are entitled to say that we will go thus far and no further, and not be made to give way on the point of numbers—not out of any *parti pris* on our part, but because we consider that if the size of the Federal Legislature is also held to be of no account the last hope of stability in that Legislature will vanish.

It is proposed greatly to increase the strength of the provincial legislatures. This will already be a substantial tax on the political talent available in India in her present stage of development. In her own interests it is desirable to hasten slowly so far as the Federal Legislature is concerned.

Later, there may be a demand for increasing the numbers after all parties have had experience of the working of the new institutions; or, perhaps, there will be no such demand and the federating units may come to be grateful for not having been saddled with the expense and inconveniences and dangers of having 635 people in Delhi for the small number of special subjects which will come within the purview of the Federal Legislature.

15. Do not start with the maximum figures, but leave some room for development.

Responsibility in the Federal Centre is necessary and essential, but the Legislature to which this responsibility is given should be of a suitable character.

So far as the States are concerned, there will be for a Legislature so constituted the ready acquiescence of the larger States, who will in that case not only give the lead for entering Federation, but will also set in motion the forces for grouping other States into units more equal in size and area and federal content to the other States.

The Committee is aware of the need for such grouping in matters relating to the proper administration of Federal subjects; such, for example, as the

16^o Novembris, 1933.] HYDERABAD—FEDERATION—
MEMORANDUM BY SIR AKBAR HYDARI.

[Continued.]

proper administration of Federal laws which will devolve upon the Courts of the Units.

In such a case with a Legislature as stable, even if to start with a majority of the Indian States do not join Federation—though I personally think that States representing a majority of the Indian States population area and revenue would join—there need be no fear of granting responsibility in the Centre and thus meeting the insistent demand of British India.

A. HYDARI.

November, 1933.

**RAILWAYS UNDER THE FEDERAL CONSTITUTION. PROPOSALS
OF THE STATE OF HYDERABAD SUBMITTED BY SIR AKBAR
HYDARI.**

1. The following paragraphs are based upon the assumption which seems inherent in the conception of Federation, that the jurisdiction now possessed by the British Government over the lands occupied by or for the purposes of the Nizam's railways and the other railways in Hyderabad shall be retroceded to the State.

2. The State would desire that as regards the administration and management of its railways the railway authority appointed by the State should occupy a similar and parallel position and status to those laid down for the Railway Authority under the "Sketch Proposals for the Future Administration of the Indian Railways"; that is to say, as regards matters within the jurisdiction of the Federation affecting the State's railways the Federation would have the same rights and powers in relation to the State's railway authority as in relation to the British Indian Railway Authority.

3. A constitutional guarantee should be provided against unfair discrimination between the State's railways and any other railways by or under legislative or administrative act of the Federation.

4. The State's railways should be afforded a constitutional guarantee of all reasonable facilities for the receiving, forwarding and delivering of traffic upon and from the several railways belonging to or worked by any other railway administration and for the return of rolling stock; such reasonable facilities to include the due and reasonable receiving, forwarding, and delivering of through traffic by through bookings and at through rates. The amount of any through rate and its apportionment between the State's railways and the railways of the administration or administrations concerned, in case of dispute, to be determined by a tribunal.

5. The State's railways should be afforded a constitutional guarantee that they and their traffic will not be subjected by another railway administration to any undue or unreasonable prejudice or disadvantage in any respect whatsoever; and so that whenever for the same or similar traffic, or for the same or similar services, a railway administration charges lower rates in one case than in another the burden of proving that such lower rate does not amount to an undue or unreasonable prejudice or disadvantage shall lie on the railway administration.

6. The State's railways should be given a constitutional guarantee against unfair competition. For this purpose the State's railways should be enabled to bring before a tribunal any rate or charge made by another railway administration in competition with the State's railways which (a) places the

16° Novembris, 1933.] HYDERABAD—FEDERATION— [Continued.
MEMORANDUM BY SIR AKBAR HYDARI.

State's railway at an undue or unfair disadvantage in the competition; or (b) is inadequate having regard to the cost of affording the service or services in respect of which the rate or charge is made; and unless the tribunal is satisfied, in either of the foregoing cases, that the action of the railway administration in making the rate or charge is desirable in the public interest (including the interests of the competing railways) the tribunal shall cancel or vary the rate or charge.

7. The foregoing guarantees could not be made effective in practice without the ancillary right on the part of the State's railways to require information from other railway administrations not merely as to the charges that are being made by the latter but also as to the proportions of any such charge attributable to (a) carriage of the goods on the railway, (b) terminals, (c) demurrage, (d) collection, delivery and other expenses.

8. It is obvious that the guarantees referred to above involve the necessity for a tribunal to interpret and give effect to them. The State is advised that having regard to experience of English railway legislation the most satisfactory system would be to set up a single permanent judicial body to deal with disputes arising under the foregoing guarantees. Moreover, it may well be that traders will, as respects undue preference and facilities, be given, either in the Constitution Act or at a later stage, similar rights, and as in that case similar questions are likely to arise as between traders and railway administrations, it would be most desirable, in order to avoid inconsistent and overlapping decisions, that the same tribunal should adjudicate upon all such questions whether arising between one railway and another or between a trader and a railway.

9. Construction of Railways in British India is a Federal subject under Appendix VI., List I., Head 12 (a), whereas construction by a State within its own territory remains outside the Federal sphere.

In order to prevent friction in matters relating to construction the State suggests that constitutional provision should be made whereby all railway construction whether in British India or in a State shall be regulated with due regard to (a) progressive extension of the Indian Railway System; (b) co-ordination of that system as a whole; and (c) the avoidance of unfair encroachment by one railway administration upon the area served by another.

In order to give effect to such a provision it would seem desirable that every scheme of railway construction should be brought before an impartial body whose duty it would be to hear objections to the scheme in the same way as would be done by a Private Bill Committee in this country. The State sees no reason why this function should not be entrusted to the tribunal contemplated.

Note on Federal Finance by Sir Manubhai Mehta.

Under this important head the Princes, by their resolutions at the informal meetings of the Princes' Chamber, have asked that: "no direct tax or levy of any kind, including income tax and corporation tax, shall be imposed by the Federal Government with the States or on the subjects of States. Federal sources of revenue shall be strictly confined to those mutually agreed upon and mentioned in Appendix A, and no addition to this list will be permissible without the free consent of each State."

This demand has important bearings on paragraphs 138, 139, 141 and 142 of the White Paper dealing with the chapter on the allocation of revenues. The scheme of the White Paper provides that the Federal Government may for the first ten years retain all the proceeds of income tax for its own expenditure without allowing any contribution from income tax revenue to the Provinces. The income tax revenues would be assigned to the Governor's Provinces, but would be payable only after ten years, the assignment to the Provinces during those first ten years being regulated on a gradually increasing scale limited to a maximum of 75 per cent. and a minimum of 50 per cent., spread over the first ten years. Taxes levied on official emoluments of Federal officers and taxes on income earned in Chief Commissioners' Provinces and other Federal areas will naturally remain with the Federal Government, but all other revenues from income tax will be liable at the end of ten years to revert to the Governors' Provinces under the above arrangements.

Paragraph 141 gives to the Federal Legislature power to impose surcharges on taxes on income for Federal purposes. While such surcharges are in operation, each State member of the Federation will contribute to the Federal revenues a sum to be assessed on a prescribed basis. If any State has agreed to accept Federal legislation regarding income tax, its contribution to the Federal revenues under the contingency of surcharges mentioned above may take the form of a corporation tax or a tax on the undistributed profits of companies.

These provisions of the White Paper are not quite acceptable to all the Indian States. Of course, such States as choose to make their contribution in the shape of corporation tax will be free to do so, but as a matter of principle the Indian States generally ask for exemption from any form of direct taxation.

If any contribution is called for from the whole of India during any emergency, the Indian States desire that their contribution ought to be left entirely on a voluntary basis and not made compulsory. If a surcharge is required on account of any expenditure called for by war, the Indian Princes demand that under their treaties they are entitled to free protection from the Paramount Power, and it would scarcely be right or in accordance with their treaties to insist upon obligatory contributions from the States in case of war.

In the case of any other crisis, what the Princes ask for is that resort to surcharges and contributions from States may be sought only as a dernier resort and only after exhausting all the other ways and means of meeting the emergency. In the first place, every endeavour ought to be made for curtailing the ordinary expenditure of Government; perhaps the expenditure of the Military Department may have left room for curtailment if carefully explored. And if after such exploration it is conclusively proved that fresh

16^o Novembris, 1933.]NOTE ON FEDERAL FINANCE
BY SIR MANUBHAI MEHTA.

[Continued.]

sources of raising revenue are absolutely necessary, the Princes desire that all the sources of indirect taxation must first be exhausted. The present duties on imports may be raised; if it is not possible to increase the duties without setting in motion the law of diminishing returns and thus reducing the very revenues it is sought to increase, the Princes suggest that fresh excise duties may be levied on products of new indigenous industries sought to be protected, like excise on matches, excise on tobacco, new monopolies, manufacture of arms and explosives, etc.

Even when all these ways and means are found inadequate and more funds are needed to cope with an emergency of a specially grave character, it may be safely left to the Indian Princes to come to the relief of the Federal Government of their own free choice rather than out of compulsion, as they have done during the past, during the time of the Great War and other grave emergencies, but they object to compulsory contribution or any form of direct taxation.

MANUBHAI N. MEHTA.

4th November, 1933.

APPENDIX.

FEDERAL SOURCES OF REVENUE.

1. Federal sources of revenue shall, subject to the rights of States, be strictly confined to the following:—

- (a) Maritime Customs;
- (b) Salt;
- (c) Export Opium;
- (d) Excise duty on articles levied in 1931 in addition to Customs duties; subject to the rights of the maritime States when such excise takes the form of countervailing duty;
- (e) Receipts from federal commercial undertakings, e.g., federal railways, federal posts and telegraphs;
- (f) Profits from federal currency;
- (g) Cash payments and payments through ceded territories provided that "g" shall be treated as a vanishing item, relief being given to the States as quickly as possible.

2. Should the revenue yielded by the sources set forth above not suffice for the expenses of the Federal Government, the Government should, subject to the proviso in (g) make up the deficit by:—

- (i) manipulating the aforesaid sources of revenue so as to yield higher revenues;
- (ii) by all possible economies;
- (iii) by devising other forms of indirect taxes; and
- (iv) by utilising if and when necessary the following reserve sources of revenue, namely, excise duties on any of the following articles:
 - (a) matches;
 - (b) tobacco.

N.B.—The above scheme is subject to:—

(1) The rights of the individual State under treaties, and agreements, provided that no maritime State shall levy Customs duties lower than those of British India.

(2) The conditions that pending disputes between individual States and the Government of India are immediately settled.

3. Where these proposed excise duties impinge on existing taxes in individual States, adjustment will have to be made with them.

Note dealing with Constituent Powers by Sir Manubhai Mehta.

1. Provision for ultimate transfer of reserved departments at the end of a period of transition.

The Princes do not approve of the mixing up of these subjects, like Army and Defence as well as Foreign Relations, with other Federal subjects in List No. 1. Under Appendix VI attached to the White Paper, which purports to enumerate the subjects the Princes will be expected to agree to federalise, the subjects of Defence and Army, as well as Foreign Relations, according to the opinion of the Indian Princes, ought to be classified as Crown subjects to be listed separately from subjects which are purely Federal, and though they understand that the subject of Army is one reserved though Federal, in contradistinction to Provincial subjects, the subjects of Army and Foreign Relations cannot, at this stage, be regarded as under the control of the Federal Government. The relations of the Princes with regard to Army and Defence are with the Crown and come under the sphere of paramountcy. The Princes therefore feel that when any period is provided for the ultimate transfer of the Reserved departments to the Federal Government, that they ought to be consulted before any such transfer takes place. By their treaties, they are entitled to look up to the Crown for protection against foreign aggression as well as internal commotion, and no transfer of these obligations from the Crown to the Federal Government can take place unless with their previous consent. The Princes feel that their Treaties of Accession ought to preserve this power of revision as all such treaties must be bilateral in character, and the Paramount Power can be released from its obligations only with the assent of the Princes.

2. The proposal that there should be some provision for the transfer of subjects from the Federal Government to the units and vice versa.

The Princes do not agree to this. They consider that no transfer of subjects from the Provincial list to the Federal list, or from the Central Indian list to the Federal list, ought to be allowed without their specific consent, and such a power of constitutional amendment ought not to be within the purview of the authority of the Indian Federal Legislature. If any such fundamental constitutional amendment is proposed, it could only be done by a fresh Act of Parliament, and before such an Act was passed by the Parliament the assent of the Princes should be taken, as such changes would affect their Accession Treaties. The Princes should be free to agree to such revision in their treaties adding to their Federal obligations.

3. Constitutional changes.

No amendment in the financial arrangements affecting the Indian States ought to be possible unless their previous assent was secured. The Princes attach great importance to their exemption from any kind of direct taxation proposed by the Federal Legislature. If any amendment seeks any change in this financial arrangement, their assent must be first taken and such a constitutional amendment should only be possible by a fresh Act of Parliament.

Similarly the Constitution ought to leave no room for any change in the strength and composition of the Federal Legislature. The agreement of the Princes will first be secured to the numbers of the seats they would be assigned in the Federal Legislature, and no decrease in this number nor any change in the mode of their selection ought to be left within the competence of the Indian Federal Legislature. Such a fundamental change ought to

16^o Novembris, 1933.] NOTE DEALING WITH [Continued.
CONSTITUENT POWERS BY SIR MANUBHAI MEHTA.

require a fresh Act of Parliament, and such a new enactment could only be undertaken with the assent of the Princes.

Amongst the safeguards that were communicated to the Lord Chancellor at the third Round Table Conference by the representatives of the Indian Princes it was requested that:—

“ Any amendment of the Constitution shall—

“ (a) for the purpose of its introduction in the House require in the first instance a two-thirds majority of the House in which it is being introduced, and will only become Law after

“ (b) separate ratification and acceptance by three-fourths of the Indian States represented in the Federal Legislature and by three-fourths of the members representing British India, provided that no alteration affecting the Indian States in the following matters shall be deemed valid without the consent of the State concerned.

- (1) Sovereign autonomy of the State.
- (2) Representation allotted to any State in the Upper House.
- (3) Minimum representation of any State in the Lower House.
- (4) The alteration of the territorial limits of the State.
- (5) Additions to the list of Federal subjects.

“ The statutory and constitutional guarantees provided for shall be unalterable except with the consent of each federating State.”

Taking this communication in relation with what they have said in the present note, the gist of their demands amounts to the following:—

Amendments in the Constitution may be of two kinds.

(1) They may be very informal changes of a routine character, not impinging upon the rights or obligations of any units. Such amendments ought to be possible without much difficulty and they may be carried by a simple majority of votes in the Legislature.

(2) But where amendments were fundamental and involved vital changes in the Constitution, especially when confined to the five matters noted above, their passage through the Indian Legislature ought to be hedged round by such safeguards as sought for under the devices of absolute majority or other specified two-thirds or three-fourths majority in a joint session of both Houses.

And even after the passing of such an amendment in the Indian Legislature, the Constitutional amendment could only be ultimately ratified by a fresh Act of the British Parliament, for which again the assent of the Indian States acceding to the Federation for such revision of their Accession Treaties ought to be first secured.

This practically is embraced by what the Princes have meant by their demand for freedom to secede.

MANUBHAI N. MEHTA.

November 4th, 1933.

**Joint Memorandum submitted by the British Indian
Delegation to the Joint Committee on
Indian Constitutional Reform**

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THE BRITISH INDIAN DELEGATION.

[Continued.]

INTRODUCTION.

1. The Memorandum in which we submit our views on the various issues raised by the White Paper scheme has been prepared in two sections. In the first section we have stated the principal modifications that should in our opinion be made in the scheme in order to satisfy moderate public opinion in India and have indicated very briefly the reasons justifying them. In the second section we have attempted to answer the chief criticisms directed against the basic principles of the White Paper proposals.

We have throughout kept in view the declaration of policy made by the Prime Minister at the end of the first Round Table Conference on behalf of the last Labour Government and endorsed by the present National Government and the present Parliament. The salient sentences of that declaration are as follows:—

“The view of His Majesty’s Government is that responsibility for the government of India should be placed upon Legislatures, Central and Provincial, with such provisions as may be necessary to guarantee, during a period of transition, the observance of certain obligations and to meet other special circumstances, and also with such guarantees as are required by minorities to protect their political liberties and rights.

“In such statutory safeguards as may be made for meeting the needs of the transitional period, it will be a primary concern of His Majesty’s Government to see that the reserved powers are so framed and exercised as not to prejudice the advance of India through the new constitution to full responsibility for her own government.”

It is in the light of this declaration of policy that we have examined the White Paper proposals. The modifications we suggest do not affect the basic structure of the scheme. They are intended to ensure that the reserved powers are so framed and exercised as not “to prejudice the advance of India to full responsibility”, and to secure that the period of transition is not indefinitely extended.

PART I.

Preamble to the Act.

2. We consider that the preamble to the Constitution Act should contain a definite statement that the “natural issue of India’s constitutional progress is the attainment of Dominion Status”. This declaration, as Lord Irwin explained in the announcement he made on behalf of His Majesty’s Government on October 31, 1929, is in accordance with previous public declarations of Ministers of the Crown and also with the directions given in the Instrument of Instructions by His Majesty the King “that it is His will and pleasure that the plan laid down by Parliament in 1919 should be the means by which British India may attain its due place among His dominions.” That the expression “Dominion Status” was not used in a ceremonial or honorific sense is clear from the following extract from the message conveyed to India by His Majesty the King-Emperor, through H.R.H. the Duke of Connaught, on the solemn occasion of the inauguration of the new Central Legislatures in 1921:—

“For years, it may be for generations, patriotic and loyal Indians have dreamed of *Swaraj* for their Motherland. To-day you have beginnings of *Swaraj* within my Empire, and widest scope and ample opportunity for progress to the liberty which my other Dominions enjoy.”

16^o Novembris, 1933.] JOINT MEMORANDUM BY
THE BRITISH INDIAN DELEGATION.

[Continued.]

Indian public opinion has been profoundly disturbed by the attempts made during the last two or three years to qualify the repeated pledges given by responsible Ministers on behalf of His Majesty's Government. Since it is apparently contended that only a definite statement in an Act of Parliament would be binding on future Parliaments, and that even the solemn declaration made by His Majesty the King-Emperor on a formal occasion is not authoritative, we feel that a declaration in the preamble is essential in order to remove present grave misgivings and avoid future misunderstandings.

Date and conditions for the inauguration of the Federation.

3. We consider that, following the precedent of some of the Dominion Constitutions, a definite date after the passing of the Act should be fixed by the Constitution Act for the inauguration of the Federation. We have been assured that no serious difficulty is now anticipated in the way of an early establishment of the Reserve Bank, and we have also been authoritatively informed by the witnesses who appeared on behalf of the Princes' Chamber that a period of one year would be sufficient for the negotiations in connection with the Treaties of Accession. If it is feared that unforeseen difficulties might delay the inauguration of the Federation, power might be given to His Majesty's Government to postpone the date by means of a Royal Proclamation.

In making this suggestion we have in view the psychological effect of such a provision on the political parties in India. The uncertainty that must necessarily result from the absence of any definite date in the Constitution Act for the inauguration of the Federation and the possibility of further delay arising from the procedure of an address in both Houses for the issue of a Proclamation would seriously prejudice the formation or realignment of political parties in India. On the other hand, we have reason to suppose that if a definite date were fixed, even the parties which are dissatisfied with the White Paper Constitution would probably cease to carry on an agitation on the present lines and would be encouraged to concentrate their attention on the new elections. We attach very great importance to this development, since the satisfactory working of the new scheme must necessarily depend on the existence of well-organised parties, prepared to work the scheme.

The Reserved Subjects.

The Army.

4. We have accepted the necessity for the reservation, during a period of transition, of Defence, Foreign Affairs, and the Ecclesiastical Department. We regret to note, however, that in spite of the insistent demands of the Indian Delegates at the Round Table Conference for greater control over Army administration and the promise contained in the Prime Minister's declaration that the reserved powers will not be so framed and exercised as to prejudice the advance of India to full responsibility, the White Paper provisions relating to the Army, so far from giving Indians greater opportunities for influencing Army policy, actually make the constitutional position in some respects worse than at present. While at present the Governor-General and his Council, three Members of which are Indians, "superintend, direct and control"* the military government of India, the Governor-General, assisted by a Counsellor appointed at his discretion, will in future solely determine Army policy. A direction in the Instrument of Instructions

* Government of India Act, Section 33.

16^o Novembris, 1933.] JOINT MEMORANDUM BY
THE BRITISH INDIAN DELEGATION.

[Continued.]

to encourage joint consultation between the Ministers and Counsellors is obviously no satisfactory substitute for the opportunities which the present statute affords to the Indian public of expressing its views through the Indian Members of the Executive Council. Past experience of the actual working of a similar direction to Provincial Governors as regards joint consultation between Executive Councillors and Ministers justifies this statement. In Madras under Lord Willingdon joint consultation was invariably the practice, while in some other provinces separate meetings of the two sections of the Executive were the rule rather than the exception. Nor were these variations due to local circumstances, for in the same province under different Governors the practice has been different.

5. We summarise below the modifications that should, in our opinion, be made in the White Paper provisions relating to Defence:—

(1)* (a) The Army Counsellor should be a non-official Indian, preferably an elected member of the Federal Legislature, or one of the representatives of the Indian States in the Federal Legislature.

(b) There should be a definite programme of Indianization with reference to a time limit of twenty or twenty-five years, and one of the primary duties of the Indian Army Counsellor should be the provision and training of Indian officers for the programme of Indianization.

The position of the Army Counsellor, we may point out, will be fundamentally different from that of any responsible Minister. Army policy will, in all vital matters such as discipline, strategy, equipment, etc., be determined by the Commander-in-Chief. The principal functions of the Army Counsellor will be "to express the views of the Governor-General on defence matters in the Legislature, since these will impinge upon strictly Federal matters",† and to co-ordinate policy in all matters in which the activities of the Army Department bring it into contact with the civil administration. We consider that for the discharge of these very limited functions it would be more appropriate and desirable to have a non-official Indian Counsellor, chosen by the Governor-General to have a non-official Indian Counsellor, chosen by the Governor-General Governor-General who will be free to reject his advice.

(2) The Treasury control now exercised in respect of Army expenditure by the Finance Member and the Finance Department should be continued under the new constitution. We fully recognise that in cases of differences of opinion the decision of the Governor-General, who is ultimately responsible for defence, should be final.

(3) All questions relating to Army policy and the annual Army budget estimates should be considered by the entire Government, including all the Counsellors and the Ministers. We again recognise that if the united Cabinet should fail to arrive at an agreement regarding the expenditure to be included in the budget or on other questions referred to it, the Governor-General's decision should be final. This is the minimum that would satisfy the Indian public, especially as the White Paper scheme involves the abolition of the Governor-General's Council, the Indian members of which have not only influenced Army policy, but have actually participated in the determination of that policy.

(4) There should be a statutory Committee of Indian Defence constituted on the lines of the Committee of Imperial Defence. The Committee should consist of the Commander-in-Chief and other Army experts,

* Sir Henry Gidney considers that the Army Counsellor should be a non-official but not necessarily a non-official Indian.

† Para. 12 of the Second Report of the Federal Structure Committee.

16^o Novembris, 1933.] JOINT MEMORANDUM BY
THE BRITISH INDIAN DELEGATION.

[Continued.]

the principal Federal Ministers and any other Ministers including representatives of the Indian States whom the Viceroy may at his discretion select.

(5) The cost of defence is primarily an administrative issue, but the scale of Army expenditure is a dominant factor in the financial situation and seriously reduces the margin available for the nation-building services. Our views on this subject are well known to His Majesty's Government. We merely repeat our request that an endeavour should be made further to reduce the military expenditure very substantially and that the provisions we have suggested above to ensure economy in Army administration should be given effect to in the Constitution Act.

(6) There should be a provision in the Statute requiring the consent of the Federal Legislature to the employment of the Indian Army outside India, except, of course, for the purpose of the defence of India itself. At the third Round Table Conference His Majesty's Government agreed to consider the suggestion how far the Legislature might be given a voice as to the loan of Indian forces to the Imperial Government "on occasions when the interests of India within the sphere of defence were not involved."*

Other Reserved Subjects.

6. We consider that it is unnecessary to provide for more than two Counsellors for the three Reserved Departments, since the administration of Ecclesiastical affairs does not involve any appreciable work and can easily be entrusted to the Army Counsellor. We have been assured that it is not the intention to appoint more than two Counsellors, but the provision for a third Counsellor in Proposal 12 has created some misapprehension in India, for it is feared that if a third Counsellor is appointed and is placed in charge of the special responsibilities of the Governor-General, there is considerable danger of his developing into a super-Minister, whose activities must necessarily take the form of interference with the work of the responsible Ministers.

Financial Safeguards.

7. In view of the great importance that has been attached at the Round Table Conferences to the sterling obligations of India and of the attempts that have been made in this country to exploit the nervousness of the investor for political purposes, we have analysed in the second part of our Memorandum in some detail the debt position of India. Three conclusions emerge from this analysis:—

(1) In the first place, five-sixths of India's debt is covered by productive assets, which are mainly State railways and irrigation works.

(2) In the second place, the internal rupee debt of India is nearly one and a half times the sterling debt and an appreciable portion even of the latter is held by Indian investors.

(3) In the third place, a considerable portion of the rupee debt is held by millions of small investors belonging to the upper and lower middle classes who are politically the most vocal section of the population and among whom nationalist feeling finds expression in its most intense form.

The significance of these conclusions lies in the fact that any factors that affect the stability of India's finances or its credit in England would have serious repercussions on India's internal credit.

* Page 47, Indian Round Table Conference Proceedings, Third Session.

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8. We must also draw the attention of the Committee to another feature of India's debt. The total expenditure incurred by India on the Great War was £207.5* millions or about Rs.311 crores at the rate of exchange prevailing at the time. Of this sum the *direct* contribution from Indian revenues towards Great Britain's War expenditure was £146.2 millions or Rs.220 crores, nearly two-thirds of which was found by borrowing. These figures include the gift of £100 millions but *not*, of course, the numerous private gifts or the contributions of Indian States. If British India's total contributions towards Great Britain's war expenditure and the interest paid on War borrowings had been utilised for wiping out the sterling debt of India, the sterling debt to-day would have been very small; for a substantial portion of the amount was borrowed before the War at low rates of interest and until recently the securities were quoted at rates very much below par. We fully recognise that these enormous contributions were made by the Indian Legislature and we also recognise that whatever the circumstances connected with the composition of India's sterling debt the position of the British investor is not affected. We have not referred to this subject at any of the Round Table Conferences, and we refer to it now with great reluctance for the last thing we desire to do is to exploit for political purposes a gift made with the full assent of Indian representatives. Nevertheless when attempts have been made in this country to exploit the nervousness of the British investor for purposes of political propaganda, it is necessary to bring to the notice of the British public and of Parliament the fact that, if India had utilised the money which she contributed towards the expenditure on the Great War to wipe out her sterling obligations, the sterling debt to-day would have been very small. We must appeal to the British sense of fair play to see that the financial sacrifices which India made in order to assist Great Britain in her hour of need do not result in the imposition of severe restrictions on the powers of the Legislature and the responsible Finance Minister in the administration of the country. Nothing would exasperate Indian public opinion more than the realisation of the fact that the enormous sacrifices that India had made have actually become the justification for impediments in the way of her constitutional advance.

9. We now proceed to indicate the modifications we suggest in the White Paper provisions.

(1) The fact that a large number of Indians have invested in Indian sterling securities in this country and that an appreciable portion of the Rupee debt is held by a large class of small investors who will be in a position to wield considerable political influence under the new constitution constitutes in our opinion an effective safeguard for the security of India's finances and of her credit abroad. A special responsibility in respect of financial stability and credit has, however, been imposed on the Governor-General. At the Third Round Table Conference attempts were made by several delegates to define this responsibility precisely and to restrict its application to specific cases such as borrowings to meet budgetary deficits. While considerable sympathy was expressed for this latter demand, the difficulty of drafting a clause that would cover all such cases has apparently been the principal consideration that has influenced His Majesty's Government in retaining the wording adopted in the White Paper. If the difficulties of drafting are found to be insuperable, we consider that the

* The figures in this paragraph are taken from the publication "India's contribution to the Great War" published by the authority of the Government of India.

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intentions of His Majesty's Government should be made clear by means of appropriate directions in the Instrument of Instructions.

(2) We recognise that if the Governor-General is to have a special responsibility in respect of financial stability and credit, it will be necessary for him to have a Financial Adviser on the spot, for it is better that he should be guided by an adviser who is stationed in India and is in touch with local conditions than that he should be obliged to invoke the aid of experts in England who have had no direct or recent contact with India. We have, therefore, no objection to the appointment of an adviser for a limited period under the new constitution, but it should be made clear either in the Statute or in the Instrument of Instructions, that the intention is that he should not interfere in any way in the ordinary day-to-day administration.

We are further of opinion that there are considerable advantages in designating him Adviser to the entire Government, i.e., the Governor-General as well as the Ministry. It is also very important that the Financial Adviser should be a financier approved by and acceptable to the Finance Minister. The success of the Financial Adviser will depend not merely on his experience and knowledge but upon his personality and his political outlook. His duties under the Constitution will be to advise the Governor-General when he considers that the financial stability or credit of the Federation is in danger: but a financial crisis is often due to the cumulative effect of a series of acts which individually are not of such consequence as to justify interference. It is obvious that the utility of a Financial Adviser would be gravely diminished if he could deal only with the consequences of a crisis and had no opportunities of preventing it by giving his expert advice at the appropriate moment. It is, therefore, of the utmost importance that the Minister, while retaining fully his right to reject the advice of the Financial Adviser, be encouraged to consult him as frequently as possible. We request the Committee to take the psychological factors into consideration. If the Financial Adviser were chosen without the agreement of the Minister and did not enjoy his confidence, the latter would probably never consult him, however able and experienced he might be. The inevitable tendency would be for the Finance Minister to isolate himself, as far as constitutional provisions would permit, from the Financial Adviser, and the main object for which the appointment is considered necessary would be frustrated. On the other hand, if the selection were made with the approval of the Minister, he would probably get into the habit of consulting him and of accepting his advice without any prejudice to his constitutional right to reject it in cases in which he considered it necessary to do so.

(3) We have recognised the importance on financial grounds of the constitution of a Reserve Bank. We do not propose to offer any detailed observations on a subject which has been discussed by a special committee here and is now before the Indian Legislative Assembly. We wish, however, to emphasize here that it is of the utmost importance that the principal officers of the Bank, namely, the Governor and Deputy Governor, should not be under the influence either of Whitehall or of the City. In the course of the discussion which some of the Delegates to the Round Table Conference had last year with representatives of the City, very great emphasis was laid on the importance of establishing a Bank which had the confidence of the Indian public. Nothing would shake public confidence in India more than the suspicion that the Governor and the Deputy Governor were acting under the influence of Whitehall or the City.

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(4) The legislation in respect of currency and coinage and of the Reserve Bank should not, as proposed in paragraph 119 of the White Paper, be subject to the previous assent of the Governor-General. (Two Members dissent from this proposal.)

These provisions and the establishment of a Reserve Bank, independent of the Federal Executive, would in effect mean that the Finance Minister would not, in respect of currency and exchange policy, be responsible to the Indian Legislature. We draw the attention of the Committee to a statement made by the Secretary of State on December 24th, 1932, at a meeting of the Round Table Conference, that "the British Government have fully accepted the fact that there can be no effective transfer of responsibility unless there is an effective transfer of financial responsibility."* We do not see how Finance can be regarded as a transferred subject unless and until the Finance Minister is also responsible for the currency and exchange policy of the country and is in a position to determine that policy solely in the interests of India. Indeed, as we have shown in the second part of the Memorandum, so long as the currency and exchange policy of the country is reserved it would be difficult for the Ministers in charge of Industry and Agriculture to accept full responsibility for the development of these Departments. It is unnecessary, especially at present, to emphasize the fact that the prosperity of industry and agriculture is very closely connected with the level of commodity prices, which, of course, is dependent on the currency and exchange policy of the country.

(5) Future Indian sterling loans should be raised on behalf of the Government of India by the High Commissioner or some other suitable agency. The Secretary of State in his evidence before the Committee recognised the justification for a change in the present procedure. The question has a political aspect, since the necessity for securing the position of the British investor is one of the principal justifications for the financial safeguards. We realise that any change of procedure might result in a higher rate of interest for Indian loans, but this possibility must be faced by India at some time or other.

Fiscal Convention.

10. Under the White Paper provisions, Commerce will be a transferred subject, in charge of a responsible Minister, and fiscal policy will be determined solely by the Ministry and the Legislature. Since the special responsibilities of the Governor-General do not include fiscal policy or the other matters at present dealt with under the Fiscal Convention, the Governor-General will, in regard to such matters, be guided by the advice of his responsible Minister. We have no modifications to suggest as regards the provisions of the White Paper, but in view of statements that have been made in this country, we wish to draw the attention of the Committee to the following passage in the Report of the Joint Select Committee of 1919:—

"Whatever be the right fiscal policy for India, for the needs of her consumers as well as for her manufacturers, it is quite clear that she should have the same liberty to consider her interests as Great Britain, Australia, New Zealand, Canada, and South Africa."

* Page 79, Round Table Conference Reports, Third Series.

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The further declaration based on this passage made by Mr. Montagu in 1921 in reply to a deputation from Lancashire cannot be too often quoted. He said:—

“After that Report by an authoritative Committee of both Houses and Lord Curzon’s promise in the House of Lords, it was absolutely impossible for me to interfere with the right which I believe was wisely given and which I am determined to maintain—to give to the Government of India the right to consider the interests of India first, just as we, without any complaint from any other parts of the Empire, and the other parts of the Empire without any complaints from us, have always chosen the tariff arrangements which they think best fitted for their needs, thinking of their own citizens first.”

The confidence inspired by this declaration of policy and the policy of discriminating protection (which, it may be noted, is a far more diluted form of protection than the system in force in the Dominions) have led to the remarkable industrial development in India during the last decade, to which reference was made by the witnesses who appeared on behalf of the Manchester Chamber of Commerce. Any departure from this policy would cause dissatisfaction of the very gravest character in India and the consequences might be most disastrous even from the point of view of British commercial interests.

11. At a very late stage of our deliberations a suggestion has been made that while complete freedom in the matter of tariff arrangements should be definitely recognised by Statute, there should be a clause prohibiting discriminatory tariffs penalising British imports as compared with those of other countries, imposed with the object of exercising political pressure on Great Britain. It was explained that such a clause would not prevent discrimination against Great Britain if it was necessary in the economic interests of India, nor would it restrict in any way the right of India to conclude trade agreements with foreign countries in the interests of Indian commerce and industry. For instance, it was made clear that a reciprocal agreement with Japan as regards the purchase of Indian cotton by Japan and the purchase of Japanese cotton goods by India would not come within the scope of this clause even if it involved a certain measure of discrimination against Great Britain.

12. The possibility of the tariff being utilised as an instrument of political pressure is remote. Our fear is that misunderstandings are bound to arise if the Governor or the Governor-General is the authority that will decide whether there is a political motive underlying the economic policy of the Ministers. If British politicians have been alarmed by some of the statements of the Congress and some of the implications of Congress policy, we venture to point out that Indian commercial interests have also been very disturbed by statements in a section of the British press that in the economic interests of Great Britain there should be no relaxation of Parliamentary control.

13. We would like in this connection to refer briefly to the tariff developments in the past and to their psychological reactions on Indian public opinion. The efforts of Lancashire to interfere with the tariff arrangements of India in the latter half of the last century, the abolition of the whole of the import duties in 1881 after a memorial by the Manchester Chamber of Commerce and a prolonged controversy between the Secretary of State and the Government of India, and finally the imposition of excise duties on cotton goods in 1896, again under pressure from Lancashire, had had very serious political repercussions on Indian public opinion, which are familiar to all who are acquainted with the fiscal and political history of India

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during the last 50 years. The excise duty on cotton goods became a grave political issue and the demand for its abolition continued long after the levy of heavy import duties on cotton goods. The grant of freedom in respect of tariff arrangements under the Fiscal Convention of 1919 and the abolition of the excise duties in 1925 have had a remarkable effect on the fiscal outlook of India and in particular on its attitude on the question of Imperial preference. In 1926 India had refused to accept the full policy of Imperial preference; but a Bill for the grant of preference to British steel was carried through the Legislature in 1927 though by a small majority. The Ottawa agreement was ratified by the Legislature last year by a very large majority, and the Indian tariff now provides for preference for several classes of British goods. The reason for the change has been explained in the evidence of Sir Charles Innes, who was a member of the Viceroy's Council in charge of Commerce for five years and is undoubtedly one of the greatest authorities on Indian commercial matters. The following is his reply to Mr. Davidson's question No. 5007:—

"I think it was mainly due to the fact that the Indians realised that it was for themselves to decide whether or not they would ratify that agreement. In the old days, before we introduced this principle of discriminating protection, every Indian thought that Britain kept India a free-trade country in the interest of her own trade. When the Fiscal Convention was introduced, and when we passed a Resolution in favour of discriminating protection, and the first Steel Bill was passed, we at once transferred all that from the political sphere to the economical sphere, and in recent years in the Indian Legislative Assembly more and more we have been creating a strong Free-Trade party. It was getting more and more difficult for me to pass Protection Bills. I think that is all to the good; it shows the value of responsibility, and I am perfectly sure that if we had not taken that action, you would never have got the Indian to agree to preference on British steel, or to the Ottawa agreement, and it seems to me a very good example of the stimulating effect of responsibility."

14. In these circumstances we request the Committee definitely to recognise by Statute India's freedom to regulate her fiscal policy without any reservations or qualifications. Such a course, we are convinced, would be fully justified by the results. In our opinion, so far as the fiscal relations between Great Britain and India are concerned, the question is not whether there will be any tariff discrimination against Great Britain but whether and to what extent *preference* will be given to Great Britain. A constitutional provision which might never have to be applied in practice but which would tend to offend public opinion in India might seriously prejudice the development of any preferential arrangements as regards Great Britain. India desires to shake hands with Great Britain in token of friendship based on a recognition of equality. A proposal that she should be hand-cuffed before she is allowed to shake hands, lest she be tempted to strike, is hardly the most expedient method of beginning a new era of cordiality and mutual understanding.

Commercial Discrimination.

15. The question of Commercial Discrimination has been the subject of prolonged negotiations and discussions for many years. Throughout these discussions and negotiations, the expression "Commercial Discrimination" was used in a very limited sense. It had reference solely to internal restrictions on trade and commerce. It was never intended to include tariff arrangements and the other matters dealt with under the Fiscal Convention.

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In fact, the only reference to the subject in the reports of the first Round Table Conference is found in the Report of the Minorities Sub-Committee.

16. On the question of principle there has always been a substantial measure of agreement. The All Parties Conference which met in India in 1923 and which was presided over by that eminent leader of the Congress, the late Pandit Motilal Nehru, stated in their report (commonly known as the Nehru Report) that "it is inconceivable that there can be any discriminatory legislation against any community doing business lawfully in India". The statement was endorsed in even more emphatic terms by Mr. Gandhi at the second Round Table Conference. It has been accepted on the one hand that there shall be no unfair discrimination against British companies operating in India, while it is equally agreed on the other side that the Indian Government should have all the powers which Great Britain and the Dominions possess to develop indigenous industries by all legitimate methods. The difficulty throughout has been to define by legislation the expressions "legitimate" and "unfair" and also the term "indigenous".

17. The question was considered by the authors of the Montagu-Chelmsford Report and also by the Simon Commission. The former in paragraph 344 of their report made an appeal to Europeans "to be content to rest like other industries on the new foundation of government in the wishes of the people" and to Indians "to abstain from advocating differential treatment aimed not so much at promoting Indian as at injuring British commerce". The Simon Commission considered that it was not feasible to prevent discriminatory legislation by attempting to define it in a constitutional instrument. Any such provision would, in their opinion, have to be drawn so widely as to be little more than a statement of abstract principle, affording no precise guidance to courts which would be asked to decide whether the action complained of was discriminatory. The Parliamentary draftsmen, however, considered otherwise, and attempts have been made in the White Paper in Proposals 122, 123 and 124 to deal with this highly complicated question. The view of the Simon Commission has, however, been justified, for the draft has already been found to be unsatisfactory and a complete redraft has been suggested in the memorandum circulated by the Secretary of State. We must point out that if the clauses are drawn so widely as to prevent legitimate discrimination, the Government would be driven to State socialism as the only method by which the provisions of the Act could be circumvented.

18. Before we deal with this revised draft, we must state very frankly the apprehensions of Indian commercial and industrial interests in this matter. A protective tariff, as regards which complete freedom has been given and is to be continued under the White Paper scheme, is the most common and perhaps the most effective method by which indigenous industries can be fostered and developed. The clauses relating to commercial discrimination also recognise that in the case of bounties, subsidies, or other payments of grants from public funds, discrimination even in the case of British companies operating in India would be legitimate under certain circumstances. These, however, do not exhaust the methods by which other countries, including Great Britain, have attempted to develop indigenous industries or to counteract attempts made by foreign companies to frustrate the objects of a protective tariff. The particular difficulty which is disturbing the minds of Indian commercial men is the possibility of powerful foreign trusts establishing themselves in India and making it impossible for Indian industries to develop, not necessarily by methods which in ordinary commercial practice would be regarded as unfair, but by their superior resources, powers of organisation, political influence, etc. It is immaterial from the Indian

16^c Novembris, 1933.] JOINT MEMORANDUM BY
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point of view whether these trusts are British or international, nor do we see how legislation can differentiate between a foreign company which is registered in Great Britain and a British company.

The question has already arisen in the case of the match industry. As a result of the heavy revenue imposed on matches in 1922, a big indigenous industry has developed, and the Swedish Match Company has also established several factories in India. When the question whether the revenue duty should be definitely recognised as a protective duty was considered by the Tariff Board in 1928 one of the points which it examined was whether the Government should introduce any special measures to curtail the activities of the Swedish Match Company in the interests of the Indian companies. The Board, which was presided over by an Indian and had a majority of Indians, recommended that a no-discriminatory action was necessary, though the situation required careful watching; but it is interesting to note that the Tariff Board did not consider itself precluded from considering the question of discrimination and examined several possible methods, such as the establishment of a quasi-monopoly under Government control, State control of sales and prices, and a differential excise duty.*

19. In dealing with the revised draft, it would probably be better for us to state clearly on what lines the draft should, in our opinion, be modified rather than to suggest specific modifications of the draft. We summarise below in the form of propositions our views on this subject:—

(a) We have no objection to the general declaration as to British subjects in regard to the holding of public offices or to the practising of any profession, trade or calling. We would, however, very strongly object to any provision which makes it impossible for India to discriminate against subjects of the Dominions and Colonies which impose disabilities on Indian subjects. We do not wish to elaborate the point further, for His Majesty's Government are aware of the strength and intensity of Indian feeling on this question.

(b) Proposal 124 of the White Paper and the revised draft fully recognise that in respect of bounties, subsidies, or other payments from public funds, discrimination would be legitimate. We would, however, like to point out that the Report of the External Capital Committee of 1924, on which the draft is based, is not the last word on this subject. The conditions imposed in accordance with the recommendations of this Committee have so far been found to be satisfactory, but it is not improbable that altered circumstances will necessitate other conditions or modifications of these conditions with a view to the encouragement of Indian trade or industry. The clause should not, therefore, restrict the right of the Government and the Legislature to impose further conditions, if necessary.

(c) The clauses relating to the special provisions for persons who are British subjects domiciled in the United Kingdom are based on the principle of reciprocity. In the course of the discussions we have referred to several methods by which Western countries have attempted to foster and develop national industries and which might in certain circumstances be held to contravene one or other of these provisions. We have two alternative proposals to make.

20. We strongly hold the view that a friendly settlement by negotiation is by far the most appropriate and satisfactory method of dealing with this complicated matter. Any statutory safeguards given to British commercial

* Appendix A, Report of the Indian Tariff Board regarding grant of protection to the Match industry, 1928.

16^o Novembris, 1933.] JOINT MEMORANDUM BY
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interests would irritate public opinion and would operate as impediments to be a friendly settlement. We therefore earnestly suggest the omission of clause 123 of the White Paper and the corresponding clauses in the re-draft. If any legislation which subjects to unfair discrimination any class of His Majesty's subjects protected by this clause is passed by the Federal Legislature, the Governor-General has already the right under clause 39 to reserve the Bill for the significance of His Majesty's pleasure. Any such action on the part of the Governor-General would itself put the rival parties in the proper frame of mind for a satisfactory agreement. The fear on the one hand of the exercise of the ultimate veto and on the other the possibility of assent being given in view of the strongly expressed public opinion in the matter would probably induce the parties to arrive at a satisfactory compromise.

(Sir Henry Gidney dissents from this proposal.)

21. A less satisfactory alternative (though in our opinion much better than the White Paper proposals) would be the inclusion of legislation, which discriminates against any class of His Majesty's subjects in India, in the list of legislation which, under Proposal 119, requires the previous assent of the Governor-General given at his discretion. It should, however, be made very clear by means of a provision in the Statute itself or by means of appropriate directions in the Instrument of Instructions that the assent should not be refused unless the object of the legislation is "not so much to promote Indian commerce as to injure British commerce."

We consider that a clause drafted generally on these lines would be preferable, though it is open to the objection referred to in paragraph 12.

In the first place a provision of this sort would be more elastic than the White Paper provision, for the Governor-General or the Governor, as the case be, would be in a position to decide with reference to the merits of each individual case whether the measure was a legitimate attempt, intended to promote Indian industries, or whether its aim was primarily to injure British commerce in India.

In the second place it would avoid a reference to the Courts to which there are obvious objections, some of which have been given by the Simon Commission in paragraph 156, Volume II of their Report. We do not think that the Courts should be placed in a position in which they might have to give a decision contrary to strongly expressed public opinion in the Legislature. Indeed, any attempt to test the legality of popular legislation by a foreign company would at once raise political issues and would tend to mobilise the forces of public opinion against the company concerned. European companies have during the last four years realised how extremely effective a boycott, supported by public opinion, can be in India.

In the third place a reference to the Federal Court with the right of appeal would mean considerable uncertainty and delay, which might in certain circumstances frustrate the very object of the legislation. Moreover, if the legality of the legislation is challenged, not immediately, but some years after the passing of the Act, a decision of the Federal Court declaring the legislation *ultra vires* on the ground of discrimination would inflict heavy losses on the companies, which in the meanwhile had invested capital and commenced operations.

22. We see grave practical objections to any constitutional provisions against administrative discrimination. Indian Ministers in charge of Transferred Departments in the Provinces have exercised unrestricted powers in respect of contracts and the purchase of stores for the last twelve years and there has been no complaint from any British companies that the powers have been abused. Apart from the fact that any provision in the new constitution which would enable the Governor-General or the Government to interfere

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with the discretion of the Indian Ministers in these matters would be very strongly resented as an encroachment on the rights already granted by convention, we are convinced that administrative interference would, in practice, seriously affect the relations between the Governor-General or the Governor and his Ministers. In practice no such discrimination against British companies in India is likely to take place, especially as the vast majority of the shareholders in many of the so-called European companies in India, such as the jute companies of Bengal, are Indians. The Indian shareholders, like the shareholders of any other country, do not concern themselves very much with political or racial issues so long as they get their dividends regularly. Although the shareholders in the jute companies have been predominantly Indian, the management and direction has, as is well known, been almost exclusively European.

Railway Board.

23. The question of the constitution of a Statutory Railway Board was never discussed at the Round Table Conferences but was considered by the Consultative Committee of the Round Table Conference in India. This Committee, while recognising the advantages of the establishment by Statute of a Railway Board for the administration of the Indian Railway system on commercial lines, considered that the Constitution should merely contain a clause requiring the establishment of such a body and that the constitution, functions and powers of the Board should be determined by an Act of the Federal Legislature. We agree with this recommendation.

Federal Legislature.

24. We generally accept the proposals in the White Paper both as regards the composition of the Lower Federal Chamber and as regards the method of election to it.* The representatives of some of the bigger Indian States have urged the desirability of smaller Legislatures and also the adoption of an indirect system of election. The arguments that have been advanced against direct election are familiar to those who have taken part in the constitutional discussions of the last five years, but since the matter is of such vital interest we propose to deal with the principal objections which are as summarised below:—

(1) Direct election, even with Legislatures of the size contemplated by the White Paper scheme, would necessitate extensive constituencies, and with the comparatively undeveloped state of communications in India it would be impossible for the individual member to maintain that personal contact with the electorate which is the essence of the democratic system.

(2) The vast mass of the electors who are to be enfranchised under the White Paper scheme are illiterate, and in the absence of a well-organised party or press, it would be difficult for the illiterate voter to understand the complicated and in some cases highly technical issues which the Federal Government would deal with under the new constitution.

* Some members of the Delegation would much prefer smaller legislatures though they are in favour of direct election to the Lower Chamber. One member considers that in view of the special circumstances of his community at present, indirect election would be preferable.

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(3) India has not sufficient men with the necessary qualifications to fill Provincial and Central Legislatures of the size provided for in the White Paper scheme, and a large Federal Legislature is unnecessary for the purposes of the Federal scheme, since the functions of the Federal Government under this scheme will be very restricted.

25. The first two arguments have been answered in the following passage from the Government of India's despatch on a similar proposal made by the Statutory Commission:—

“First, the central elector has exercised the franchise with increasing readiness and at least as freely as the elector to provincial councils. A great deal of the business of the central legislature is as intimate to the elector, and is as fully within the scope of his understanding as the business of the provincial councils. We need cite only such matters as the Sarda Act, the income-tax, the salt tax, the railway administration, and postal rates. Even more abstruse matters, such as the exchange ratio and tariffs, interest large sections of the electorate. Second, the electoral methods natural to the social structure of India may be held to some extent to replace personal contact between candidate and voter, a contact which adult suffrage and party organizations make increasingly difficult in western countries. The Indian electorate is held together by agrarian, commercial, professional and caste relations. It is through these relations that a candidate approaches the elector, and in this way political opinion is the result partly of individual judgment, but to a greater extent than elsewhere of group movements. These relations and groups provide in India a means of indirect contact between voter and member, reducing the obstacles which physical conditions entail. Moreover, we are impressed by the further consideration that ten years ago Parliament of its own motion set up for the first time a directly elected Assembly, representative of the whole of India. That Assembly, in part perhaps because it is directly elected, has appealed to the sentiment of India, and sown the seeds, as yet only quickening, of real representation. Accordingly, unless new considerations of greater importance have to be taken into account, we feel reluctant as yet to condemn an experiment undertaken so recently in a country awakening to political consciousness.”

Apart from the other weighty arguments which have been urged by others in favour of a system of direct election, we wish to draw the attention of the Committee to the possibility, almost amounting to certainty, of Provincial elections being fought on All-India issues if the Federal Legislatures were indirectly elected by the Provincial Councils. The result would be that none of the advantages claimed for the indirect system could be secured, since All-India issues would be voted upon by an electorate of 35 millions instead of by the more restricted electorate recommended by the Lothian Committee for the Federal Assembly.

26. As regards adequacy of qualified men to fill the legislatures, whatever the conditions in the Indian States, no-one who is in touch with conditions in British India doubts that, except perhaps in the case of the depressed classes, men with the necessary qualifications will not be available. Our fear, on the other hand, is that the number of candidates will be embarrassingly large.

27. We consider that there should be a definite provision regulating the procedure for the participation by representatives of Indian States in

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matters of exclusively British Indian interest. The following formula indicates the procedure which in our opinion should be followed:—

(1) In a division on a matter concerning solely a British Indian subject, the representatives of the Indian States will not be entitled to vote.

(2) Whether a matter relates solely to a British Indian subject or not will be left to the decision of the Speaker of the House, which will be final.

(3) If a substantive vote of "No Confidence" is proposed in the House on a matter relating solely to a British Indian subject, the representatives of the Indian States will be entitled to vote since the decision on such a question will vitally affect the position of a Ministry formed on the basis of collective responsibility.

(4) There should be a definite provision in the Constitution regarding the procedure on this important point, since the issues raised affect the status and rights of the representatives of the Indian States on a question of voting in the Legislature.

(5) If the Ministry is defeated on a vote of the Legislature on a subject of exclusively British Indian interest, it will be for the Ministry to decide whether it should continue in office. It will not necessarily resign as a result of the vote.

Provincial Constitutions.

28. We approve generally the scheme of Provincial responsibility provided for in the White Paper proposals, and our observations and suggestions are confined to matters of detail.

(1) We are very strongly opposed to the proposal that Law and Order or any section of the Police Department should be reserved. In the first place, the isolation of this Department would result in the intensification of the hostility to this Department which would be increasingly recognised as the agency of an alien Government. In the second place, the maintenance of Law and Order is very closely connected with the administration of the other departments, since the Police are the agency through which in the last resort the policy of the other departments is enforced. For instance, the periodical Moplah outbreaks in the south, the tenancy agitation in the U. P., and the Gurudwara agitation in the Punjab were due to agrarian or religious movements which necessitated action in the Transferred Departments. To give another instance, the enforcement of prohibition, which has the sympathy of a large section of the population in India, is, as has been demonstrated by the American experiment, primarily a question of Law and Order.

(2) Any special provision for dealing with the terrorist activities in Bengal and elsewhere, which would involve a restriction of ministerial responsibility in respect of Law and Order, would, apart from its political reactions, defeat the object in view. It is well-known that the terrorist activities have been aggravated by social and even religious influences, unemployment among the University graduates, and by economic conditions of the Province in general. Absence of any strongly expressed public opinion against the movement has also been one of the principal factors that has contributed to its growth. Only an Indian Minister who is very closely in touch with the classes of the population from which the terrorists are drawn can mobilise the forces of public opinion against the movement and deal effectively

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with the social and the other factors that have influenced its growth. (Sir Henry Gidney dissents.)

(3) There is nothing in the White Paper scheme which could prevent the Governor-General from carrying out the suggestion that, while Law and Order would be completely transferred in the Provinces, there should be a small organisation directly under the Governor-General which would, in co-operation with the provincial authorities, supply him with information relating to movements of a subversive character which extend over more than one Province and which raise questions relating to the defence and security of the country. The military section of the C.I.D. does, as a matter of fact, discharge this function.

(4) The Instrument of Instructions should definitely contain a direction to the Governors that the collective responsibility of the Cabinet with a Prime Minister should be introduced from the very inception of the provincial constitutions.

(5) *Special responsibilities of the Governor.**

While we recognise that certain special responsibilities would have to be imposed on the Governor in view of the demands of the Minorities and other circumstances, we consider that the following modifications should be made in Proposal 70 of the White Paper:—

(i) In respect of the prevention of grave menace to the peace and tranquillity of the Province, the Governor's action should be confined to the Department of Law and Order. In other words, these special powers should not be exercised so as to interfere with the administration of the other Departments. It is suggested that the special responsibilities should be restricted to cases in which the menace arises from subversive movements or the activities of a person or persons tending to crimes of violence.

(ii) In the case of Minorities, the expression "legitimate interests" should be more clearly defined and it should be made clear that the Minorities referred to are the racial and religious minorities which by usage are generally included in this expression.

(iii) In the case of the Services, the expression "legitimate interests" should be clearly defined. The Governor's special responsibility should be restricted to the rights and privileges guaranteed by the Constitution. (The other special responsibilities of the Governor will be dealt with in the appropriate sections of this memorandum to which they relate.)

(6) The power of issuing ordinances should be given only to the Governor-General as at present. The Governor should have no difficulty in getting ordinances issued even in emergencies as at present. (Some members of the Delegation dissent from this proposal and support the White Paper proposal.)

* Sir Abdur Rahim is of the opinion that the special responsibilities and special powers of the Governor as proposed in the White Paper will make it extremely difficult for responsible Governments in the Provinces to function and considers that the provision made to meet cases of breakdown of the Constitution should suffice to meet all serious contingencies. He is convinced that if the rights and interests of the Minorities and the Services are properly defined in the Constitution Act itself that will afford more effective protection to them. The Governor should, however, be responsible for carrying out the orders of the Federal Government and protecting the rights of Indian States.

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[Continued.]

(7) We are opposed to the creation of second Chambers in Bengal, Bihar and the U.P. The opinion of the present Legislative Councils in these Provinces is not conclusive in the matter.

If, however, in spite of our opinion a second Chamber with a nominated element is to be constituted in these Provinces, we consider that it should be definitely recognised that persons appointed Ministers must be or become within a stated period elected members of one of the two Chambers. (One member of the Delegation considers that in the case of the United Provinces a Second Chamber is necessary, while another would like to have it in all the three Provinces.)

(8) In respect of the Governor's Act, referred to in Proposals 92 and 93 of the White Paper, most of us would prefer that, if any legislation were required for the discharge of the special responsibilities imposed on the Governor, he should take the entire responsibility for such legislation and should not be required to attempt to secure the assent of the Legislature.

Federal Finance.

29.—(1) The allocation of the sources of revenue between the Federation and the units, which follows with slight modifications the recommendations of the Peel Committee of the Third Round Table Conference, is the result of a compromise and we do not, therefore, suggest any change.

(2) In regard to the division of income-tax, however, we observe that the contentions of the British Indian members of the Peel Committee have not been accepted. These members, realising the importance of strengthening the financial position of the Federal Government by the permanent allocation of a portion of the income-tax, agreed, as a compromise, to the suggestion that the proceeds of the income-tax which are not derived solely from residents in British India should be allotted to the Federal Government, in addition to the Corporation Tax which would be definitely classed as a Federal source of revenue. According to the figures placed before the Peel Committee, the amount of income-tax so allotted was roughly about 2½ to 3 crores of rupees, or only about 20 per cent. of the balance remaining after the allocation of the Corporation Tax to the Federal Government.

Under the White Paper scheme, the portion of the income-tax to be assigned to the Federation has been fixed at not less than 25 per cent. and not more than 50 per cent. of the net proceeds, the exact percentage to be fixed by a committee just before the inauguration of the Federation.

Since the Percy Committee have definitely found that the pre-Federation debt of India is covered by the assets to be transferred to the Federal Government, there is no justification in theory for the assignment to the Federal Government of any portion of the personal income-tax paid by the residents of the Provinces, since no corresponding tax on incomes will be paid by the States. Any such proposal would have serious political repercussions, for an economic issue of this sort might determine the line of party cleavage in the Federal Legislature. It would be very deplorable if at the very inception of the new constitution the representatives of British India and those of the Indian States were ranged in opposite camps in the Federal Legislature.

(3) In Proposal 137, it is stated that the Federal Legislature will be empowered to assign the salt duty, the Federal excises and the export duties "in accordance with such schemes of distribution as it may determine". It should be made clear that the system of distribution should be on the basis

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[Continued.]

of population or according to some other method that would not render possible the exercise of administrative control over the units of the Federation. In other words, the scheme of distribution should not be interpreted as including grants-in-aid as an instrument of control.

(4) There should be a provision in the Constitution Act for the appointment by the Governor-General of a committee (say, three years after the Federation has begun to function) to institute an inquiry into the financial conditions of the Federation and of the British Indian Provinces and to make recommendations for the allocation of the income tax to the Provincial units according to a time-table.

*Public Services.**

30. No part of the White Paper proposals has caused more dissatisfaction in India than the provisions relating to the Public Services. Before we indicate our views on these provisions, we may draw the attention of the Committee to certain features of the duties and conditions of service, particularly with reference to the key Service, namely, the Indian Civil Service. The Covenant or contract signed by a member of the Indian Civil Service imposes many obligations on him, but confers hardly any rights or privileges, which have all been granted either by Statute or by rules, such as the Devolution Rules and the Classification Rules. The salaries and other conditions of service have been varied from time to time and are still subject to variation by the Secretary of State in Council. The duties and functions of this Service have also undergone considerable changes. Originally the Collector and Magistrate was a fiscal officer, a revenue and criminal judge, the local head of the police, jails, education, municipal and sanitary departments. Owing to the increase of specialisation by the creation of new departments, transfer of certain departments to the direct control of the Imperial Government, de-officialisation of local authorities and other administrative changes due to the introduction of the Montagu-Chelmsford reforms, his duties have been considerably restricted, but he continues to be the administrative head of the district, whose principal functions, apart from the collection of revenue, are the maintenance of law and order and the co-ordination of the work of the different departments of Government in the district. Many of the higher administrative appointments and almost all the higher secretariat appointments in the Provincial Governments and in the Government of India are reserved for the members of this Service under the present Constitution.

31. According to the White Paper scheme, the Secretary of State will continue to recruit on the present basis for the two key Services, namely, the Indian Civil Service and the Indian Police. There is to be a statutory inquiry after a period of five years after which Parliament will determine on what basis future recruitment should be made.

Very strong objection has been taken in India to this part of the scheme which is, it may be noted, not in accordance with the recommendations of the Services Sub-Committee of the Round Table Conference. We consider that, after the passing of the Constitution Act, recruitment for the Central Services, including the Indian Civil Service and the Indian Police, should be by the Provincial Governments, who should have full power to determine the pay and other conditions of service for future recruits and also the proportion

* Wherever the word 'Indian' is used, it includes 'Statutory Indians.'

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of Europeans that should be recruited.* We give below some statistics, necessarily based on certain assumptions, as to the number of European officers that would remain in service even if recruitment were completely stopped in 1935:—

	<i>Indian Civil Service.</i>	<i>Indian Police.</i>
(1) Total sanctioned strength	1,225	683
(2) Present strength (on 1st January, 1932, latest figures available)	1,308	680
(3) Number of European officers at present (1st January, 1932)	843	528
(4) Number of European officers if recruitment were stopped in 1935—		
(a) in 1935	762	498
(b) in 1940	632	443
(c) in 1945	502	388

There would thus be a very substantial European element in the two key Services for another generation, even if European recruitment were completely stopped after the passing of the Act. The proposal that a statutory inquiry should be instituted after a period of five years is open to very strong objection. The problem of European recruitment cannot be considered in isolation. It is very closely connected with standards of administration, the state of communal feeling and other factors which are of a very controversial nature and raise political issues. Any such inquiry even of an informal nature would, therefore, have a grave disturbing effect on the political atmosphere and would seriously affect the relations between the Services and the Legislatures.

32. We now proceed to deal with the existing rights of officers appointed by the Secretary of State in Council which are to be guaranteed by Statute. We may say at once that we have no objection to the proposal that the pensions, salaries, and the privileges and rights relating to dismissal or any other form of punishment or censure should, in the case of the existing members of the All-India Services, be fully safeguarded by the Constitution. We consider, however, that the Governor-General in his discretion (*not* the Secretary of State in Council) should be the statutory authority for the protection of these rights and privileges. We realise that the Governor-General acting in his discretion is responsible to the Secretary of State, and that constitutionally there would be very little change. Indian public opinion, however, attaches great importance to this formal change, which would be more in keeping with the rest of the Constitution.

To meet the reasonable demands made by the Services Association we are prepared to go further and agree to the following concessions:—

(1) Although the members of the All-India Services, appointed after the commencement of the Government of India Act of 1919, are not entitled to the "existing and accruing rights or to compensation in lieu thereof" referred to in Section 96B (2) of the Government of India Act, we have no objection to the proposal that these rights should be extended to the officers appointed before the passing of the Act.

(2) We agree to the proposal that the right of retiring on proportionate pension should be extended to all European members of the All-India Services, appointed up to the passing of the Act.

* Sir Henry Gidney dissents from this proposal.

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[Continued.]

33. Our objection is mainly to the rights and privileges which operate as restrictions on ministerial responsibility. We foresee many administrative developments. We therefore consider that there should be no restriction on the Ministers as regards postings, allocation of work, reorganisation of services and functions, and other matters which relate to the enforcement of policy and the efficiency of administration. The Ministers should also have the power of abolishing individual appointments now held by members of the All-India Services, subject to right of compensation in certain cases on the lines indicated in the evidence of the Secretary of State.

34. We see no justification for the proposal to exempt from income-tax the pensions of retired officers of the All-India Services. Any such exemption would not benefit the retired officials resident in Great Britain or Northern Ireland who are subject to the British income-tax and who come within the scope of the double income-tax arrangements. Whether India levied an income-tax on pensions or not, they would continue to pay income-tax at the British rate. The only persons who would be protected are the retired officials who have settled in foreign countries in order to evade the British income-tax. We do not think that these officers deserve the sympathy of Parliament or that any special constitutional provision should be made for their benefit.

The question is not, in fact, connected with service rights or privileges, for retired British officials in India are subject to Indian income-tax. The matter is one for adjustment between the British Treasury and the Indian Government, if the latter decided to remove the present exemption.

It is possible that, owing to the fact that under the Indian income-tax provisions no exemptions are given for families, in a few cases the British rate might be lower than the Indian rate of income-tax and that a few retired officials in Great Britain and Northern Ireland would therefore become subject to a higher rate of tax. To avoid any hardship in this comparatively small number of cases, we would have no objection to any arrangements under which retired officials in Great Britain and Northern Ireland would continue to pay income-tax at the same rate as at present.

Appointment of Governors.

35. We strongly feel that the Governors of all the Provinces should under the new Constitution be selected from amongst public men in Great Britain and in India. Members of the permanent services in India, whether retired or on active service, should be excluded from these high appointments.

Automatic Growth of the Constitution.

36. The Simon Commission declared that one of the most important principles which should be borne in mind in considering the constitutional proposals was that the new Constitution should as far as possible contain within itself provision for its own development. As the Commission observed—

“It has been a characteristic of the evolution of responsible government in other parts of the British Empire that the details of the constitution have not been exhaustively defined in statutory language. On the contrary, the constitutions of the self-governing parts of the British Empire have developed as the result of natural growth, and progress has depended not so much on changes made at intervals in the language of an Act of Parliament as on the development of conventions and on the terms of instructions issued from time to time to the Crown's representative.”

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The Prime Minister's declaration which we have quoted in the introductory paragraph of this memorandum also states clearly that—

“In such statutory safeguards as may be made for meeting the needs of the transitional period, it will be a primary concern of His Majesty's Government to see that the reserved powers are so framed and exercised as not to prejudice the advance of India through the new constitution to full responsibility for her own government.”

We recognise, however, that Parliament cannot now, once for all, completely divest itself of its ultimate responsibility. We make no detailed proposals as regards this subject, but indicate our views in the following propositions:—

(a) The machinery to be provided in the new Act for the further constitutional advance of India should not involve an inquiry such as that conducted by the Simon Commission.

(b) The Constitution Act should definitely give the power of initiating proposals for constitutional changes to the Indian Legislatures. Such proposals should be required by Statute to be placed before Parliament in appropriate form through the Secretary of State.

(c) The constitutional procedure required for implementing these proposals should not, except in a few strictly limited cases, involve Parliamentary legislation.

(d) Provisions analogous to those of Section 19A of the present Government of India Act should be inserted in the new Act for the purpose of facilitating the devolution of authority by Parliament to the Indian Legislatures.

Our proposals are intended to secure that the process of further transfer of responsibility shall be continuous. We recognise that during an initial period, which in our opinion should not exceed ten years, certain provisions of the new Constitution must remain unaltered. We cannot, however, too strongly impress upon the Committee that unless the new Constitution brings the realisation of a Government fully responsible to the Legislature within sight and its provisions are so framed as to render possible further constitutional progress by the action of the Indian Legislatures, political activity outside the Legislatures will continue to absorb important sections of the politically-minded classes in India.

37. We have not in this memorandum attempted to exhaust all the issues which the White Paper proposals raise. On the points, which we have not specifically dealt with in the preceding paragraphs, we have expressed our opinion either individually or collectively in the course of the discussions or in the course of the cross-examination of the Secretary of State.

AGA KHAN.
ABDUR RAHIM.
M. R. JAYAKAR.
H. S. GOUR.
SHAFAT AHMAD KHAN.
A. H. GHUZZAVI.
PHIROZE SETHNA.
BUTA SINGH.
HENRY GIDNEY.
B. R. AMBEDKAR.
ZAFRULLA KHAN.
N. M. JOSHI.

B. RAMA RAU,

Secretary,
British Indian Delegation.
17th November, 1933.

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APPENDICES.

PART II.

APPENDIX A.*

1. In this section we propose to deal with the more important general criticisms directed against the basic structure of the White Paper Scheme. We summarise below the principal points which have been raised in the evidence of critics such as Sir Michael O'Dwyer and Mr. Winston Churchill and in the newspaper campaign that has been carried on in this country for some time.

(a) The proposed All-India Federation is not an organic growth but an artificial creation.

(b) The federal idea, which is an abstraction with no roots in the soil, was precipitately accepted by the Princes in their anxiety to safeguard their future which they thought was threatened by the 1929 declaration about Dominion Status.

(c) The Provinces must first become political entities before the necessary conditions for bringing a federal constitution into being can arise.

(d) There has been a sensible deterioration in the services transferred to responsible Ministers under the Montagu-Chelmsford scheme. There should, therefore, be a further period of probation during which all the Provincial services, except Law and Order, should be transferred subject to certain restrictions and safeguards.

(e) The transfer of all services, except Law and Order, in the Provinces would give the Indian responsible Ministers complete control over the administration and development of all the nation-building services and there should be no Central responsibility until and unless this experiment has proved a success.

The Evolution of the Federal Idea.

2. The use of the expression "All-India Federation" in connection with the constitutional discussions has inevitably suggested analogies which are based on the genesis of federations in other parts of the Empire, in Europe and America, and which, as explained in paragraph 6 of the Introduction to the White Paper, are not applicable to the peculiar conditions under which the Indian constitution has evolved since Great Britain accepted responsibility for the government of India. The first three criticisms referred to in the last paragraph have a special appeal to British politicians who are accustomed to a gradual and natural growth of political institutions and have an almost instinctive abhorrence of novelty or idealism in constitutional schemes. To answer these criticisms effectively it would be necessary to describe in some detail the various stages, spread over a period of 70 years, in the evolution of the present administrative and constitutional machinery of India. The Montagu-Chelmsford Report and the Simon Commission Report have described the process at some length and we shall merely draw the attention of the Committee to the principal features of India's

* Some of the Members of the Delegation were not able to examine the Appendices in their final form. It must not therefore be assumed that all the Delegates have endorsed every one of the statements in the Appendices, though they all accept the conclusions in Part I, subject to the dissents noted in a few cases.

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constitutional development which have a direct bearing on the criticisms referred to in the last paragraph.

3. The principal features of the Montagu-Chelmsford reforms were:—

(a) The demarcation of the Central and Provincial spheres of administration and legislation by means of a classification of subjects.

(b) An almost complete separation of the sources of Provincial and Central revenues and the definite recognition of the financial autonomy of the Provinces.

(c) A preponderant non-official majority at the Centre as well as in the Provinces, based on a widely elected franchise.

(d) Responsibility of the Executive to the Legislature in respect of certain subjects in the Provinces.

The degree of Provincial autonomy (we use the expression here in the sense of freedom from control by the Central authority) attained under this system has not been generally recognised. The Central Government does not now exercise any control over Provincial expenditure except in respect of certain matters affecting All-India Services. The budgets of Provincial Governments are not submitted either to the Government of India or to the Secretary of State for approval before they are presented to the Provincial Legislatures; and Provincial solvency is ensured only by the indirect method of control over provincial borrowings which, it may be noted, has been retained under the White Paper scheme.

As regards the administration of the transferred subjects, there has been, of course, little or no control by the Central Government, but even in respect of the reserved subjects, the Government of India have in accordance with the recommendations of the Joint Select Committee of 1919 refrained from interference, except perhaps in the domain of Law and Order, where intervention has been more frequent owing to subversive movements extending over the whole of India. Mainly as a result of the financial independence conferred on the Provinces, Provincial autonomy has already become an accomplished fact, and provincialism has found expression in the Central Legislature even through official representatives in a form which the Central Government have often found extremely embarrassing.

4. The subjects classified as Central under the Montagu-Chelmsford reforms are more or less the same as those assigned to a Federal Government in western countries. A Central Government which discharges all the functions of a Federal Government elsewhere is thus already in existence. Central legislation does not, of course, apply to the Indian States, but the range of matters in which the States have realised their solidarity with British India is very extensive, and, as we shall show presently, by means of treaties, conventions, and usage a very close association with the Indian States in the sphere of administration has already been established.

(a) *Defence and Foreign Affairs.*

As regards Defence, the Indian States are guaranteed security from without and they share with British India the obligation for common defence. The external affairs of the States are also entirely in the hands of the Government of India and Indian States are for international purposes in exactly the same position as British India. "An Indian State cannot hold diplomatic or other official intercourse with any foreign power. India, of course, is a member of the League of Nations and at Geneva is represented as a unit by a delegation which in practice includes the ruler of an Indian State."

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(b) *Railways.*

The Government of India have complete control over the Indian railways, one-seventh of which run through Indian States. In respect of the strips of territory over which the railways run in the Indian States, the Indian States have in most cases ceded civil as well as criminal jurisdiction. In addition to the British Indian railway system, many States have their own railways which they themselves administer and control, but there is a considerable measure of control exercised by the Railway Board even in respect of these railways. They are subject to inspection by the Government of India and they generally follow the rules and regulations prescribed by the Railway Board.

(c) *Currency.*

Only eight out of 652 States have their own currency, but the currency and exchange policy has always been determined by the Government of India for the whole of India including the Indian States, for apart from other factors, economic necessities have forced the Indian States to adopt the currency policy of the Government of India.

(d) *Posts and Telegraphs.*

637 out of 652 Indian States have already accepted postal unity, i.e., they have agreed to the States being considered for postal purposes as part of British India and have accepted the administration of the Indian Posts and Telegraphs Department in respect of post offices within their boundaries. Out of the remaining 15, five have conventions under which they use British Indian stamps over-printed with the name of the State.

(e) *Customs.*

The States are not consulted in regard to tariff or customs policy, which under the Fiscal Convention is determined by the British Indian Central Legislature and the Governor-General in Council, and customs duties levied by the Government of India have, of course, affected the whole of India including the inland States who form the vast majority of the Indian States. Indeed, the question of maritime customs has been the subject of acute controversy during recent years, and the federal process has been carried so far that, in the opinion of the Butler Committee, the States have a real and substantial grievance which calls for remedy.

(f) *Scientific Departments.*

These subjects do not raise any controversial issues since the results of departmental research are available for British India as well as the Indian States. It may be noted, however, that in regard to one of the most important of these Departments, namely, the Council of Agricultural Research, the Indian States have got definite representation though on a voluntary basis and some of them have actually made substantial contributions towards the expenditure of the Department.

(g) *Taxes.*

In regard to customs duties and the salt duty which contribute the bulk of the Central revenues of the present Government of India, the burden is shared by the residents of Indian States as well as those of British India.

5. It will be evident from the preceding analysis that in the domain of administration the process of federalisation has gone very far indeed. In respect of almost all the subjects to be classed as federal under the new

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constitution, namely, Defence, Foreign Affairs, Currency, Exchange, Railways, Posts and Telegraphs, etc., there is now a common policy applicable to British India as well as the Indian States, determined by the same authority, namely, the Governor-General in Council, who, in the case of British India exercises his powers under the Government of India Act, and, in the case of the Indian States, acts as the agent of the Crown. There has, however, been no parallelism in the political development of the two halves of India. The Central Legislature which exercises a powerful influence on governmental policy (and in the case of the tariff actually determines the policy under the Fiscal Convention) contains an overwhelming majority of elected non-officials from British India but has no representatives of the Indian States. Administrative unity and the greater opportunities afforded to British India of influencing policy have necessarily given rise to a demand for a closer association of the Indian States with the Central Government. Many of the proposals that have been discussed in the past but which did not actually materialise are referred to in the following passage from the Montagu-Chelmsford Report:—

“Lord Lytton’s proposal to constitute an Imperial Privy Council which should comprise some of the great Princes resulted only in the ephemeral and purely honorific body known as the Councillors of the Empress. Lord Dufferin’s institution of Imperial Service Troops was of much greater value in giving actual and useful expression to the feeling of community of interests. Lord Curzon’s plan for a Council of Ruling Princes and Lord Minto’s schemes first for an Imperial Advisory Council and then for an Imperial Council of Ruling Princes were suggestions only a little in advance of the time. The idea which attracted his two predecessors gained fresh life as a result of the conferences which Lord Hardinge held with the Princes to consider questions of higher education in the States. Lord Hardinge made no secret of his desire to seek the collective opinion of the Princes as trusted colleagues whenever possible on matters affecting their Order; and in responding to His Excellency’s invitation, Their Highnesses the Maharajas of Gwalior and Indore also laid stress upon the essential identity of interest between the two halves of India. Lord Chelmsford carried the system of conferences further by utilising them for the purpose of discussing general questions affecting the States as a whole; and His Highness the Gaekwar in welcoming the new development expressed the hope that what had by that time become an annual conference would develop into a permanent Council or Assembly of Princes. Moreover only last year the claims of the States to be heard in matters of Imperial concern were signally recognised by the deputation of His Highness the Maharaja of Bikaner to the meeting of the Imperial Conference and the War Cabinet.”

As a result of the recommendation made in the Montagu-Chelmsford Report, the Chamber of Princes was set up in February, 1921. It is not an executive body and its functions are mainly deliberative, consultative, and advisory. It advises the Viceroy on questions referred to him and it also proposes for his consideration other questions affecting Indian States generally or which are of concern either to the Empire as a whole or to British India and the States in common.

The enormous increases in customs duties since the introduction of the reforms and establishment of the Fiscal Convention, which, as we noted, introduced a measure of responsibility in respect of tariff policy, have tended to intensify the demand for a closer association of the Indian States with the

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Government of India. As the Butler Committee have pointed out, during Lord Reading's viceroyalty a proposal was drawn up for the establishment of a *Zollverein*, an important feature of which was the association of the representatives of the Indian States with the Indian Legislature in the determination of policy.

Individual Princes even before the publication of the Simon Commission Report made no secret of their desire to associate themselves with British India in a common federation. The following extract from a speech delivered by the Maharaja of Bikaner in 1929 is quoted in the Report itself:—

"I look forward to the day when a United India will be enjoying Dominion Status under the aegis of the King-Emperor and the Princes and States will be in the fullest enjoyment of what is their due—as a solid federal body in a position of absolute equality with the federal provinces of British India."

6. The federal idea, i.e., the desire of the Princes for a closer association with British India for the determination of a common policy in respect of matters of common concern, is thus not of recent origin. It is the logical and inevitable result of forces which have been at work for over 70 years. If we rid our minds of notions and analogies suggested by the evolution of federations elsewhere, it will be clear that the White Paper scheme provides for little more than the formal association of the Indian States in an administration which has already been almost completely federalised, but has been influenced predominantly by British India. The scheme is, therefore, not an artificial creation but is a natural development of the policy announced in the Declaration of 1917. It was definitely foreseen and provided for by the authors of the Montagu-Chelmsford Report, as is evident from the following extract:—

"The gradual concentration of the Governments of India upon such matters (Defence, Tariffs, Exchange, Railways, Posts and Telegraphs, etc.) will, therefore, make it easier for the States while retaining the autonomy which they cherish in internal matters to enter into closer association with the Central Government if they wish to do so. But though we have no hesitation in forecasting such a development as possible the last thing which we desire is to tend to force the pace. Influences are at work which need no artificial stimulation. All that we need or can do is to open the door to the natural developments of the future."

7. From this brief survey of the administrative and political developments in India, two conclusions emerge:—

(a) As a result of the rigid demarcation of Central and Provincial subjects and in particular of the complete separation of the sources of Provincial and Central revenues, Provincial Autonomy is for all practical purposes an accomplished fact.

(b) In respect of the subjects to be classed as Federal under the new constitution, the administration has not only been centralised so far as British India is concerned but has actually been federalised. In other words, in the domain of administration the federal process is almost complete.

These two features of the Indian constitutional and administrative machinery furnish an almost complete answer to the criticisms based on the analogy of the growth of western federations. The conditions under which a federal constitution is emerging in India are fundamentally different from those which existed in Australia, Canada, the United States of America, and Germany before they adopted a federal constitution. In all these countries there existed a number of completely independent States which had control over their defence, their fiscal policy and all the subjects which are normally classed as federal. The necessity for a common defence and the economic advantages

16^o Novembris, 1933.] JOINT MEMORANDUM BY
THE BRITISH INDIAN DELEGATION.

[Continued.]

of a customs union or a common tariff wall were the two powerful forces which drove the States into a federal union. The British Indian Provinces can never be in the position in which the States of the western federations were, for no scheme that we know of has ever suggested the devolution of central authority on a scale which would make the Indian Provinces responsible for their own defence or their customs policy.

The problem in the case of the other federations was to bring into existence a common administration and to devise a constitutional system suitable for the administration of certain subjects on a federal basis. The task of the constitutional experts in respect of India is not the creation of a federal administration but merely the adaptation of the present constitution to suit the necessities of an administration which has been almost completely federalised, but which is influenced by one section of India. With all respect we venture to point out that the argument urged by the Simon Commission and the critics who have objected to the constitution of a federation simultaneously with the creation of autonomous provinces has no relevance to the Indian problem which confronts Parliament now.

Deterioration in Services.

8. We must now deal with the charge that there has been a sensible deterioration in the services transferred to responsible Ministers under the Montagu-Chelmsford scheme. . This assertion has been made by Mr. Churchill before the Committee and forms the basis of a great deal of the press propaganda in this country. When Mr. Churchill was asked by Sir John Wardlaw-Milne to justify the statement, Mr. Churchill refused to develop the subject further since "it would be painful to his Indian friends."

Though Mr. Churchill declined to give the source of his information or the facts on which he based his conclusions, he explained that the deterioration he referred to was not in respect of personnel but in respect of the services rendered to the people. The only specific instances of deterioration that have been cited by the opponents of reforms in India are cases of embezzlement of money in municipalities, corruption in some of the Services, the supersession of two major Municipal Boards in Northern India, and the growth in the arrears of municipal taxes in different Provinces. The principal Services transferred to ministerial control in the Provinces under the Montagu-Chelmsford reforms are:—

- (a) Communications.
- (b) Education.
- (c) Medical Relief and Sanitation.
- (d) Agriculture and Industries.
- (e) Local Self-Government.

9. *Communications.*—As regards communications, it is universally acknowledged that there has been a tremendous improvement in the condition of the roads. We do not claim that the improvement is solely or even mainly due to ministerial direction. The greater interest shown in rural communications as a result of the pressure exerted by rural representatives in the Provincial Councils, the requirements of the rapidly developing motor traffic, the constitution of an All-India Road Board, financed by means of a tax on petrol, and other factors have all contributed to the very striking development in regard to transport facilities in India. Indeed, as Sir Charles Innes has pointed out in his evidence, the emergence of the motor-bus which now reaches remote villages has been one of the important factors

16^a Novembris, 1933.] JOINT MEMORANDUM BY THE BRITISH INDIAN DELEGATION. [Continued.]

that have contributed to the growth of political consciousness in rural areas and to the magnitude of the mass movements that have been a feature of the political agitation during the last decade in India.

10. *Education.*—In the following statement the number of educational institutions and the number of students attending them in 1921-22 and 1929-30 are given for comparative purposes.

Number of Institutions.

	1921-22.	1929-30.	Percentage Increase.
(1) University Colleges	231	313	95.50
(2) Secondary schools	8,987	13,152	46.34
(3) Primary schools	160,072	204,094	27.50

Number of Students.

(1) Universities.			
(a) Boys	58,066	94,025	61.93
(b) Girls	1,529	3,141	105.43
(2) Secondary schools.			
(a) Boys	1,110,360	2,009,181	80.95
(b) Girls	129,164	237,027	83.51
(3) Primary schools.			
(a) Boys	5,111,901	7,332,678	43.44
(b) Girls	1,198,550	1,891,406	57.81

The statement shows a very striking development in all classes of educational institutions. Particular attention may be drawn to the large number of students at the Universities. The figure for 1929-30 was nearly 100,000, and it has enormously increased since then. This figure is of particular interest with reference to Mr. Churchill's statement that "the proportion of the intelligentsia in India is probably smaller in proportion to the amount of the population than in any other community in the world—far smaller than the proportion in Western countries". Though the proportion of literates in India is comparatively very small, the number of those who have received higher education is astonishingly large. We have not been able to get accurate statistics as regards university education in the principal countries of Europe, but we believe we are correct in stating that the number of students at the universities in British India is not only absolutely but relatively to the population greater than in some countries in the West.

11. *Medical Relief and Sanitation.*—The developments in these Departments, as the figures given below show, have been almost as striking as in the case of Education. The organisation of an efficient and fairly widespread agency for the prevention of epidemics has been a feature of the sanitary administration of many Provinces.

16^o Novembris, 1933.] JOINT MEMORANDUM BY
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[Continued.]

MEDICAL AND PUBLIC HEALTH.

Expenditure (in crores of rupees).

(1) *Provincial.*

	1921-22.	1929-30.	Percentage increase.
(a) Medical	2.85	4.06	42.45
(b) Public Health	1.41	2.62	85.81
(2) <i>Municipalities.*</i>			
(a) Medical67*	.93	38.81
(b) Water supply, drainage and conservancy	4.28*	5.84	36.44
(3) <i>Local Boards.</i>			
Hospitals and sanitation	1.09	2.02	85.32

* Figures relate to 1920-21.

Number of hospitals and patients treated.

	1920.	1929.	Percentage increase.
I. Hospitals			
(1) State	407	546	34.15
(2) Local Authorities	2,655	3,807	43.39
II. Number of patients treated	36,342,417	54,132,152	48.95

12. *Agriculture and Industries.*—It is difficult by means of statistics to indicate the improvements that have been introduced in agricultural methods by governmental action. For a detailed description of the activities of the Provincial Departments of Agriculture and of the Central Board of Agricultural Research, which was established as a result of the recommendations of the Linlithgow Commission, we must refer the members of the Committee to the official reports that are published annually. We may, however, give here one instance of the results achieved by the application of scientific research to agriculture. The imports of sugar into India until very recently were so heavy that the customs duties levied on sugar yielded Rs.10.7 crores in 1930-31, i.e. nearly 23 per cent. of the total customs revenue and over 10 per cent. of the total net revenue of the country. Owing to the introduction of improved types of sugar cane and the levy of protective duties, the production of sugar is growing so rapidly that it is estimated now that India will be completely self-supporting as regards sugar within the next three or four years.

The astonishing development of industries in India is generally admitted and in fact has caused some alarm in foreign countries. It is, therefore, unnecessary for us to give any figures, nor do we claim that this development is due to ministerial action in the Provinces. As we shall have occasion to state in a subsequent section of this memorandum, it is only the Central Government that can create the conditions necessary for the development of industries.

13. *Local Self-Government.*—The principal services entrusted to local authorities in India are rural communications, elementary education, medical relief and sanitation. The statistics we have given above relate both to Provincial and local institutions. Judging by these, it is obvious that on the whole there has been a marked development. Emphasis has, however, been laid not so much on the development of the services entrusted to the

16^o Novembris, 1933.] JOINT MEMORANDUM BY
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[Continued.]

care of these authorities, but rather on the alleged irregularities and cases of maladministration in some of the Provinces. We do not, of course, deny that there have been several failures, but such failures are, as the Simon Commission have pointed out, in no way peculiar to India, and "they can be paralleled at various times in countries with a far greater experience of representative institutions." Nor have they been confined in India to the Transferred Departments. There has not been in the history of Indian administration during recent years such a colossal failure as the Bombay Back Bay Reclamation Scheme, in which Lord Lloyd, who was then Governor, took a personal interest and which has imposed a very heavy burden on the finances of Bombay for many years. We would draw the attention of the critics, who have sought to draw inferences regarding the competency of Indian Ministers from a few failures in local self-government, to the report of the Back Bay Enquiry Committee,* and also to the reports of the Central Public Accounts Committee, which have brought to light serious irregularities even in the administration of departments not entrusted to responsible Ministers.

14. In the administration of local authorities since the Reforms, Indian Ministers have laboured under serious difficulties which can be traced directly to the attempts to carry out in its fullest implications the recommendation of the Montagu-Chelmsford Report that "there should be the largest possible independence for local authorities of outside control." Before the Montagu-Chelmsford Reforms, there was in India nothing that could be recognised as local self-government of the British type. The principal administrative change that was made as a result of this recommendation in the Montagu-Chelmsford Report and its consequences have been fully described in the following passage from the Simon Commission Report†:—

"The principal administrative change made, in every province except the Punjab, was the substitution of an elected Chairman in almost every district and municipality. This measure, designed to carry out the policy of enlarging the sphere of self-government by removing official control, in fact did far more than this: it radically altered the constitution of the local bodies and their relationship with the Provincial Government. The official Chairman had not merely been the presiding member, but actually the chief executive officer of the Local Board. In administering its affairs, he had never been entirely dependent on the Board's own staff. He combined in his person the authority of the highest revenue and the highest magisterial office in the district, and had in consequence at his command an army of other officials whose services he could and often did utilise in the discharge of his Local Board duties. His functions as Chairman of the District Board merely formed part of a varied complex the constituent part of which fitted in with, and simplified the discharge of each other. His revenue and magisterial work took him to every corner of his charge, and these tours served at the same time to keep him in intimate touch—without any extra expenditure of time, money or effort—with the requirements of local board administration.

"It seems to have been expected that an elected Chairman should not only take the place of the District Officer as presiding member, but should also, without pay and in such time as he could spare from his

* This Committee was appointed in 1926 by the Government of India to enquire into the Back Bay Reclamation Scheme. It was presided over by Sir Grimwood Mears, Chief Justice of the Allahabad High Court.

† Para. 350, Volume I, Simon Commission Report.

16^o Novembris, 1933.] JOINT MEMORANDUM BY
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[Continued.]

own affairs, be the chief executive officer of the Board, with such assistance as he might obtain from an ill-paid secretary, little better than a minute clerk, and from the technical officers such as the engineer and medical officer."

It is not, therefore, surprising that there has been some loss of efficiency in some of the Provinces. The principal defects of the system introduced on the recommendation of the Montagu-Chelmsford Report are, as has been pointed out by the Simon Commission:—

(a) the absence of "a class of skilled professional administrators who, while they follow the policy laid down by the elected representatives, are at once their advisers and the instruments whereby their decisions are put into operation"; and

(b) the absence of a general system of grants-in-aid which in this country have been found to be more effective instruments of control than the exercise of statutory powers by the Central authority.

Political and financial difficulties have stood in the way of reform in local self-government. The development of a system of grants-in-aid has been rendered impossible owing to the extreme financial stringency in the Provinces, for a grant-in-aid is every ineffective as a means of controlling local authorities unless it is substantial. The difficulties as regards the provision of efficient executive officers for the local authorities have been partly political and partly financial. The Collector of the district, who co-ordinates the work of all Departments, is obviously the most appropriate executive officers for the District Board, but so long as the Indian Civil Service is not completely controlled by responsible Ministers, political considerations will stand in the way of this important administrative development. The resources of the local authorities are quite inadequate for the employment of an executive agency as efficient as that which was under the control of the Collector of the district before the reforms. It may be noted in this connection that, as has been observed by the Simon Commission, wherever (as in Madras) a system of grants-in-aid subject to inspection has been adopted, there has been very little loss of efficiency.

15. The difficulties of dealing with local authorities who have been given extensive powers, which in some respects are wider than those possessed by similar bodies in this country or on the Continent of Europe, will be appreciated by British politicians who are acquainted with the history of local self-government in this country in the first half of the 19th century. It is unnecessary for us to remind the members of the Committee of the formidable difficulties which Sir Robert Peel and other British statesmen had to encounter in the last century in reforming the police administration and other local services. Indian local authorities are very jealous of any interference with their newly-acquired privileges, and publicity is the only weapon on which the Central authority can rely. The system of surcharge has during recent years been introduced in several Provinces, and the stricter audit which is now in force discloses irregularities which in the pre-reform days never became public.

The annual reviews of the administration of municipalities and local boards which are issued, it may be noted, under the instruction of the responsible Indian Ministers have also during recent years been of a very critical nature, for it is obvious that public opinion has to be created to some extent before powerful and influential municipalities, such as Benares, can be superseded by an exercise of the statutory powers. It is the extracts from these reviews that have furnished the critics of the White Paper scheme with the material for their press propaganda. The following letter from Sir Alfred

16^o Novembris, 1933.] JOINT MEMORANDUM BY
THE BRITISH INDIAN DELEGATION.

[Continued.]

Watson, which appeared in the "Times" of 3rd June, 1933, summarises in a few sentences the true state of affairs:—

"Much is being made by those who oppose advance in India of extracts from the reports of the Provincial Governments on local self-government in India. These are held to be the condemnation of Indian control of Indian affairs. The point seems to be ignored that local self-government is one of the transferred subjects in the hands of Indian Ministers, and that all these censures are those of Indians upon the administration of their own people; that does not support the contention that Indians are indifferent to inefficiency or corruption in Government.

"The level of municipal government in India is low, and has never been anything else, but it is certainly improving under the watchful criticism of the Indians in whose hands its central control has been placed."

Central Responsibility.

16. We shall now deal with another contention which is the basis of the schemes put forward both by Mr. Churchill and Sir Michael O'Dwyer. It has been suggested that a scheme of provincial autonomy without Central responsibility would give the responsible executive in the Provinces control over all the vital departments that affect the welfare of the masses and in particular over the so-called nation-building departments. Mr. Churchill stated that the administration of these subjects in vast Provinces should be regarded by the Indian politician as "a majestic task," and that he would not be prepared for a further transfer of responsibility until and unless this great experiment proved a success.

17. We deal elsewhere with the political and administrative objections to the reservation of Law and Order. Apart from political and other considerations, our assertion is that no Minister can accept real responsibility for the development of the nation-building services unless the policy in respect of Central subjects is also determined by a Ministry responsible to the people. The five principal nation-building services are:—

- (a) Education;
- (b) Sanitation;
- (c) Medical Relief;
- (d) Industries; and
- (e) Agriculture.

As regards the first two, it is generally admitted that the only impediment in the way of rapid advance has been finance, for there has been no dearth of either teachers or of qualified medical practitioners in India. As has been made abundantly clear both by the Hailey Memorandum and also by the evidence of eminent administrators like Sir Charles Innes, the financial difficulty arises from the fact that the margin of taxation is now very small and the increased resources necessary for these services can be provided only by a revival and development of agriculture and industries.

Now the principal methods by which the Government can create the conditions favourable to agriculture and industries are:—

- (i) Protective tariff;
- (ii) Development of credit facilities;
- (iii) Transport facilities. (This is of special importance in India since the railway system is owned and very largely managed by the State); and
- (iv) Maintenance of a level of prices favourable for the development of industries and agriculture. (This, of course, is dependent on the currency policy of the country.)

16^o Novembris, 1933.] JOINT MEMORANDUM BY
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In other words, the administration of these two departments is vitally connected with, and in fact dependent on, the policy of the Government of India in respect of the tariff, banking, railways and currency, which are, of course, Central subjects. We venture to doubt whether the Minister of any country would be prepared to accept responsibility for the development of agriculture and industries without control over the tariff, exchange and currency policy of that country. It will be the function of the Central Government to create the conditions favourable for industrial and agricultural development by a tariff and currency policy suited to the country and for the Provincial Governments to organise and build on the foundations laid. The prosperity of the agricultural classes, it is hardly necessary to point out, depends not only on the out-turn of their crops, but also on the prices they can secure for the commodities they grow. The results of laborious years of agricultural research and organisation might be completely destroyed by an unsound currency policy. It is superfluous, however, to labour the point at present when stabilization of currency and prices with a view to the revival of agricultural and industrial prosperity is a live issue in most of the countries of Europe and America.

APPENDIX B.

INDIA'S DEBT POSITION.

1. The following statement shows the debt and other interest-bearing obligations of the Government of India in England and in India, outstanding at the end of 31st March, 1933:—

	<i>£ Millions.</i>	<i>Rs. Crores.</i>	
(a) In India			
(1) Loans		446·9	
(2) Other obligations (including Treasury Bills, Post Office Savings Bank deposits, Cash Certificates, etc.)		258·5	
Total in India ...			705·4
(b) In England			
(1) Loans	315·6	420·8	
(2) War Contributions	16·7	22·3	
(3) Capital value of railway annuities	47·0	62·7	
(4) Other obligations	1·0	1·3	
Total in England ...	380·8	507·1	
			507·1
Total in India and in England...			1212·5
<i>Interest-yielding or productive assets.</i>			
(1) Capital chargeable to railways ...		751·6	
Other assets including advances to Provinces		217·3	
			968·9
(2) Cash, bullion and securities in Treasury			36·9
(3) Balance of unproductive debt, not covered by assets			206·7
Total ...			1212·5

16^o *Novembris*, 1933.] JOINT MEMORANDUM BY
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[*Continued.*]

2. From this statement emerge two facts which are of the very greatest importance to every British investor in Indian sterling loans and which cannot be given too much prominence in the political controversy that is raging in this country.

(1) In the first place it will be noted that five-sixths of India's debt is covered by productive assets, which are mainly State railways and irrigation works. We need hardly point out that the new constitution provides for the establishment of a Statutory Railway Board with a view to the management of the Indian State railway system on commercial principles, unhampered by political influences in the day to day administration.

(2) In the second place it will be noted that the internal Rupee debt of India is nearly 1½ times the sterling debt. An appreciable portion even of the latter is held by Indian banks, insurance companies, and individual Indian investors. It is obvious that any measures of the future Government of India that would affect the stability of India's finances or its credit in England would have serious repercussions on India's internal credit.

3. In this connection a word of explanation is required as to the composition of India's internal rupee debt. Industrial development and investment are still in their infancy in India and the educated middle classes, as in France, invest a considerable portion of their savings in Government securities, post-office savings banks, post-office cash certificates and, in the case of Government servants, the Provident Funds. The following figures indicate the amazing growth of this form of investment, particularly during the last ten years:

	31st March, 1923.	31st March, 1933.
	<i>Rs. Crores.</i>	<i>Rs. Crores.</i>
Post Office Savings Bank	23.2	42.6
Cash Certificates	3.1	54.6
Provident Funds	36.1	76.6

We have no recent figures of the number of persons who have invested money in the Post Office Savings Bank or the cash certificates, but the Post Office Savings Bank depositors numbered 2,300,000 in 1929. The vast majority of the Government servants contribute a portion from their salary to the Provident Funds, and the number of persons who have invested in Post Office cash certificates also probably runs into millions. These figures are of very great political significance since as is well-known, the upper and lower middle classes are the very section of the population who are most "politically-minded" and among whom nationalist feeling finds expression in its most intense form. Any future Government of India which by its financial indiscretions endangers the financial stability or credit of the country would be very short-lived indeed, since it would have to meet the united opposition of all these classes including the enormous army of Government officers.

4. We must now analyse the unproductive debt (or, as it is sometimes described, the unallocated debt, i.e. the portion of the debt not allocated to any productive assets such as railways) and attempt to discover the circumstances under which the present figure of Rs.207 crores has been reached. In 1914 and 1915 there was no portion of the interest bearing debt which was not covered by actual assets.* This statement requires

* This is based on paragraph 32 of the Memorandum on the financial separation of Burma, prepared by Sir Henry Howard and Mr. Nixon.

16^o Novembris, 1933.] JOINT MEMORANDUM BY
THE BRITISH INDIAN DELEGATION.

[Continued.]

some explanation for those who are not acquainted with the mysteries of India's accounting system. The figure of unproductive debt is, as has been observed from the statement in paragraph 2, arrived at by deducting from the total debt of India the amount which is allocated to railways and other commercial assets. The amount debited to one of these commercial departments, as for instance the railways, represents the capital actually expended on construction irrespective of whether the amount so spent was found from loan funds or from current revenues. Thus, when a portion of the surplus revenues was spent on railway construction an addition was made to the railway debt and a corresponding reduction made in the unproductive or unallocated debt. Similarly when sinking fund charges were provided for wiping out the whole debt including the railway debt, the whole of the amount was shown as a deduction in the unproductive debt (except the small portion which by Statute has to be applied towards the reduction of particular items of the debt). For instance, out of the 7 crores of rupees which are annually provided in the Government of India budget for reduction or avoidance of debt, over 5 crores relate to the railway portion of the debt but in the actual accounts the railway debt remains stationary while there is a corresponding reduction in the unproductive debt.

5. Two causes have primarily contributed to the growth of the unproductive debt since 1914-15. These are:—

(a) The heavy deficits in the Indian budgets from 1918-23 amounting to Rs.98 crores largely caused by the abnormal defence expenditure after the Great War.

(b) India's enormous contributions towards the expenditure by Great Britain on the Great War. These contributions amounted to £146.2* millions at the end of 1919-20. This figure does not include the expenditure on various special war services which have been estimated at £57 millions up to the end of 1921-22. It includes, however, the special war gift of £100 millions which India gave in March, 1917. Of this sum of £100 millions, nearly £75 millions were raised in India by means of the War loans in 1917-18, while as regards the balance the Government of India took over the liability for interest on an equivalent amount of the British Government War loan.

If India's total contributions towards War expenditure and the interest paid on War borrowings had been utilised for wiping out the sterling debt, there would have been little or no sterling debt to-day, for a substantial portion of the debt was incurred before the War, when the rates of interest were very low. Until recently these pre-War Indian sterling securities were quoted at rates very much below par.

We may incidentally refer here to the answer given by the Secretary of State to question No. 8405 put by Major Attlee. He stated that, out of the debt of £100 millions put up by India only about £16 millions were now outstanding. It is true that out of the £25 millions, the liability for which the Government of India took over from His Majesty's Government, only £16 millions are now outstanding, but it is not correct to say that the sum of £75 millions borrowed in India by means of War loans has been repaid. The War loans raised in the years 1914-19 in India were in most cases short-term loans which were converted or repaid by fresh borrowings in the subsequent years, either in England or in India.

* The figures given in this section are taken from the official publication 'India's contribution to the Great War', pages 160-161.

Memorandum on The White Paper by Sir Tej Bahadur Sapru, K.C.S.I.

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16^o Novembris, 1933.] MEMORANDUM ON THE WHITE PAPER [Continued.
BY SIR TEJ BAHADUR SAPRU, K.C.S.I.

1. At the outset I consider it necessary to state my entire position in relation to the White Paper containing the proposals on Indian Constitutional Reform. Having worked at the three Round Table Conferences between 1930 and 1932, and taking a broad view of the Constitutional question, the difficulties and complexities of which I appreciate, I have come to the conclusion that no constitution which fails to satisfy certain essentials will meet the needs of the situation in India, or rally round it a sufficient body of men willing to work it in the spirit in which it should be worked.

2. In my opinion those essentials are:—

(1) Responsibility at the Centre, with such safeguards as in the interests of India may be necessary for the period of transition, to be established, soon after the passing of the Act, without prolonging the transitory provisions contemplated by paragraph 202 of the White Paper.

(2) Provincial Autonomy with necessary safeguards for the period of transition.

(3) The reserved subjects, viz.: the Army, Foreign Affairs, and also Ecclesiastical Affairs, to be under the control of the Governor-General, only for the period of transition which should not be long or indefinite.

(4) A definite policy to be adopted and acted upon in respect of the Reserved Departments so as to facilitate their transfer to the control of the Indian Legislature and the Government within the shortest possible distance of time, compatibly with the safety of the country and the efficiency of administration in those departments.

(5) The constitutional position of India within the British Commonwealth of Nations to be definitely declared in the Statute.

ALL-INDIA FEDERATION.

3. The great contribution of the first Round Table Conference in 1930 was the evolution of the idea of an All-India Federation consisting of (a) the Provinces of British India and (b) Indian States, not as an ideal to be attained in a dim and distant future but as the basis of a constitution providing central responsibility to be set up as an immediate result of Parliamentary legislation.

4. In certain quarters it has been suggested that the Princes, present at the first Conference, rushed into agreement without clearly realising the implications of what they were saying and doing, and that during the time that has elapsed since their enthusiasm for the Federation has waned and that many of them are now unwilling or hesitating to join it. No one has put forward this point of view more emphatically than Sir Michael O'Dwyer, in his written statement and oral evidence before the Joint Parliamentary Committee.

"The Federal idea was," says Sir Michael O'Dwyer, "in 1930 welcomed by certain Indian Princes anxious to safeguard their future which they thought threatened by the 1929 declaration about Dominion Status: it was rather hastily accepted by the Government then in power and by representatives of the Liberal Party in the first Round Table Conference as a possible means of securing the Central Government against control by the Congress Extremists." I venture to think that this observation of Sir Michael betrays a regrettable ignorance of what had preceded the Round Table Conference, and does less than justice to the Princes, the Government then in power and the representatives of the Liberal Party, who were

16^o *Novembris*, 1933.] MEMORANDUM ON THE WHITE PAPER [*Continued*.
BY SIR TEJ BAHADUR SAPRU, K.C.S.I.

present at the First Round Table Conference under the distinguished leadership of Lord Reading, who had retired from the Viceroyalty of India only four years before the meeting of the Conference, and might be assumed to have a knowledge and understanding of the Indian situation. To understand fully what Sir Michael's view is, it is necessary to bear in mind what he said in reply to certain questions put to him by Sir Akbar Hydari, the representative of the premier state of Hyderabad, and Sir Manubhai Mehta, the Prime Minister of Bikaner. After confessing his ignorance of the fact that several Princes had met at a Conference in 1918 and that they had then come to the conclusion that they must work more or less on the Federal ideal, and after admitting that he had not studied that part of the Simon Report which had recommended the immediate establishment of the Council for Greater India, Sir Michael proceeded to explain his views at length. I make no apology for quoting at length the question put by Sir Akbar Hydari, and the answer of Sir Michael O'Dwyer.

Sir Akbar:—

(No. 636)—“I think you will find that practically that is so.”* “Does it not, therefore, make you alter, to a certain extent, the idea that really the Princes' declaration at the first Round Table Conference, which was repeated with greater and graver emphasis as time went on in successive conferences, was not a sudden outburst of enthusiasm but a realisation of the conditions that were obtaining in India at the time, and the necessity that there was, in their own self-interest, to try to get a constitution on the lines of the White Paper?” “My view is,” said Sir Michael, “that the matter was rushed forward owing to the fact that the Government of India Despatch of the 20th September still regards—and presumably the Government of India were in communication with the Princes—Federation as a distant idea. In a few months, at the first Round Table Conference, the thing is put forward as being something almost immediately feasible. That leads me to think that, although individual Princes and men of great authority and position have given some consideration to it, the great body of Princes had neither the time nor the opportunity to consider it at all, and I am influenced in that view by what was said to me at the very first Round Table Conference by some of the Princes individually. They had neither the time nor the opportunity. That is quite right, but as soon as the time and the opportunity came and they were face to face with this problem, then they thought it over, and they made a declaration. Is that not possible? No. I think a great many of them who thought over it had more and more misgivings about it.”

5. (No. 651)—Sir Michael O'Dwyer was on this point closely examined by Sir Manubhai Mehta also, and for the sake of convenience I quote the whole of his statement in answer to questions put by Sir Manubhai.

In the second paragraph of Part 1 of his Memorandum, Sir Michael writes: “The Federal idea was, in 1930, welcomed by certain Indian Princes anxious to safeguard their future, which they thought threatened by the 1929 Declaration about Dominion Status?” “Yes.”

(No. 652)—“As regards this remark, may I ask Sir Michael if he had the advantage of a talk with His Highness the Maharajah of Bikaner or His Highness the Nawab of Bhopal, who were exponents of the idea of All-India Federation at the first Round Table Conference? Had he any talk

* This has reference to the previous question in which Sir Akbar pointed out that the Council for Greater India proposed by Sir John Simon dealt mainly and practically with all those questions with which the All-India Federal Legislature would deal in future.

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with them?" Answer—"Not with His Highness the Nawab of Bhopal. I think I had a talk with His Highness the Maharajah of Bikaner."

(No. 653)—"Did he say he was influenced by the idea of Dominion Status?"—"No, other Princes said so to me."

(No. 654)—His Highness the Maharajah of Gaekwar Baroda, His Highness the Maharajah of Patiala, His Highness the Maharajah of Kashmir, and His Highness the Maharajah of Alwar. Had Sir Michael any talk at any time with those Princes?" "I had talks with all of them except the Nawab of Bhopal, but I am not going to give away any of the names of my informants."

(No. 655)—"Did they say they were in favour of this idea of Federation because they were afraid of Dominion Status?" Answer—"Some of them said when the Declaration was made about Dominion Status they did not realise what their position would be *vis-a-vis* a future British India."

(No. 656)—"The Declaration about Dominion Status was made in 1929?" "Yes."

(No. 657)—"This Declaration about Federation was made in 1930?" "Yes."

(No. 658)—"During that period had Sir Michael any occasion to talk with any of these Princes?" "Yes."

(No. 659)—"Before the Declaration was made?" "No, after the Declaration was made. The only opportunity I had to talk with them was when they came here to the first Round Table Conference."

(No. 660)—"After the Declaration was made Sir Michael had talk with them?" "Yes."

(No. 661)—"But not before?" "I thought you meant the Declaration about Dominion Status."

(No. 662)—"That was made in 1929. After the opening of the Round Table Conference the Princes declared on the very first day that they were in favour of Federation?" "Yes."

(No. 663)—"What was the ground for Sir Michael's belief that they were influenced by the idea of Dominion Status?" "Some of them told me so."

(No. 664)—"After they declared for Federation?" "I do not think all the Princes individually declared for Federation, and, as I say, some who did declare for Federation changed their opinion afterwards, and made no secret of the fact that they did so."

Lord Winterton then asked:

(No. 665)—"Was your answer that those who had declared for independence said so in private conversations?" "No, I am not prepared to specify who they were. I had conversations with most of the Princes. I cannot specify whether it was the time they were here for the first Round Table Conference. Some of them told me that the Declaration in favour of Federation was brought about largely by the Viceroy's Declaration about Dominion Status. I am not prepared to give the names of those who stated that to me."

Sir Manubhai Mehta then asked:

(No. 666)—"How does Sir Michael reconcile that belief with the Declaration of the Princes that they were prepared to come into the Federation only if there was central responsibility and self-government. How are the two ideas reconcilable?" Answer—"I am not arguing with the rights and wrongs of the case, I am only stating the reasons which some of the Princes gave me for this Declaration that some of the Princes were willing to come into the Federation."

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(No. 667)—“Were the Princes responsible for this Declaration?”
Answer:—“I am not prepared to be pressed for information as to the particular Princes who gave me their view. I do not think it is fair to bring forward their names, but I know certain of the Princes who declared for the Federation altered their views when they went back to India. They publicly stated so.”

6. It is obvious that Sir Michael O'Dwyer places those who differ from him at a great disadvantage in so far as he states publicly that some Princes expressed to him privately their regret for their hasty action, but is unwilling to give their names, and I would therefore respectfully endorse the view of His Grace the Archbishop of Canterbury, that it was not fair on the part of Sir Michael to put in evidence the statements, which, according to him, were privately made by the Princes. I submit that the repeated statements and declarations of the Princes at their Conferences and meetings of the Chamber of Princes and the repeated assurances given by their representatives at the third Round Table Conference and at the Joint Parliamentary Committee, can lead to one, and only one, conclusion, and that is that not only have the Princes not gone back on their original attitude, but they still adhere to the idea of an All-India Federation. That they have imposed certain conditions from the start of the first Round Table Conference, is perfectly true. Some of these conditions are no longer matters of controversy, while others are capable of adjustment. I quote below a statement which appeared in the “Times” of 6th July, 1933:

PRINCES' SUPPORT OF FEDERATION.”

Chancellor's Statement.

“The Maharajah of Patiala, Chancellor of the Chamber of Princes, has sent to Nawab Sir Liaquat Hayat Khan, his Prime Minister, who is one of the States' delegates to the Joint Select Committee, a telegram defining his attitude to Federation, and expressing surprise that there have been allegations throwing doubt upon his support of the policy of his Majesty's Government. His Highness states that his position is clear; since a general agreement (known as the Delhi Pact) was reached between Princes and Ministers in December last, he had adhered to the Chamber's policy in regard to Federation. He adds:

“Please repudiate all suggestions to the contrary. The authorities will, of course, appreciate that our insisting on adequate safeguards for the protection of our autonomy, sovereignty, and financial stability does not mean opposition to Federation. In fact it is in the best interests of India as a whole that the Federation should assure our continued connection with the British Crown and stability in the Centre, to the safeguarding of Imperial as well as Indian States Interests.

“Under the Delhi Pact, in the shaping of which the Rulers of Patiala, Bikaner, and Bhopal took part, existing differences were adjusted between the two sections—Federationists, and Confederationists. The Princes were unanimous in reaching a common policy in favour of joining an All-India Federation, subject to certain essential safeguards being provided in the new Constitution, through Confederation among such States as desired to adopt that method, while leaving the door open to others to join the Federation direct.”

7. If I have given so much space to Sir Michael's views on this matter, it is because I treat him as representing a number of public men in England

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who have expressed more or less identical views in Parliament or on public platforms, and in the press, and I am only anxious to point out that their views are neither correct nor fair to British India or to the Princes.

8. I shall now give a few facts in historical sequence to show that the idea of the Federation was not suddenly sprung upon the Princes or British Indians at the time of the first Round Table Conference:—

(a) The Simon Commission was appointed on 27th November, 1927, and visited India between 1928 and 1929, and submitted their Report in May, 1930.

(b) I shall invite the attention of the Committee to Vol. 2 (Part VII), pp. 193-206, of the Simon Commission Report. On page 193 they say: "It would be more true to say that there is really one India, but that the unity of India includes the Indian States as well as British India"; and then they quote from the earlier Report of Mr. Montague and Lord Chelmsford as follows:—

"India is in fact as well as by legal definition one geographical whole. The integral connection of the States with the British Empire not only consists of their relations to the British Crown, but also in their growing interest in many matters common to the land to which they and the British Provinces alike belong." The Report then goes on to say: "Whatever may be the future which is in store for British India, it is impossible to conceive that its constitutional developments can be devised and carried out to the end, while ignoring the Indian States. It is equally certain in the long run, that the future of the Indian States will be materially influenced by the course of development in British India. The Indian Princes have not been slow to acknowledge that their interest in the constitutional progress of British India is not that of a detached spectator, but of fellow-Indians living in a world which, for all its history of deep divisions and bitter rivalries, preserves in some respects remarkable cultural affinities, and is slowly working out a common destiny." It was for these reasons that in October, 1929, the Commission addressed a letter to the Prime Minister and drew attention to the importance, when considering the direction which the future constitution of India is likely to take, of bearing in mind the relations which may develop between "British India and the Indian States." "The Commission recommended the examination of the relationship between these two constituent parts of Greater India, and further recommended that a Conference should be called to which representatives of both British India and the Indian States should be invited." This was in October, 1929. In the same month, Lord Irwin, the Viceroy of India, returned from England to India and made his famous announcement with the full authority of His Majesty's Government, that a Round Table Conference would soon be held. The Commission in their Report published in May, 1930, expressed their pleasure that such a Conference was going to be called. For obvious reasons, the Commission could not make any concrete proposals for the adjustment of the future relationship of the two constituent elements. The Indian States had not during their visit to India put forward their own views, and they accordingly welcomed the prospect of an exchange of views at the Round Table Conference. (Simon Commission Report, Vol. 2, p. 194.) In paragraph 228 of their Report the Commission quote an important statement of His Highness the Maharajah of Bikaner to the effect that "the Princes have openly given expression to the belief that the ultimate solution of the Indian problem and the ultimate goal—whenever circumstances are favourable, and time is ripe for it—is Federation, which word has no terror for the Princes and Government of the States." The Commission then refers with approval

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to the language of caution of the Butler Committee, which, pursuing the line of thought adopted in paragraph 300 of the Montague-Chelmsford Report in 1917-1918, gives a warning against the danger of trying to advance in the direction of Federation too fast.

(c) In paragraph 231 of their Report they actually discuss the form of the ultimate Federation, and in paragraph 234 they observe that "Federations come about only when the units to be federated are ready for the process, and we are far from supposing that the Federation of Greater India can be artificially hastened, or that, when it comes, it will spring into being at a bound." They say that "what is now needed is some organ, however rudimentary, which will for some purposes, however limited, address itself to the treatment of matters which are of common concern to the whole of Greater India, not from the side of the Indian States alone, nor solely from the side of British India, but from both."

They then put forward in paragraph 237, their proposals for the establishment of the Council for Greater India—"a Consultative body having no executive powers, intended to make a beginning in the process which may one day lead to Indian Federation."

(d) The next important State document, in which the ideal of an All-India Federation is discussed, is the Despatch of the Government of India, bearing date, September 20, 1930. Like the Simon Commission, they envisage the Federation as a distant ideal which "cannot be artificially hastened" (vide paragraph 16, p. 11, of the Despatch). The Government of India then go on to recommend "the provision for the Council of Greater India consisting of not less than 60 members, of whom about 20 might be representatives of the States."

(e) Referring to the treatment of the question of Federation in his Report, Sir John Simon said in the course of his speech in the House of Commons, on March 28, 1933 (vide Parliamentary Debates, House of Commons, Vol. 276, No. 59 at p. 89) that the Indian States were outside their reference, and that the Commission "have not taken evidence from any Indian States. No Indian Princes came before us. No Minister from any one of these great countries, some of which are as big as some of the smaller countries of Europe, came and offered his views." Sir John Simon then quotes from the speech of H.H. the Maharajah of Patiala, the Chancellor of the Chamber of Princes, who spoke not for himself alone, but for a large body of Princes whom he had consulted. The Maharajah had said at the Conference:

"The main principle of Federation stands acceptable, and I echo the confident hope expressed the other day by His Highness the Maharajah of Bikaner, that by far the larger proportion of the States will come into the federal structure at once, and that the remainder will soon follow." Sir John Simon thought that this might be too sanguine a view, but he proceeded to draw particular attention again to the following words of the Maharajah of Patiala:—

"We have all made it clear, however, that we consider certain things to be essential. We can only federate with a British India which has self-government and not with a British India governed as it is at present. This is a sentiment to which repeated expression has been given by other Princes and their Ministers at all the Conferences, and the Joint Parliamentary Committee."

(f) I shall now refer to another public document, though not of an official character. In 1928 the All-Parties Conference in India appointed

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a Committee to examine and report on the various constitutional proposals then engaging public attention, and it submitted a report generally known as the Nehru Committee Report. In the Report it is stated that "if the Indian States would be willing to join such a federation (i.e., a perpetual union of several sovereign States) after realising the full implications of the federal idea, we shall heartily welcome their decision and do all that lies in our power to secure to them the full enjoyment of their rights and privileges."

(g) I have been at pains to show that the ideal of Federation had been engaging the attention of British Indians and Indian States for some time, and that it had not been absent also from the mind of certain important and high placed English statesmen even before the Simon Commission came to discuss it in their Report. No doubt there was a good deal of clearing of ideas which remained to be done, and this could only be achieved by a Joint Conference of His Majesty's Government and the representatives of British India and the Indian States. This opportunity was afforded by the Round Table Conference held in London in 1930. There would thus seem to be no justification for the suggestion that the Indian Princes hastily agreed to join the Federation because, as suggested by Sir Michael O'Dwyer, they wanted to protect their position against the possibility of British India achieving Dominion Status which was foreshadowed in the announcement made in 1929 by Lord Irwin. If the representatives of British India accepted it as a feasible basis of advance in 1930 at the Conference, it was because they realised that (a) it would lay the foundation of Indian unity, (b) it would provide an effective machinery for protecting common interests and minimising the chances of friction between the two sections of India; (c) it would, by supplying a stable element in the Indian Constitution, allay the apprehensions in the minds of British statesmen in respect of changes to be brought about in the character and composition of the Central Government in India, and (d) it would promote the cause of progress and constitutional advance in the Indian States themselves.

9. Whether the time for the establishment of the Federation of All-India has come, or whether it will arrive after the Provinces have become autonomous units and developed what is called "provincial self-consciousness", is a question which may now be dealt with briefly. In my humble judgment the analogy between British India as it now is, and Canada and Australia as they were at the time of the establishment of Federation in those countries, is not sustainable. British India already possesses a Central Government. The problem in India is not to create a Central Government there for the first time, but to alter its character and divide its functions and powers from those of the federating Provinces and the States. This problem did not, so far as I know, exist in Canada or Australia at the dates of the establishment of the Federal Governments in those Dominions. Whether, therefore, the Federation is established now or after some time, the whole structure and sphere of action of the Central Government will have to be altered. It is not quite clear what precisely is meant by "provincial self-consciousness". In point of fact the provinces in India have been existing as separate units practically since the beginning of British rule, though they have been under the guidance of the Central Government, and in the last 40 years, during which representative institutions have been more or less developed, they have in their administrative and economic life developed a consciousness which has at times been a source of great embarrassment to the Central Government—particularly in

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the field of finance. While in certain branches of administration, e.g., civil and criminal laws and their administration, there has been uniformity nearly everywhere, in certain other matters of a local character, such as land tenures, agriculture, local self-government, education, excise, industries, etc., each province has maintained and developed its local peculiarities, and has thus become self-conscious. The fact is that the Provinces have already developed a life of their own, and that the real point is not that they have not developed individual self-consciousness, but that in some cases there has been for some time a marked tendency towards too much of a provincial or local outlook. Quite apart, therefore, from the financial pre-requisites such as the Reserve Bank, the credit and stability of the finances of India, which will be noticed later, I think that the political conditions necessary for the association of the provinces into a Federation already exist and the legal machinery for effectuating this purpose can only be provided by parliamentary legislation. On the other hand, I very strongly apprehend that in a country like India with so many provinces, the danger of leaving it to the newly constituted legislatures of the Provinces to exercise their option in joining or not joining the Federation, ought not to be overlooked. One single province, if left to itself, may hold up the progress of the entire country, a contingency which I think will be most disastrous in the circumstances of India. Further, to create autonomous provinces with responsible government functioning in them, and to link them up to a Centre which is to continue to be responsible to British Parliament, will only tend to frustrate the object of those who believe in the necessity of a strong centre, and may seriously lead to the breaking up of that unity of India, which it has taken more than a century to build up. Autonomous provinces may, and probably will prove too strong for an unreformed Centre. An arrangement of this character will, it is apprehended, promote friction instead of co-operation, between province and province, and between provinces on one side, and the Centre on the other. Lastly, an unaltered Centre will be the object of concentrated attack in British India; it will have no moral backing in the country, and instead of playing the part of a unifying factor, will be treated as a rival standing in the way of the provinces.

10. At this stage, I think it will be convenient to deal with some aspects of the All-India Federation, which have formed the subject of criticism both in India and in England. It has been said that the proposed Federation is unnatural owing to the difference in the character and structure of the two constituent elements, viz., (a) the Provinces of British India which have a framework of representative institutions, and responsible government, however restricted in its scope, and operation, and (b) the Indian States, which are governed autocratically and have no such institutions as British Indian Provinces possess.

I would point out that some Indian States, particularly those in the South, already possess representative institutions, though there is much room for their development. Others are showing a tendency to move towards constitutional forms of government, and nearly everywhere in the Indian States there is an awakening among their subjects who are urging their rulers to associate them with internal administration. Public opinion in British India distinctly and strongly favours a substantial advance in Indian States towards constitutional forms of government, and I think I am right in saying that the Princes and their Ministers are keenly watching the signs of the times. I do not wish to impose my views on the States, and even if I wished to do so, I could not.

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11. I am strongly of the opinion, however, that one result among others of the association of British India and Indian States in the field of common activity in the Federal legislature, will be to facilitate the passage of the Indian States from their present form of autocratic government (I use the expression in no offensive sense) to a constitutional form with the rights of their subjects defined, ascertained, and safeguarded. It will be noticed that during the proceedings of the Round Table Conference we made appeals to their Highnesses and the replies given by His Highness the Maharajah of Bikaner, and His Highness the Nawab of Bhopal, though lacking in precision, may well be treated as holding out a hope for the future. It has next been urged in British India, and also in England, that the presence of the nominated representatives of Indian States in the two Chambers will introduce an element of a markedly conservative character, and will practically be a substitute for the present official bloc in the Indian legislature. I do not wish to minimise or ignore the weight of this criticism, or the anomaly of the position, but, having considered it carefully and dispassionately, I have come to the conclusion that the risks of this bloc generally acting as an impediment in the way of British India are not by any means great. At any rate, they are not of such a grave character as to justify us in rejecting the All-India Federation on that ground alone. In the first place I cannot believe—and there is no warrant for such an assumption—that all Indian States representatives will think alike; secondly, I think that differences caused by regional and economic interests are bound to lead to diversity in policy and action among the representatives of the Indian States; thirdly, I would draw attention to the list of Federal Subjects in Appendix VI. The Federation being limited to subjects 1-49 in List 1 of Appendix VI, the Indian States bloc cannot perform the functions of the present official bloc in respect of those matters in which Indian opinion and official opinion in British India are usually ranged on opposite sides.

12. I do not wish to disguise the importance from the Indian point of view of some legislation which may be introduced at the instance of the Governor-General. Bearing in mind this contingency, I have, from the start, proposed that the representatives of the Indian States should not take part in legislation or other proceedings in the Federal Legislature which affect purely British Indian matters. So far as the attitude of the Princes themselves is concerned, it was very expressly stated by the Nawab of Bhopal at the second Round Table Conference. During the course of the discussion on the 28th of October, 1931, at a meeting of the Federal Structure Committee, His Highness the Nawab of Bhopal said: "May I make the position of the Indian States quite clear? They are not at all keen or anxious to vote on any matters which are the concern of British India." A similar statement was made by His Highness the Maharajah of Bikaner. There being no reference to this matter in the White Paper, the question was raised at a meeting of the Joint Parliamentary Committee, and it was urged by some of us that there must be a statutory provision to the effect that no member of the legislature appointed by the Ruler of an Indian State shall vote upon any Bill or Motion affecting the interests of British India alone, and being outside the list of Federal subjects as mentioned in Appendix VI, of the White Paper, and that the decision of any question as to whether it affects the interests of British India alone, and is or is not outside the list of Federal subjects, should be left to the Speaker of the House. The representatives of the Indian States took time

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to make a considered statement, and accordingly Sir Akbar Hydari made a statement on the 30th May, 1933, which I quote below :

" We want to declare that the policy of the States is, as it has always been from the beginning, not to desire intervention in any matter affecting British India alone.

" At the same time we have also declared that the Indian States have an equal interest, as members of the Federation, in the existence of a strong and stable executive, and, therefore, they may have the right to speak and vote whenever such a question arises.

" If the scheme of the White Paper is carefully studied, then, provided the matter is left to the good sense of the parties, starting with a gentleman's understanding, and developed in practice into a well-understood convention, this two-fold object will be attained without endangering either of the principles which we have laid down at the outset.

" The Round Table Conference in its successive sessions refrained from laying down a rigid formula, partly because of the difficulty of framing one which would not overlap the limits in either directions, and partly because it was felt that this was a matter which could be suitably left to a convention.

" We therefore appeal to our friends on the other side to rest content with the declaration we have made."

I should like to draw attention to the fact that when Sir Hari Singh Gour asked whether Sir Akbar Hydari intended that the States were to be the sole judges of when their representatives were to speak and vote, Sir Akbar said that that was his intention.

13. I recognise the objection to what is called the in and out system, and I also appreciate that a rigid provision of this character may prevent the growth and expansion of Federation in future. Taking all the practical difficulties into consideration, I think, however, that provision should be made for a written convention or rule on the subject meeting the point of view I have argued above. It is obvious that in the absence of such a written convention, even a few of the representatives of States might by their conduct prevent the convention from coming into existence at all. It seems to me, therefore, necessary that a reference to this rule should be made in the Treaties of Accession. The rule framed should give power to the Speaker to decide the question as to whether a particular matter is one affecting British India alone.

In this connection I would also draw attention to the statement made by Mir Maqbul Mahmood a representative of the Chamber of Princes, in the course of his evidence before the Joint Parliamentary Committee, which does not seem to me to be quite consistent with the statement made by Sir Akbar Hydari. I quote that statement below :

" On this question also the views that I have to put on behalf of the Chamber of Princes' Delegates and other States' Delegates present at that meeting are that it would have to be left to somebody like that to interpret, but I have no specific instructions from the Chamber."

The following questions put by me, and the answers given to them by Mir Maqbul Mahmood, are important, and may well be quoted at this place.

Question: " Then I take your position to be that you are opposed to a statutory provision prohibiting Indian States' Delegates from taking part, but you are not opposed to a convention? "

Answer: " No "

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Question: "If you are not opposed to a convention, will you please tell me how it is possible to prevent, even two or three or four of your representatives from breaking that convention, and never allowing that convention to come into existence unless we have some rule on that point?"

Answer: "I have already submitted that this question was considered by the Chamber of Princes' Delegates, and some of the States' Delegates who were present at that meeting, and it was there thought that something in writing in the rules would be desirable, but the Chamber of Princes has given no instructions on this specific question."

Question: "You remember that it was said in the Statement—I am speaking now from recollection, and if I am wrong I hope you will correct me—or rather in answer to a question put by Sir Hari Singh Gour, that the Indian States' Delegates will be the sole judges as to when they shall interfere and when they shall not interfere. Would you stand by that statement, or would you rather leave that matter to be decided either by the speaker or by some other independent body, such as a Committee of Privileges of the two Houses?"

Answer: "On this question also the views I have to put on behalf of the Chamber of Princes' Delegates and other States' Delegates present at that meeting are that it would have to be left to somebody like that to interpret, but I have no specific instructions from the Chamber."

If, therefore, proper care is taken to lay the foundation of such a convention, its growth can be left to the future. I fear, however, that if no provision is made in this behalf, the apprehensions of British India will not be allayed.

14. I would, however, urge that while on the one hand I would not, in view of the peculiar conditions of Federation, object to their Highnesses nominating such representatives as they might think fit, I could not agree to their nominating those officers who are really servants of the Crown, but whose services have been temporarily lent to States.* To do so will, in my opinion, amount to defeating the provision of the Statute that persons holding any office of profit under the Crown should be ineligible for membership of the Legislature, and the observance of this rule in the case of Indian States is all the more necessary in view of the objection to the presence of an official bloc in the Legislature.

15. I presume that ordinarily the Indian States will be represented in the Executive, that is to say, one or two of the portfolios will be filled by the appointment of such representatives of the Indian States as may be willing generally to support the policy of the leader who is called upon to form a Ministry. Once the Ministry is formed, with the inclusion of representatives from the Indian States, the Ministers will no doubt act collectively, and if the Ministry is defeated by the Legislature on a point which the Prime Minister considers of a vital character, the entire Ministry, including the representatives of the Indian States, will resign.

As the Federal Government will be the government both of the Indian States, and of British India, it is desirable that when an attempt is made to extinguish the life of the Ministry by a direct vote of no-confidence, the representatives of British India, and of the Indian States alike, should take part in the proceedings of the Legislature. On the other hand, if on a purely British Indian question the Ministry is defeated, and the Prime Minister feels that he has lost the confidence of the British Indian section of the Legislature, and that it will be impossible for him to carry on the

* See on this point the evidence of Sir Samuel Hoare.

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administration without their support, he should be left free to resign. In other words, the ordinary Parliamentary procedure should be pursued until a direct attempt is made to overthrow the Ministry of the day. I do not anticipate any such difficulty in regard to the Budget, as the Budget will be a joint one in which both British India and the Indian States will be equally interested.

I realise that occasions may arise, especially in matters relating to taxation, when it may be sought to impose a burden on British India alone, and the representatives of the Indian States may be prepared to support the Ministry of the day. In a case of this character it would be obviously unfair for the Government of the day to turn the scale in their favour by depending upon the support of the representatives of the Indian States. If an occasion of this character should arise we should leave the contest to be fought out between the Government of the day and the representatives of British India alone, leaving it to the Prime Minister in the event of a defeat to exercise or not to exercise his option of resigning according to his estimate of the situation.

16. I cannot, however, agree to the Upper Chamber exercising co-equal powers in the matter of supply. Apart from the fact that the participation of the Upper Chamber in the matter of supply will probably be wholly opposed to British Parliamentary practice, and the present law in India, I desire to point out that the Lower Chamber itself, according to the proposed constitution, will consist of 33½ per cent. of representatives of the Indian States, who will, so far as I can see, for some time to come, not be popular representatives coming through the open door of election, and the Upper Chamber will consist of two classes of representatives, namely, British Indians, who will be elected by the Provincial Legislatures, and representatives of the Indian States, who will be a nominated bloc. It seems to me, therefore, that to allow the Upper Chamber the right of voting supply will amount to overloading the constitution with conservative influences, and may conceivably have the effect of making the Executive irremovable.

17. I notice with satisfaction that it is intended to provide that it will be the duty of the Ruler of a State to secure that due effect is given within his territory to every Act of the Federal Legislature, which applies to that territory. Proposals 128 and 129 of the White Paper seem to me to be of a consequential character, flowing naturally from proposal 127. It is obvious that in regard to Federal subjects of administration the Governor-General must have the power by inspection or otherwise to satisfy himself that an adequate standard of administration is maintained, and that the federating States are carrying out the Federal purpose. The words: "through the agency of State authority" were no doubt a concession to the sentiment of the States. I think that in fairness the States cannot have any reasonable objection to the Federal agency being empowered by the Governor-General for the purpose of implementing the decisions of the Federal authority, if and when a particular State refuses to carry out such decisions, or is unable to carry them out in the spirit in which they should be carried out.

18. There remain now two important questions to notice. The first is the question as to whether in the event of only 51 per cent. of the Indian States coming in they will be entitled to any special considerations in the matter of their voting strength, and the second is Federal finance.

19. As regards the first question, it will be noticed that paragraph 12 of the Introduction to the White Paper provides that "so far as the States are concerned, His Majesty's Government propose as the condition to be

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satisfied before the Federal Constitution is brought into operation, that the Rulers of States, representing not less than half the aggregate population of the Indian States, and entitled to not less than half the seats to be allotted to the States in the Federal Upper Chamber, shall have executed instruments of accession. If this condition regarding the representation of States representing not less than half the aggregate population of the Indian States, and entitled to not less than half the seats to be allotted to the States in the Federal Upper Chamber, is fulfilled but the number of acceding States does not exceed 51 per cent. at the date of the inauguration of the Federal Constitution, then the question will arise as to whether the acceding States will be entitled to their full quota of 100 per cent. The question will not probably be of much political importance, as it is anticipated that if once the bigger States offer to join, others will follow their lead. It is, however, necessary to arrive at some decision on this point, and to provide for such contingency as may arise. I submit that the most regular and proper course to follow would be to leave the remaining seats unfilled, and to allot the unfilled seats in future to such States as may at a later stage desire to accede to the Federation. It has, however, been suggested that the residue should be placed at the disposal of the Crown, and that the Governor-General should be empowered to nominate persons out of that residue. In my opinion, nominations by the Governor-General will have a most demoralising effect on the Constitution, and will be, I apprehend, strongly resented both by British India and the Indian States. British India will strongly resent this nominated bloc, and the Indian States will not treat such nominated members as their representatives. Two alternatives have been suggested: one is that in the event of only 51 per cent. of the Indian States coming in at the start, a higher value should be put upon their voting strength; and the other is that the acceding States should be allowed to nominate a larger number of members than they would be entitled to on the basis of the quota reserved for them.

20. If one need choose between these two alternatives, I would prefer the latter, on the distinct understanding that it will be only a temporary arrangement, and that rules will be framed on the subject so as to provide for a State vacating the seats in excess of its proper share in favour of a fresh incoming State. Further, it would be obviously unjust to British India to give to the acceding States the full 40 per cent. of the seats reserved for the entire Indian States bloc, when the acceding States may represent only 51 per cent. or a little more of their total number. The weightage, if it is to be given as a necessity of the situation, should be very moderate.

RESPONSIBILITY AT THE CENTRE.

21. In paragraph 2 of this memorandum, in enumerating what seemed to me to be the essentials of the new constitution, I referred to responsibility at the Centre, with such safeguards in the interests of India as may be necessary for the period of transition. I would emphasize that such responsibility should be established soon after the passing of the Act, without prolonging the transitory period contemplated by paragraph 202 of the White Paper. The period of transition between the establishment of the New Constitution in the Provinces and the inauguration of Central responsibility,

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should be of the briefest possible duration. And the composition of the Executive Government consisting as it does of the Governor-General and Members of the Executive Council appointed by the Crown, and their relation to the Legislature, should be as little interfered with as possible. The adjustments in the relations of the Centre and the responsible Provincial Governments should, I submit, rest on a very temporary basis, and the power of the Central Legislature should not be whittled or reduced during the period of transition.

22. To my mind, public opinion in India will not favour or reconcile itself to a constitution which seeks to establish Responsible Government in the Provinces, without a simultaneous or nearly simultaneous change in the character and composition and powers and duties, of the Government and Legislature at the Centre. On the merits of the question too, it would be extremely undesirable to change the character of the Provinces and leave the Centre unaltered. If such a result should ensue, I should have no hesitation in considering our labours at the three Round Table Conferences as wasted, and the best intentions of His Majesty's Government frustrated. I think it is necessary to sound a note of warning that I have considerable doubt as to whether any organized political party in India would be prepared to work such a constitution.

23. I hold very strongly that Provincial Autonomy by itself will have the certain effect of weakening the Centre. It cannot be seriously maintained that the Centre as at present constituted is a strong Centre. The Government of India consists of the Governor-General and seven members of the Executive Council, including the Commander-in-Chief. Three of these members are Indians, of whom one has, during the last ten years, been a member of the Indian Civil Service or the Indian Finance Department. The Assembly which is the Lower House has an overwhelmingly large majority of elected members, there being in it an official nominated bloc consisting of about 26 members. The Council of State consists of 60 members, of whom the non-officials, including nominated members, constitute the majority. The Assembly, however, is not responsible, and the Executive is irremovable. Except in those matters which are by Statute not open to discussion, or which are not subject to the vote of the House, the Assembly can raise any question by way of debate, and can exercise its voting power. The relations of the Legislature, constituted as it is and possessing as it does a large elected majority, without any constitutional responsibility resting upon its shoulders, and the Executive which is irremovable by that Legislature, but is answerable for its conduct to Parliament, cannot be and have not been very harmonious. In actual practice it has not unoften happened that the Legislature has refused to support proposals put forward by the Government, or to grant some of their demands and even to pass the votable portion of the Budget. In the circumstances existing in India, which only tend to foster a sense of political struggle and restlessness, the Legislature is apt at times to be affected by some strong currents of thought in the country, and this cannot be conducive to harmonious relations between it and the Executive. Incidentally, the present state of things is wholly detrimental to the growth of a compact party system or even well defined groups based on differences of an economic and social character. The present system, is, in short, not calculated to foster or encourage that sense of responsibility which can only arise if it is felt that the effect of a particular decision may be to throw out the Government of the day, and to transfer to other shoulders the responsibility for implementing it. On the other hand, the existence of an overwhelming majority of elected

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members has at times compelled the Government to accept compromises which it would not have done if it knew that it had a party to support it. These differences which have arisen between the Government of India and the Legislature have not tended to strengthen the position of the Government in the eyes of the public; on the contrary, they have weakened their position and affected their prestige in the public eye. An irremovable Executive may survive repeated defeats by an irresponsible Legislature, but it can do so only at the cost of its moral hold upon public opinion. In this connection I would invite the attention of the Committee to the valuable evidence of Sir John Thompson. In the Memorandum submitted on behalf of the Union of Great Britain and India by Sir John Thompson, Sir Alfred Watson and Mr. Villiers to the Joint Select Committee, they say:—"The present position is not satisfactory, with a responsible Legislature and an irremovable Executive." It was further developed by Sir John Thompson in the course of his oral statement to which I would invite attention. Sir Charles Innes, who retired only a few months ago from the Governorship of Burma, and who was before that a very distinguished member of the Viceroy's Executive Council, and to whose Memorandum I attach the very greatest importance, thus expresses himself on this point. "His Majesty's Government announced" observed Sir Charles, "that it was their intention gradually to introduce responsible government into India, and the Government of India Act, 1919, was the first instalment of that promise." "Some 6,000,000 people were enfranchised. Partial responsibility was introduced in the Provinces, and though the principle of responsibility was not admitted at the Centre, the Executive Government was confronted by a Legislature enjoying large powers. The results were what might have been expected. The transitory stage is always a difficult stage. Incomplete self-government is the most difficult form of government. It is always, so to speak, reaching out to fulfil itself. Canada in the first half of the nineteenth century offers in some respects a parallel to the India of to-day. There was an irresponsible Executive confronted by a powerful Legislature, and Canada had its own communal problem in the rivalry between the French and English Canadians. The effects of these factors were much the same as those which have manifested themselves of recent years in India. There was a tendency towards irresponsibility on the part of the Legislature. The tension between the French and the English Canadians increased, and there was a growing bitterness against the Home Government. Finally, there was a rebellion, and it was only Lord Durham's Report which saved Canada for the Empire. He recognised that responsibility was the only real remedy for the situation that had arisen. History is repeating itself in India to-day, and much the same phenomena can be seen. The ferment has been immensely increased by the first instalment of self-government. We have set every person in India who understands the matter at all thinking about political advance. It has become an obsession with almost all educated Indians, and they feel that the honour and self-respect of India are bound up with it. As the Indian Statutory Commission put it, there has grown up a 'passionate determination among the politically-minded classes of Indians to assert and uphold the claim of India as a whole to its due place in the world.' There is in India to-day a real nationalist movement, concentrating in itself all the forces which are aroused by an appeal to national dignity and national self-consciousness. Then again, communal feeling between Hindu and Muslim is more acute to-day than it has ever been before, and finally during the last 12 years racial feeling against the British has increased in India. Politically-minded Indians tend to believe that the British are standing in the way of their

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legitimate aspirations, and that we do so because in our own interests we are reluctant to give up our hold on India."

24. I have ventured to quote this long extract from the valuable Memorandum of Sir Charles Innes, as it presents a picture of the present position of India with great fairness and moderation. No one can know better than Lord Reading during whose term of office Sir Charles Innes was a member of the Executive Council, and Lord Irwin, during whose term of office Sir Charles was Governor of Burma, that he was an officer of the greatest distinction, who was always respected for his soundness of judgment and for his understanding of the administrative and political problems of India. Sir John Thompson had a long experience of the Punjab, where he was Chief Secretary of the local Government in the time of Sir Michael O'Dwyer. He then came to the Government of India as Political Secretary, and ended his career only a few months ago as Chief Commissioner of Delhi. The experience of these two recently retired members of the Civil Service, and their reading of the situation in India, and particularly their knowledge of the movements which have stirred the minds of the Indian masses is almost up-to-date. And I believe that these two distinguished members of the Indian Civil Service may be taken fairly to represent a considerable body of opinion among those members of the Indian Civil Service who have recently retired. I would also in particular draw attention to the list of names of the members of the Union of Britain and India submitted by Sir John Thompson. Among these names are the names of two of the successors of Sir Michael O'Dwyer, viz.: Sir Edward Maclagan and Sir Geoffery de Montmorency, the latter of whom retired only about three months ago. I have therefore no hesitation in saying that Sir Charles Innes and Sir John Thompson are entitled to speak about the India of 1933 much more accurately than Sir Michael O'Dwyer, who retired in 1919, and who has never had direct or personal knowledge of the working of the Montagu-Chelmsford Reforms, or the changed mentality of the people since the inauguration of these reforms. I would further invite the attention of the Committee to the letter signed by men like Sir Richard Burn, Sir Selwyn Fremantle, Sir R. Oakden, Mr. S. R. Daniels and others, all of whom have lived in the U.P., and also to the opinions of Lord Meston. These were put by me to Sir Michael O'Dwyer, who did not agree with them, and expressed the opinion that in recent years Indian Civil Servants have given more time to politics than to administration—an opinion which I think will not be readily endorsed by others, and is not at any rate in my judgment at all true. To give therefore the Provinces autonomy and to retain for the Centre a sort of general control over the field of provincial administration, cannot, in my opinion, be anything but a mockery of provincial autonomy. It is difficult to conceive of responsible autonomous Governments working in harmony and co-operation with a Centre which is responsible only to British Parliament—a Centre which is still further enfeebled by the autonomy of the Provinces. I feel so strongly on this question that I have little hesitation in saying that if the Centre is not to be a responsible Centre, but is to continue to be responsible to British Parliament, and to be under the control of the Secretary of State, I would much rather postpone all changes in the Provinces until those who hold different views can be convinced of their error.

25. It is possible that the advocates of a strong Centre may suggest a reduction in the size of the Legislative Assembly, and the curtailment of its powers, and the adoption of an indirect method of election with which I shall deal at a later stage of this memorandum. Public opinion in India

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will never reconcile itself to any, such action, and I very seriously apprehend that if any such thing is done it may easily jeopardize the working of the constitution even in the Provinces.

FEDERAL FINANCE.

26. The question of the federal finance still remains to be settled finally and effectively. Repeated enquiries have been made into this subject by Committees appointed by the Round Table Conference and through departmental Committees. I do not wish to refer at length to the contention of the Indian States that they already make a very substantial contribution to the revenues of the Government of India. I am fully aware of their contention regarding customs and the contributions which they claim to make for the defence of India by maintaining troops. They also claim that they are entitled to credit for the revenues of the territories surrendered or assigned by them, in the accounts of the federal finance. These are questions on which there has been a considerable difference of opinion in the past, and I fear that complete agreement on these questions between British India and the Indian States is not very easy to achieve. It is to be regretted that the Indian States have declined to agree to the imposition of Income Tax in their territories, and that some of them are opposed even to the imposition of Corporation Tax. No one can, however, deny that in any system of federation it is vitally necessary that each unit should make a fair contribution to the federation to enable the common purpose of the Federal Government to be carried out. It is really the application of this principle which presents difficulties. In this connection attention may be drawn to paragraph 56 of the Introduction to the White Paper, and Appendix VI of the proposals. The more important heads and sources of revenue described therein are (1) Import duties—(except on salt); (2) Contributions from Railways, receipts from other Federal commercial undertakings; (3) Coinage profits and shares in profits of Reserve Bank; (4) Export duties—in the case of export duty of jute, at least one-half of the total proceeds must be assigned to the producing units); (5) Salt; (6) Tobacco excise; (7) Cotton excise duties; other excise duties (except those on alcoholic liquors, drugs and narcotics); (8) Terminal Tax on goods and passengers; (9) Certain stamp duties. It will be noticed that the power of Legislature in regard to all these heads of expenditure is exclusively Federal. In regard to other Excise duties, it will be observed that the revenue proceeding from them is Federal, with power to assign a share of the whole unit, and that in respect of the last two items they are to be provided with power reserved to the Federation to impose a Federal surcharge. On the whole, the arrangement arrived at at the last Round Table Conference was fair, and the provision in the concluding portion of paragraph 56 that the Governor-General will be empowered to declare in his discretion that any specified source of taxation should be Federal, is particularly important.

27. Paragraph 57 deals with taxes on Income. Corporation Tax is to be wholly Federal, though, as stated above, some States are now raising an objection to this. It will be perceived that this tax is to be contributed by the federating States after ten years. All legislation regarding other

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taxes on Income will be Federal. Receipts from such taxes on officers in Federal service, and taxes attributed to the Chief Commissioners' Provinces, or other federal areas, will be Federal reserve. The Federal Legislature will be empowered to impose surcharge on taxes on Income, the proceeds of which will be retained by the Federation, and the Federal States are to contribute to the Federal reserve proportionate amounts. The remaining net proceeds other than those produced from the Federal surcharges referred to above are to be divided between the Federation and the Governors' Provinces, 10 per cent. being assigned to the former, and the remainder to the latter. It is in regard to this unknown quantity that further technical investigation was said to be pursued. At this stage it is not possible to say what the result of such investigation has been—as mentioned above, it is objected to by some States—but attention may be drawn to what is stated in paragraph 58. We are told that in the earlier years of the Federation, before there has been time to develop new sources of taxation (in particular Federal Excise), the system mentioned in paragraph 57 is likely to leave the Federation without adequate resources, and for this reason it is intended to adopt a transitory provision enabling the Federation to retain for itself a bloc amount out of the proceeds of Income Tax distributed to the Provinces, which would be surcharged for three years, and which will diminish annually over the next seven years, so as to be extinguished at the end of ten years. If the Governor-General should think that the programme of reduction is likely to endanger the financial stability and credit of the Federation, he is to have the power to suspend such a programme. In short, the effect of this provision is that after ten years Income Tax will go to the Provinces, and it is then that the Federal States will be required to contribute Corporation Tax. It is obvious that the Provinces must have an increasing source of revenue for their development, and they are accordingly keen on securing Income Tax. It is equally obvious that immediate transfer of Income Tax to the Provinces will leave the Federation in a very crippled financial condition. It is for this reason that the suggestion made in the White Paper appears on the whole to be fair to the Federation, the Provinces and the States.

28. It is contemplated (vide paragraph 80 of the Introduction) to review it at as late a date as possible before the new constitution actually comes into operation in the light of the then financial and economic conditions both of the Federation and of the Provinces. It is proposed that the determination in such matters should be by 'Orders in Council', a draft of which will be laid before both Houses of Parliament for approval. Similarly, paragraph 61 of the Introduction to the White Paper contemplates the establishment of a tribunal or other machinery for the purpose of determining the value of immunities (especially those subject to fluctuation) which have to be assessed from time to time for the purpose of setting off against contribution (or against any payment from the Federation). I have refrained from expressing any opinion on the question of contribution or immunities, to which the Indian States attach so much importance. I do not desire to be in the slightest degree unfair to them, but it is to be expected that they will be equally alive to their obligations. I recognise the importance of the question, and I feel that it will be necessary to review the whole position at or about the time of, or even after, the establishment of the Federation. I would, therefore, suggest that following the model of Section 118 of the South Africa Act 1909, with some necessary amendments, the Statute should empower the Governor-General to appoint a commission consisting of one representative from each Province, and a certain number of representatives representing the Federation

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and the Indian States, and presided over by such person as the Governor-General may appoint, to institute an enquiry into financial relations which exist between the Federation and these units, and that pending the decision of such an enquiry, transitory provisions may be made on the lines indicated in the White Paper.

GENERAL FINANCIAL POSITION AND FINANCIAL SAFEGUARDS.

29. During the progress of the work of the Joint Parliamentary Committee a memorandum, drawn up by Sir Malcolm Hailey, on the financial implications of (1) Provincial Autonomy and (2) Federation, was presented and formed the subject of discussion. Sir Malcolm Hailey's Memorandum presents a very gloomy picture of the situation. As Sir Samuel Hoare pointed out in the course of his speech, the memorandum contains no views, but only gives a summary of the position as it now is and may be envisaged to be in the years to come.

30. The position, according to Sir Malcolm, resolves itself into three objectives which, in order of priority, are as follows:—

“(1) To provide the Centre with (a) a secure means of meeting the normal demand on account of the services for which it is responsible, together with an adequate reserve power to raise from its own resources the additional sums which those services may in an emergency require; and (b) some additional reserve to meet necessary developments in its own sphere of work (of which civil aviation may be taken as an illustration).

“(2) To secure the Provinces as a minimum the amounts now available to them, together with the sums required to meet the ascertained deficits of certain Provinces and to establish the newly-created Provinces.

“(3) To secure that, when (1) and (2) are satisfied, the main benefits of any improvement in Central finances will enure to the benefit of the Provinces.”

31. The Appendix to the Memorandum gives us some idea of the financial position which is involved in the White Paper proposals. The cost of the new or enlarged constitutional machinery is about 1 crore; the alienation of half jute export duty will come up to 1½ crores; the subvention to deficit and new Provinces will cost about 2½ crores; the alienation of Income Tax comes up to: (a) 50 per cent. . . . about 5½; and (b) 75 per cent. . . . about 8 crores; and the settlement of States' excess contributions will cost another 1 crore. The loss in opium receipts, the decline in customs, the loss of currency receipts (about 1 crore), the restoration of civil and military pay cuts (about 1½ crores), and the separation of Burma (about 3 crores) must also be taken into account. Sir Michael O'Dwyer's view was that the cost of the new scheme would be 20 crores, or, at any rate, between 15-20 crores. If all this is borne in mind along with the existing conditions of economic depression, it would seem to follow that no constitutional changes either in the Provinces or at the Centre could be inaugurated in the near future, and that we must wait both for Provincial Autonomy and the Federation until the advent of better times.

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32. Sir Samuel Hoare, however, in the course of the speech on the Memorandum put forward certain views which would lead one to the inference that, though the position is one of grave anxiety, it does not necessarily warrant the postponement of all action or the abandonment of all hope for an early advance. Dealing with the case of the Provinces, he said that according to Sir Malcolm Hailey the expenditure for the setting up of Provincial Autonomy might be something between 6½ and 8½ crores. "If you analyse these figures", said Sir Samuel Hoare, "you will find first of all that about a crore is needed for the overhead expenses of setting up a new Provincial machinery; that is to say, the cost of the Provincial Legislature and the cost of the electorate (vide para. 19 of Sir Malcolm Hailey's Memorandum).

"Next, there is another figure of about ½ crore that is involved by the Provincial Governments taking over certain expenditure that is now borne by the Central Government. Then there is the further figure of from 2-3 crores, assuming Burma is separated from India, and, lastly, there is the figure of from 3-4 crores that would be involved if the provincial deficits were to be removed and the Provinces to be set up upon a self-supporting basis."

Having referred to this very formidable state of affairs, Sir Samuel Hoare proceeded to discuss some countervailing factors that ought to be taken into account. First he referred to the fact that India's credit was steadily improving and, secondly, to the fact that, judged by past experience, India responded more quickly than almost any country in the world to an upward movement in the economic field, and(thirdly, he stressed the fact that there were still opportunities for economy to be carried out in certain fields of administration in India, and, lastly, he referred to the possibility of a contribution of some kind towards the defence expenditure of India as a result of the proceedings of the Capitation Tribunal. He then pointed out that the greater part of this deficit from 6-10 crores was due, not to the setting up of the Federal Government, but to setting up the autonomous Provinces upon a self-supporting basis. He next maintained that if the figures were properly analysed, it would appear that, apart from the comparatively small sum, namely, about three-quarters of a crore, for setting up the Federal institutions at the Centre, the rest of this amount is not fresh expenditure at all, and it is due in the main to two changes in the allocation of the revenues of India, namely, first of all, the change, supposing Burma is separated from India, of leaving Burma two or three crores that it now pays to the Indian Central Government. Secondly, it is due to a figure of about the same amount (about two or three crores), that it is necessary whether changes take place in the constitutional field or whether they do not, to put a stop to the permanent deficits in Bengal and Assam. The conclusion he drew from the entire situation was that, if the state of the world did not get better, if we still go on with commodity prices either at their present rate or actually falling, not only does it make any change almost impossible, but it make the existing system of Indian finances equally impossible, and we shall then have to readjust our whole system of finance in India to meet the state of affairs with which we shall be faced. "Nevertheless, I would venture", said Sir Samuel Hoare, "to urge that in the meanwhile the wise course is, first of all, to go on making our plans, to make them as reasonable and as secure as we can, but, frankly, to admit the fact that if the state of the world does not improve we may have materially to readjust them; and, secondly, I think it is most important to emphasize the fact that, so far as we can see,

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for quite a number of years to come, there is no orange to be divided up in India between the Centre and the Provinces. The fact does emerge, anyhow in my mind as definitely as any other, that for some years to come the Central Government, whether it be the present Government or whether it be a Federal Government, will need substantially its present resources if the credit of India is to be maintained, and if its financial obligations are to be met." In winding up his speech Sir Samuel Hoare again suggested that we should keep these facts constantly in mind, but they should not debar us from proceeding with our constitutional plans, and that also we should keep in mind the fact that there is no Government, either Indian or British, that accurately can say, in the uncertainties of the world, what the state of its finances is going to be in twelve months' time.

33. I have tried to give the views of Sir Samuel Hoare as accurately as possible. From the Indian point of view, those of us who are interested in an early inauguration of the new constitution cannot feel at all happy about the situation. Indeed, I might say that the entire position becomes involved in great uncertainty. It will be noticed that Sir Samuel Hoare has referred to the possibility of further economies in the fields of Civil administration. If beneficial services are to be curtailed and taxes are to be maintained at their present level, then it is quite clear that the new constitution will start with a very serious prejudice against it. One possible avenue of economy in the future would be to transfer the recruitment of the Imperial Services to the Indian Government with power to fix their scale of pay and allowances. Another avenue of economy is the curtailment of military expenditure. On this point there is a wide divergence of opinion between British and Indian public men. The former hold that the expenditure having been reduced from 56 crores to 46 crores, there is no further margin for any economy, and that indeed India has effected more economies in its military expenditure than any other country during the corresponding period. The latter hold that there is still further room for economy in that department. Whether the Government intend to institute further inquiries into this matter or not is a question to which no answer has yet been given.

34. Again, the setting up of the new Provinces due mainly to political considerations, has entailed a further strain on the purse. I would here draw attention to the remarks made by Lord Reading in the course of his speech, which seem to indicate that in the opinion of his Lordship, the setting up of the Second Chambers is a question which, on economic grounds, may still be further considered—an opinion which will be endorsed by many of us.

35. Sir Purshotamdas Thakurdas also reviewed the financial position in the course of his speech and urged that unless the Provinces were "more or less self-dependant" Provincial autonomy would be worth nothing. Under these circumstances, the question which arises is whether the proposed constitution will at all become operative, or whether we shall simply have to wait on events. Sir Samuel Hoare is not without hope that things may improve soon, but cannot be sure. I can conceive nothing more unfortunate than that the fruition of the labours of the last four years should be any further delayed. Our fears are still further aggravated when we remember that, apart from the general financial position, certain financial prerequisites must be fulfilled before the Federation and Central responsibility can be inaugurated (vide para. 32, of the Introduction of the White Paper).

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FINANCIAL PREREQUISITES.

36. The first condition laid down is that a Reserve Bank free from political influence should be set up by Indian Legislation and be already successfully operating. I understand that a committee of experts, including some Indians, has been sitting, and is expected to submit a report within the next few days. I cannot express any opinion on their recommendations which have not yet been published; I can only express the hope that, as a result of their work, the necessary legislation will be introduced in the Indian Legislative Assembly during its winter session. Assuming, however, that such legislation is passed and meets with no opposition in Indian financial circles, still the question whether sufficient reserves have been already accumulated or can be expected to be accumulated within the next one year or so, has to be answered. What exactly the position is in this respect we do not know. Next, the question which arises is as to how and by whom is the success of the operations of the Bank to be judged. Does the condition imply that we must wait for a series of years before any judgment can be passed on its operations? I would point out that though Government have no doubt had the advantages of the advice of their experts, we have had no such advantage, and it is still not clear to me why it should be looked upon as impossible or dangerous to set up responsibility at the Centre without first establishing a Reserve Bank. At the first Round Table Conference, it was intended to arm the Governor-General with certain special powers in respect of currency and exchange legislation (vide paragraphs 18-20 of the Federal Structure Committee's Report, p. 21), and there does not seem to me to be any reason for departing from that decision pending the establishment of the Reserve Bank. I would also draw attention to paragraph 10 of the Joint Memorandum which Mr. Jayakar and I submitted in December last (vide pages 196-197 of the Indian edition of the Report of the Indian Round Table Conference). The other conditions which are imposed are: existing short term debt both in London and in India, should be substantially reduced, and that India's normal export surplus should be restored. It is difficult to say when these conditions would be fulfilled. It follows, therefore, that the establishment of the Federation depends upon whether these conditions are fulfilled at an early date, or whether they take a long time to fulfil. It is obvious that the position created by the imposition of these conditions is not one which is calculated to afford any satisfaction to those of us who think that any further delay in the inauguration of the new constitution at the Centre, is likely to prove very injurious to the best interests of the country. As I have urged elsewhere, it seems to me to be vitally necessary that a more definite attitude in regard to this matter should be adopted.

FINANCIAL ADVISER.

37. Another question of importance which arises in connection with finance at the Centre is whether the Governor-General and the Ministers should have the benefit of the services of a financial adviser. Paragraph 17 of the White Paper provides that the Governor-General will be empowered in his discretion, but after consultation with his Ministers, to appoint a

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financial adviser in the discharge of his special responsibility, and also to advise the Ministry on matters regarding which they may seek his advice. The special responsibility for financial matters is, according to paragraph 18, in respect of the safeguarding of the financial stability and credit of the Federation. It is somewhat difficult to define the scope of the expression "financial stability and credit," but one may safely assume that it is sufficiently wide to cover the question of currency and exchange. The Financial Adviser, it will be noticed, will be responsible to the Governor-General, who will fix his salary, and that salary will not be subject to the vote of the Legislature. No term is provided for the continuance of this office, so that it is open to the Governor-General to continue or discontinue this office in the exercise of his discretion. As a layman, it is difficult for me to express any positive opinion as to whether there is or is not a case for the appointment of a financial adviser. I shall here quote from what Mr. Jayakar and I had to say in our joint note which we submitted to the Secretary of State at the conclusion of the Third Round Table Conference: "But we are of opinion that such advice should in the nature of the circumstances be strictly limited to matters which are within the province of the special responsibilities of the Viceroy, and should not be extended so as to amount to a general power of control over the Finance Member. In other words we would strongly urge that every precaution should be taken that the general responsibility of the Finance Member and the Legislature for the administration of the finances of the country should be in no way interfered with or weakened. We are further of opinion that if at all a Financial Adviser has to be appointed for the limited purposes indicated above, the appointment should be made by the Governor-General in consultation with his Ministers, and the Adviser should in no way be connected with any financial or political interests in England or in India. We would further add that the appointment should be provisional, to endure only so long as a clear necessity for the retention of that office is felt and that the advice of the Adviser should be fully available both to the Governor-General and the Federal Government."

38. I notice with satisfaction that in the Introduction to the White Paper it is stated that the Financial Adviser shall have no executive powers (see para. 31, p. 17). It is, however, not enough that, theoretically, the Financial Adviser should be an officer without executive power, but what is necessary is that every care should be taken that the Financial Adviser does not develop into a rival Finance Minister. Indian opinion is particularly sensitive on this point, as the experiment of a Financial Adviser was tried in Egypt, and there had the result, as pointed out by Mr. Young in his book "Modern Egypt," that the Financial Adviser became in fact and in substance the Finance Minister. Again, Indian opinion would like to be reassured that the Financial Adviser to be appointed would be a perfectly independent expert, and that he would not reflect any financial or political interests in England or in India.

ON INDIAN CONSTITUTIONAL REFORM

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AUDITOR-GENERAL.

39. While I am dealing with financial questions, I may refer to the position of the Auditor-General in India and the Council of India.

The Auditor-General is appointed directly by the Secretary of State in Council, and there are further provisions with regard to the audit of Indian accounts in the United Kingdom to be found in the Government of India Act. (Vide Sections 26, 27 of the Government of India Act.)

The Auditor-General is not in any sense a servant of the Legislature but he is an important part of the machinery and it is his reports on the appropriation accounts that the Public Accounts Committee considers and he or his representative attends all meetings of the Committees and guides their deliberations. It is suggested that in future the Auditor-General should be appointed by the Governor-General for the Federal audit and by the Governor for the Provincial audit. He should not be removable from office except on an address presented by both Houses of the Legislature.

I would further submit that the accounts of the entire expenditure from Indian revenues whether incurred in India or in England, should be audited by the Auditor-General in India, and laid before the Indian legislature.

FISCAL AUTONOMY.

40. Another question to which Indian opinion at present attaches the greatest importance is that of Fiscal Autonomy. In this connection I would quote the language of the Report of the Joint Select Committee on the Government of India Bill, dated 17th November, 1919, paragraph 33. "Nothing is more likely," says the Committee, "to endanger the good relations between India and Great Britain than a belief that India's fiscal policy is dictated from Whitehall, in the interests of the trade and commerce of Great Britain. That such a belief exists at the moment there can be no doubt. That there ought to be no room for it in the future is equally clear. India's position in the Imperial Conference opened the door to negotiation between India and the rest of the Empire, but negotiation without power to legislate is likely to remain ineffective. A satisfactory solution of the question can only be guaranteed by a grant of liberty to the Government of India to devise those tariff arrangements which seem best fitted to India's needs as an integral portion of the British Empire. It cannot be guaranteed by statute, without limiting the ultimate power of Parliament to control the administration of India and without limiting the power of veto which rests in the Crown; and neither of these limitations finds a place in any of the Statutes in the British Empire. It can only, therefore, be assured by an acknowledgment of a convention. Whatever be the right fiscal policy for India for the needs of her consumers as well as for her manufacturers, it is quite clear that she should have the same liberty to consider her interests as Great Britain, Australia, New Zealand, Canada, and South Africa. In the opinion of the Committee, therefore, the Secretary of State should, as far as possible, avoid interference on this subject when the Government of India and its Legislature are in agreement, and they think that his

RECORDS OF THE JOINT COMMITTEE

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intervention, when it does take place, should be limited to safeguarding the international obligations of the Empire or any fiscal arrangements within the Empire, to which His Majesty's Government is a party."

41. In point of fact, the convention recommended by the Joint Select Committee in the paragraph quoted above, has been in operation since the inauguration of the Montagu-Chelmsford Reforms, and its latest vindication took place at Ottawa, when certain representatives of the Indian Legislature entered into certain agreements subsequently ratified by the Indian Legislature. I express no opinion on the Ottawa agreements; I only refer to them as illustrating the operation of this convention. The Simon Commission dealing with this question in paragraph 402 (Volume 1) quote from a speech made by Mr. Montagu on the 3rd of March, 1921, in reply to a deputation from Lancashire on the Indian import duties on cotton, when he endorsed the principle laid down by the Joint Committee. Mr. Montagu said:—

"After that Report by an authoritative Committee of both Houses, and Lord Curzon's promise in the House of Lords, it was absolutely impossible for me to interfere with the right which I believe was wisely given and which I am determined to maintain—to give to the Government of India the right to consider the interests of India first, just as we, without any complaint from any other parts of the Empire, and the other parts of the Empire without any complaint from us, have always chosen the tariff arrangement which they think best fitted for their needs, thinking of their own citizens first". In paragraph 532 of the Second Volume, the Simon Commission say that they "do not suggest any modification of the convention itself. But the assumption underlying such delegation is that the Government of India's approval of the course proposed is arrived at independently of the views of the Assembly; and that it takes account of all Indian interests and not merely those for which a majority of the Assembly speak." The Commission regard it as inevitable that the Government of India will in future become more and more responsive to the views of the Legislature.

Having said this, the Commission then go on to say that "delegation of power to the Executive in India is necessary in the interests of administration, and would be even if no reforms had been introduced. But delegation by 'convention' with the purpose of transferring responsibility in some measure to the Legislature raises different issue. The criterion should be not whether an authority subordinate to the Secretary of State is in agreement with the Legislature, but whether the interests at stake are of such a character that His Majesty's Government could waive or suspend its constitutional right to make the final decision. On this view the decision whether the will of the Indian Legislature is to prevail is one for the Secretary of State, or, if need be, for His Majesty's Government, to take, after giving the fullest weight to the views of the Government of India, and before the proposal is put to the Legislature. A convention which sets the Government of India and the Legislature in opposition to the Secretary of State is constitutionally unsound and can only weaken the Government of India in the end." "We think it desirable in any case that any extension of the principle of the 'fiscal convention' should only be made with the approval by Resolution of both Houses of Parliament."

42. These views of the Simon Commission have caused much anxiety in India, as they tend to weaken the convention. Having regard to the

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proposed constitution for the Centre, the views of the Simon Commission seem to be wholly out of keeping with the character, powers, and functions of the proposed Federal Legislature. There should be no room left for doubt that the Federal Legislature will be possessed in the fullest measure of fiscal autonomy, and that the Secretary of State should have no control over the Legislature in a matter of this character. Any interference with, or any attempt at whittling down the fiscal autonomy of India is bound to produce serious dissatisfaction, and to discount to a much larger degree than is probably realised the value of the proposed constitution. The best safeguard that Lancashire, or for the matter of that England, can have for trade and commerce in India, is the goodwill of the people of India. At this stage, I should like to draw attention to the views expressed by Sir Charles Innes in his evidence before the Joint Select Committee. "I think," said Sir Charles, "it* was mainly due to the fact that Indians themselves realised that it was for them to decide whether or not they would ratify that agreement. In the old days, before we introduced this principle of discriminating protection, every Indian thought that Britain kept India a free-trade country in the interests of her own trade. When the fiscal Convention was introduced, and when we passed a resolution in favour of discriminating protection, and the first Steel Bill was passed, we at once transferred all that from the political aspect to the economical sphere, and in recent years in the Indian Legislative Assembly more and more we have been creating a strong Free Trade Party. It was getting more and more difficult for me to pass Protection Bills. I think that is all to the good; it shows the value of responsibility, and I am perfectly sure that if we had not taken that action you would never have got the Indians to agree to the British influence on steel, or to the Ottawa agreement, and it seems to me a very good example of the stimulating effect of responsibility."

43. In this connection I would also like to quote the following extract from the speech which Mr. Baldwin delivered last month to a meeting of the Lancashire, Cheshire and Westmoreland Provincial area of the National Union of Conservative and Unionist Associations. "There has been," said Mr. Baldwin, "a great talk about safeguards. All the safeguards are being examined by the Joint Select Committee, but whatever safeguards we have, the real safeguard is the maintenance of goodwill. If there is not a basis of goodwill, your trade will eventually wither away, and I regret to say that some of the measures which have been suggested, and which Lancashire people have been asked to support, have, in my judgment, been calculated to destroy rather than to further any possibility of that good will between Lancashire and India which we can get, which we ought to get, and which we cannot do without. . . . Whatever a Government may do you cannot prevent a population nowadays, and especially an Oriental as opposed to an Occidental population, if it considers it has been unjustly treated, from expressing its feelings by refusing to buy goods. The refusal to buy goods, commonly called a boycott, had been brought to a fine art in the East. The Japanese have experienced in China what a boycott means. We have some experience of what it means in India. The causes of the boycott were more than one. The moment the economic condition gets better and the buying power returns, that moment there will be more trade. Besides that, there came

* See questions by Mr. Davidson (Nos. 5004—5 07). This has reference to the ratification of the Ottawa agreement by the Indian Legislature.

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in the political elements—and for a time they were a strong force. But that boycott has died away, and it has died away under the double influence of firm Government, but, as I believe, still more by a conviction in the minds of the Indians themselves that we were going to deal honourably with them and keep our word about getting on with the reforms. The moral aspect of that question helped to break the boycott as much as, if not more than, any question of force." In short, the convention should, under the new Constitution, be expanded, and the Secretary of State should have no power to interfere with the decisions of the Legislature in this respect.

ELECTION.

44. As regards the method of election, the question was examined at great length by the Simon Commission, and their recommendations on the subject were reviewed by the Government of India in their despatch of the 20th September, 1930. I would refer in this connection to paragraph 37 of Vol. II of the Simon Commission Report, which says:—"We venture, however, to think that *a priori* arguments against indirect election should not be considered, especially in the light of recent experiences, as conclusive. It is indeed of great importance that the individual voter in India should have the training in political responsibility which may come from going to the polling booth and deciding what candidate shall have his support. For this reason we should not be prepared to see the method of indirect election generally applied in electing the Provincial Councils. But after Provincial Councils have been constituted by the direct choice of citizens of the Provinces, it appears to us to be quite unwarranted to assume that training in citizenship will be impeded by the adopting of a device for constituting the Central Legislature, which, having regard to the size of India, has such manifest advantages and avoids such obvious difficulties. It may be said that the method of composing the Federal Assembly which we are suggesting will confuse the mind of the individual elector, since he will at one and the same time be choosing both a provincial representative and a member of an electoral college. The objection seems to us of theoretical interest rather than of practical substance." Dealing with this matter, and after pointing out the difficulties of polling even a limited electorate over an area so widespread and of such varied physical characteristics, the Government of India stated their views as following in para. 135:—"First, "the central elector has exercised the franchise with increasing readiness and at least as freely as the elector to Provincial Councils. We need cite only such matters as the Sarda Act, the Income Tax, the Salt Tax, the Railway Administration, and the Postal rates. Even more abstruse matters such as the exchange ratio and tariffs, interest large sections of the electorate. Second, the electoral methods natural to the social structure of India may be held to some extent to replace personal contact between candidate and voter, a contact which adult suffrage and party organisations make increasingly difficult in western countries. The Indian electorate is held together by agrarian, commercial, professional and caste relations. It is through these relations that a candidate approaches the elector, and in this way political opinion is the result partly of individual judgment, but to a greater extent than elsewhere of group

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movements. These relations and groups provide in India a means of indirect contact between voter and member, reducing the obstacles which physical conditions entail. Moreover, we are impressed by the further consideration that ten years ago Parliament of its own motion set up for the first time a directly elected Assembly, representing the whole of India. That Assembly, in part perhaps because it is directly elected, has appealed to the sentiments of India, and sown the seeds, as yet only quickening, of real representation. Accordingly, unless new considerations of greater importance have to be taken into account, we feel reluctant as yet to condemn an experiment undertaken so recently in a country awakening to political consciousness. On these general grounds we would hesitate to hold that the orthodox method of representation by direct election is unsuited to the conditions of India. It may be admitted that during these ten years direct election has not achieved all the results which Parliament perhaps hoped, nor has it overcome all the obstacles which the vast size of the country and the complication of separate electorates impose. But in many ways its success has been growing, and it has contributed to the strength of the Assembly as a focus of national allegiance. On the other hand, it would not provide that expression of provincial views as such which may be judged desirable in the new conditions contemplated by the Commission. In financial matters, in particular, this defect may be serious. But, as against a plain alternative of indirect election we believe that the balance of the argument is in favour of direct election."

45. The position was further examined by Lord Lothian and his Committee when they went out last year to India. In chapter 3 of their Report they deal with the question of the indirect system and other possible modifications of adult franchise. They discuss five possible courses, namely: (a) adult franchise by indirect voting; (b) adult suffrage within certain age limits; (c) adult franchise for large towns; (d) household suffrage; (e) indirect election through local bodies. In paragraph 42 of their Report, after citing the cases of Egypt, Turkey, Syria and Iraq, where universal adult suffrage has been adopted, by grouping the whole population into groups of about 20, 50 and 100, or other appropriate numbers, each group electing from among itself its own member, one or more secondary electors should form the constituencies for returning members to the legislature in the ordinary way. They discuss in a subsequent paragraph the reasons against indirect election. There are four main reasons against indirect election. The first is because "it involves the abolition of the direct system of voting, to which India has become accustomed during the last 12 years, through four elections held for the Provincial Councils, the Legislative Assembly, and the Council of State, and also through numerous elections for district and local boards, and municipalities. Some seven million electors who have hitherto been entitled to exercise the direct vote at elections, to legislative bodies would thus lose it; and obtain only an indirect vote in its place. The overwhelming mass of evidence we have received has been to the effect that the strongest opposition would be aroused by any proposal to abolish the direct vote." The second reason that they assign is that "the indirect system would lead to one of two results, neither of them desirable—namely, either the primary election would be a non-political election, in which case the candidates and parties would endeavour to secure the return of secondary electors pledged to themselves." The third reason is that the primary voters under the indirect system, would have no means of judging whether the secondary elector carried out their wishes or not. The fourth reason urged by them is that the indirect system undoubtedly lends itself to manipulation and jerry-

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mandering. Then they go on to say in paragraph 47: "moreover, certain Provincial Governments and Committees which were at one time inclined to support the indirect system have now abandoned it. For all these reasons we have unanimously decided to reject the universal indirect system." I think that the view taken by the Lothian Committee correctly reflects the overwhelming mass of Indian opinion. No doubt one of the main reasons urged against direct election for the Legislature is furnished by the size of the country, and the difficulties of transport in rural areas. It must not be supposed that I am opposed to adult franchise; on the contrary, I think that the one way to strengthen the position of the masses is to give them adult franchise. It may be that they will not be able to make a discreet use of their vote in the beginning, but I think that the ignorance and indifference of the masses may easily be exaggerated. They may not be able to understand or appreciate questions of high finance; exchange, currency, etc., but they are quite capable of understanding their local needs, and I have no doubt that experience and mistakes will be their best educators. At the same time, I realise the administrative difficulties pointed out by Lord Lothian in his Report. I would therefore urge that from the practical point of view the most desirable thing would be to place power in the hands of the local Legislature to extend the franchise in the light of experience gained, so that within the next 20-25 years the country would gradually work up to a system of adult franchise.

As regards the fourth course, it is not necessary to repeat the arguments contained in the Lothian Report, as I am more or less in agreement with their suggestions. I would not hesitate to allow adult franchise, in big towns, but I have a strong feeling that while on the one hand this might strengthen the position of the urban section of the people, it would on the other hand tend to weaken the position of the rural section of the people. In any case I should deprecate any difference being made between the rural and the urban areas in regard to such matters, and if adult franchise has got to come, as, in my opinion, it should, the enfranchisement of the towns and the villages should synchronise.

46. I am quite alive to the necessity of giving a training to the masses in the exercise of the right of voting, but that can easily be done under the future constitution, by the setting up of local bodies of an effective character, with definite powers in regard to local matters. If local bodies such as the village Panchayats, have hitherto been unable to give a good account of themselves, it is because their finances and their powers have been limited, and no attempt has been made to encourage them or to help them in the management of their local affairs.

Generally speaking, therefore, I support the recommendations of the Lothian Committee Report, so far as the number of men to be enfranchised is concerned, though personally I should have been glad if the number had been larger.

47. The manner in which there is contact established in India between the candidate at the election or the member and his constituency has been very well described by Sir John Kerr. While no doubt road transport is still very undeveloped, it should not be overlooked that the advent of the motor-bus in rural areas and the growth of the vernacular press which has been steadily penetrating these areas, are new factors which are bound, as time goes on, to play a considerable part in developing political consciousness in the villages, and curtailing the distance between rural electors and their members.

Before concluding my remarks on this subject I may point out that the effect of the proposals of the Lothian Committee is to create an electorate of between 8-9 millions. (See paragraph 414 of the Lothian Committee.)

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48. The Lothian Committee has recommended that the number of seats in the Federal Assembly should be increased so as to allot British India 300 seats, instead of 200, thus reducing the average area of the constituency by one-third.

Sir Akbar Hydari's view has again urged that the size is too large and that it should be kept at 200. The matter has not been overlooked by the Lothian Committee. The reason which they assign for the increase in the numbers is that if responsible Government is to develop properly, the electoral system must make it possible for candidates and members to get and keep in touch with their constituents, and from this point of view an increase in the British seats is necessary.

49. In a preceding paragraph of their Report, the Lothian Committee refer to the area of the United States of America which is 3,026,789 square miles, of which one-third consists of thinly populated mountain territory. The population is 122,775,046. The number of members of the House of Representatives is 435, or one for every 6,958 square miles and 282,241 of the population. The number of the Senate is 96. Two members are elected by each State, voting as a single constituency, of which the largest is New York, with an area of 49,204 square miles and a population of 12,588,066, and the smallest is Rhode Island, with an area of 1,248 square miles and a population of 687,497. Probably also if the size of the constituencies in Canada and Australia is examined as suggested by Lord Lothian, it will be found that the size of constituencies in those countries is also of enormous proportions. Of course I assume that when we are able to work up to a system of adult franchise the whole system may have to be revised, and readjusted, but that is a matter for further development.

50. The size of the constituencies, the number of persons enfranchised, and the class of men that may be returned to the two Houses of the Legislature, have no doubt an important bearing upon the efficiency of the Legislature. It has been suggested that the size of the two Houses and of the Upper House in particular should be very much smaller than what is proposed. Another suggestion has also been put forward to the effect that in order to make the Upper House fully federal it should consist of the delegates nominated by Provincial Governments. In this connection while I would invite attention to the views of Sir Akbar Hydari and Sir Mirza Ismail, I would also point out that the views of the representatives of the other Indian States are wholly different. Indeed the latter have pressed for larger Houses, so as to provide for a representation of the Chamber States, and the smaller States, by grouping. The smaller States want still larger Houses. I would submit that British India will not be satisfied with Houses of the size and type suggested by Sir Akbar Hydari, or Sir Mirza Ismail. I also venture to doubt very seriously whether a smaller Upper House can do justice to many States, particularly the smaller States. Indeed, if this view is pressed or accepted, I apprehend that it may imperil the entire scheme of the Federation. The constitution is already a very conservative one, and I fear that one consequence of making the Upper House representative of the provincial governments and the governments of the States may be that it will become too provincial in its outlook and might easily become involved in provincial rivalries and conflicts. There are other objections which may be urged against this point of view. The general practice, as I understand it, is that in a Federal constitution the Lower House should seek to represent the nation and the Upper House the States, and I think there is no valid reason why, in the case of India, we should depart from this principle.

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BASIS OF ENFRANCHISEMENT.

51. The two qualifications which have been recommended by the Lothian Committee in paragraph 83 are property and education. In paragraph 82, after referring to the case of Bihar and Orissa, and Central Provinces, where the existing electorate is only a little over one per cent. of the total population, the Committee say that "what we have done is to fix the franchise as low as we consider possible, having regard to all the circumstances of the case." While the principle adopted by the Committee seems to me to be sound, the White Paper is open to the criticism that it does not provide definitely for its expansion. In this connection I would point out that the rejection of wages as one of the bases of general franchise has caused much dissatisfaction in India. The Committee point out that in villages where the employment of agricultural labour is not constant, and where remuneration is sometimes paid in cash and sometimes in kind, and also by permission to cultivate land, it would be an impossible task to ascertain whether the wages earned by individuals in a year had reached the prescribed standard or not. The difficulties would be less serious in the case of large industrial concerns which keep regular books, and attendance rolls, but would still be formidable in the case of smaller firms relying to a great extent on casual labour. I realise that within the time at their disposal the Committee could not very well prepare a scheme to meet the needs of wage-earners. But it is a class which should not be ignored and which is going to become more and more important in the near future. I would suggest, therefore, that local Governments should be instructed to prepare a scheme for the enfranchisement of these classes so that after the first election they may be enfranchised in time for the second election.

RAILWAY BOARD.

52. The question as to a Statutory Railway Board which is referred to very generally in paragraph 74 of the White Paper, was never discussed at any one of the three Round Table Conferences, but it was one of those items which came up for discussion at Delhi at the Consultative Committee presided over by His Excellency the Viceroy. The broad principle that there should be a Statutory Board, and that the Statute constituting the Railway Board should be passed by the Indian Legislature, was accepted at Delhi. During the sittings of the Joint Parliamentary Committee another expert Committee to which some members of the Indian Legislature have been invited, has been sitting and discussing the various issues connected with the composition, powers and functions of the Board. I have not had the advantage of reading the report of the expert Committee or discussing the various proposals which have been considered by that Committee, with the members of the Joint Parliamentary Committee or the Indian Delegation. Subject therefore to my right of revising my opinion or making any other suggestion which I may consider necessary to make after reading that report, I would like to express my views generally on some of the important issues that seem to me to arise in this connection.

53. While admitting the commercial and strategic importance of the Railways in India, I think it to be of the essence of responsible government that Railways should be transferred to the Federal Government and that the Federal Legislature should be empowered to pass such legislation as it might be advised to pass, setting up a statutory Railway Board with clearly defined powers and functions.

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54. The members of the Railway Board or Railway Authority, should be appointed by the Governor-General upon the advice of his responsible ministers. I have no doubt that whatever the number of members be, whether it is three, five or seven the Ministers will take every care to ensure that expert knowledge and technical experience are adequately represented. Similarly I am confident that they will secure the representation on the Board of the Muslims, and other minorities. The Minister in charge of Railways should be the ex-officio President of the Board. The Legislature should have the power to discuss and lay down general policy, although the execution of that policy and general administration should be left in the hands of the Board or Railways Authority. As regards the revenues, I would point out that for some years past a separate Railway Budget has been prepared in India. The statute may provide for the formation of a Railway Fund, into which shall be paid all revenues raised or received by the Government for the administration of the railways, such funds being appropriated by the Legislature to the purposes of the railways in the manner to be prescribed by the Act, constituting the Board and the Fund. (Vide Section 117, 127, 128, 129, 130 and 131 of the South Africa Act, 1909.)

55. Having regard to the fact that Defence is a reserved subject, I think it may be necessary to provide that all railways must comply with such requisites as the Governor-General may make as to the use of railways for the purpose of the Defence of the Country. (cf. Article 96 of the German Constitution.)

I received the Confidential Memorandum A. 23, containing proposals for the future administration of Indian Railways, after I had completed my own Memorandum. I should like to take more time in studying the Memorandum, and then if I should think it necessary to make any other submissions, I should do so. At present I can only say that I am of the opinion that legislation constituting a Statutory Railway Authority should be passed by the Indian Legislature.

FUNDAMENTAL RIGHTS.

56. Indian opinion of all sections has been very insistent that the constitution should provide for certain fundamental rights. The Nehru Committee Report laid down certain fundamental rights and the question as to their inclusion in the constitution was raised at some length at the third Round Table Conference. Paragraph 75 of the Introduction to the White Paper, states that His Majesty's Government see serious objections to giving a statutory expression to any large range of declarations of this character, but they are satisfied that certain provisions of this kind such for instance, as respect due to personal liberty, and rights of property and the eligibility of all for public office, regardless of differences of caste, religion, etc., can appropriately and should, find a place in the Constitution Act. His Majesty's Government think it probable that occasion may be found in connection with the inauguration of the new Constitution for a pronouncement by the Sovereign and in that event, they think it may well be found expedient humbly to submit for His Majesty's consideration that such a pronouncement might advantageously give expression to some of the propositions suggested to them in this connection which prove unsuitable for statutory enactment.

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Some of these fundamental rights are to be found in the Proclamation of Queen Victoria, and some others in the Government of India Act itself. The following passages may well be quoted from the Proclamation of Queen Victoria:—

“ We declare it to be our Royal will and pleasure that none be in any wise favoured, none elected, or disquieted, by reason of their religious faith or observances, but that all shall alike enjoy the equal and impartial protection of the law, and we do strictly charge and enjoin all those who may be in authority under us that they abstain from all interference with the religious belief or worship of any of our subjects on pain of our highest displeasure.

“ And it is our further will that, so far as may be, our subjects, of whatever race or creed, be freely and impartially admitted to office in our service, the duties of which they may be qualified by their education, ability, and integrity duly to discharge.

“ We know and respect the feelings of attachment with which the natives of India regard the lands inherited by them from their ancestors, and we desire to protect them in all rights connected therewith, subject to the equitable demands of the State, and we will see that generally in framing and administering the law due regard be paid to the ancient rights, usages, and customs of India.”

Section 96 of the Government of India Act itself provides that no native of British India, nor any subject of His Majesty resident therein, shall, by reason only of his religion, place of birth, descent, colour, or any of that, be disabled from holding any office under the Crown in India.

I am aware of the objections that are urged against fundamental rights being specially mentioned in the Constitution, on the ground that when they are not enforceable in a court of law, they are no more than mere moral maxims, and that they generally amount to a limitation of the powers of the Legislature. Many of the post-war constitutions have, however, included fundamental rights. It seems to me that in the peculiar circumstances of India, and particularly with a view to give a sense of security to the Minorities and the Depressed classes, it is necessary that too much emphasis should not be laid on the orthodox British legal point of view, regarding fundamental rights, but that some of them should find a place in the Statute itself, and others might, as stated in the White Paper, find expression in the Royal Proclamation. I refrain from going into further details as to the nature and character of the fundamental rights, which should be recognised. The question was discussed at length at the Third Round Table Conference. The list of fundamental rights in the Nehru Committee Report also indicates the nature of fundamental rights which Indian opinion generally favours.

TRANSITORY PROVISIONS.

57. Proposal No. 202 of the White Paper which deals with transitory provisions has given rise to many misapprehensions. Sir Samuel Hoare was, however, closely examined both by Mr. Ranganaswami Iyengar and myself on the 21st July as to the meaning and effect of proposal No. 202, and I would invite attention to his evidence on this point. Briefly put, the effect of his statement in the light of which he said proposal No. 202

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should be interpreted is that after the setting up of the new constitution in the provinces the constitution of the Centre will have to be readjusted until it is possible to inaugurate federal constitution for the Centre as contemplated by the White Paper. During this period there will have to be readjustments of legislative, financial, and administrative relations of the Centre with the Provinces. Nevertheless the Executive Council of the Viceroy and the Indian Legislative Assembly, including the official bloc, will continue on their present basis. He also added that the requirement of the previous assent of the Governor-General to the provincial legislation will during this period have to go, excepting where the Statute itself may have imposed such a condition. It seems to me that under this arrangement it will be very necessary to closely examine the concurrent powers of the Provincial and the Central Legislature so as to avoid conflicts between the two.

After this statement by Sir Samuel Hoare I was naturally anxious to find out from him as to when he envisaged the Federal Constitution to come into operation. He could not commit himself to any point of time owing to the uncertainty of certain essential factors, but he said, "we are doing, and will continue to do, all in our power to satisfy the conditions which the White Paper lays down as precedent to Federation." He thought, "if the financial conditions are such as to justify the institution of Provincial autonomy, then . . . they are very much the same kind of financial considerations that would not necessitate any very great delay in bringing into operation the Federal Centre." I do not wish in any degree or measure to throw any doubt on his desire to achieve an early fruition of his proposals both with regard to the Provinces and the Centre, but again, bearing in mind the uncertainties of the situation and the slowness with which ordinarily the official machinery works, I must express my concern as to the entire situation. I can only express the hope that the transitory provisions contemplated by proposal No. 202 may not be in operation for more than a year or so.

AMENDMENT OR CONSTITUENT POWERS.

58. The subject of constituent powers is dealt with on pages 64 and 65 of the report of the Third Round Table Conference. I submit that the constitution should provide for such powers being vested in the Indian Legislature. The class of subjects which may be included within the ambit of these powers, the conditions on the fulfilment of which these powers may be exercised, and the time when they may be exercised should all be laid down. His Majesty's Government express the view in paragraph 5 of the Report of the Third Round Table Conference (page 65) that the authority of Parliament to decide any issues which might present themselves involving changes of a substantial character in the Constitution should be left unimpaired, but that they undertake to see that any provisions designed to set up a machinery which might obviate the disadvantages and inconveniences to be contemplated from the lack of means to secure any alteration of the details of the Constitution should be framed. As illustrating this I may refer to the question of the expansion of franchise after a certain time and also to the revision of the communal award, subject to the conditions laid down therein. I might refer to Section 152 of the South

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Africa Act as a precedent for laying down the time limit within which certain provisions (such as those relating to Native Affairs) could not be amended until the expiry of a certain period and without a certain majority. Having regard to the scheme of the White Paper which provides for certain Reserved Subjects, the powers of amendment will probably be of a limited character unless as indicated in another part of this note, the constitution provides a special machinery for effecting the transfer of those subjects. I would, therefore, suggest that a list of those matters which may fairly admit of amendment by the Indian Legislature should be prepared and incorporated in the Act. As a guide to these details I may refer to schedule 5 of the present Government of India Act though, no doubt, there will be many more matters which will be admissible in the list of subjects in regard to which the Indian Legislature should possess the power of amendment.

PROVINCIAL CONSTITUTION.

59. The essential features of the constitution for the Provinces outlined in the White Paper are:

- (1) That there are to be Reserved Subjects, every subject being transferred to the control of and administration by the popular Ministers;
- (2) That collective responsibility of Ministers is to be aimed at;
- (3) That the Governor is vested with certain special responsibilities.

60. A great deal of evidence, mostly of the representatives of the various services, has been led before the Committee, and the entire position has been explained at length by the Secretary of State in the course of his evidence. On the question of the safeguards and the power of the Governor to make and promulgate Ordinances, I have nothing to add to the note which I submitted at an early stage of the proceedings of the Committee. I request that it may be read as a part of this Memorandum. As regards the special procedure provided by Clauses 92 and 93 for the passing of the Governor's Acts, I would point out that the legislature containing no official element, the Governor will have no machinery at his disposal by the use of which he can secure the progress of such a Bill, and it would not be fair to the Ministry to secure the co-operation and support of, say, the leader of the Opposition. Further, it seems to me that this procedure is calculated to blur the line of responsibility of the Minister, and the Governor may, in seeking to test public opinion, undermine the authority of the Minister, and if the Legislature refuses to accept his recommendation, his own authority will be undermined.

The important points which have emerged in the course of evidence may be tabulated as follows:

- (1) Whether law and order should be transferred in the Provinces;
- (2) Whether, if law and order are transferred in the Provinces, it is necessary or desirable to make any special provision for coping with what is called the terrorist movement;
- (3) Whether the Inspector-General of Police should be treated on a special footing in the matter of having a direct access to the Governor;
- (4) Whether any special staff is to be provided for the Governor enabling him to cope effectively with his special responsibilities;

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(5) Whether in the constitution of the Provincial Executive the principle of the Cabinet system, under which there is a Prime Minister and other Ministers are appointed upon the selection made by him, should be followed from the start; (b) whether the Cabinet might contain a non-elected Minister appointed upon the recommendation of the Prime Minister of the Cabinet;

(6) Whether there shall be Second Chambers in the Provinces.

I shall now briefly deal with these questions.

61. As regards 1, 2 and 3, I think it necessary to state the Indian position as I conceive and interpret it.

All the three Round Table Conferences have unanimously recommended the transfer of law and order, and both the Labour Government and the National Government have been parties to this recommendation. The Simon Commission also recommended the transfer of law and order, though it contemplated the inclusion in the Cabinet of a Minister drawn from official or other non-elected sources, who would not necessarily be in charge of law and order (vide paragraph 64 of Vol. 2, p. 48). Indian opinion treats this question as *resjudicata*, but quite apart from the recommendations of the Round Table Conference, His Majesty's Government, the Government of India, and the Simon Commission, it seems to me that there are very weighty reasons for the transfer of law and order.

62. Firstly, the reservation of law and order would mean in actual practice the concentration of all attack in the Councils on that single department, and prevent the growth of that sense of responsibility and harmonious co-operation between the Legislature and the Government, without which the success of the scheme must be seriously imperilled. Secondly, the policy adopted in a transferred department may give rise to a delicate situation in the sphere of law and order, and the Police may be asked to implement or execute such a policy. For instance, it is conceivable that a policy adopted in the domain of land revenue, excise, religious endowments or forests, might easily create difficult and awkward situations for the agency of law and order. To reserve law and order and to transfer other subjects is to create opportunities for friction and to court the failure of the entire Government.

63. I have no doubt that an Indian Government, even though it may be responsible and subject to political pressure, as other responsible governments are, can effectively maintain law and order. I have equally little doubt that the reservation of law and order will be looked upon by Indians as a serious reproach to Indian character and capacity and imperil the success of the entire scheme; it will not amount to even provincial autonomy, and I am confident that no section of Indian opinion can support or will be prepared to work such a scheme.

64. It has, however, been suggested in certain quarters that law and order should not be transferred in Bengal, in view of the existence of the terrorist movement there. I think it would be most unfortunate to discriminate against Bengal in this respect. So far as it is known, the Bengal Government does not favour the reservation of law and order. The terrorist movement has been in existence in Bengal for the last 25 years, and during all this period the administration of law and order has been in the hands of the official Government. It cannot be denied that the strongest possible measures have been taken from time to time in coping with this movement, and yet it has not been uprooted. It is brought under control for some time, but again it comes to the surface. The fact of the matter is that no Government can cope with a movement of this character unless it has

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the active support of the vast majority of the people. I have no doubt that the vast majority of the people of Bengal are instinctively opposed to a movement of this character. Mr. Page, in the course of his evidence, however, suggested that many people were unable to render active assistance to the Government for fear of social ostracism. This may be true of a certain number of people, but it seems to me that the idea of the fear of "social ostracism" may be exaggerated and carried too far. The only way of obtaining the active support of the vast majority of the population of Bengal is by transferring real responsibility to the people themselves. This is bound to have a desirable reaction on public opinion.

65. It has been also suggested that the special branch of the C.I.D. may be segregated from the rest and placed in the hands of the Governor. The reason which has been assigned for this suggestion is that informers will be reluctant to give assistance to the police if they know that their names are going to be disclosed to a popular Minister or the Cabinet. It seems to me that it should not be difficult to so arrange things that the strictest secrecy may be observed about information of this character, and as a matter of practice, the other members of the Cabinet need not be inquisitive to know the names of the informers. It is in the highest degree improbable that a Minister will fail to realise his responsibility in respect of such secret information, or that he will disclose it to others when duty and prudence will require that he should treat it as strictly confidential. The possibility, also, of Indians rising to the position of Inspectors-General cannot be excluded. It seems to me that the argument that informers will be unwilling to render assistance if they know that their names will be made known to Indian Ministers or Inspectors-General may also be carried too far. Whether on administrative grounds it will be convenient to segregate the special branch from the rest of the C.I.D., or whether the entire organisation of the C.I.D. can be separated from the rest of the Police, is a matter which, to put it at the lowest, admits of some doubt. But assuming that the Governor of a Province finds that the minister in charge of law and order is unable to cope with this movement, the White Paper proposals give him ample power in dealing with this branch of law and order. I shall in this connection refer to propositions 69-70 of the White Paper. In brief, my suggestion is that no special provision should be made in the constitution providing for the segregation of the C.I.D. as a whole, or for the segregation of the political branch from the rest of the department of law and order. The White Paper amply safeguards the position.

66. The third question as formulated by me above is whether the Inspector-General should be treated on a separate footing in the matter of having direct access to the Governor. If what is meant by direct access to the Governor is that the Inspector-General should be able to approach the Governor over the head of his Minister and take any orders from him without the knowledge of the Minister, then I think it will be open to serious objection. Ordinarily, it should not be difficult under the scheme proposed by the White Paper for the Governor to call the Inspector-General and obtain such information as he wants from him. Under proposal 69, he has the power of making rules. Further, it is implicit in his special responsibility in regard to law and order that he must keep himself in touch with important matters connected therewith. Again, under proposal 69, the Governor has got the power to preside at meetings of his Council of Ministers. There are thus so many avenues of information open to him. It will be remembered that when Sir Charles Innes was asked as to how

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he would be able to see the Inspector-General of Police, he said that he could meet him on the golf course. In answer to a question put by Lord Eustace Percy, Sir Charles Innes expressed himself thus:—

Question: "Would you make any rule as regards the Inspector-General of the Police?"

Answer: "No, I would not, myself. If I wanted my Inspector-General of Police, I should play golf with him, or get at him in some way like that; I should always keep in touch with him."

67. As regards the fourth question, Sir Malcolm Hailey explained during the course of the evidence of the Secretary of State, that in Presidency towns, where the Governor is usually selected from the ranks of public life in England, and has no local knowledge, it may be necessary to give him a Secretary of the standing of a member of the Board of Revenue, or of the Executive Council, and that in other Provinces where a Governor, according to him, will presumably be a member of the I. C. S., a Secretary of the status and experience of a senior Collector, or a Commissioner, may be appointed to help the Governor in the discharge of his special responsibility. I would again repeat that the avenues of information open to the Governor are many. We need not suppose that the Governors of the future will be wanting in tact, or a keen sense of their duty, or that the Ministers will necessarily be perverse and at cross-purposes with the Governor.

68. With respect to the last question, it was pointed out by Sir Samuel Hoare, and, if I may say so, rightly, that, excepting in the case of Ireland, in no other constitution of any country within the British Commonwealth of Nations is there direct provision for responsible Government, or for the collective responsibility of the Ministers. It is true that Sir Samuel Hoare at one stage of his evidence said that he would leave all this to organic growth, but he also made it clear that he was aiming at it and that he would not object if the system of a collectively responsible Cabinet was accepted from the very beginning. Under the Montagu-Chelmsford Reforms, Madras is the only Province where there has been a Chief Minister, and the Ministry have from the start worked collectively. In the other Provinces there has been at times collective responsibility, and at others it has been absent. We cannot afford to take risks in this matter, and I think it is very necessary that the Cabinet form of responsible Government should be adopted in the Provinces from the commencement of the new constitution, and that instructions should be definitely laid down to that effect in the Instrument of Instructions to the Governor. Notwithstanding the fact that separate electorates are the basis of representation, I feel that in actual practice it will not be found difficult to get representatives of the minorities to work in close co-operation with the Minister belonging to the majority community.

69. The last part of question 5 is whether the Cabinet might contain a non-elected Minister appointed upon the recommendation of the Prime Minister. In support of this suggestion, it was pointed out that in England Members of the House of Lords who owe no responsibility to any electorate are appointed Ministers. It was further pointed out that in France the Ministers of the Marine and War are generally selected from outside the ranks of the elected members. In my opinion, to introduce one feature of the British or French constitution into the proposed Indian Constitution and to ignore the rest would not be conducive to the smooth working of the Cabinet, even though such an outsider may find himself placed in the Cabinet with the consent of the Prime Minister. I cannot, therefore, agree to this suggestion.

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SECOND CHAMBERS IN THE PROVINCES.

70. The last question that has emerged from the evidence is as to whether there should or should not be second Chambers in the Provinces. It will be noticed that so far as the White Paper is concerned, proposition 74 provides for single Chambers in all the Provinces, excepting for Bengal, the U. P. and Bihar. In Bengal the total number of seats proposed in the Upper Chamber is 65; in the U. P. it is 60; and in Bihar it is 30 (vide Appendix III, part 2, p. 92 of the White Paper). In my first note on the safeguards I have already discussed the provisions of proposal 74 as to the abolition of a Second Chamber in these three provinces, and the establishment of the Upper Chambers in those in which they will not come into existence at the start of the new Constitution. It is therefore not necessary to say anything more on this part of proposition 74. I shall however, submit a few considerations on the main issue as to whether the provincial legislature everywhere should be bicameral. As regards the three Provinces which have been selected for the establishment of Second Chambers at the commencement of the Constitution, I believe the decision has been arrived at mainly because they are pre-eminently zamindari Provinces. With reference to Bihar, it appears from the evidence of Mr. Sinha that when the question was discussed in the Legislature of the Province in January last, the voting was 39 in favour of the proposal for the establishment of a second Chamber, and 30 against it. But the 39 voters in favour of the proposal included non-officials, members nominated by the Governor, and also one official, while those against the proposal were all elected representatives. The position in Bengal was more evenly balanced, but there seems to me to be little room for doubt that the bulk of general opinion as distinct from the opinion of the zamindars is against the establishment of a Second Chamber there. In this connection reference may be made to the memoranda on behalf of the various associations representing the land-holders in the various Provinces, and particularly to the evidence of the Maharajah of Burdwan. In the U. P., too, the Zemindars are strongly in favour of a Second Chamber, and, indeed, they have suggested that "the resolution about the abolition of the Chamber should be confirmed subsequently by an Act passed two years after the election of the new Provincial Assembly." (Vide p. 202, No. 7, of the Minutes of evidence.) They have further "strongly urged that the Second Chamber should become a permanent feature of the Legislature of these Provinces." The U. P. Legislature has a very large element of the Zemindar electorate, and in judging of the resolution passed in the U. P. Council, this fact should not be overlooked. It is perfectly true that wherever there are important zemindars there is a demand for the establishment of a Second Chamber, but this demand is not endorsed by general public opinion. I personally have grave doubts as to whether Second Chambers by themselves can effectively protect the interests of the zemindars or otherwise conservative classes. I am also more than doubtful as to whether, constituted as the zemindar class at present is, it can supply a sufficient number of men who can effectively discharge the functions of the members of an Upper Chamber as in other countries. Nor do I feel so confident as Sir Malcolm Hailey seemed to be that it would be possible to secure the right type of men from among commercial magnates or retired members of the judiciary. If the Second Chamber's legitimate function is going to be that of a revising body, then I do not expect any such results to follow from them in the Provinces of India. On the other hand, if they are to function merely as brakes upon hasty and ill-considered legislation passed by the Lower Chambers, one ought not to overlook the danger—by no means imaginary—that the Second Chambers may, and probably will effectively block all social

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legislation of a progressive character, and thus come into conflict with the popular Lower House and the general public opinion. There is also the question of a greater strain being placed on the provincial purse by the establishment of a Second Chamber, and we ought not to overlook it.

71. The whole position was examined by the Simon Commission in Chapter 4, Vol. II, of their Report. I would refer to paragraphs 113 and 114, which indicate the views of the Provincial Governments and of the committees associated with the Commission. In paragraph 116, at page 99 of their second volume, the Simon Commission express themselves as follows:—

“It has generally been proposed in evidence before the Joint Conference to constitute Second Chambers disproportionately representative of vested interests. They fear that such Chambers would be regarded as an undemocratic instrument of Government, and that ceaseless conflict between the two Houses would result. They think that this danger will be a real one, however the Second Chambers may be formed. While a Second Chamber will not be a substitute for the Governor's powers, its existence may be used as an argument for modifying the Governor's powers before this is desirable, and it may support the Lower House against the Governor and so increase rather than prevent friction between him and the Legislature. So long as Ministers are secured in the support of the Lower House, and so obtain the funds which they require, the Second Chamber can exercise little control on the administrative side, and it is here that the influence of a Legislature is most required.” I would further point out that it does not appear to me to be the case that the Provincial Legislatures or the Government of India consider the establishment of Second Chambers in all the Provinces as vitally necessary. “We would not propose”, say the Government of India, in paragraph 27 of their Despatch, “that in any Province a Second Chamber should be made a condition of advance. Where local opinion favours and local conditions seem to require a Second Chamber, it should, in our view, be set up and incorporated in the Constitution.” As regards the three Provinces of Bengal, Bihar and Orissa, and the United Provinces, they accept the recommendations of their local Committees, but, as I have submitted above, in these three Provinces general public opinion as distinct from the opinion of the zemindars or other conservative sections of the people is not prepared to support a Second Chamber. I do not wish to under-rate the importance of the evidence of the European Association, or of the Zemindars' Association, in regard to this matter, but I am bound to say that the case for the addition of a further conservative element to a constitution, the striking feature of which is an over-cautious conservatism, has not been made out beyond all doubt. On all these grounds I am against the establishment of Second Chambers in any Province.

PUBLIC SERVICES.

72. The question of the Public Services is dealt with at length in the White Paper. Reference may be made to paragraph 70-73 of the Introduction; pages 35-36 and paragraphs 180-202; pages 81-201 of the Proposals and to Appendix VII; page 120. In the existing Government of India Act, the relevant sections are 96B-100.

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The Civil Services in India have within the last eighteen or twenty years come under detailed review by two Royal Commissions, viz.: (1) The Islington Commission which assembled on 31st December, 1912, the report of which was submitted on 14th August, 1915, and (2) the Lee Commission which submitted its report on 27th March, 1924.

There were three questions which were referred to the Lee Commission, viz.:—

(a) The organization and general conditions of service, financial and otherwise, of the Superior Civil Services in India;

(b) The possibility of transferring immediately or gradually any of the present duties and functions to Services constituted on a provincial basis;

(c) The recruitment of Europeans and Indians respectively, for which provision should be made under the constitution established by the Government of India Act, and the best methods of securing and maintaining such recruitment.

73. As regards the Superior Civil Services, namely the Indian Civil Service and the Indian Police Service, the Commission made certain definite proposals for their Indianisation. Speaking of the Indian Civil Service they say that in their view it is desirable in order not only to carry out the spirit of the Declaration of 1917 but to promote an increased feeling of camaraderie and an equal sense of responsibility between British and Indian members of the Services that the proportion of 50-50 in the cadre of the Indian Civil Service, should be obtained without undue delay and that the present rate of Indian recruitment should be accelerated with this object. They expected to produce a 50-50 cadre in about 15 years by which time the whole situation would again have to come under review by the Second Statutory Commission. As regards the Indian Police Service they recommended that of every hundred recruits for this Service, fifty should be Europeans recruited directly, thirty should be Indians recruited directly, and the remaining twenty obtained by promotion from the Provincial Services. And they expected that the corresponding cadre of 50-50 would be reached in about 25 years in the Police Service from the date when the new scheme of recruitment comes into operation. (See paragraphs 35, 37, pp. 18, 19 of the Lee Commission.)

74. I need not refer in detail to the recommendations as to the Indian Forest Service of Engineers, the Indian Agricultural Service, the Indian Veterinary Service, etc., and the Central Services which they discuss (see page 21, 23, of their Report).

The essential point which emerges from the White Paper is that " at the expiry of five years from the commencement of the Constitution Act a statutory enquiry will be held into the question of future recruitment for the Indian Civil Service and the Indian Police, and the Governments in India will be associated with the enquiry. The decision on the results of the enquiry will rest with His Majesty's Government and will be subject to the approval of both Houses of Parliament. Pending the decision to this enquiry the present ratio of British and Indian recruitment will remain unaltered. The question of continued recruitment by the Secretary of State to the Superior Medical and Railway Services is under examination. His Majesty's Government hope to submit their recommendations on this matter later to the Joint Select Committee " (vide para. 72 of the Introduction to the White Paper).

75. The Services sub-committee of the first Round Table Conference made two important recommendations. In paragraph 2 they recommended

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that for the Indian Civil Service and the Indian Police Service recruitment should continue to be carried out on an All-India basis, but the majority of the Committee were of the opinion that recruitment for judicial officers should not longer be made in the Indian Civil Service, and the Indian Forest Service and the Irrigation branch of the Indian Service of Engineers should be provincialised. Mr. Shiva Rao and Mr. Tamba desired to record the view that all services should be Provincialised forthwith. Dr. Ambedkar, Mr. Zafrulla Khan and Sardar Sampuran Singh were averse to further recruitment on an All-India basis for the Indian Civil Service and the Indian Police Service save in respect of the European element in those Services. The majority of the sub-committee were of the opinion that in the case of these two Services it was desirable that some recruitment of Europeans should continue. On the question of the ratio there was a difference of opinion, some holding that for the present recruitment should continue on the lines laid down by the Lee Commission, while others would prefer that the matter should be left for decision by the future Government of India. Irrespective of the decision that might be reached as to the ratio, the majority of the sub-committee held that the recruitment and controlling authority in the future should be the Government of India. They would leave to that authority the decision of all questions such as the conditions of recruitment service, emoluments and control. A Minority thought that the recruiting authority should be the Secretary of State. But even they consider that adequate control over the members of the Services should be secured to the Indian and Provincial Governments under the Devolution Rules.

76. It seems to me that the provision in the White Paper for a Statutory enquiry after five years into the question of future recruitment for the Indian Civil Service (vide paragraph 72 of the Introduction) is inconsistent with provincial autonomy and responsibility at the Centre. I am personally in agreement with the views of the majority of the Sub-Governments of the future desire to have any European element in their Services. The position that existed at the time of the Lee Commission has materially changed since the Round Table Conference was called. To give the provinces autonomy and the central government responsibility over a large field of administration and then to withhold from them the power of recruiting their Public Servants and exercising control over them, subject no doubt to ample and effective safeguards of their interests, is not only to deny a very material element of responsibility, but is also calculated to have undesirable effects on the mutual relations of the Services and the Indian Legislature and the Minister. Further the Indian Legislature of the future should be vitally interested in making every possible economy in public expenditure and there does not seem to me to be any valid reason why the future Government in India should be made to submit, in the case of future recruits, to the scales of salaries prescribed by the Secretary of State. It has been urged in certain quarters that the right type of English recruits will not be available for these Services unless they are recruited by the Secretary of State. If the Indian Governments of the future desire to have any European element in their Services they must be left free to exercise their option in the matter. It may be presumed that if they will want European recruits they will have to offer sufficiently attractive terms to them. Upon a broad view of the matter I urge that there should be no further examination of the question after five years by another Commission. I think effective decisions

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should be arrived at now and the question should no longer be left as an open one.

77. As regards the Superior Medical and Railway Services the recommendations of His Majesty's Government have not yet been placed before the Joint Select Committee, but I am generally in agreement with paragraph 44 of the Services Sub-Committee.

78. I have submitted above that in my opinion the recruiting authority, after the promulgation of the new Constitution should be the Government of India. It is only necessary to add that I am assuming that the Government of India will, for the purpose of recruitment, make use of the machinery of the Public Service Commission, and rely on their technical knowledge and impartial judgment and advice.

RIGHTS AND INTERESTS OF THE SERVICES.

79. No less important than the question of future recruitment is the question of the rights and interests of the Services. It is necessary to point out that the Statutory provision governing the rights and interests of the Services is to be found in Section 96B of the Government of India Act. Rules have been framed according to that section. The last set of Rules so far as I know were published in June, 1930, and are known as Civil Service (classification, control and appeal) rules. Most of the items in Appendix 7 of the White Paper are based on Section 96B of the Classification Rules. I have no desire whatsoever in any degree or measure to prejudice the Services in respect of their salaries, emoluments and pensions which must in my opinion be given every effective protection, but I would point out that the proviso to Section 96B and its provisions require to be analysed before a correct view of the position can be taken. Under that section the Secretary of State in Council has the power to make rules for (a) regulating the classification of the Civil Services in India, (b) the methods of their recruitment, (c) their conditions of service pay, allowance, and discipline and control. The rules referred to deal with these matters and the section itself provides that such rules may, to such extent and in respect of such matters as may be prescribed, delegate the power of making rules to the Governor-General in Council, or to local Governments, or authorise the Indian Legislature or local Legislatures to make laws regulating the Public Services. It would thus appear that under the existing Act itself, the Secretary of State in Council could delegate his powers entirely if he liked in respect of the Services not only to the Government of India or the local Governments, but also to the Indian Legislature and the local legislatures. This was at a time when full Responsible Government was not set up in the Provinces and the Central Government contained no element of responsibility to the Legislature. It seems to me, therefore, that under the proposed constitution there should be an advance upon the position prescribed by the Section 96B of the Government of India Act. I feel that the proposals in the White Paper instead of being in advance constitute a distinct set-back at any rate for the time being.

80. Coming next to the proviso it will be noticed that according to it every person appointed before the commencement of the Government of India Act of 1919 by the Secretary of State in Council to the Civil Service of the Crown

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in India shall retain all his existing and accruing rights or shall receive such compensation for the loss of any of them as the Secretary of State in Council may consider just and equitable. The Act therefore protects the existing or accruing rights of persons appointed *before* the commencement of the Government of India Act, 1919, apparently because officers appointed before 1919 entered the Service at a time when the policy of Parliament for the future Government of India as declared in the preamble of the Government of India Act, 1919, had not been declared. The men who joined the Service after 1919 must be presumed to know that policy and to realise that that policy would be fulfilled within a reasonable distance of time.

81. In this connection I would draw attention to question No. 187 on page 31 of the Minutes of Evidence, which I put to Sir Jon Kerr, and his reply to it.

Question. According to your view of the matter, do the men who entered the Civil Service, say in 1920, or at any time since 1920, stand exactly on the same footing in regard to these rights as the men who entered the Civil Service before 1919?

Answer. We do not say that they do under the law, because the law does make a distinction between persons appointed before and after 1919.

Question. I am asking you that, from your point of view, you think it expedient and desirable that those men should also get the protection that you yourself have had?

"We think it just that they should."

82. On grounds of justice and expedience I myself would not make any distinction between the pre-1919 and the post-1919 men so far as the conditions of their pay allowances, etc., are concerned. I am prepared to go further and say that if the pre-1919 men insist on control being exercised in respect of their discipline and conduct by the Secretary of State I would not object to this anomaly which would be of a temporary character, but in regard to all other officers I would strongly urge that the centre of control should be transferred from London to Delhi. Logically speaking their control should be in the hands of the Federal Government assisted by the Public Service Commission, but rather than have the control of the Secretary of State over these officers I would urge that it should be transferred to the Governor-General for some time to come who might similarly be assisted by the Public Service Commission, leaving it to the development of the Constitution to facilitate the transfer of the control to the Federation Government. In other words, I suggest that in respect of officers appointed after 1919 up to the date of the new constitution, and in respect of officers appointed after the setting up of the new constitution the Governor-General should be the final appellate authority for the time being leaving it again to the development of the constitution to transfer the control of the Governor-General at his discretion to the Federal Government.

83. The next important point which arises relates to the interpretation of the expression "accruing rights" in the proviso of Section 96B quoted above. In this connection I would draw attention to the despatch of the Secretary of State dated 26th April, 1923 (vide paragraph 81 of the Lee Commission Report—pages 46-48). The Secretary of State at that time consulted the law officers of the Crown, and he was advised by them that the words "accruing rights" in Section 96 (a) "means all rights to which members of the Civil Services are entitled, whether by statute or by rule having statutory force, or by regulation in force at the time of their entry into service. They do not, however, include prospects of promotion, except in case where the promotion is no more than advancement by seniority to increased pay, as in the case of the various appointments borne upon the

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ordinary lists of time-scales of pay. In particular, they do not apply to general expectations of possible appointment to offices, such as those of a Commissioner of a Division, which are not included in the ordinary time-scale lists, and the filling of which involves selection by merit. I am advised accordingly that the abolition of such appointments would give rise to no claims to compensation except to persons who were actually holding them at the time of their abolition. I am further advised that no method of filling such appointments which is not inconsistent with the Statute, even though it reduced the expectations of members of a particular service, would give rise to any claim to compensation on the part of any person whose actual tenure of an appointment was not thereby affected. I trust, therefore, that difficult as these words may be of interpretation, the authoritative opinion of the law officers of the Crown will be accepted. Appendix VII (e).

84. Coming then to the list of rights in Appendix 7 of the White Paper, it is not my intention to deal with each item separately. I have indicated my views in the preceding paragraphs as to the guarantees to be given to the Indian Civil Service as regards their pay, allowances, emoluments, leave, pensions, etc., and also as regards the transfer of the control over the post-1919 members of the Services from London to Delhi. There are just a few points that I shall now refer to.

85. Item No. 9 secures to the Services the reservation of certain posts to members of the Civil Service. This must be read with Section 98 of the Government of India Act and the third schedule to it. In the ordinary course, in the vast majority of cases, members of the Indian Civil Service will rise to occupy many of the appointments mentioned in the third schedule. But in the altered state of things there does not seem to be any reason why the reservations provided by the third schedule should continue to exist.

86. Item No. 11, which is based on Classification rule No. 25, further provided that posts borne on the cadre of All-Indian Services shall not be left unfilled for more than three months without the sanction of the Secretary of State in Council. Whatever justification there might be for such a rule under the present system there does not seem to me to be any for continuing it in future when the Provinces will be autonomous and there will be responsible government both in the Provinces and at the Centre. The possibility of economy to be effected by appointing efficient men belonging to the Provincial Service to such vacancies should not be excluded.

87. Another "right" which calls for some remark is that contained in item No. 15. Ordinarily the proposals for the posting of an officer of an All-Indian Service proceed from the Chief Secretary of a local government, who has always been a member of the Indian Civil Service, and it may well be presumed that under the new scheme they will be dealt with by the Chief Secretary or some other Secretary and the Minister will have neither the time to go into nor the necessary knowledge about matters of this character. I should not presume that Ministers would deliberately act to the disadvantage of an officer of an All-India Service. I cannot, therefore, agree to the proposal that in such matters the personal concurrence of the Governor should be required. While I appreciate the desire to protect the Public Servants against loss or inconvenience resulting from unjust orders of posting, it seems to me to be necessary to bear in mind that nothing should be done to undermine the authority or the prestige of the Minister.

88. Another important matter which calls for notice is that contained in item No. 18, and that relates to the right of certain officers to retire under the regulations for premature retirement. The Lee Commission recommended that in the case of all future British recruits to the All-India

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Services, "a rule should be made and a clause inserted in their contracts to the like effect, that if and when, the field of service for which they have been recruited is transferred it shall be open to them either:—(a) to retain their All-India Status, or (b) to waive their contracts with the Secretary of State, and to enter into new contracts with the Local Governments concerned, or (c) to retire on proportionate pension; the option to remain open for one year, from the date of transfer." "This concession," the Lee Commission recommended, "should also be extended to all officers who joined the Services since January 1, 1920." It seems to me that item 18 of Appendix 7 goes beyond even this limit within which the option to retire on proportionate pension is to be exercised.

89. Two more points remain to be considered. It has been suggested in the memorandum of the Indian Civil Service Association that "the Governor-General or the Governor might be empowered, in view of a possible deficit, to issue such instructions to the audit officer or the authority responsible for arranging 'Ways and Means'; as would secure this result. 2. The family pensions and funds that have been established under rules framed by the Secretary of State, require equal protection. These rules have been framed under sub-section 4 of Section 96B of the Government of India Act, and as stated in paragraph 73 of the Introduction to the White Paper, the assets of these funds must be recognised as constituting a definite debt liability to the Government of India. The Indian Civil Service Association is strongly of the opinion that sterling funds should be established in England to give the liabilities arising under this heading a chance."

As regards 1, it is scarcely conceivable that the Indian Ministers will be so dead to their sense of responsibility in regard to the regular and punctual payment of the salaries of the Public Servants as is apprehended. Further it is feared that this view overlooks the constitutional position regarding the withdrawal of the money from the Treasury by the Ministers. It is difficult to believe that if a Minister wanted to draw money from the Treasury for any social services at the expense of funds reserved by the Legislature or by the Statute for other purposes, he would be allowed to do so.

If it is worth while having a new Constitution with a responsible Indian Government, it is also worth while trusting it to discharge those obvious obligations which will rest upon its shoulders. I need scarcely point out that the salaries of the All-Indian Services will be protected by the Statute and we may well presume that the Ministers will not be so foolish or reckless or devoid of a proper sense of their duty in the matter as to leave no money in the till for the payment of the salaries.

90. As regards the second point, I would refer to question No. 30 put by Sir Reginald Craddock to Sir Charles Fawcett, and his answer to it. (Pages 14-15 of No. 1 of the "Minutes of Unrevised Evidence.") The point was further elaborated by the witness, on page 18, as follows:—

"We cannot be sure that India will remain solvent, and that salaries and pensions will be forthcoming out of Indian revenues. We know that an influential section in India is flatly hostile to us, and constantly preaches that the payments due to England from India amount to a ruinous imposition and should be repudiated." They then refer to the example of Ireland and to Mr. Lang's government in New South Wales, which they say should be taken to heart, though they go on to say, that they do not distrust moderate and responsible Indians, but greatly distrust the extremist section and their policy that may impair the solvency of India under the new regime.

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91. Sir Samuel Hoare has pointed out that the figure including both military and civil pensions, is about £50,000,000 sterling. In fairness to the "extremists" in India I may point out that to the best of my knowledge they have never sought to repudiate the pensions of the Public Servants. In this connection I would recall what Mr. Gandhi himself said in his speech on the financial safeguards at a meeting of the Federal Structure Committee held on November 25, 1931.

"I want," said Mr. Gandhi, "to say that the Congress has never suggested, as it has been viciously suggested against it, that one single farthing of National obligations should ever be repudiated by the Congress. What Congress has further suggested is that some of the obligations which are supposed to belong to India ought not to be saddled upon India, but should be taken over by Great Britain." I have considered it necessary to quote this passage to show that in the first place the pensions of retired officers have never been repudiated, and in the second, the general charge against the Congress, that it repudiated the national debts, is not borne out by the statement of Mr. Gandhi. If Mr. Gandhi and the Congress want an examination of certain financial obligations, they cannot be seriously blamed when one remembers that it was upon the persistent representations of the Government of India in regard to India's liability for capitation charges, and some other claims, that a tribunal was appointed last year to investigate this problem. It submitted its report early this year, which is still engaging the attention of His Majesty's Government.

92. To come back to the main point it is out of the question and I cannot conceive the possibility of it, that the pensions of retired officers should be imperilled in any manner. Under the White Paper scheme the powers of the Secretary of State and the Governor-General are more than ample to enforce these obligations in the event of any breach. To impose, however, a condition that a capital sum of £50,000,000 sterling should be now invested in Trust Funds in England for this purpose would cripple the resources of the Government of India.

PUBLIC SERVICE COMMISSION.

93. Paragraphs 195-201 deal with Public Service Commission. There will be a Federal Public Service Commission and a Provincial Public Service Commission for each Province, but by agreement the same provincial commission will be able to serve two or more provinces jointly. The principle of appointing the Public Service Commission is much to be commended. These Commissions should be absolutely independent bodies free from all political influences, possessing definite powers and discharging definite functions. I cannot, however, agree with proposal 196 which provides that the members of the Federal Public Service Committee will be appointed by the Secretary of State who will also determine their number, tenure of office, and conditions for service, including pay, allowances, and pensions, if any. No doubt this is quite consistent with the general policy regarding the Services adopted in the White Paper, a policy which seeks to preserve the authority and control of the Secretary of State over some of the Public Services for some time to come. I personally hold that while the Constitution should provide for the appointment of Public Service Commissions and possibly also for the qualifications of members to be appointed to them, the powers reserved to the Secretary of State under proposal 196 should

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be transferred to the Federal Government or at any rate to the Governor-General acting at his discretion for a short period not exceeding five years, after which the powers should devolve upon the Federal Government. The position taken in the White Paper in regard to the Public Service Commission does not seem to me to be in the nature of any advance upon the present position as laid down in Section 96C of the Government of India Act.

SECRETARY OF STATE'S ADVISERS.

94. Paragraphs 67-69 deal with the Secretary of State's advisers. It is proposed now to abolish the Secretary of State's Council and to enable the Secretary of State to appoint not less than three, and not more than six advisers (at least two of whom must have served the Crown in India for not less than ten years) to hold office for five years. The Secretary of State will be free to consult these advisers, either individually or collectively, as he may think fit. But he will be required not only to consult them, but to obtain the concurrence of a majority of them on the draft of any rules regulating the Public Services in India, and in the disposal of any appeal to him permitted by the Constitution, from any member of those Services.

We are further told that the conception of the Secretary of State in Council of India as a statutory corporation for legal or contractual purposes is wholly incompatible alike with Provincial self-government and with a responsible Federal Government. This being so, there is obviously no occasion for the maintenance of the Council of India, the Statutory duties of which are laid down in the existing Government of India Act. (See sections 21, 22, 28-32.)

It does not, therefore, seem that it is necessary for this purpose to have as many as three or six advisers for the Secretary of State. In view of the opinion which I have expressed in regard to Public Services, it seems to me that even the number of three admits of reduction.

JUDICATURE.

95. Part IV of the White Paper deals with the judiciary in India. It provides for (1) the establishment of the Federal Court. (2) The Supreme Court and (3) the maintenance of the Provincial High Courts. So far as the need for establishment of the Federal Court is concerned it is made out clearly and cogently in paragraph 62 of the Introduction. In a Constitution created by the federation of a number of separate political units and providing for the distribution of powers between a Central Legislature and Executive on the one hand and the Legislatures and Executives of the federal units on the other, a Federal Court has always been recognised as an essential element. Such a court is, in particular, needed to interpret authoritatively the Federal Constitution itself.

It is proposed in the White Paper that the Federal Court should possess both an original and an appellate jurisdiction. Perhaps it may be necessary to revise the language of propositions 156-158. It is not intended to oust the jurisdiction of the Privy Council. All that is aimed at, and all that should be aimed at, is to restrict the right of appeal to the Privy Council, to such decisions of the Federal Court as may involve really important

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questions relating to the interpretation of the Constitution Act, or any rights and obligations arising thereunder. In such appeals it may not always be possible to go by the pecuniary value of the matter involved in the case; the true test should be the nature of the question involved, and no appeal should lie to the Privy Council ordinarily, without the leave of the Federal Court. This will not, however, affect the right of the Privy Council to grant special leave in any case in which they may deem it fit to do so.

96. It will be noticed that proposition 156 seeks to provide for an appeal from a decision of the High Court to the Federal Court, in any case which involves the interpretation of the Constitution Act, or a determination of any right or obligation arising thereunder. Presumably the Federal Court is intended in such cases to exercise jurisdiction over Courts in Indian States in cases of the above description.

97. Proposition 157 lays down that an appeal to the Federal Court will be by way of a Special Case on facts stated by the Court from which the appeal is brought. Procedure of this character is not unknown to Indian law; and one advantage in adopting this procedure may be that it will meet the point of view which has been put forward by some of the representatives of Indian States. It must be borne in mind that in India there is a large number of jurisdictions and this frequently gives rise to much confusion. There is a very wide difference between the jurisdiction of the Revenue Courts and that of the Civil Courts, and in some provinces legislation has been passed providing for reference to a civil court in a case pending before a Revenue Court, which involves the determination of an issue of title. On the whole this procedure has worked well, and I take it that proposal 157 is an adaptation of that procedure. Reference may also be made to the ordinary practice in Income Tax cases in India, where under certain circumstances a question of law is stated by the Income Tax authority for the opinion of the High Court. I am, therefore, prepared to support the principle involved in proposition 157.

98. Attention may in particular be drawn to two other proposals—160 and 161. The former provides that "the process of the Federal Court will run throughout the Federation, and within those territories all authorities, civil and judicial, will be bound in any place within their respective jurisdictions to recognise and enforce the process and judgments of the Federal Court; and all other Courts within the Federation will be bound to recognise decisions of the Federal Court as binding upon themselves." It has been suggested on behalf of the Indian States, that when a matter relates to an Indian State the order of the Federation should be executed, not in the ordinary manner in which the orders of an appellate Court are executed by Courts subordinate to it, but by reference to the Executive authority of the State concerned. In the memorandum presented on behalf of the Chamber of Princes by Mir Maqbool Mahmood, Dr. P. K. Sen, and Mr. K. M. Panikkar, they say "It seems desirable to provide that in the case of judgment against a federating State, the remedy should be sought only from the Government of the State concerned. In the case of a State failing to execute the judgment of the Federal Court, within a reasonable time, the authority of the Viceroy could be invoked." This suggestion seems to me to be wholly opposed to the basic principle underlying Federation and to the whole recognized Judicial procedure governing the enforcement and execution of the orders and judgments of Superior Courts by subordinate Courts. It should not be for the government of the State concerned or, in the last resort, for the Viceroy, to attend to the enforcement of the orders of the Federal Court; it should be left

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to the State Courts themselves. Conformity to the ordinary practice will not, in my opinion, be any invasion of the sovereignty of an Indian State, in as much as upon a proper view of the matter, the Federal Court will not be foreign court, but will be as much a British Indian Court as an Indian State's Court.

99. I would strongly support the provisions of proposition 161 which give the Governor-General the power to refer to the Federal Court, for the hearing and consideration in any justiciable matter which he considers of such a nature and of such public importance that it is expedient to obtain the opinion of the Court upon it. Advisory jurisdiction is already exercised by several High Courts in India, and it may be a very beneficial jurisdiction for the development of the Federal Constitution.

THE SUPREME COURT.

100. That there is a general demand for the establishment of a Supreme Court, seems to me to be without any doubt. I am at the same time bound to point out that opinion in Bengal is not favourable to it. The question was discussed at length at the Round Table Conference. The immediate establishment of the Supreme Court is opposed first, on the ground of finance and secondly, on the ground that it is not desirable to abolish the jurisdiction of the Privy Council. As regards the first no estimate has been prepared showing the impossibility of establishing the Supreme Court within reasonable limits of expenditure. I cannot believe that we can require as many as twenty to thirty judges for the Supreme Court. I should think that for some time to come a Court consisting of ten to twelve judges could adequately deal with appeals coming to it from the High Courts. Further it may be pointed out that much of the cost will be met by fixing proper scales of Court fees. The highest number of appeals that come up to the Privy Council from India in any given year may roughly be put down as 100 to 125, though the number is generally less. However, if we treble this number of appeals to the Supreme Court, a Court of twelve judges should not find it difficult to cope with the work. Further it should be possible to restrict the number of appeals to the Supreme Court by making other suitable provisions, or by raising the pecuniary appealable limit. As regards the second ground, namely, that it is undesirable to abolish the jurisdiction of the Privy Council, it has never been suggested that the jurisdiction of the Privy Council should be abolished. Even in the case of the Dominions, appeals come very frequently from Canada, and they come also, though less frequently from the other Dominions. What is suggested is that appeals should lie to the Privy Council only upon a certificate given by the Supreme Court.

101. As regards appeals in criminal cases paragraph 166 provides appeals in such cases where a sentence of death has been passed, or where an acquittal on certain criminal charges has been reversed by a High Court. I apprehend that appeals in criminal cases where a sentence of death has been passed may tend to overburden the Supreme Court. I would suggest that for the present the Constitution should provide for appeals where an acquittal on a criminal charge has been reversed by a High Court, and to cases where leave to appeal to the Supreme Court has been given by the High Court.

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102. It seems to me that it would be most unfortunate to have two separate courts, namely (a) a Federal Court and (b) a Supreme Court. Such an arrangement would, of necessity, entail separate expenditure on separate judges, and their staffs, apart from separate non-recurring expenditure. A single court sitting in two divisions with a common Chief Justice possessing the power to constitute benches for federal work, and also for hearing appeals from British India, will contain a variety of talent and experience and thus command public confidence in a greater degree than a small Federal Court doing purely federal work. It must be recognised that in India one of the great evils of the judicial system is the number of the High Courts, which leads at times to deplorable divergence in judicial opinion and legal practice. This might easily become worse if federal or constitutional questions were to be decided by different courts in different ways. It seems, therefore, necessary that there should be a single final Court of Appeal, doing its work in two divisions and maintaining uniformity of interpretation of the laws and enforcing uniform legal and judicial standards.

THE HIGH COURTS.

103. The High Courts existing in India at present are governed by the Government of India Act, Section 101-114. Each of the High Courts has superintendence over all Courts, subject to its jurisdiction. Its powers are defined by Section 107 of the Government of India Act. "The several High Courts are courts of record for such jurisdiction, original and appellate, including admiralty jurisdiction in respect of offences committed on the high seas, and all such powers and authority over or in relation to the administration of justice, including power to appoint clerks and other ministerial officers of the court, and power to make rules for regulating the practice of the court, as are vested in them by letters patent, and subject to the provisions of any such letters patent, all such jurisdiction, powers and authority as are vested in those courts respectively at the commencement of this Act." (See Section 106.)

104. The qualifications for the judges are provided by Section 101 of the Government of India Act. Proposal 170 of the White Paper provides that the qualifications for appointment as a Chief Justice or a judge will remain as at present, but the existing provision, which requires that one-third of the Judges must be members of the English Bar or the Faculty of Advocates in Scotland, and that one-third must be members of the Indian Civil Service will be abrogated. This is certainly an advance on the present law which has created vested interests in favour of certain classes of lawyers or public servants. Whatever justification there might have been at one time for such an arrangement, it has ceased to exist now in view of the development of an indigenous Bar within the last seventy-five years or more, and the organisation of Provincial Judicial Services. Public opinion will expect that there must be at least one Court in India composed exclusively of experienced lawyers and I urge accordingly that the Supreme and Federal Court, if not, at present, the High Courts, should consist of Judges recruited exclusively from the ranks of the Bar or of High Court Judges of distinction who are barristers or advocates. The last part of proposal 170 in the White Paper provides that any person qualified to be a Judge, will be eligible for appointment as Chief Justice. Hitherto it has always been the practice to appoint a barrister as Chief Justice, and what is needed

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now is that the difference between barristers and local advocates should be done away with. It would, however, be unfortunate if the appointment of Chief Justice were thrown open to non-legal element. The best traditions of the courts in India have been built up by Judges recruited from the profession, men who have imbibed in the exercise of their profession, and their surroundings in England, or by judges who have been recruited from the ranks of the profession in India. I should not be willing to accept any change in the law which would in any degree or measure affect the continuance of those traditions. It does not necessarily imply any reflection on the Indian Civil Service or the Provincial Service, both of which have produced some very distinguished Judges. But the fact remains that both the legal profession and the public have been accustomed to look upon the Chief Justice as the one man in the Court who gives a tone to it, and is responsible for upholding those judicial traditions of independence, which are absolutely necessary for the good repute of the Court. I need scarcely say that the same remarks will apply to Judges of the Federal and the Supreme Court.

105. In point of fact so far as the Civil Courts are concerned the High Courts exercise a direct supervision over their work, but there is very little of direct supervision exercised by them over the criminal courts. I understand, however, that in one province in recent years, the High Court has been exercising supervision over criminal courts. In my opinion public confidence in the administration of criminal justice is bound to increase if such supervisory control is transferred to the High Court.

As regards the appointment of Judges on the civil side the usual practice is for the High Courts to recommend the appointment of fresh candidates to the lowest grades of civil Judges, called Munsifs, and in some provinces subordinate judges of second class. The appointments are, however, made by the local Governments themselves. This does not apply to District Judges belonging to the Indian Civil Service. The High Court may be consulted in regard to their selection, but in actual practice its powers are limited. In order to secure the appointment of right men, possessing the necessary qualifications it is suggested that the appointment, selection, promotion and control of the Judicial side of the Services, should be transferred to the High Courts themselves. This should also effectively prevent the evils of patronage. If the judicial and executive functions of magistrates can be separated, as they should be, the High Courts may also be given similar functions and powers in respect of the Magistrates.

106. Lastly there is the question of the relation of the High Courts to the local Governments. All the High Courts except Calcutta, are in direct relation with their respective local Governments, in other words, the local Governments hold themselves responsible for the expenditure and budget of the High Courts. As regards the appointment of the Judges—they are appointed in England by the Secretary of State. If a member of a local bar or a member of the Indian Civil Service, or the Provincial Judiciary is to be permanently appointed to any seat on the bench, the local Government, after consulting the Chief Justice and the High Court, submits his name to the Government of India who finally approaches the Secretary of State.

107. The legal position is that every permanent Judge is appointed by the Crown. The Statute, however, makes exception in the case of an additional Judge who can be appointed only by the Governor-General in Council. Acting and temporary Judges are appointed by the local Government concerned. It is submitted that in order to more effectively safeguard the position of the Judges it is desirable that all the High Courts

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should be brought into direct relationship with the Central Government. The importance of the matter, will, in my opinion, justify what may seem to be a diminution of the autonomy of the Provinces. I have very strong reasons to believe that very high judicial and legal opinion in many of the Provinces favours such a course.

After concluding my note on this subject, I received Confidential Memorandum A. 21 on the Judiciary. I have gone through it very carefully, and if I may say so it is a fair and complete statement of the present position in India. On the question of the federalization or provincialization of the High Courts, however, I see no reason to modify the opinion that I have expressed above. Most of the objections raised to the centralization of the High Courts are of an administrative character, and it does not seem to me that it is impossible to surmount them. At any rate I should not sacrifice the question of principle to the considerations of administrative convenience and financial arrangements, which though difficult in some cases, should not be considered as presenting any insurmountable difficulty in the way of the necessary reform.

RESERVED DEPARTMENTS: DEFENCE AND FOREIGN AFFAIRS.

108. Among the propositions which I formulated at the commencement of this note as constituting the essential elements of the Constitution, the third and the fourth are as follows:—

(3) The Reserved Subjects, namely, the Army, and Foreign Affairs, to be under the control of the Governor-General only for the period of transition, which should not be long or indefinite.

(4) A definite policy to be adopted and acted upon in respect of the Reserved Department so as to facilitate their transfer to the control of the Indian Legislature and the Government within the shortest possible distance of time, compatibly with the safety of the country and the efficiency of administration in those departments.

The first Round Table Conference appointed a Sub-Committee presided over by Mr. J. H. Thomas. The first resolution at which it arrived was as follows:—

“The Sub-Committee consider that with the development of the new political structure in India, the Defence of India, must be to an increasing extent the concern of the Indian people, and not of the British alone.”

The second resolution which it arrived at was passed in order to give practical effect to the first resolution, and provided:—

(a) “that immediate steps be taken to increase substantially the rate of Indianization in the Indian Army to make it commensurate with the main object in view, having regard to all relevant considerations, such as the maintenance of the requisite standard of efficiency.” Mr. Jinnah dissented and desired a clear indication of the pace of Indianization.

(b) “that in order to give effect to (a) a training college in India be established at the earliest possible moment, in order to train candidates for commissions in all arms of the Indian Defence Services. This college would also train prospective officers of the Indian State Forces. Indian cadets should, however, continue to be eligible for admission as at present to Sandhurst, Woolwich, and Cranwell.

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(e) "that in order to avoid delay the Government of India be instructed to set up a Committee of Experts both British and Indian (including representatives of Indian States) to work out the details of the establishment of such a college.

The Sub-Committee also arrived at the following resolution:—

"The Committee also recognise the great importance attached by Indian thought to the reduction of the number of British troops in India to the lowest possible figure and consider that the question should form the subject of early expert investigation."

The sixth paragraph of the Thomas Report is as follows:—

"In agreeing to the foregoing recommendations the Committee were unanimous in their view that the declaration must not be taken as a mere pious expression of opinion, but that immediately the Conference was concluded, steps should be taken to deal effectively with the recommendations made."

The last paragraph of the Report recognised the advisability of establishing a Military Council including representatives of the Indian States.

109. After the Report of this Committee the Government of India appointed a committee in India which was known as the Indian Military College Committee, and which was composed of military officers and Indian non-officials (including representatives of the Indian States), the Commander-in-Chief being the chairman of the Committee. This Committee submitted its Report on 15th July, 1931, and as a result of its recommendations a college was recently started at Dehradun, and it has been decided to Indianize two divisions experimentally.

110. The Report of the Indian Military College Committee contains the minutes of the various Indian members, and I would say that I am in general agreement with the minute of Sir P. S. Sivaswamy Aiyer and Major-General Raja Ganpat Rao Raghunath Rao Rajwade of Gwalior. At page 80 of the Report they express themselves as follows:—

"Indians are quite alive to the necessity for maintaining the efficiency of the Army and to the importance of not imperilling the safety of India. They are, however, naturally anxious to assume responsibility for the control of the Army within a reasonable period. What then is a reasonable period for the Indianization of the officers' ranks? It has been pointed out that even if British recruitment to the officers' ranks were stopped to-day it would take 35 years for the Army to be completely Indianized. The Shea Committee of 1922, which was appointed by Lord Rawlinson, first recommended a period of 43 years, but on further consideration submitted the shorter period of 30 years, which was unanimously accepted by the Government of India as then constituted, including Lord Rawlinson. The refusal of the military authorities and the British Government to commit themselves to any indication of the probable period of Indianization, subject to the necessary conditions of efficiency and the availability of suitable candidates, is one which it is impossible for Indians to appreciate. They refuse to contemplate the contingency of India proving unequal to the task of defending herself within a reasonable period. That the country is now unable to defend itself no one is concerned to deny. But we believe that, if the policy of Indianization were started in right earnest and carried out on sound national lines, it should be possible for us to train ourselves to undertake

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the responsibility for defence within a period of something like 35 years.* If the Empire had to face the danger of another world war on the same scale as the Great War, there can be little doubt that England would be obliged to train India for her own defence within a much shorter period."

111. While agreeing to the reservation of the Army and foreign affairs, Mr. Jayakar and I put forward certain definite views in regard to certain matters connected with these reserved departments, and we submitted a memorandum which is printed at page 194 of the Indian edition of the Report of the Third Indian Round Table Conference. For the convenience of the Joint Parliamentary Committee I would quote paragraphs 14-15 from that Memorandum.

"We next come to the question of defence. We think that the success of the proposed constitution will be judged in India very largely by the policy which His Majesty's Government will adopt towards defence. We are of the opinion that the Statute or the Instrument of Instructions, if the latter is to have a statutory basis, as we think it should have, should recognise the principle laid down in the Report of the Thomas Committee that the defence of India should be to an increasing degree the concern of India, and not of Great Britain alone. We also urge that consistently with this principle and in order to implement the same, a duty should be cast on the Governor-General to take every step to Indianize the Army within the shortest possible period compatibly with the safety of the country and the efficiency of the Army. This would, in our opinion, necessitate the preparation of a programme more or less on the lines of the Rawlinson and other Committees' Reports, to which attention was drawn during the deliberation of the Thomas Committee on Defence. A definite time should be kept in view for this purpose, the duration of which should be adjusted according to the experience gained.

"While during the period of transition, which we do not envisage to be a long one, the Governor-General will have the control of the Army and the Army Budget may not be put to the vote of the Legislature, we strongly urge the adoption of the following proposals:—

"(a) The Army member, though appointed by the Governor-General and responsible to him, should be selected from among the members of the Legislature representing British India and the Indian States. We think that this cannot be regarded as an undue restriction of the discretion of the Governor-General, as the Indian Legislature will consist of at least 500 representatives, if not more, and it should not be difficult for the Governor-General to find a suitable person out of so large a number. Such a member will carry great weight and influence with the Legislature and will act as a bridge between the Governor-General and the Legislature, and will, in our opinion, be able to enlist the interest of the Legislature in the Army much more effectively than an outsider. Besides it will enable members of the Legislature to acquire knowledge and experience so that when the period of transition ends and defence has to be transferred to Indian control, the shoulders that will bear the burden may be found prepared to take it up.

* I must not be understood to imply that I agree to the period of 35 years. It might easily be less and we must not lose sight of the ground already covered.

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“(b) It is not enough, in our opinion, that there will be consultation between the Finance Department and those responsible for defence. We therefore urge that provision should be made in the Statute or the Instrument of Instructions placed on a statutory basis as suggested above, for the appointment of a Committee consisting of (1) the Army member and such other representatives of the Army Department as the Governor-General may appoint, and (2) The Prime Minister, the Finance Minister, and such other members of the Federal Government as the Prime Minister may appoint, to discuss and arrive at an annual settlement of the Army Budget. We are agreed that failing such settlement the Governor-General should have power to arrive at a final decision as regards the budget.

“(c) The Army estimates should, in our opinion, be put in separate blocks before the Legislature annually, and this should be independently of the consent of the Governor-General.

“(d) The Indian Army should not be sent out of the limits of India without the consent of the Legislature for any purpose not directly connected with the defence of India.

“(e) The Army should be thrown open to all subjects of His Majesty, irrespective of class, creed, or community.

“(f) We strongly urge that a Committee should be appointed consisting of British and Indian experts for further exploring all avenues for the reduction of military expenditure to a level as near as possible to that existing before the War. We are strongly of the opinion that there is room for further economy in Army expenditure. While we recognise that the expenditure on the Army is in the nature of an insurance for the safety of the country, we think it must be limited by the taxable capacity of the people and the needs and requirements of the moral and material progress of the people of the country.

“(g) We urge also that the expansion, upkeep, and maintenance of military schools, and colleges should be committed to the charge of the Legislature.

“(h) We trust that the decision of His Majesty's Government on the question of the reduction of British troops in India, which on financial grounds cannot be postponed much longer, will soon be announced.”

Paragraph 38 of the Introduction to the White Paper provides that “the Budget will be framed by the Finance Minister in consultation with his colleagues and with the Governor-General. The decision as to the appropriations required for the Reserved Departments and for the discharge of the functions of the Crown, in relation to the Indian States, will, of course, be taken by the Governor-General on his own responsibility, though he will be enjoined by his Instrument of Instructions to consult his Ministers before reaching any decision on appropriations for the Department of Defence.” While I appreciate the value of consultations on the lines suggested in the extract quoted above, I feel that this provision is inadequate and should be supplemented by a further provision to the effect that during the period of transition, the representatives of the Governor-General and of the Federal Government appointed by the Federal Minister shall meet together to discuss and if possible to agree upon Defence Expenditure, and that if they fail to come to any agreement, the Governor-General's decision shall be final. This may obviate a resort to the procedure laid down in paragraph 39 of the Introduction to the White Paper, which is very much

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similar to the present procedure of certification. I do not think an arrangement of this character can really have the effect of dividing the responsibility of the Governor-General for defence, as his decision will in any case be final. It will in my opinion materially tend to foster an element of compromise and co-operation between the two sides of the Government and to the extent, at any rate, to which the Federal Government will be a party to any decisions regarding defence expenditure the Legislature's support may well be counted upon.

112. As regards the other suggestions made in the joint memorandum of Mr. Jayakar and myself, from which I have quoted above, I note with regret that no decisions have been arrived at or at any rate announced.

Although the White Paper does not deal specifically with such question as Mr. Jayakar and I raised in our memorandum, yet I am bound to say that we look upon the entire question of the constitution as a single whole including questions relating to Defence.

FOREIGN AFFAIRS.

113. As regards Foreign Affairs it was suggested by some of the members of the Round Table Conference that there were certain matters which came under the domain of Foreign Affairs such as the appointment of commercial agents, consuls, trading agents, and which might easily be transferred to the Federal Government at the start.

Questions relating to tariffs or the position of Indians in foreign countries are so intimately connected at times with Foreign Affairs, that if the Legislature is altogether excluded from discussing Foreign Affairs, it might find itself at times unable to deal with those questions. Indian opinion is, as is well known, very much interested in tariffs, and the position of Indians overseas. In point of fact such questions can be discussed in the Legislature under the existing Constitution, and it would be in my opinion a distinct set-back if a discussion of them was barred out under the new Constitution. It would be a different thing if questions relating to peace and war between one country and another were treated on a separate footing, but it seems to me that to lay down a general provision to the effect that the discussion of Foreign Affairs will be absolutely outside the purview of the Legislature, is to impose a serious disability on it, and to affect its utility.

I therefore suggest that the Legislature should not be barred, even during the transitory period, from a discussion at least of certain questions coming under the general phrase "Foreign Affairs."

INDIA'S POSITION IN THE LEAGUE OF NATIONS AND HIGH COMMISSIONER'S APPOINTMENT.

114. I would urge that the whole subject of foreign affairs requires to be carefully dissected. Take for instance the question of commercial treaties between India and other countries. There does not seem to be any reason why the Federal Government, possessing fiscal autonomy, should not be

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at liberty to enter into commercial treaties and agreements with other countries. Another illustration is furnished by the manner in which India is at present represented at the League of Nations, of which she is an original member, and at the other international Conferences. The representatives are appointed by the Governor-General in consultation with the Secretary of State. It is only during the last 4 or 5 years that the Government of India have been deputing one of their members. It would be most inconsistent with the dignity of the Federal Government and its credit with, and status in international gatherings if it were not represented by men appointed by the Federal Government itself.

115. Lastly I may point out that the White Paper says nothing as to how the High Commissioner is to be appointed in the future. At present his appointment is regulated by Section 29A of the Government of India Act, and powers are delegated to him by the Secretary of State for India, or the Secretary of State in Council, in relation to making contracts. The High Commissioner's position is in certain respects semi-diplomatic. In the constitution for the Dominions there is no provision for the appointment of High Commissioners for the very obvious reason that their governments have the right of appointing their High Commissioners. If the omission in the White Paper to deal with this matter implies that in future the High Commissioner will be appointed by the Governor-General on the advice of his ministers, then I have no criticism to offer; I am only anxious that the High Commissioner, should in future owe his appointment to the Government of India, and that his powers and duties should be similar to those of the High Commissioners of the Dominions.

116. In answer to a question put by me, Sir Samuel Hoare made the following statement in the course of his evidence. "In the case of the Reserved Departments taking in particular by far the most important case, the case of Indian Defence, I have always thought that the problem of Indian Defence depends, to a great extent upon the Indianization of Indian defence, and there we are embarking upon a programme of gradual Indianization. As the defence of India becomes Indianized, so the particular justification for the reservation of a defence Department will more and more cease to exist, and the solution, therefore, of the reservation of defence, subject always to the rights of the Princes under the Treaties, will depend, to a great extent, upon the progress of the Indianization of defence."

He further added that the transfer of defence could only be effected by an Act of Parliament.

Now while I appreciate the spirit in which Sir Samuel Hoare made this statement I cannot help feeling that in the absence of any definite and steadily growing programme of Indianization, the transfer of the control of defence to the Indian Legislature must continue to be a matter for an uncertain future. This is precisely the objection which Indian opinion has to a policy of an uncertain character which is incapable of being interpreted in terms of a foreseeable future and which must therefore have the effect of keeping India on a lower plane of its political existence and status than that occupied by any other Dominion.

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PROVISION FOR THE GROWTH OF THE CONSTITUTION.

117. Sir Samuel Hoare has developed this point in the course of his evidence on two or three occasions. At one place he states as follows:—

“I should have thought the whole basis of these proposals was a basis of development. What I imagine, anyhow what I hope will happen, will be that the two sides of the Government will work closely and sympathetically together, that year by year the Governor-General and the Governor will have less and less reason to intervene in the field of his special responsibilities, owing to the fact that the Ministries themselves will be ensuring that the rights contemplated in the field of special responsibilities are safeguarded, and that, just as in other parts of the Empire, as the Governments develop, so powers of that kind fall into desuetude, not because the powers are unnecessary, but because the Ministries themselves carry those powers into effect, and I hope and believe that that is what is going to happen in India. In course of time, other Acts of Parliament will be necessary, more to recognise a state of affairs that is in existence than to make actually new changes. That is the way I hope and believe the kind of Constitution that we are discussing is going to work in the case of India.”

I have quoted this very important statement of Sir Samuel Hoare to show that he is very naturally laying stress upon the organic growth of the constitution, but I venture to point out that when the statute itself reserves certain departments, and places responsibility for their administration on the Governor-General, no constitutional developments short of an amending Act by Parliament can at any time shift the centre of responsibility from the Governor-General to the Legislature.

CONSTITUTIONAL POSITION OF INDIA WITHIN THE BRITISH COMMONWEALTH OF NATIONS.

118. The last essential element of the constitution which is referred to in paragraph 2 of this memorandum, relates to the constitutional position of India within the British Commonwealth of Nations, and the necessity for its declaration in the Statute. The preamble of the Government of India Act provides that “it is the declared policy of Parliament to provide for the increasing association of Indians with every branch of Indian administration, and for the gradual development of self-government, with a view to the progressive realisation of responsible government in British India as an integral part of the Empire.” It then says that “this policy can be achieved by successive stages” and reserves the right of determining the time and manner of each advance, to Parliament. The action of Parliament, according to the preamble must be guided by the co-operation received from those upon whom new opportunities of service are conferred, and by the extent to which it is found that confidence can be reposed in their sense of responsibility. Section 84A of the same Act provides for the appointment of a Statutory Commission at the expiration of 10 years, from the date of the Act, for making enquiries into “the working of the system of Government, the growth of education, and the development of representative institutions in British India, and matters connected therewith.” The Commission was to report as to whether and to what extent “it is desirable to establish the principle of responsible government, or to extend or modify or restrict the degree of responsible government then existing

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therein, including the question whether the establishment of Second Chambers is or is not desirable." By an amendment of the Statute, authorising Parliament to establish such a Commission before the expiry of 10 years, Parliament appointed the Commission in 1927 which was presided over by Sir John Simon. This Commission visited India twice between 1928-1929. Meanwhile considerable doubt had been raised in India as to the meaning of the preamble quoted above, and as to the aim and objective of Parliament. Indeed it had been suggested authoritatively in the Legislative Assembly that what Parliament intended to give India in course of time, was Responsible Government, and not Dominion Status. During the summer of 1929, His Excellency, Lord Irwin, who was then the Viceroy of India, paid a visit to England. Upon his return to India, he made a public announcement on 31st October, 1929. "With the full consent of the Chairman of the Statutory Commission His Majesty's Government had decided to call a Round Table Conference consisting of 'representatives of different parts and interests of British India and representatives of the Indian States' for the purposes of conference and discussion in regard both to the British Indian and All-Indian problems". In the course of his announcement Lord Irwin referred to the goal of British policy as stated in the declaration of August, 1917, and pointed out that his own Instrument of Instructions from the King-Emperor expressly stated that "it is His Majesty's will and pleasure that the plan laid down by Parliament in 1919 should be the means by which British-India may attain its due place among his Dominions." "The Ministers of the Crown, moreover, have more than once publicly declared that it is the desire of the British Government that India should, in the fullness of time, take her place in the Empire in equal partnership with the Dominions. But in view of the doubts which have been expressed both in Great Britain and India regarding the interpretation to be placed on the intentions of the British Government in enacting the statute of 1919, I am authorised *on behalf* of His Majesty's Government to state clearly that *in their judgment it is implicit in the Declaration of 1917, that the natural issue of India's Constitutional progress as there contemplated is the attainment of Dominion Status.*"* This Declaration created a very considerable impression in India at that time, but unfortunately certain speeches delivered during the debate which took place within a few days of it in Parliament, again caused a great deal of anxiety in India. Mr. Baldwin himself expressed his anxiety over the terms Dominion Status, but he went on to say, "when self-government or responsible government in India is obtained, what is to be the position of India in the Empire? None can say when Responsible Government will be established, or what shape it will take. These things will be determined by forces we could not control, British Indian, and world forces. Could there be any doubt in any quarter of the House that the position of India with full Responsible Government in the Empire, whatever form it may take, must be one of equality with other States in the Empire?"

"Nobody knows what Dominion Status would be when India has Responsible Government, whether the date would be near or distant. No one dreamt of a self-governing India without a self-governing status. No Indian dreamt of an India with an inferior status because that would mean we had failed in our work in India. No Tory Party, with which he (sic) was connected would fail in sympathy and endeavour to help in our time

* The italics are mine.

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to the uttermost extent of our ability in the solution of the great political problem which lay before us to-day." (Hansard, November, 1929.)

119. I am not however overlooking the fact that at that time some correspondence passed between the Prime Minister and Mr. Baldwin, who was then the Leader of the Opposition, but all that that correspondence came to, was, as pointed out by Mr. Wedgwood Benn, in his speech in the debate in the House of Commons, on 18th December, 1929, that so far as the Statute was concerned there was no change, but that there was of course the change in procedure. Of course the Statute stands, but with it must be taken the interpretation put on it by Lord Irwin with the authority of His Majesty's Government. I submit it constitutes a definite pledge and India is entitled to take her stand on it.

120. The circumstances under which the first Round Table Conference was held in England are well-known to the Joint Parliamentary Committee, but I would draw attention at this stage to the entire declaration of His Majesty's Government made at the conclusion of the first Round Table Conference. I shall in particular quote the following passages from that declaration:—

"The view of His Majesty's Government is that responsibility for the government of India should be laid upon Legislatures, Central and Provincial, with such provisions as may be necessary to guarantee, during a period of transition, the observance of certain obligations and to meet other special circumstances and also with such guarantees as are required by minorities to protect their political liberties and rights.

"In such statutory safeguards as may be made for meeting the needs of the transitional period, it will be a primary concern of His Majesty's Government to see that the reserved powers are so framed and exercised as not to prejudice the advance of India through the new constitution to full responsibility for her own government.

"His Majesty's Government has taken note of the fact that the deliberations of the Conference have proceeded on the basis, accepted by all parties, that the Central Government should be a Federation of All-India, embracing both the Indian States and British India, in a bi-cameral legislature. The precise form and structure of the new Federal Government must be determined after further discussion with the Princes and representatives of British India. The range of subjects to be committed to it will also require further discussion, because the Federal Government will have authority only in such matters concerning the States as will be ceded by their Rulers in agreements made by them on entering into Federation. The connection of the States with the Federation will remain subject to the basic principle that in regard to all matters not ceded by them to the Federation their relations will be with the Crown acting through the agency of the Viceroy.

"With a Legislature constituted on a federal basis, His Majesty's Government will be prepared to recognise the principle of the responsibility of the Executive to the Legislature.

"Under existing conditions the subjects of Defence and External Affairs will be reserved to the Governor-General, and arrangements will be made to place in his hands the powers necessary for the administration of those subjects. Moreover, as the Governor-General must, as a last resort, be able in an emergency to maintain the tranquillity of the State, and must similarly be responsible for the observance of the constitutional rights of Minorities, he must be granted the necessary powers for these purposes.

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“As regards finance, the transfer of financial responsibility must necessarily be subject to such conditions as will ensure the fulfilment of the obligations incurred under the authority of the Secretary of State for India and the maintenance unimpaired of the financial stability and credit of India. The Report of the Federal Structure Committee indicates some ways of dealing with this subject, including a Reserve Bank, the service of loans, and the Exchange policy, which, in the view of His Majesty's Government, will have to be provided for somehow in the new constitution. It is of vital interest to all parties in India to accept these provisions, to maintain financial confidence. Subject to these provisions the Indian Government would have full financial responsibility for the methods of raising revenue and for the control of expenditure on non-reserved services.”

In winding up the proceedings the Prime Minister spoke as follows:—

“Finally I hope, and I trust, and I pray, that by our labours together India will come to possess the only thing which she now lacks to give her the status of a Dominion amongst the British Commonwealth of Nations—what she now lacks for that—the responsibilities, and the cares, the burdens and the difficulties, but the pride and the honour of responsible self-government.”

121. In consequence, a White Paper was presented to Parliament and a motion was put forward which was carried. The first Round Table Conference was followed by a second, which was held from 17th September to 1st December, 1931. At the plenary session held on 1st September, 1931, the Prime Minister repeated the salient sentences of the Declaration made by the first Round Table Conference, and went on to observe as follows:—

“With reference to Central Government I made it plain that, subject to defined conditions, His Majesty's Government were prepared to recognise the principle of the responsibility of the Executive to the Legislature, if both were constituted on an All-India Federal basis. The principle of responsibility was to be subject to the qualification that, in existing circumstances, the Defence and external affairs must be reserved to the Governor-General, and that in regard to finance such conditions must apply as would ensure the fulfilment of the obligations incurred under the authority of the Secretary of State, and the maintenance unimpaired of the financial stability and credit of India?”

122. There was again a White Paper presented, and again a debate took place in Parliament. The important point to note is that the policy of the Labour Government initiated at the first Round Table Conference was endorsed by the new National Government which comprised all political parties in England. The second Round Table Conference decided to set up certain committees to examine certain questions, such as Federal finance, the representation of the Indian States, and Franchise. These Committees went out to India, worked for several months, and submitted their reports. Then came the third Round Table Conference held last year, which submitted its report after carefully investigating certain details.

It will thus appear that the process of examination has already covered a considerable time both in India and England, and early decisions are anxiously awaited in India.

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PROGRESS BY SUCCESSIVE STAGES.

123. It might be urged that the preamble of the Government of India Act, 1919, provides for an advance by successive stages, and that it does not commit Parliament to a pledge of Dominion Status in favour of India. As regards the successive stages, I submit that India has already covered a number of these stages, and indeed the constitution foreshadowed in the White Paper also represents a stage, which I hope will be treated as a penultimate stage, the final being reached when responsible government will be completed by the transfer of the control of defence and foreign affairs to the Federal Legislature. In a speech which Lord Chelmsford delivered in 1921 to the Indian Legislature when his Royal Highness the Duke of Connaught performed the opening ceremony of the Legislature, his Lordship reviewed the entire history of constitutional development in India, which, he said, fell into certain well-defined stages. The first of these, according to him, terminated in the Act of 1861; the second with the Act of 1892. The third stage was associated with the names of Lords Morely and Minto, and the fourth stage opened in 1921 with the inauguration of the constitution associated with the names of Mr. Montagu and Lord Chelmsford himself. In concluding his speech, Lord Chelmsford said that "a continuous thread of action links together the Act of 1861 and the Declaration of August, 1917. In the last analysis the latter is only the most recent and most memorable manifestation of a tendency that has been operative throughout British rule. But there are changes of degree so great as to be changes of kind, and this is one of them. For the first time the principle of autocracy, which had not wholly been discarded in all earlier reforms, was definitely abandoned; the conception of the British Government as a benevolent despotism, was finally renounced, and in its place was substituted that of a guiding authority whose role it would be to assist the steps of India along the road that, in the fullness of time, would lead to *complete self-government*.* In the interval required for the accomplishment of this task, certain powers of supervision, and, if need be, for intervention, would be retained, and substantial steps towards redeeming the pledges of the Government, were to be taken at the earliest possible moment."

124. More than 12 years have elapsed since Lord Chelmsford spoke thus, and I submit that, having regard to the stages through which India has already passed, to the new consciousness in the country and to the change in the outlook of the people to which distinguished administrators like Sir Charles Innes and Sir John Thompson, who were in India until a few months ago, have borne testimony, any further prolongation of the stages or periods of probation can only result in diverting the attention and energy of the people of India from fruitful constructive channels, to agitation, struggle, dissipation of energies and increasing estrangement between the Government and the people. It would be disastrous if the next stage was to be that of advance in the provinces and the centre was left unchanged. As I have indicated above, the constitution must cover both the provinces and the centre, if it is to inspire the people with a sense of hope and to make them realise their own responsibility for their future. Further, it will not be enough, in my opinion, to provide in a single Act for the Constitution of the Provinces and the Centre, and then to keep the part dealing with the Centre in suspense for an indefinite or undefined period of time. It would be as unfortunate in the interests of the country, to take a course of this character, as it would be impossible

* The italics are mine.

16^o *Novembris*, 1933.] MEMORANDUM ON THE WHITE PAPER [Continued.
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for many of us to feel satisfied with, or agree to a constitution which might or might not materialise within a foreseeable distance of time. I would further urge that the time factor should not be lost sight of. During the last six years or more, as already stated, commissions, committees and conferences have followed one after the other, and while I recognise the value of caution and prudence in building up a constitution for a vast country like India, I would also emphasise the dangers of delay. In short, I suggest that the constitution should come into operation so far as the Provinces are concerned towards the end of 1934, and every attempt should be made to make the constitution at the Centre function a year later.

125. To make the inauguration of the Federation, therefore, depend upon the fulfilment of certain financial pre-requisites about which even the Government cannot speak with any degree of certainty, and on the preparedness on the part of a certain number of Princes to accede, about which one may, however, feel more sure, is to involve the constitution as to the Centre in great uncertainty. I would, therefore, reiterate that a certain time limit should be fixed and power taken to extend that time by a year or so in case of proved necessity. It should not be difficult for the Indian Princes to come into the Federation within a year or so after the passing of the Act, during which time the preliminary details as to the Instruments of Accession could be settled. But if it is found absolutely necessary to extend the time, power should be taken by statute to do so by proclamation.

Paragraph 32 of the Introduction says:—

“If a situation should arise in which all other requirements for the inauguration of the Federation having been satisfied, it had so far proved impossible successfully to start the Reserve Bank, or if financial, economic or political conditions were such as to render it impracticable to start the new Federal and Provincial Governments on a stable basis, it would inevitably be necessary to reconsider the position and determine in the light of the then circumstances what course should be pursued. If unfortunately, such reconsideration became necessary, His Majesty's Government are pledged to call into conference representatives of Indian opinion.”

126. I submit that by the time the Bill is introduced into Parliament the position should become still more clear to the Government as to whether it is possible for them to set up the Federation within a year or so of the passing of the Act. If the Government should feel that it is impossible to do so, they should lose no time in taking Indian opinion into their confidence and taking such steps as might seem to them to be necessary to establish responsible government at the Centre. Indeed, I am not sure whether Government should not have now taken Indian opinion into confidence regarding these contingencies. It is necessary to be clear on this point, and I feel it my duty to say that, if, at that stage, Central Responsibility is ruled out for British India, and only a responsive form of Government is established, it will be difficult to satisfy Indian opinion and enlist co-operation on a large scale.

127. Lastly, as regards the extracts I have quoted in the preceding paragraphs from the speeches of Lord Irwin and Lord Chelmsford and the Prime Minister, they all justify me in holding that there are definite pledges on which India can take her stand. But perhaps what is most valuable is the Royal Message to India at the time of the opening of the

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existing Legislature. In the message of the King Emperor, which was delivered in 1921, we have the most direct and clear assurance given to us as follows:—

“ For years, it may be for generations, patriotic and loyal Indians have dreamt of Swaraj for their Motherland. To-day you have the beginnings of Swaraj within my Empire, and widest scope and ample opportunity for progress to the liberty which my other Dominions enjoy.”

128. To argue at this distance of time that Parliament is bound by the preamble of the Government of India Act only, and that it makes no reference to Dominion Status, that the declaration made by Viceroy and Prime Ministers of His Majesty's Government are not binding on Parliament and that those pledges were conditional pledges and could not be given effect to unless those conditions were fulfilled in the minutest detail, will be to give a rude shock to the faith of those Indians who have honestly believed in the realisation of India's destiny as a self-governing dominion within the British Commonwealth of Nations, not in a remote and uncertain future, but in the near future. These pledges should be interpreted in a generous spirit and carried out without any unnecessary delay. Further, upon the fulfilment of those pledges, I submit, will depend the justification of those constitutional methods of co-operation, without which the three Round Table Conferences would have been impossible.

129. The constitutional position, therefore, of India should be definitely defined, so that there may be no further differences of opinion as to what her destiny is going to be. In other words, it seems to me to be vitally necessary that the constitution itself should provide for India's equality of status with the other Dominions, as soon as she is able to set up under an Act of Parliament complete responsible government.

16^o Novembris, 1933.] MEMORANDUM ON THE WHITE PAPER [Continued.
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APPENDIX A.

MEMORANDUM ON THE SPECIAL POWERS OF THE GOVERNOR
BY SIR TEJ BAHADUR SAPRU.

1. The proposals in the White Paper which deal with the special responsibilities or powers of the Governor are as follows:—

Nos. 70, 71 at pages 55-56.

Nos. 92-94 at pages 61-62.

Nos. 103, 104 at pages 64-65.

No. 105 at page 65.

For the sake of convenience, the items in proposal No. 70 may be examined in the reverse order.

2. Clause (g) deals with the special responsibility of the Governor in respect of securing the execution of orders lawfully issued by the Governor-General. The orders of the Governor-General contemplated in this clause were explained by Sir Samuel Hoare to mean those orders which the Governor-General will have to issue in the discharge of his special responsibilities. If certain special responsibilities are placed on the Governor-General, it is obvious that there must be some machinery available for the carrying out of orders which he may pass in the discharge of these responsibilities. For the carrying out of such orders the Governor is obviously the best instrument or agent. Clause (g), therefore, is obviously a provision of a consequential nature, and cannot be taken exception to in the circumstances.

3. Clause (f) deals with the Governor's special responsibilities in respect of administration of areas declared in accordance with provisions in that behalf to be partially excluded areas. This must be read with the substantive proposal No. 106 at page 66, which provides that His Majesty will be empowered to direct by Order in Council that any area within a province is to be an excluded area and by subsequent Orders in Council to remove or vary any such order. Under proposal No. 107 in respect of partially excluded areas the Governor will be declared to have a special responsibility. The Governor will himself direct and control the administration of any area in a province declared, for the time being, to be an excluded area. Proposals 108, 109, at page 66 relate to legislation for the excluded areas. Coming back to proposal No. 70, it is a question of policy, on which difference of opinion is permissible, as to whether there should be any excluded areas. If, however, there are to be excluded areas, it is clear that somebody must be responsible for their administration, and the Governor is obviously the person on whom this responsibility can be placed. What is, however, necessary is that the excluded areas with their limits and extent must be ascertained, and the Indian Delegation should be given a chance of discussing this question in its entirety.

4. Clause (e) relates to the special responsibility of the Governor in respect of "the protection of the rights of an Indian state." It is obvious that this clause cannot relate to those rights of the Indian States, infringement of which can be actionable before the Federal Court, at the instance of the Federal unit concerned. It apparently relates to the infringement of certain rights which the Indian States possess under their treaties, or by virtue of their relationship with the Crown. Take for instance the case of a British-Indian district in the neighbourhood of an Indian State, where a movement has been started for the overthrow of the government in that state, or the ruling dynasty of that state. In a matter of this character the Indian state cannot get any relief from the Federal Court. It can only approach the representative of the Crown to protect it against an

16^o Novembris, 1933.] MEMORANDUM ON THE WHITE PAPER [Continued.
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attempted revolution or a subversive movement. This, of course, will not apply to an agitation which may partake of the character of the criticism of the administration of the state. If this view of the matter and if this interpretation of Clause (e) are correct, this clause cannot be taken exception to.

5. Clause (d) relates to the special responsibility of the Governor in respect of commercial discrimination. In order to appreciate the full significance of it reference should be made to proposal 122 on page 70. The Nehru Committee Report also had a clause providing against legislation of a discriminatory character. This Report was drawn up in 1928 by a committee of an All-Parties Conference to which the Congress was also a party. Its chairman was the late Pundit Motilal Nehru. The point is not that it should be open to the legislature of the future to pass legislation of a discriminatory character, but whether relief from legislation of that character should be sought in the Federal Court or at the hands of the Governor. In the interests of the Europeans themselves, it is far more desirable that they should seek their remedy in such a case, openly and directly, in the Federal Court, rather than approach the Governor of the province and ask for his executive and administrative intervention. The decision given by an independent tribunal will naturally have greater weight than the administrative decision of a Governor. By approaching a Governor for his intervention, the European commercial community will expose themselves and also the Governor to severe criticism, and may bring themselves and the Governor into conflict with public opinion. Such action may also, it is feared, tend to weaken the authority and responsibility of the Ministers, and may easily be a fruitful source of misunderstanding between the Ministers and the Governor. If any legislation is passed by any legislature which contravenes the constitutional guarantees given to the Europeans, the Federal Court is apparently the proper tribunal before which its validity can be tested. And if any interim wrong or injury arises or is threatened no doubt the Federal Court will possess the power of issuing temporary injunctions. Coming to proposals 122, 123, referred to above, it will be seen that proposal 122 gives protection to any British subject coming into India from any part of the British Empire for the purposes of trade or business. For instance a British subject coming into India from South Africa or Kenya can claim the protection formulated in proposal 122, while a British-Indian subject going to, or living in South Africa or Kenya cannot as a matter of right claim equal treatment in those parts of the Empire. The whole basis of the settlement arrived at, at the Round Table Conference, was reciprocity between the United Kingdom and India, that is to say, if the laws of England do not discriminate against any Indian subject of His Majesty in respect of his carrying on of trade or business, or holding property in England, the laws of India too should not discriminate against any person belonging to the United Kingdom exercising similar rights in India. Proposal 122 therefore goes beyond the agreement. Probably it is an oversight, but in any case Indian opinion will not agree to the clause as it is drafted. If clause 122 affords protection to every British subject, then the provisions for the benefit of British subjects domiciled in the United Kingdom such as are contained in proposal 123, seem to be wholly unnecessary. Lastly the provisions as to commercial discrimination should not prevent Indian legislatures and Governments from fostering, encouraging, and subsidising indigenous industries, particularly those which may partake of the character of key industries.

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6. Clause (c) deals with the special responsibilities of the Governor in respect of the securing to the members of the Public Services, of any rights provided for them by the Constitution, and the safeguarding of their legitimate interests. So far as the Public Services are concerned, it is only fair that they should receive the most absolute protection in respect of their salaries, allowances, emoluments, and pensions, and all other rights which may be guaranteed to them by the Constitution. But the character and extent of those rights must be carefully defined. Proposals 182-201 deal with various matters relating to the Public Services at pages 82-86.

Appendix 7 (Part 1) pages 120-122, gives a list of the principal existing rights of officers appointed by the Secretary of State in Council.

Appendix 7 (Part 2) page 121, gives a list of the principal existing rights of officers appointed by an authority other than the Secretary of State in Council.

Appendix 7 (Part 3) page 122, deals with the question of the non-votable salaries of certain classes of Public Servants. These various provisions must be carefully examined. There are some rights of the Public Services, detailed in these Appendices to which no exception can be taken. There are others, however, which are open to objection. The point is that such rights as are guaranteed to the Services by the Constitution should be protected, and if that is accepted then the protective authority must be the Governor. In this connection it should be necessary also to discuss the functions of the Public Services Commission, and its relation to the Governor. The words in Clause (c) namely "*vis-a-vis*" the safeguarding of their "legitimate interests" are, however, wide and indefinite. If the phrase "legitimate interests" means the same thing as rights provided for by the Constitution, then it is redundant and may create trouble. If, however, that expression means something more than the rights provided for by the Constitution then the Delegation should be told what exactly it means. To place such large and vague powers in the hands of the Governor, is apt to give rise to a great deal of conflict between the legislature and the cabinet of the future on the one side, and the Governor on the other. Instead of strengthening the position of the Public Services, and placing their relations with public opinion on a satisfactory footing, provision of this character would weaken their position *vis-a-vis* public opinion. It must be borne in mind that if the Public Services in England do not come in for public criticism, it is because public opinion holds the Government responsible for anything that goes wrong, or is supposed to go wrong. On the other hand in India the Public Services, and particularly the Indian Civil Service; have hitherto performed the dual functions of administrators, and politicians. When, however, the Public Services will come to occupy the position of mere administrators or agents of the will of the Government of the day, public criticism will, as in England, be directed against the government.

7. Clause (b) deals with the special responsibilities of the Governor in respect of the safeguarding of the legitimate interests of the minorities. Here, again, the expression "legitimate interests" is open to the same objections as those in Clause (c). It may be admitted readily that the minorities are entitled to the protection of certain rights and privileges which must be carefully defined in the Constitution. It should be open to the minorities concerned to seek proper relief in the Federal Court, if any legislation is passed by the legislature in violation of constitutional guarantees. Where, however, anything is done administratively which causes any injury or loss to any minority, and where proper relief cannot be had in a court of law, the Governor may be appealed to for his intervention. Clause (b) as it stands may, however, give rise to

16^o Novembris, 1933.] MEMORANDUM ON THE WHITE PAPER [Continued
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conflicts between various sections of the community, if appeals are made to the Governor against some act of the Ministry of the day which may appear to the minority as being unjust to the minority, or opposed to what it considers to be its "legitimate interests." It will thus weaken the authority of the Ministry, and may seriously interfere with its constitutional responsibility to the legislature. This clause requires to be carefully redrafted, so that the circumstances in which the Governor may be called upon to exercise his special responsibility, in the interests of a minority, and the purpose for which his intervention may be invoked may be closely defined.

8. Clause (a) deals with the special responsibility of the Governor in respect of the prevention of any grave menace to the peace or tranquillity of the province, or any part thereof. If it is intended that in the ordinary day-to-day administration of law and order the Governor should not interfere with the discharge of their responsibility by the Government of the day, then this clause must be revised. The administration of law and order is so closely connected with the administration of other departments, such as Land Revenue, Excise, Forest, Public Charities, Religious Endowments, that it is easily conceivable that any action, legislative or administrative, taken by the Government of the day in any one of these departments may create grave public excitement. Certain sections of the community may then raise an agitation which may appear to the Governor as likely to interfere with the peace or tranquillity of the province, and the Governor may, purporting to act under this clause, completely stop such action. For instance, it is by no means unlikely that in several of the provinces, questions relating to the relations of landlords and tenants, or the administration of Public Charities and Religious Endowments may form the subject of legislation. It is conceivable that in one province the landlords, and in another the tenants or peasants may start an agitation attacking the policy of the Government. Similarly, if an attempt is made by the Government to bring under control or regulate the administration of Religious Endowments, the orthodox section of the community may adopt the same attitude. What is to happen in such a case? A nervous Governor, or a Governor who is not in sympathy with the policy of his Government, may easily stop all such legislation under this clause. It is true that this clause can be brought into operation only where there is *grave menace* and this clause is apparently intended to provide an intermediate stage of action of a preventive character on the part of the Governor, before the final stage of breakdown contemplated by proposal 105, page 65, is reached. The real object of this clause, however, seems to be to enable the Governor to take action when any grave menace to the peace or tranquillity of the province arises, due to the dangerous activities of a person or persons. It may be that either the minister will not have the necessary courage to deal with a situation of that character, or he may feel that he will not have the necessary support from the legislature. In such a case the Governor may, in the interests of the province, interfere, so as to prevent a grave menace to the peace or tranquillity of the province. It is, therefore, suggested that this clause should be so modified as not to interfere with the responsibility of the ministers in the other spheres of government, and its operation should be limited to the preservation of the peace or tranquillity as against a grave menace. It is, therefore, suggested that some such words as the following should be added to this clause:—

"Arising out of the activities of a person or persons tending to crimes of violence."

16^o Novembris, 1933.] MEMORANDUM ON THE WHITE PAPER [Continued.
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9. The next important power of the Governor enabling him to discharge his special responsibility is that which is contained in proposal 92-93-94. In this connection reference may be made to paragraphs 36, 37, 38 of the Introduction.

It will be noticed that under the present constitution a Governor of a province does not possess such powers as are contemplated by proposal No. 92. According to the White Paper scheme, briefly put, he is to be vested with two special powers namely—1. the power of enacting, according to a certain procedure, a Governor's Act, and 2. the power of making ordinances under proposals 103, 104. The procedure as regards the former according to proposal 92, is, that the Governor may present or cause to be presented a Bill in the legislature with a Message that it is essential, having regard to any of his special responsibilities, that any Bill so presented should become law, before a day specified in the Message, and (b) to declare by Message in respect of any Bill already introduced in the legislature that it should become law before a stated date in the form specified in the Message. In the event of the legislature failing to act according to the Message, the Governor can enact the Bill as a Governor's Act. It is submitted that this procedure, though not identical with, is akin to, the procedure of certifying legislation under the existing Government of India Act (*see* section 67B of the Government of India Act), a procedure to which strong exception has always been taken in India.

10. The procedure contemplated by proposal 92 is objectionable in so far as (a) it is likely to tend to weaken party organisation in the legislature by affecting the adherence of the rank and file to their leaders; (b) it will blur the responsibility of the Ministers to the legislature and introduce an element of disruption into the legislatures. The Governor or the Governor-General who resorts to this procedure must not take shelter behind the support of such members of the legislature as dissenting from their leaders or the general body of members may decide to support such a Bill. Most of the special responsibilities contemplated by proposal 70 are responsibilities of an administrative character. It is possible that a Governor may contemplate special legislation in the interests of peace and tranquillity of the province, but that can only be in rare instances. There does not however seem to be any valid reason to assume that if there is grave menace to the peace and tranquillity of the province the Ministers will withhold their co-operation from the Governor. There does not, therefore, seem to be any necessity for giving this special power of legislation to the Governor. But, if the Governor must needs have that power, it is far better that he should exercise that power on his own account than that the Bill should *seem* to have received the support of the legislature. In short, the two spheres of responsibility must be kept distinctly apart. Proposal 94 seems to be of a still more far-reaching character, as under this provision the Governor can arrest the progress of any Bill which in his opinion affects the discharge of his special responsibility for the prevention of any grave menace to the peace and tranquillity of the province. The Governor has and must have the power of veto in any case. It is therefore submitted that the power of stopping legislation of a Bill under proposal 94, should be done away with.

11. Under proposal 103, the Governor can issue an Ordinance, if he is satisfied that the requirements of any of his special responsibilities with which he is charged under the Constitution call for the exercise of this exceptional power. If the language of this proposal is compared with Section 72 of the present Government of India Act it will be found that while the Governor-General may *in case of emergency* make and promulgate ordinances for the peace and good government of India, or any part thereof, the Governor may under the proposal under consideration pass an Ordinance, not merely for the peace and

16^o Novembris, 1933.] MEMORANDUM ON THE WHITE PAPER [Continued.
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good government of the province, but for implementing any one of the special responsibilities mentioned in proposal 70. It will be noticed that proposal 53 of the White Paper gives the same powers to the Governor-General. In these days of easy communication, there is no reason why the Governor should possess this power when such power is also vested in the Governor-General. It is far better that the Governor-General should exercise this power from his place of detachment than that the Governor who will be nearer to the scene of local excitement and local prejudices, should be armed with the power.

12. Under proposal 104, an additional power is vested in the Governor to issue an Ordinance if his Ministers are satisfied, at any time when the legislature is not in session that an emergency exists rendering such a course necessary. If all that is meant by this proposal is, that under certain special circumstances, Orders in Council may be issued by the Governor upon the advice of his Ministers, then such a provision should be made in explicit terms, but there does not seem to be any strong and valid reason for multiplying the power of issuing Ordinances at the instance of Ministers. Such a power is, it is to be feared, likely to affect the relations of the Ministers to the legislature, and may at times enable them to avoid their responsibility to the legislature by taking shelter behind the Ordinance promulgated by the Governor.

APPENDIX B.

A MEMORANDUM ON COMMERCIAL DISCRIMINATION BY MR. M. R. JAYAKAR.

1. I base my comments on the provisions of the White Paper, being Clauses 18B and 122 to 124 of the proposals, and paragraph 29 of the Introduction. I also refer in this note to the previous proceedings of the Round Table Conference, especially the fourth report of the Federal Structure Committee (hereinafter referred to as the "Fourth Report, see second Round Table Conference Reports, p. 54), and the proceedings of that body and of the Minorities Committee at the second session of the Round Table Conference. There are also a few references to a report of the Committee on Commercial Safeguards, which was presented to the third Round Table Conference (see p. 39 of Indian Round Table Conference, third session—November-December, 1932).

2. Clause 122 of the Proposals lays down that a Federal Legislature and the Provincial Legislatures will have no power to make laws subjecting in British India any British subject, including Companies, etc., constituted in India, to any disability or discrimination, etc., etc. As drafted, this Clause would mean that no British subject, whether belonging to India or the United Kingdom or any of the Colonies or Dominions (now or in the future), and no Company formed by such British subjects, provided it is constituted in India, can be subjected to any discrimination.

3. It would be open under this clause for a South African, or a New Zealander, or for Companies formed by South Africans or New Zealanders, provided they are constituted in India, to claim complete equality for all time with indigenous concerns. It is not quite clear, but it seems to me that under this clause it would even be open to foreigners to be incorporated into a Company in India and claim exemption from discrimination unless the definition of "British Subject" is to be so framed as to include Companies formed by British subjects only. The clause, as drafted, is thus altogether too wide and goes far beyond the conclusions arrived at at the Round Table discussions. It will be noted that there is no reference to

16^o Novembris, 1933.] MEMORANDUM ON THE WHITE PAPER [Continued.
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reciprocity in this clause, and therefore, as it stands, any subject of a Colony or a Dominion, for himself as also for any Company he may constitute in India, will be able to claim equality, even if such equality is not granted to Indians in his own country. It will be clear from all the previous discussions on this subject at the Round Table Conferences that it was never the intention to grant equality to any others than the residents of the United Kingdom. The issue was specifically raised by me in the Federal Structure Committee (*see, e.g.,* last paragraph at page 1062 of the proceedings of the Federal Structure Committee and Minorities Committee, second Round Table Conference, Vol. 2). Reference is also invited to paragraph 34 of the Fourth Report which clearly lays down "it will be for the future Indian Legislature to decide when and to what extent such rights should be accorded to others than individuals ordinarily resident in the United Kingdom or Companies registered there, subject of course to similar rights being accorded to residents in India and to Indian Companies."

4. The future Indian Government should be left a free hand to discuss and adjust these questions on a footing of equality and reciprocity with the Dominions and Colonies of the British Empire as well as with foreign countries. This principle was accepted unanimously by the Committee on Commercial Safeguards in their report presented to the third Round Table Conference. In the last part of paragraph 3 of the said report it is stated: "The Committee assume that it would be open to the Governments of India should they wish to do so to negotiate agreements for the purpose mentioned in this paragraph with other parts of the British Empire." The future Indian Government may, for instance, decide that the grant of any such privileges to South Africans might be conditional on their granting not only equality of trading, but also equality of political status to Indians in South Africa. That the object was to confine these privileges to the residents of the United Kingdom is also clear from the concluding sentence of paragraph 25 of the Fourth Report which says: "on the other hand the Committee are of opinion that an appropriately drafted clause might be included in the Constitution itself recognising the rights of persons and bodies in the United Kingdom to enter and trade with India on terms not less favourable than those on which persons and bodies in India enter and trade with the United Kingdom."

It will be seen from clause 24 of the Fourth Report that, in accordance with the discussions that had previously taken place, a distinction has been made between persons and bodies in the United Kingdom trading with India but neither resident nor possessing establishments there and persons and bodies trading with India and resident or possessing establishments there. It will be clear from this, as well as from the trend of the previous discussion that it was admitted that a distinction should be made between the existing rights of British individuals and Companies now trading in India, and resident or possessing establishments there, and British individuals and Companies who did not possess such establishments or who are not at present trading with India. The said clause 24 states that: "such persons and bodies clearly do not stand on the same footing as those with whom this Report has hitherto been dealing." By this is obviously meant persons and bodies now trading with India and resident or possessing establishments there. The same distinction was recognised in paragraph 4 of the Report of the Committee on Commercial Safeguards presented to the third Round Table Conference. This distinction is of vital importance and must not be lost sight of, as the safeguarding of the future industrial development of India will, to a large extent, rest upon the maintenance of

16^o Novembris, 1933.] MEMORANDUM ON THE WHITE PAPER [Continued.
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this distinction. Just as the Clauses preceding Clause 24 of the Fourth Report dealt with existing persons and bodies trading with India, so Clause 122 of the Proposals of the White Paper is meant to deal with such persons and bodies only.

6. The view which the Committee took as stated above, is the prevalent view in India, even amongst British merchants. This was made clear in the course of the examination of Sir Edward Benthall and other representatives of European commerce, who gave evidence before the Joint Select Committee. I shall quote a short extract from Sir Edward Benthall's evidence consisting of my questions and his replies on this point.

Mr. Jayakar: Sir Edward, your Association speaks on behalf of British subjects domiciled in the United Kingdom and trading with India?

Sir Edward: Yes.

Mr. Jayakar: You do not represent British subjects who are not domiciled in the United Kingdom?

Sir Edward: No; we are speaking for the first class.

Mr. Jayakar: And they accept the principle of reciprocity?

Sir Edward: Yes.

Mr. Jayakar: What will be your Association's view? Do you suggest that British subjects belonging to other parts of the British Empire should enjoy in India rights which their own country does not give to Indians?

Sir Edward: I think I made it clear in an answer to a previous question that we were only representing British subjects domiciled in the United Kingdom, and while we hoped that British subjects domiciled in the Dominions would be treated in the same way as British subjects domiciled in the United Kingdom, that was a matter of arrangement between the Government of India and the Government of the Dominions.

Mr. Jayakar: You do not advocate that they should enjoy in India rights which their own country does not give to Indians?

Sir Edward: That is a matter of negotiation, I think.

Mr. Jayakar: What is your own view? You are an important man in British India. Do you suggest that they should enjoy in British India rights which their country does not give to British Indians?

Sir Edward: No.

7. The principal objection that has been raised from the Indian point of view to the proposals regarding commercial discrimination is that they do not provide adequate means of safeguarding the development of Indian industries, particularly with regard to the basic, national, key and infant industries.

8. So far as industries already established by Britishers in India are concerned, I recognise that it would be futile to resist the grant of complete equality to them. The question, however, stands on a totally different footing with regard to industries that may be established in the future. With regard to them, there is no reason why the principles recognised as aforesaid in paragraph 24 of the Fourth Report and paragraph 4 of the Report of the Committee on Commercial Safeguards at the third Round Table Conference should not be embodied in the Constitution Act. I can find no adequate reason why the Indian Legislature should be debarred from providing reasonable conditions regarding incorporation, capital, control and similar other requirements which would ensure that Companies to be formed under British initiative or control should promote the development of Indian trade and industry and not hamper or restrict it in any way. The conditions to be imposed would be similar to those recommended by the External Capital Committee and would be applied only in the case of basic or national industries, key industries and infant industries. The principle of applying such conditions when subsidies or

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bounties are granted was accepted in paragraph 4 of the Report of the Committee on Commercial Safeguards at the third Round Table Conference and has already been accepted by the Government of India. I may mention, however, that the grant of direct subsidies or bounties is fast coming to be regarded as an inadequate and economically objectionable method of helping industries and is utilised in rare cases only. There is no reason why similar conditions should not be imposed in all cases where assistance is granted by the State, whether in the shape of a financial aid or otherwise, in order to safeguard and promote industries of the nature described above.

9. The definition of "infant" industries should not present any difficulty.

By "key industries" I mean industries dealing with certain materials or processes which are regarded as vital for the defence or well-being of the country. Instances of such industries as mentioned in the "British Key Industries Protection Act" are: optical glass, magnets, valves, etc.

The term "basic or national industry" is more difficult to define exactly. By basic or national industries I mean industries which are necessary for the defence of a country in time of war, or on which its industrial prosperity in peace is based.

10. It is not unlikely that an attempt will be made to set aside the whole of this proposal on the ground of the impossibility of defining basic or national industries. In that case, I would invite attention to paragraph 22 of the Fourth Report in which a reference is made to the difficulty of drafting a clause prohibiting legislative or administrative discrimination. It is stated there: "a completely satisfactory clause would no doubt be difficult to frame and the Committee have not attempted the task itself. They content themselves with saying that (despite the contrary view expressed by the Statutory Commission in paragraph 156 of their Report) they see no reason to doubt that an experienced Parliamentary draftsman would be able to devise an adequate and workable formula." Similarly I would make no attempt in the time at my disposal, to frame a satisfactory definition but would content myself by saying that it should not be beyond the competence of an experienced Parliamentary draftsman. If, however, the difficulty of formulating a general definition was found to be insuperable, a schedule might be attached enumerating the various industries to be treated as basic or national. Such a schedule might contain the following:—

- Ammunition and materials of war;
- Railways;
- Exploitation of minerals, water and electrical power;
- Manufacture of iron and steel;
- All industries which are State monopolies or over which Government exercise any form of direct control.

This list is illustrative.

11. In connection with the right of a country to safeguard its indigenous industries, I would invite the attention of the Committee to a Memorandum by Dr. Narendra Nath Law printed in the proceedings of the Federal Structure Committee and Minorities Committee, second Round Table Conference Vol. 3, pages 1483 and following.

12. A difficulty will immediately arise regarding the definition of existing industries. It would not be difficult to get over any conditions sought to be imposed by forming what would be essentially a new Company while retaining the name of an existing Company. Here, again, I do not attempt to formulate a definition which would leave no loopholes but would suggest that a substantial modification of the scope and nature of a business might be held to constitute a new undertaking.

16^o Novembris, 1933.] MEMORANDUM ON THE WHITE PAPER [Continued.
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13. I now proceed to state how Clause 122 might be modified so as correctly to implement the decision arrived at the Round Table Conference.

I should word it somewhat as follows:—

“The Federal Legislature and the Provincial Legislatures will have no power to make Laws subjecting in British India any British subject domiciled in India or in the United Kingdom at the time of the passing of the Act, including Companies, partnerships or Associations constituted in India and existing at the time of the passing of the Act, and Companies constituted in the United Kingdom and trading with India at the time of the passing of the Act, in respect of taxation, the holding of property of any kind, the carrying on of any profession, trade, business or occupation, or the employment of any servants or agents, or in respect of residence or travel within the boundaries of the Federation, to any disability or discrimination based upon religion, descent, caste, colour, or place of birth, etc.”

(The italicised words are new.)

14. A further difficulty has been caused by the fact that, the question of the rights of all Indians to hold property, trade, travel, etc., in which no discrimination is intended to be made now or hereafter is mixed up in the said clause with the question of the equality of the existing rights of British traders. This has caused confusion. It would be better to deal with this subject separately by means of a separate clause in the Constitution Act which would guarantee such equality to all British Indian subjects for all time.

15. It is further to be noted that, as stated above, nothing has been mentioned about reciprocity in Clause 122. So far as this clause merely guarantees non-discrimination to the existing British business interests, I do not think that reciprocity matters very much. But perhaps it would be better to refer to it in this clause, so that, in the very unlikely contingency of the British Government imposing restrictions upon Indian trade or industry in the United Kingdom which do not exist at present, it will be open to the Indian Government to impose similar restrictions upon British Companies in India. It is only when clause 122 is re-drafted so as to be made applicable to existing British interests that clause 123 assumes its real significance. It might be pointed out that if clause 122 remains as it is in the White Paper and clause 123 also remains unaltered, then clause 123 does not carry out the intentions of the Round Table Conference, because in paragraph 24 of the Fourth Report, it is distinctly stated that “the Committee were generally of opinion that *subject to certain reservations*, they (i.e., persons and bodies in the United Kingdom trading with India but neither resident nor possessing establishments there) ought to be freely accorded upon a basis of reciprocity the right to enter and trade with India.” (The italics are mine).

16. In Clause 123 there are no reservations of any kind which would be applicable to Companies not now trading with India or possessing establishments there. I have already mentioned the kind of reservations which I would apply to such Companies in the interests of the future development of Indian industry. If Clause 122 is modified as suggested above, Clause 123 may perhaps remain as drafted in the White Paper, in view of the modifications I propose in Clause 124. I would modify Clause 124 on the following lines:—

“An Act¹ of the Federal or of a Provincial Legislature which with a view to the encouragement of Indian trade or industry, lays down certain conditions regarding the incorporation of future Companies in India, their registration, the denomination of their capital, the

16° Novembris, 1933.] MEMORANDUM ON THE WHITE PAPER [Continued.
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proportion of it to be offered to Indian subjects, the composition of the Board of Directors, or the facilities to be given for the training of the Indian subjects of His Majesty, will not be held to fall within the terms of the two preceding paragraphs," etc. (The words italicised are new).

17. Before considering the new draft, I might examine the clause as drafted in the White Paper. In this connection attention is invited to the discussion in the Federal Structure Committee on this question and the remark of Sir Purshotamdas Thakurdas in the middle of page 1244 (Indian Round Table Conference, Second Session, proceedings of Federal Structure Committee and Minorities Committee Vol. 2), stating that the reference to the recommendations of the External Capital Committee was illustrative and not exclusive. Particular reference is also invited to the discussion on this question, especially the remarks of Lord Reading on pages 1246 and 1247, where the noble Lord accepted my suggestion that the conditions should be such as might be prescribed by the Indian Legislature. Nevertheless, Clause 124, as drafted now, treats the conditions as though they were exclusive and all-sufficient and incapable of being modified in any way by the future Indian Legislature. One of the conditions which was then suggested was that a certain proportion of the capital should be held by Indians. Some objections, into which I need not go at present, can be raised to this suggestion, but there can be no objection to the offering of a certain proportion of the capital for subscription in India at the time of the issue. I may here invite the attention of the Committee to the remarks of Sir Akbar Hydari on page 1243 describing the practice in Hyderabad. Sir Akbar said " . . . wherever we want to give any help from public funds we do lay down certain conditions, which are not based upon racial discrimination, but upon these facts—that a certain proportion of the directors shall be Hyderabadis and also a certain number of the shareholders. Having regard to the difficulties to which Lord Reading has referred, we say that a first refusal of a certain number of shares shall be given either to Hyderabadis or to the Hyderabad Government, but afterwards there are no further conditions."

If such a practice prevails in conservative Hyderabad, there ought to be no objection in adopting it in British India.

18. There is another respect also in which the conclusions of the Round Table Conference do not seem to have been fully embodied in this Clause. It is material here to refer to the remarks of Lord Reading in the last paragraph on page 1082 in which he admitted the right of the Government of India to lay down conditions in respect of future public utility undertakings or public concerns in which public money was to be invested or used. His Lordship said: "I quite follow the argument that where, for example, in future public utility undertakings or public concerns in which public money is to be invested or used, the Government of India may say, well, we think that a Company which is to get the benefit of the subsidy that we shall give or of the advantage that we shall give by some direct payment or use of money, must be a registered Company in India with rupee capital, with a moderate reasonable proportion of directors, and with a reasonable and moderate proportion of Indian shareholders . . ." There may be concerns of this kind in which public money is used but which nevertheless do not receive subsidies or bounties. The right of the Government of India to impose conditions in such cases does not appear to be provided for in clause 124.

19. Turning now to the clause as drafted by me, it will be seen that I have specifically defined the nature of the conditions which it would be within

16^o *Novembris*, 1933.] MEMORANDUM ON THE WHITE PAPER [*Continued.*
BY SIR TEJ BAHADUR SAPRU, K.C.S.I.]

the competence of the future Indian Legislature to impose, and not give it a general power to impose restrictions. I am prepared to concede, for meeting my opponent half way, that the grant of such a general power, in spite of the remarks of Lord Reading already quoted, may be open to grave difficulties and may be stoutly opposed unless it is hedged in by numerous qualifying clauses. I am even prepared to accept the principle that the conditions so imposed must be for the development of Indian trade and industry and not for the hampering of British trade and industry and that it may be open to the Federal Court to decide whether the conditions imposed are in fact meant for the promotion of Indian trade and industry, or for the hampering or obstruction of British trade and industry. May I add, that in making these concessions I have gone as far as it is possible for Indian opinion to go.

20. The Viceroy may also exercise his power of disallowance or submission of the Bill for the pleasure of His Majesty. If, even with these safeguards, a power to impose conditions is not granted, then Indian opinion may have to hold out for a clause such as the one proposed by me. If, even to that, an objection is raised that, in the absence of a definite proportion or percentage, the power may be so exercised as seriously to obstruct, if not destroy, British business, the answer would again lie in the power of appeal to the Federal Court and the authority of the Viceroy to interfere in the exercise of his special responsibility for the prevention of commercial discrimination. If there is still no agreement, we may agree to define the conditions more closely. In that case they might be:—

- (1) The right to provide that the Company shall be incorporated in India on a rupee capital.
- (2) That at least half the Directorate shall be Indian.
- (3) That at least 55 per cent. of the capital shall in the first instance, be offered for subscription in India.
- (4) Adequate measures for the training of Indians in the industrial concerns.

21. What to my mind is most important is that India should have the right to impose these conditions in the case of all future Companies who may desire to establish themselves in India in connection with the basic, national, key, or infant industries mentioned above. I do not think that it can be said that we would be raising a very important issue at the eleventh hour, because according to my reading of the proceedings of the Round Table Conference the right to make a distinction between existing and future British Companies has, as stated above, always been admitted. If such a thing is not done, to take the instance of the Iron and Steel Industry of the Tatas, it will be possible for a powerful and long-established firm like Messrs. Dorman Long's, to establish themselves in India and compete with them. Even though 100 per cent. of their capital and 100 per cent. of the Directorate may be British, and they may not agree to train a single Indian in the more responsible posts in the Iron and Steel Industry, they will be entitled to the benefit of all the protective duties. It is only when any question of direct financial assistance in the shape of a subsidy or bounty arises that there is any likelihood of any distinction, but the possibility of a Company like the Tatas being given a subsidy or bounty in the future is very remote.

16^o Novembris, 1933.] MEMORANDUM ON THE WHITE PAPER [Continued.
BY SIR TEJ BAHADUR SAPRU, K.C.S.I.

ADMINISTRATIVE DISCRIMINATION.

22. The proposals regarding Administrative Discrimination as embodied in the White Paper are novel; they unduly fetter the discretion of the Ministers and will actually place Indian industry in a more unfavourable position than it is to-day. Paragraph 29 of the Introduction to the White Paper says: "The Governor-General or the Governor as the case may be, would be entitled to act otherwise than in accordance with his Minister's advice if he considered that such advice involved discriminatory action in the administrative sphere." Under clause 18 of the Proposals the Governor-General is declared to have a "special responsibility" in respect of (c) the prevention of commercial discrimination. The clause further says: "It will be for the Governor-General to determine in his discretion whether any of the 'special responsibility' here described are involved by any given circumstances." That seems to mean that the Governor-General, in the case of administrative discrimination at least, will be the final judge as to whether any act of his Ministers really involves such discrimination. Instances of such discrimination exercised in a reasonable and impartial manner exist even to-day, not only in India, but in all countries of the world.

23. To take an instance. The B.B. & C.I. Railway invited tenders both in England and India for sleepers some time ago. I understand that although one tender in London was slightly lower than an Indian tender, the Government of India in the exercise of its discretion had the contract awarded to the Indian Company as the producers of Iron and Steel in the country itself. There are many countries in the world to-day in which their respective Governments have issued specific instructions that for all Government works, works of public utility by municipal or other local bodies, materials produced in the country alone should be used with a view to the prevention of unemployment. The Indian Government is far more conservative in this respect than most other Governments. Tenders for public works are invited from all over the world and it is only in rare instances as when dumping prices are tendered, as is so often the case nowadays, and the difference is very small, that any preference is given to the home manufacturer. Under the provisions regarding administrative discrimination as laid down in the White Paper as strictly interpreted, it would be open to any British manufacturer whose tender may be £100 less than the tender of an Indian manufacturer, actually to go to the Federal Court on the ground of administrative discrimination even if the Governor-General or the Governor did not choose to interfere in the exercise of his "special responsibility." Such a provision is not only detrimental to the interests of industries run by Indians in India, but also the interests of industries run principally by British interests in India, such as the engineering and coal trades. No question of reciprocity enters into this. Reciprocity in any case, between a rich and an industrially powerful country like Great Britain and a poor and backward country like India is a bit of camouflage, but as applied to administrative discrimination it is nothing less than moonshine. Supposing there was an order for British rails which would mean employment to 10,000 British workmen, would any Railway Company or public body or Government in England dare to place the order in Germany or in Canada simply because the German or the Canadian tender was £100 less than the lowest British tender? Would they place the order with an Indian manufacturer if his tender was £100 less? The life of no British Government which systematically countenanced any such policy would be worth a month's purchase. It is perfectly right and reasonable

16^o Novembris, 1933.] MEMORANDUM ON THE WHITE PAPER [Continued.
BY SIR TEJ BAHADUR SAPRU, K.C.S.I.

that such should be the case. At a time when the spending of money for public works in order to relieve unemployment is powerfully advocated, it would certainly be wrong for a British Government or a Railway Company to give a contract outside Great Britain, merely because they saved a few pounds and thereby deprived a number of British workmen from getting their livelihood. The same thing would be done by Canada or France or Germany or Belgium, and there is no reason why it should not be done by India.

24. As stated above, it is being done now by the Government of India, although in a very timid, cautious and conservative manner, but the new Constitution outlined in the White Paper would deprive the future Indian Government of all power to do so. There is no reciprocity in this case and the existing proposals should be abandoned as far too rigid and unfair. At the same time it is not unreasonable that British interests should seek to safeguard themselves against *systematic* discrimination in the administrative sphere by the future Indian Executive which might lead to serious harm to their business. For that purpose, I would only leave a general discretionary power to the Governors and the Governor-General to interfere and overrule their Ministers if they thought that the administrative discrimination made by the latter was so markedly malicious, persistent and unfair as to amount to the penalising of British business *vis-a-vis* Indian business. Special provision for that purpose might be made in the Instrument of Instructions. The Governor-General or the Governor would not lightly exercise this power of interference as it would lead to the resignation of the Minister and a public outcry, unless it was fully justified; but this is essentially a matter where practical and political considerations enter. It is difficult to lay down the exact limit at which the Governor-General or the Governor would exercise his right of interference, or to define it in terms of hard and fast rules. I would not, therefore, give the power of adjudication on this issue to the Federal Court as that would immediately make the provision too rigid and deprive it of the elements of flexibility and discretion which are its essence.

25. There is another very important consideration. There should be very little administrative discrimination as between British Companies established in India now, or in the future, but there should be discrimination within reasonable limits, between Indian Companies or British Companies established in India and British Companies incorporated in the United Kingdom.

It is mainly a question of the measure of the discrimination and its reasonableness and must be left to the discretion of the Governor-General and the Governors. I would desire a modification of Clauses 122 to 124 of the Proposals, in the light of these comments.

26. I cannot conclude this note without referring to the formula which was accepted by the first Round Table Conference as a compromise between the rival views of British and Indian business men. That formula, which is to be found set out in detail at page 49 of the first Round Table Conference Reports (copy supplied to the Committee), spoke of an appropriate convention based on reciprocity to be entered into for the purpose of regulating the rights of the British commercial community in this behalf. I have not been able clearly to understand why such a convention is regarded as impossible in expert circles. That there are difficulties connected with the creation of such a convention may be easily conceded, but such difficulties are to be encountered in every branch of this subject. I do not regard these difficulties as incapable of being overcome by goodwill and understanding

16th Novembris, 1933.] MEMORANDUM ON THE WHITE PAPER [Continued.
BY SIR TETJ BAHADUR SAPRU, K.C.S.I.

on both sides. The advantages of such a convention are manifest, and were referred to in the course of the discussions at the first and second Round Table Conferences. Even now, I would urge upon the attention of His Majesty's Government some method by which these difficulties might be overcome and an appropriate convention established between the two countries, even after the new Constitution is offered to India. It was very encouraging to hear the views in this connection of no less a person than Sir Edward Benthall, the main representative of European Commerce, who gave evidence before the Committee. I shall quote a short extract from his evidence, being my questions and his replies on this point.

Mr. Jayakar: Do I understand that you do not think that an appropriate convention is possible?

Sir Edward: We have said in paragraph 22, of Part G of our memorandum, that we put forward the proposal for a convention ourselves, but it was not found practicable to accept the Chambers' proposal, and, if I remember aright, at the second Round Table Conference, it was you, Mr. Jayakar, who said that such a convention ought to be negotiated between the Government of India of the future and the Government of Great Britain.

Mr. Jayakar: That is so. Would you agree to such a convention being created at the right time?

Sir Edward: If it could be negotiated.

Mr. Jayakar: I am assuming that such a convention could be negotiated. Would your Association agree to such a convention?

Sir Edward: Certainly, provided it covered our rights.

Mr. Jayakar: I mean a convention which carried out the principle which is contained in the first part of the formula. This formula embodies in the first part the principle of it, and, in the second part, it suggests that the convention should carry out the principle which is embodied in the first part. Would you agree to such a convention?

Sir Edward: Yes; of course it has got considerably more complicated than that paragraph indicates, since that time.

Mr. Jayakar: I want to know whether you think a convention of this character cannot be worked out. That is not your view?

Sir Edward: We always felt it could, but practical difficulties were put in the way.

Mr. Jayakar: Supposing those practical difficulties could be got over, merely as a matter of principle your Association would accept a convention of that character?

Sir Edward: Yes, we like the idea.

16^o Novembris, 1933.] MEMORANDUM ON THE WHITE PAPER [Continued.
BY SIR TEJ BAHADUR SAPRU, K.C.S.I.

APPENDIX C.

25th July, 1933.

From M. R. Jayakar, Esq.

MY DEAR SIR TEJ,

I have carefully gone through the Memorandum which you have prepared on the White Paper, stating the Indian point of view as you and I have conceived it.

I am in complete agreement with the views you have stated in your Memorandum, and I do hope that you will be able to persuade the Rt. Hon. Secretary of State and the British Parliamentary Committee to accept the suggestions you have made in your Memorandum. In that case, I have no doubt that the White Paper will be acceptable to a very large section of our countrymen, who will be able to work the new constitution and settle down to constructive work.

In response to your desire that I should add a Memorandum of my own on Commercial Discrimination, I am sending you a short note, with permission to incorporate it with your Memorandum when you send it to the Secretary of State and to the Chairman of the Parliamentary Committee. I authorise you to deal with my note in any way you like and even incorporate it, if you think it right, in your Memorandum when you publish it for the use of our countrymen, on your return to India.

Yours sincerely,

(Signed) M. R. JAYAKAR.

24th July, 1933.

From N. M. Joshi, Esq.

MY DEAR SIR TEJ,

I have read your Memorandum on the White Paper. I find myself in agreement with the general lines of the Memorandum and with most of your constitutional proposals. There are a few points, specially dealing with Labour and the democratisation of the Constitution, on which I shall write a separate note.

Yours sincerely,

(Signed) N. M. JOSHI.

22nd July, 1933.

NOTE from A. RANGASWAMI IYENGAR, Esq.

I desire to add this note to Sir Tej Sapru's Memorandum. I not only accept the case for India as stated by him in all essential outlines, but also in the actual proposals he has made.

I have, however, a number of important suggestions on questions connected with General and Railway Finance, Franchise, Special Responsibilities, and the like, on which I desire to submit supplementary memoranda to the Lord Chairman of the Joint Committee, for the consideration of the Joint Select Committee.

(Signed) A. RANGASWAMI IYENGAR.

Supplementary Memorandum by Mr. A. H. Ghuznavi on certain points affecting Bengal

While I fully endorse the conclusions of the memorandum submitted jointly by the British Indian Delegation to the Joint Committee on Indian Constitutional Reform, I would like to bring prominently to the notice of the Committee two points which are of special importance to the Province of Bengal which I represent.

In the first place I should like, on behalf of the Muslim Community of Bengal, to say a few words on the determined efforts that are being made in certain quarters both here and in India to have the Communal Award revised in respect of Bengal. I would state with the utmost emphasis that any such change would alter for the Muslims of Bengal the whole basis of the White Paper proposals, and the entirely new situation that would be created would give rise to serious difficulties since it re-opens the whole question of our support to the scheme of reforms. As is well-known, at a comparatively early stage of the discussions at the Round Table Conference, the Muslim Community declined to take part in the discussions relating to Central responsibility until and unless there was a satisfactory solution of the communal difficulty. The Muslim Community participated in the Third Round Table Conference on the understanding that the Communal Award would be maintained.

I should fail in my duty both to the Committee and to my Community if I did not stress the fact that very grave apprehensions have been aroused in our minds by rumours to the effect that the Committee may contemplate changes in the Award. After seven months, day by day contact with the Joint Select Committee I am confident that so well-informed a tribunal is conscious of the very serious evils which would attend any alteration in the terms of the Award. But I cannot conceal the fact that the Muslim Community in Bengal has been deeply disturbed by the information it has obtained of the strength and ubiquity of the attacks which are being made day by day on the Award. That this statement of the position will be given the weight which is its due is the earnest hope of many millions of His Majesty's Muslim subjects in Bengal, and indeed throughout British India.

The second point I wish to make on behalf of the whole of Bengal and not merely in the interests of my own Community is about the allocation of the export duty on jute. The White Paper proposal is that Bengal should receive half the proceeds of the export duty on jute. I need not here elaborate the arguments which I have urged on previous occasions that, in view of the economic situation in Bengal, the entire proceeds of the tax should be assigned to the Province on grounds of equity. While I have no objection to the retention by the Federal Government of a portion of the proceeds for a limited period, the allocation of revenues under the new Constitution should definitely recognise this as a Provincial tax, to be ultimately assigned completely to the Province concerned.

Memorandum on Labour Representation and Franchise and some other subjects by Mr. N. M. Joshi

Without prejudice to my views on the adequate Labour Representation and the desirability and practicability of Adult Suffrage, I propose to make some suggestions for modifying the White Paper proposals as regards the representation of Labour and Franchise and a few other cognate matters which will make for some improvement.

LABOUR REPRESENTATION.

Provincial Legislatures—Provincial Assemblies.

Labour is inadequately represented in all Provincial Legislatures. But I shall content myself by suggesting that in C.P. which is an industrialised province, having Textile, cotton-ginning and pressing, Mining and Railways highly developed, Labour Representation should be increased from 2 to 4. In C.P. the aborigines and Hill tribes form one-fifth of the population and are given only one seat. I suggest this special representation should be substantially increased.

Seats allotted to Labour in Sindh and Orissa should be increased from one seat in each Province to two seats in each. In North Western Frontier Province no seat is allotted to Labour. I suggest that Labour should have a minimum of two seats in this Province. It may be said even these slight modifications may be considered as an alteration of the Communal award. If that view is taken I would suggest that Government should in these cases take the initiative in securing the consent of the Hindus and Mussalmans to these modifications, which in my view is not difficult, considering the slight nature of the changes proposed. It would not be fair to leave the initiative in this matter to illiterate working classes and aborigines.

Provincial Upper Chambers.

In the Provincial Upper Chambers where they are proposed to be established, no Labour representation is provided. The landlords, industrialists and merchants on account of their influence and wealth will easily secure representation without special reservation. In no province Labour Representation is sufficient to secure election of its representative without special reservation. The qualifications for candidates for election for these Upper Chambers ought to be so devised that Labour Candidates will not find it very difficult to possess them.

Federal Upper Chamber.

Remarks made above regarding Labour representation in the Provincial Upper Chambers apply equally to the Federal Upper Chamber. Seats reserved for Labour in the Upper Chamber should be filled by election through an electoral college consisting of members elected for Provincial Legislatures through special Labour Constituencies.

Federal Assembly.

No representation has been provided to the aborigines and Hill Tribes, either in the Federal Assembly or Federal Upper Chamber. Though in some cases this section of the population will be in what are called "backward Areas", they will be subject to most of the Federal Legislation on Federal subjects. A glance through the list of Federal Subjects will convince anyone of this fact. Moreover, even the Backward Areas cannot be free from Federal Taxation. There is, therefore, no justification for denying representation to this helpless section of the population. The same remarks apply to the representation of these people in the Provincial and Federal Upper Chambers.

16^o Novembris, 1933.] MEMORANDUM ON LABOUR
REPRESENTATION BY MR. N. M. JOSHI.

[Continued.]

Franchise.

I suggest that a certain amount of wages paid in cash on monthly, fortnightly or weekly basis, should be regarded as a qualification for franchise. Any one who has earned during the previous year an income of Rs.100 and more by his wages paid monthly, fortnightly or weekly should be entitled to vote. If it is absolutely necessary this qualification may be first made applicable to cities and towns which have municipalities where the staff for registration of voters will easily be available. This qualification will not only benefit Labour but will be useful in increasing the number of women voters for which some difficulty has been felt.

In Bombay for the election of Provincial Assemblies tenants of agricultural land are not given franchise. This omission ought to be rectified. Under the present constitution they possess franchise and consequently are entitled to vote for elections for the Federal Assembly in the White Paper Constitution. It is therefore inconsistent that when tenants can vote for the elections for the Federal Assembly they cannot have a vote for elections for the Provincial Assemblies.

Representation of States.

As a matter cognate to the main subject of these notes, I suggest that, without doing any violence to the Sovereignty of the Rulers of Indian States, recognition of the principle that their representation in the Federal Legislature should be popular or representative of the people, should be secured. If this is done through the Treaties of Accession no violation of Sovereignty is involved, as these treaties will provide for voluntary surrender of some sovereignty on the part of the Rulers of Indian States for the purposes of the Federation.

Rights of Property.

The statement made in the Introduction of the White Paper, Para. 75, that some provision regarding "Rights of Property" should find a place in the Constitution Act is fraught with serious consequences. Any such provision is bound to lead to difficulties, even though the proposal may be well defined and restricted. The power of Governments to deal with proposals as regards taxation, protection of the rights of agricultural tenants and of tenants of residential buildings and as regards clearing of slums and dangerous buildings and improvement of unhealthy areas within the bounds of municipalities and outside them, will always be in danger of being challenged.

Extension of Franchise in the future.

The White Paper proposals make no provision for the extension of franchise in the future. There is no justification of principle for the restriction of franchise to a small section of the population. As the restriction is mainly based on the ground of the difficulty of polling arrangements steps must be taken for the removal of the difficulty and the Constitution ought to provide for the automatic extension of enfranchisement and fix a period within which the goal of adult suffrage will be reached. It is suggested that the extension of franchise should be left to Indian Legislatures. But it is wrong to expect Legislatures elected on the basis of a high franchise qualification to extend enfranchisement without a struggle on the part of the unenfranchised and therefore it is essential that the extension is ensured by the Constitution Act itself and the methods of extension may be left to the Indian Legislatures.

Memorandum by Mr. N. M. Joshi on the Position of Labour Legislation and White Paper

The White Paper has very rightly put most kinds of Labour Legislation in List III which consists of subjects of concurrent jurisdiction. The need for Labour Legislation being uniform is recognised by all and therefore does not require to be dilated upon. However this kind of legislation not only needs uniformity, but it is necessary that the uniformity should be attained simultaneously. No one Province will be very willing to place any financial burden or any other kind of restrictions upon its industry, especially when it is competitive, unless such burden or restrictions are placed upon the industries of other Provinces. The lists given in the White Paper, though satisfactory as far as they go from the Labour point of view, require some modifications. "Health insurance and invalidity and old-age pensions" are put down in List II which consists of subjects of purely provincial jurisdiction. It is necessary that these subjects should also be placed in List III and be made subjects of concurrent jurisdiction. There is no justification for differentiating these subjects from the other subjects of Labour Legislation which are already placed in the list of concurrent jurisdiction. Schemes for health insurance and invalidity and old-age pensions may require contributions both from employers and employees, and in deed the financial burden of such schemes upon the industries may even be greater than the burden of legislation like the Workmen's Compensation Act which is already put in the List of Concurrent Jurisdiction. The experience of other Federations clearly proves the difficulty of establishing satisfactory schemes for health and other kinds of social insurance, when the power to legislate on them and to find money for them is entirely left to Provincial Governments. Moreover, workers working on railways, inland waterways and on sea-going ships cannot easily be brought under provincial schemes of health insurance, or other social insurance, nor is it just to keep them out of such schemes.

Unemployment insurance is not mentioned in any of the Lists in the White Paper. The need for other kinds of social insurance such as for the support of mothers, widows and orphans is felt and recognised in the modern world. In order, therefore, that all these objects should be covered by the constitution it will be wiser to put in "Social Insurance" as one of the subjects and make it of concurrent jurisdiction.

The White Paper in paragraph 114 has placed a restriction upon the powers of the Federal Legislature in legislating upon subjects of concurrent jurisdiction: the Federal Legislature cannot legislate in such a way as to impose financial obligations on the Provinces.

Secondly, in his evidence, the Secretary of State for India stated that the administration of Federal Legislation on concurrent subjects will be provincial, and, thirdly, the Federal Government even in the matter of the legislation passed by it in the concurrent field will not be endowed with power to give directions to the Provincial Governments.

The practical effect of these three restrictions combined is sure to make legislation by the Federal Legislature extremely difficult. This effect will be more felt in the matter of Labour Legislation. In the first place almost every piece of legislation regarding labour will require some expenditure either by way of cash grants or by way of providing inspectorate or other officers like the Conciliation Officers or Chairmen of Industrial Courts. If the Federal Legislature cannot impose financial obligations upon the Provinces and if the Federal Government cannot administer the legislation itself, so cannot even spend its own money for it and cannot also give directions to the Provinces to see that its legislation is carried out, it is difficult for the Federal Legislature to use its power of legislation effectively. As a

16^o Novembris, 1933.] MEMORANDUM ON POSITION [Continued.
OF LABOUR LEGISLATION BY MR. N. M. JOSHI.

matter of fact, its power of legislation is useful in bringing about simultaneous uniformity in those cases when there is appreciable financial burden upon industry such as the schemes for social insurance or the regulation of hours of work for either of which Government will have to spend some money either for administrative staff or for inspectorate or as loans or cash grants, or where a minority of Provincial Governments refuse to fall in line with the views of the majority. The difficulty of Federal Government imposing financial obligations upon autonomous Provinces is easily recognised, and so it must be enabled to administer its legislation in case the legislation involves serious financial obligation, and also to give directions to the Provincial Governments where there is no serious financial obligation imposed upon them. The Secretary of State for India in his evidence has admitted the necessity of modifying the rigour of the restriction of paragraph 114 in respect of financial obligations being imposed upon the Provinces. There is really no danger in giving power to Federal Legislature to pass legislation imposing financial obligations upon the Provinces as the bulk of the Federal Legislature will be elected on the basis of territorial constituencies and so the provincial feeling will influence these members more than even the national feeling. This is clearly proved by the attitude of the present members of the Central Legislature on questions like the contributions from the Provincial Governments to the Central Government. Similarly there is no danger in empowering the Federal Legislature to administer and spend money on Labour Legislation passed by itself as the representatives of the Princes whose territories will not derive any benefit from such legislation will not easily consent to proposals on which the Federal Treasury will have to spend money to raise which the States may have to contribute. It is therefore clear that there is no risk in the Federal Legislature being empowered to pass legislation involving financial obligations upon itself or upon the Provinces, but if the latter power is to be limited, the power to adopt the former course cannot be denied if the passing of Labour Legislation by the Federal Legislature is not to be made very difficult.

The reason given by the Secretary of State for India for leaving the administration of the Labour Legislation passed by the Federal Legislature, to the Provincial Governments is that most of these subjects were for the purposes of administration provincial even under the present Constitution. In the first place this statement is not quite accurate. Both Legislation as well as its administration on the subject of the regulation of work in Mines, on Railways, and on Sea-going Ships is central. Secondly under the present Constitution no inconvenience is caused by the administration of certain Labour Legislation passed by the Central Legislature being left to the Provincial Governments as the present Central Government has powers of Supervision and Control over the Provincial Governments in the matter of Reserved Subjects which all these subjects are under the present Constitution. If the administration of Legislation regarding the Regulation of Work in Mines is left entirely to Provincial Governments it will throw an unnecessary burden upon each province to provide separate Inspectorate which at present is central. In the case of the regulation of work on Railways and Inland Waterways administration of Legislation by the Provincial Governments is bound to be difficult and complicated. It is therefore necessary that the Federal Legislature must be empowered to pass Legislation and also to empower the Federal Government to administer its Legislation where the administration by Provincial Governments is on financial or other grounds difficult.

16^o Novembris, 1933.] MEMORANDUM ON POSITION [Continued.
OF LABOUR LEGISLATION BY MR. N. M. JOSHI.

The difficulty of Federal Legislation imposing serious financial obligations upon the autonomous Provincial Governments is frankly admitted although such an arrangement in a Federal Constitution is not unknown. In order to obviate this difficulty some machinery for previous consultation with the Provincial Governments and other organisations and for proper assessment of the Provincial feeling could be devised and for that purpose the model of the Industrial Council which has been recommended by the Royal Commission on Indian Labour on page 467 of its Report is useful as a well thought-out and balanced scheme. When Federal Legislature has to pass Legislation imposing serious Financial obligations upon the Provinces the passing of such proposals may be made conditional upon such proposals receiving in their favour the majority of votes of Provincial Governments on the Industrial Councils. This device will remove all the risk of Federal Legislature passing Legislation imposing serious financial obligations upon the Provincial Governments when the majority of Provincial Governments are unwilling to undertake these obligations and at the same time will remove the difficulty of the minority of Provincial Governments standing in the way of progressive legislation which requires simultaneous uniformity of legislation. The interposition of this machinery should not be required where there is no "serious" financial burden upon the provinces and the decision whether the burden is "serious" or not should be left to the Governor General at his discretion.

The Ratification of the Conventions of the International Labour Organisation is another subject of importance dealt with in the Lists of Subjects. The Secretary of State for India in giving his evidence stated that so far as British India is concerned he did not intend to make any change in the present position. At present the Government of India can ratify these conventions without the previous consent of the Provincial Governments though as a matter of practice it consults them at some stage. The wording of the White Paper on Subject 8 in List I (Federal Subjects) is unfortunate and requires modification. "External affairs, including International obligations subject to previous concurrence of the Units as regards non-Federal Subjects" are made Federal. This is satisfactory so far as it affects the whole Federation including Indian States. But if the position so far as British India is concerned, is to be different the phrase "Provincial Subjects" must be substituted for "Non-Federal Subjects".

There is also a change necessary in item No. 9 of List I (Federal Subjects). "Emigration from and immigration into India and Inter-Provincial migration, including regulation of Foreigners in India" is made Federal. But emigration from Indian States into British India and from British India into Indian States are not included in the Federal List which ought to be done. Otherwise the Indian States which are strongly represented in the Federal Legislature are placed in an advantageous position inasmuch as they will have the power to prevent the emigration of Indian workers into their territories while they will secure free access into British India for their subjects.

SUMMARY OF CONCLUSIONS.

1. Item No. 69 of List of Subjects II, "Health Insurance and invalid and old age pensions," should be transferred to List III, which consists of subjects of concurrent jurisdiction.

2. A separate subject called "Social Insurance" should be included in List III or provision should be made for the inclusion of unemployment insurance and schemes for the support of mothers, widows and orphans in that List.

16^o Novembris, 1933.] MEMORANDUM ON POSITION [Continued.
OF LABOUR LEGISLATION BY MR. N. M. JOSHI.

3. The restriction contained in para. 114 disabling the Federal Legislature to pass Legislation imposing financial obligations upon the Provinces should be removed, and if necessary the machinery of an Industrial Council constituted as recommended by the Royal Commission on Indian Labour on page 467 of its Report should be interposed between the Federal Legislature and Provincial Governments and the majority of Government votes on the Industrial Council should be required to be in favour in order that the Legislation introduced in the Federal Legislature be permitted to pass or, in the alternative, be permitted to be operative if passed without such majority previously obtained.

4. The interposition of the machinery proposed above need not be required where the financial obligation is not *serious* or heavy. The decision whether the obligation is "serious" or not should be left to the Governor-General at his discretion.

5. The administration of Labour Legislation passed by the Federal Legislature may be left either to the Provincial Governments or to the Federal Government according to what may be laid down in each piece of Legislation.

6. The Federal Government should possess the power of giving directions to Provincial Governments as regards the carrying out of the Legislation passed by the Federal Legislature in the concurrent sphere.

7. The language of Item No. 8 in List I should be changed so as to make it clear that the previous concurrence of the British Indian Provinces is not necessary to enable the Federal Government to undertake international obligations in the sphere in which it has power to Legislate.

8. The language of Item No. 9 in List I should be changed so as to make emigration from British India into Indian States and vice versa, a Federal Subject.

CONSTITUTION OF THE INDUSTRIAL COUNCIL AS RECOMMENDED BY THE ROYAL COMMISSION ON INDIAN LABOUR ON PAGE 467 OF ITS REPORT.

Government Members.

Three representatives from the Central Government, two each from Bengal and Bombay, one from each of the other Major Provinces, making 13

Employers' Representatives.

Four from Bengal, three from Bombay, two each from Madras, United Provinces and Bihar and Orissa, one each from other major Provinces and one from minor Provinces, collectively, making 17

Labour Representatives.

Distributed similarly to the Employers' representatives, making ... 17

Railway Representatives.

Two representatives of State Railways, one of Company-managed Railways and three of Railway Labour, making 6

Nominated non-official members 4

Total 57

Memorandum submitted Sir Hubert Carr

Evidence.

I have had the privilege of seeing the memorandum which my fellow-delegates from India have submitted. I sympathise frequently with their angle of vision, I agree with much of their representations, and in particular I join with them in viewing the proposals of the White Paper in the light of the declarations of policy of the present National Government.

In the conviction that it is essential in the interests of orderly government in India to secure the co-operation of politically minded Indians, and with confidence that responsibility will beget responsibility in the Government and Legislatures of the Provinces and Federation, I am at one with the Indian Delegation in welcoming the general scheme of the White Paper.

Pages 442, 591.

I recognise the natural difficulties attending the constitutional advance therein envisaged; further the special risks arising from the peculiar conditions in India; but also that the White Paper contains safeguards in most cases.

There are, however, certain matters for which I beg the special consideration of the Joint Select Committee in their final deliberations, and to these, in common with the great majority of European British subjects residing in India, I attach particular importance as being designated to establish standards of security for the future administration of the country, and for the British Community.

In inviting the attention of the Committee to a few of the matters interesting to British Community in India, I have made my remarks as brief as possible. They are without prejudice to the detailed evidence, both written and oral, of the European Association, and the Associated Chambers of Commerce, and only deal with certain aspects of the Constitutional question which are set forth fully in the published Evidence.

Pages 441-504,
591-658.

Provincial Autonomy cannot prove successful without satisfactory resources, and it will therefore be necessary to keep expenditure down in the early years by:—

- (1) Not too rapid extension of the franchise.
- (2) Keeping Legislatures within modest proportions; and
- (3) The prevention of wasteful expenditure.

As regards (1) and (2) comparatively large constituencies do not prevent fair representation, while as a safeguard against (3) the need for Second Chambers in almost every Province is inherent in the local conditions.

A Second Chamber is likely to be a profitable investment rather than an additional expense, and is viewed by the British Community as essential to Provincial Autonomy, as Federation is to Central responsibility.

Pages 449-450,
592.

Q. 1980-84,
5735-86,
6247-48, 8790.

In fact without Second Chambers, the British attitude to provincial responsibility would require revision.

Representation.—With the disappearance of the official bloc, legislatures will be almost entirely dependent on non-official representation for the contribution of British tradition; consequently, no Upper Chamber should contain fewer than three European members, while representation in Lower Chambers should not be less than set forth in the Evidence. As at present proposed, representation in several cases is shown to be inadequate.

Pages 450-454
595-598.

Law and Order.—Although agreeing to the general transfer of Police to the control of a Minister responsible to the Legislature, reservation of that section which deals with subversive crime, is a vital necessity. The Terrorist Movement in Bengal with its tendency to spread, is directed against the British in India. A breakdown of the devoted and courageous section of

Evidence.

16^o Novembris, 1933.] MEMORANDUM SUBMITTED.
BY SIR HUBERT CARR.

[Continued.]

See Annexure.

police which is fighting the movement, would place the lives of all our countrymen, official and non-official, in deadly danger. No arrangements would satisfy the British Community which would involve any weakening of the present control of this Intelligence Branch of the Police the future administration of which must be under the Governor-General, in order to give that security the British Community has a right to demand. How it is to be achieved is a matter for expert advice, but suggestions formulated by the European Association after the closest consultation and enquiry, are set forth in a letter dated 28th August, 1933, already circulated to the Committee.

Insulation of the general Police Force from political influence, close collaboration between the Inspector General of Police and the Governor as well as the Minister, and safeguarding of the internal administration of the Police, are essential to the transfer, if the morale of that splendid force is to be preserved.

The Federation.—Since conditional agreement was given to partial transfer of responsibility at the centre at the First Round Table Conference, nothing has transpired to render less imperative the following pre-requisites to Federation:—

- (1) the accession of a substantial majority of States;
- (2) effective establishment of the Reserve Bank;
- (3) establishment of a Statutory Railway Board; and
- (4) adequate financial resources for the Centre.

In the interests of strong Government and economy, as well as in satisfaction of the very definite wishes of the larger States which refuse to contemplate large and unwieldy bodies, I urge smaller houses at the Centre, with the Upper Chamber comprising 60 to 100 members, representing the Governments of the units, and the Lower Chamber not exceeding 150 members. In recognition of British Indian political opinion the members of the Lower House might be directly elected but with high qualifications. A Central Government of this size should prove effective for all purposes.

The Services.—Continuation of the European elements in the All-India Services on the minimum basis of Lee Commission percentages is essential to the success of the new Constitution, to the preservation of high standards, and to ensure effectiveness of safeguards in the hands of the Governor-General and Governors in cases of breakdown.

I.S.C. Rept.
Vol. II, para.
831.

High Courts, in order to be protected from Political influence, should be under the administrative control of the Federal Government and a charge on the Federal Revenues.

I.S.C. Rept.
Vol. II, para.
846-849.

Federal Court.—The proposal to incorporate a Supreme Court in addition to, or as a branch of the Federal Court fails to commend itself either on the score of necessity, or of economy.

High Courts
in India N.N.
Sircar.

Official Languages.—Although highly probable that English will prove to be the official language of the Federation, it is very desirable that it should have Statutory authority as the official language of India, and one of the official languages of each Province.

Page 444,
Q. 8898.

Appeal to Privy Council, is a right to which Europeans in India attach the greatest value, and which they would not consent to give up.

16^o Novembris, 1933.] MEMORANDUM SUBMITTED
BY SIR HUBERT CARR.

[Continued. Evidence

Trial of Europeans.—Among the limitations of Legislatures appearing in the White Paper, special importance attaches to maintenance of the present position with regard to criminal proceedings against Europeans.

Commercial Discrimination.—While realising that no statutory protection can be absolute, protection on the lines indicated in the Secretary of State's memorandum A.68 of 3rd November is essential to the preservation of confidence in Commercial and Industrial circles, both at home and in India, and also to enable British Merchants to secure their fair share in the future industrial development of India which is their due in view of the past achievement and future responsibilities of Britain.

Protection is also required that Professional men, who are qualified in the United Kingdom, shall not have to acquire identical qualifications in India or other than are justified by the necessities of local conditions.

Q. 15778.

So far no provision appears in the White Paper to this effect.

Local Taxation.—It is very necessary that protection should be given from any discrimination in the shape of differential rates on certain areas, Municipal taxes on certain callings, and other methods of discrimination against certain classes by Municipalities or local bodies.

Page 466.

Federal Finance.—The general principle of allocation meets the approval of the Associated Chambers of Commerce of India (British). Exception is taken to the suggested Provincial surcharge on Income Tax, and it is considered that income should be prohibited as a basis for local taxation.

Q. 5568-70.
Q. 5278 80.

The method of dividing Income Tax between the Federation and Provinces proposed in the Federal Finance Committee's Report (Cmd. 4069) appears inequitable and demands further consideration.

3rd R.T.C.,
page 50.

The sums retained from Income Tax for the Federal Revenues should be fixed on the same percentage for all Provinces, and should be based on their taxable capacity, not on their Income Tax collections. The inequity of the suggestion is emphasised at the present time, when probably the whole Income Tax collection would be required for Federal purposes, thus meaning that Industrial Provinces would contribute far more than Agricultural Provinces for Federal expenditure.

With regard to the division of the Income Tax between Provinces, this should be based on the place of origin of the Income, and if subventions are required for certain Provinces, they should not be found by Provinces, but by Federal Revenues.

As regards the Jute Export Tax, the White Paper proposes to transfer 50 per cent. to Bengal. This tax being raised on the chief agricultural crop of Bengal affects very severely the taxable resources of the Province, and the proceeds of the tax should therefore be recognised as Provincial Revenue, and not Federal.

In the early years of the Federation, Bengal would not be unprepared to surrender half the proceeds, but presses for statutory allocation of this tax to the Province as it is wholly improbable that the Federal Legislature would ever allot more to Bengal than it is required to do by Statute. I do not forget that Export Taxes as a class are properly Federal, but they are fundamentally unsound and in the peculiar circumstances of Jute, the Tax amounts to a discriminatory tax on Bengal agricultural produce for the benefit of the Federation.

16^o Novembris, 1933.] MEMORANDUM SUBMITTED
BY SIR HUBERT CARR.

[Continued.]

Anglo Indian Community.—In justice to this Community, and for additional security in communications and transport, the retention of a proportion of the Anglo-Indian and Domiciled European Community in all Services of this nature is very necessary.

The White Paper proposals as explained in the Introduction, and by the evidence of the Secretary of State appear to provide for much of the protection and to include some of the safeguards referred to above.

As regards the form in which Instructions to Governors should be given I realise the advantage in elasticity if the powers are left implicit rather than made explicit. But there is the danger that in the absence of a direct mandate there may be in the case of some Governors with lack of experience, or after a long period of disuse a hesitancy in using, or even a failure to recognise the existence of powers which are meant to be used.

ANNEXURE.

LETTER FROM THE CENTRAL ADMINISTRATION OF THE EUROPEAN ASSOCIATION.

17, Stephen Court,
Park Street,
Calcutta.

28th August, 1933.

Sir Hubert Carr,
16, South Street,
Thurloe Square,
London, S.W.7.

DEAR SIR,

The following is a summary of the position taken up by the Association in connection with the transfer of the police portfolios to responsible Ministers in the Provinces. An examination of the Memorandum of the European Association and of the Evidence of the witnesses before the Joint Select Committee, together with a knowledge of the background to this question, reveals a picture of the conditions which are laid down by the Association as being essential to their support to the transfer of this portfolio to popular Ministers; and it may be convenient to summarise these conditions precisely.

(a) There must be no general amnesty of prisoners convicted of terrorist crime or of complicity in terrorist crime, prior to or at the inauguration of Provincial Autonomy. Previous experiences of such general releases have been unfortunate, and have led to a recrudescence of outrages and murders.

(b) The Special Bureau which is at present attached to the Home Department of the Government of India, and which deals with the co-ordination of information in regard to all-India subversive and terrorist movements, should be retained and placed under the Governor-General in his discretion. It should be further strengthened and authorised, if the occasion should arise, to enforce its will upon the Provincial police, through the corresponding Special Branches where they exist. In the case of Provinces where special Branches do not exist the enforcement of the will of the Special

16^o Novembris, 1933.] MEMORANDUM SUBMITTED
BY SIR HURBERT CARR.

[Continued.]

Bureau will be effected through the despatch of its officers to the Provinces to see that conditions are satisfactory and, if necessary, to inaugurate Special Branches. In this way the Governor-General will have efficient means to carry out and operate his control.

(c) The Departments of the C.I.D., referred to in paragraph (b), which are known as the Special Branches, and which deal with terrorist and subversive movements in those Provinces, where they now or may hereafter exist as separate departments, should be reserved to the supervision, direction and control of the Governor-General in his discretion, and not transferred to Ministers. In such Provinces, the Governor would act as the agent of the Governor-General in this matter, and would be responsible to the latter for this department. At the present time, this "reservation" would only operate with regard to Bengal, the Punjab and Bihar and Orissa, where separate Special Branches of the C.I.D. exist.

In all other Provinces, where conditions are normal, and where such separate Special Branches do not exist, the whole of the C.I.D. would be transferred to Ministers, and there would be no reservation in the sense referred to above. If, however, terrorist and subversive movements became dangerous and active in any such Province, then the Governor-General might require the organisation of a Special Branch for the purpose of dealing with them, and such Special Branch would, as in the case of the existing organisations in Bengal, Bihar and Orissa and the Punjab, come automatically under his direction, supervision and control, and would not be subject to the authority of the Minister. Conversely, if conditions in any of the three Provinces mentioned above improve to such an extent that the Special Branches are no longer found to be necessary, then they would disappear as separate organisations, and the Minister would be left in charge of the C.I.D. without any reservation.

The effect of these proposals is to reserve to the Governor-General acting in his discretion, all Special Branches of the Police which are organised to deal with terrorist and subversive crime. That is the reason for the Association's insistence on the retention and strengthening of the Central Bureau which deals with such movements, so as to place it under the Governor-General direct, and to enable it to carry out his wishes through the Provinces.

(d) The Association does not consider that the obligation laid upon the Governor-General and Governors in para. 47 of the Introduction and Proposal 70 of the White Paper is sufficiently explicit upon this and other points. It considers that the Governor-General and the Governors should be specifically directed to pay constant and particular attention to:—

- (i) The organisation of measures to prevent the spread of terrorist and subversive movements,
- (ii) The discipline and efficiency of the police forces,
- (iii) Rules relating to the powers and discipline of the police forces made under the Indian Police Act and Provincial Police Acts, and
- (iv) the necessity of keeping in close and constant touch with Inspectors General of Police.

(e) No amendment to the Indian Police Act of 1861 and to the Provincial Police Acts should be tabled in the Legislature without the prior assent of the Governor-General, or of the Governor in their discretion; and even then, such legislation, if passed, should be reserved for the signification of His Majesty's pleasure.

16^o Novembris, 1933.] MEMORANDUM SUBMITTED
BY SIR HUBERT CARR.

[Continued.]

(f) The police forces should be absolutely insulated from political interference. The authority possessed at present by the Inspector-General and other senior officers of the police in connection with appointments, promotions, postings and transfers should be continued unimpaired. This means that in these matters the Minister would be expected to accept the recommendations of his Inspector-General, but, in the event of a division of opinion between the Minister and the Inspector-General, the final decision should rest with the Governor.

With regard to the internal discipline of the Police Force, the present powers of the Inspector-General and his officers should be maintained, and there should be no appeal from them to a Public Service Commission.

Yours faithfully.

C. H. WITHERINGTON,
General Secretary.

Memorandum submitted by Begum Shah Nawaz

The Memoranda submitted by the Women's Organisations, Indian as well as British, and the evidence of the women witnesses, have clearly shown how strongly the women of India feel that the proposals in the White Paper regarding women's franchise are inadequate, and fail to give them an effective voice in the political life of their country. The members of the Simon Commission realised the important part that the Indian women were going to play in the future progress of their Motherland, and their recommendations contained a ratio of 1 woman voter to 2 men voters. As no qualifications based on property and education could effect a substantial reduction in the great disparity between men and women voters, they proposed a differential qualification to enable women to become voters in large numbers. This principle of an added qualification for women was accepted by the Franchise Sub-Committee of the First Round Table Conference, the Indian Franchise Committee, the Third Round Table Conference, and ultimately by His Majesty's Government in the White Paper. The Indian Franchise Committee, instead of giving the women a ratio of 1 to 2, reduced their proportion to 1 woman to 4½ men, and the White Paper further reduces the proportion to that of 1 to 7, and, as the Secretary of State in his evidence said, "it's very difficult to say how many will apply at the first election," therefore it is not possible to estimate the actual number of women who will be registered as voters under the proposed qualifications.

FRANCHISE QUALIFICATIONS.

Property.

The Indian women are prepared to accept the property qualification as proposed in the White Paper on the same basis as men.

Education.

They unanimously demand an educational qualification of bare literacy only for eligibility to vote in elections to the Provincial Legislatures and also for the first election to the Federal Assembly as recommended by the Indian Franchise Committee.

Special Qualification.

The majority of the Indian women disapprove of the proposed differential qualification that the wife of a voter possessing the property qualification at present entitling him to a vote for the Provincial Legislature, should have the vote. It is quite natural for women to feel that their civic rights should be given to them as individual members of the State and should not depend on factors like marriage. The women's organisations proposed that instead of the wife's vote, women above a certain age in urban areas should be enfranchised. The adults in these areas being approximately 14 million, the number of women voters would be just a little more than that recommended by the Indian Franchise Committee for the Provincial Legislatures. The women's organisations feel that it is in these areas that an intelligent and independent electorate is to be found and one that would be easy to organise and canvass. This would also lessen the Government's administrative difficulties, that of having three lists under different qualifications and others. As the merits of this qualification have been fully discussed in the evidence given by the women witnesses on behalf of the women's organisations, I need not go into the details of it. This is a qualification submitted to the Joint Select Committee by the three All-India Women's organisations, with the full support of their constituencies, therefore I would request the

16^o Novembris, 1933.] MEMORANDUM SUBMITTED
BY BEGUM SHAH NAWAZ.

[Continued.]

members to give it their special consideration. There are some women, mostly in Bengal and Madras, who are prepared to accept the wife's vote as a temporary measure. The Government has succeeded in finding the means of safeguarding the interests of the minorities and different sections in the country, why should it be difficult for them to frame a feasible qualification which would satisfy the women of India? Whatever are the qualifications ultimately decided upon by the British Parliament, the minimum number of women voters acceptable to the women of India is that recommended by the Indian Franchise Committee for the Provincial Legislatures as well as for the Federal Assembly; a ratio of 1 woman to 4½ men

RESERVATION OF SEATS.

Electorates.

Many of us who have served on the Round Table Conference for the last few years realise what a great obstacle has been removed from the path of constitutional advance by the Communal Award. I am one of those, who believe that persons desiring a change in the system of electorates would be well advised to work for a settlement between the different communities in India, and that door lies open before them.

Provincial Legislatures.

The principle of reservation of seats for women having been accepted by His Majesty's Government under the Communal Award, it is essential that seats should be provided for them in all the Provincial as well as in both the Central Legislatures. Two seats should be reserved for the women of the Frontier Province in their own Provincial Legislature. Their backward condition demands that their own representatives should safeguard their interests in the Province. Provision should be made for women to become members of the upper chambers of the provinces, wherever such chambers are constituted.

Federal Assembly.

The women of Assam, Sind, Frontier Province and Orissa should have their representation in the Federal Assembly. If it is not possible to give one seat to women in each of these small provinces, a scheme should be devised whereby the women of these provinces could be represented at alternative elections.

The Indian women are very anxious that they should have a voice in the election of their own representatives to the Federal Assembly and that this should not be left in the hands of the members of the Provincial Legislatures, where there will be very few women. The result of an indirect election for women to the Federal Assembly will be that only women belonging to the majority parties in the Provincial Legislatures will have the chance of being elected to the Central Legislature and if the parties in power in the provinces are either extremist or orthodox then the women elected by them in many cases may not be the real representatives of their own sex. If out of a multi-member constituency, either in the capital city or in any other important town in the province, one seat were to be reserved for a woman to be returned, men and women of all communities voting for the candidate, this would give the women a chance of electing their own representatives to the Federal Assembly.

16^o *Novembris*, 1933.] MEMORANDUM SUBMITTED
BY BEGUM SHAH NAWAZ.

[*Continued.*]

Council of State.

No mention is made in the White Paper about the representation of women in the Upper Chamber at the Centre. When both the Central Legislatures are to have almost equal powers, it is essential that some seats should be reserved for women in the Upper Chamber. If one seat in each province is not possible, let one seat be reserved for one woman out of the quota of seats allotted to the major provinces, i.e., Madras, Bombay, Bengal, Punjab and the United Provinces, or representation in the Upper Chamber could be accorded to the women of all provinces in rotation by reserving at least five seats for them on the Council of State. The high property qualification for membership of the Council of State should be supplemented by an educational qualification, either for both men and women, or, if it is not feasible for men, then for women only, in order to make more women eligible for membership of the Upper Chamber.

“ SPECIAL RESPONSIBILITY ” POWERS.

(Sections 18 (a) & 70 (a)).

The powers given to the Governor-General and the Governors in Sections 18 (a) and 70 (a) are capable of very wide interpretation. Many women who have had to face tremendous obstacles in working for social reform know what a powerful weapon these clauses would place in the hands of those who are against any progressive legislation. “ The prevention of any grave menace to the peace and tranquillity of India, or any part thereof ” covers a large field, and might be taken to mean anything. Any section in the country objecting to a proposed legislation affecting social disabilities, could easily succeed in arresting its progress by creating disturbances here and there. It is essential that specific words should be used and that this power should be confined to crimes of violence only. As some of the members pointed out during the preliminary discussions, it is to the next fifteen or twenty years that we are looking for the removal of many of the social evils at present existing in India, and a wide power of this kind might be a great hindrance to the achievement of success in that sphere.

FUNDAMENTAL RIGHTS.

The women of India are very anxious that equality between the sexes in their rights of citizenship should be recognised under the new Constitution. It should be made clear, either in the Constitution itself or in the Instrument of Instructions to the Governor-General, that in future sex shall be no bar to any individual, man or woman, in holding office under the Crown or serving their country in any capacity. The words “ and sex ” should be added to page 37, line 12, of the White Paper, after the words “ caste, religion.”

ADMINISTRATIVE DIFFICULTIES.

The proposals of the Indian Franchise Committee for an electorate of 6,600,000 for the Provincial Legislatures and 1,500,000 for the Central Assembly, failed to satisfy the women of India. After the publication of the Franchise Committee's Report, cables of protest were sent to the Premier and the Secretary of State by the women's organisations. The moderate

16^o Novembris, 1933.] MEMORANDUM SUBMITTED
BY BEGUM SHAH NAWAZ.

[Continued.]

section of women within these organisations, realising how difficult it was going to be to have even this figure ultimately accepted by Parliament, tried to persuade the women to agree to the numbers recommended by the Lothian Committee. The publication of the White Paper further reducing these numbers to a ratio of 1 to 7, or even to a much lower figure, came as a very great surprise. Women of all sections fail to understand why, when the recommendations of an expert Committee sent out to investigate and report about the matter, should be accepted in all its essentials, some of their proposals regarding women's franchise should be turned down because of the so-called "administrative difficulties." The women of India are convinced that unless they become a part and parcel of the administration of their country through the exercise of their full voting strength, it will not be possible for them to work on a large scale for educational, medical, social and economic reforms, and make the men take more interest in matters concerning the welfare of women and children. Thanks to the priesthood, the social customs and old traditions having become almost a part of religion, the Government of the country would not, and perhaps could not, help them to unlock the door of their emancipation. The women of India know that many of these administrative difficulties are over-estimated by the Local Governments just because it is to the interest of certain sections in the country that women should not succeed in securing the power to work for progressive legislation by becoming voters in large numbers. The evidence submitted to the Joint Select Committee by some organisations has proved beyond doubt that there are strong sections in the country who would not like to see women getting any power into their hands. The time has come when His Majesty's Government should realise its duty towards half the population of the country, and if it is not possible for the Government to give the women direct help, it should do so through this indirect method.

By not accepting literacy as an educational qualification, an intelligent and most useful electorate of women has been left out. Most of the prominent women workers of to-day do not possess educational certificates of any kind, whether primary or matriculation, as, until very recently, women were educated in their own homes and parents would not allow their daughters to attend any schools. No one can deny that a literate person would be preferable to an illiterate one as a voter, and the proportion of literate women being very small, it is important that means should be found to register such women as voters. A test for literacy would not be very difficult; any woman who could read and write should be placed on the voting register. The method followed in Madras could easily be introduced into every province.

Repeated assurances have been given to us that "His Majesty's Government attach special importance to the question of securing a more adequate enfranchisement of women than the existing system," and the principle of a special qualification for women having been accepted by the Government in order to make them voters in large numbers, one cannot see why the condition of registration by application under this qualification has been considered necessary. This only means giving with one hand and taking away with the other. The conditions in India are such that in many remote villages it is difficult for women to have even an every-day letter written, and taking into consideration the obstacles that are usually put in the way of their enjoying any such privilege as the right to vote, it is clear that one woman in four or even in three will not be able to apply for registration as a voter.

16^o *Novembris*, 1933.] MEMORANDUM SUBMITTED
BY BEGUM SHAH NAWAZ.

[*Continued.*]

Purdah, personation, polygamy and numbers are the obstacles that we are told stand in the way of our obtaining the ratio recommended by one of the Government's own expert committees. Out of the ten per cent. adult women who are to have the vote according to their recommendations, barely one per cent. would be in purdah. Those who know India well are aware that purdah is confined chiefly to the upper classes amongst the Muslim community, and except in certain families in the Punjab and the Frontier Province, Muslim women inherit property. The names of many of these women are already on the revenue register as property holders and the names of some of the others could be taken from the marriage registers and the registered deeds of dower. Women could be employed to collect the names of those wives whose husbands object to giving them to men. If, even then, there should be some objection, women could be registered as "the wife of So-and-so." I am sure that if it is explained to the husband properly that this really means another vote for the family, he would give his consent to his wife's name being placed on the electoral roll. I have no hesitation in saying that if the Government were to ask the women's organisations to assist them, a great deal of voluntary help would be forthcoming. There are many teachers who have finished their training and are without hope of immediate employment, they could be employed in the preparation of the first rolls.

There are nearly ten million more men than women in India, and in certain districts in many provinces it is very difficult for a poor man to get even one wife. Polygamy has been mostly confined to the rich, and is now fast diminishing in India.

I see no reason why the danger of personation should be considered greater in the case of women voters than in that of men. It all depends upon the kind of officials the Government will employ as polling officers, and the efficiency of the machinery. A woman should be asked to bring one relation with her, to identify her as the registered voter, or else the husband should be made responsible for the identification of his own wife. If, in spite of all this, the application is still insisted upon, then the number of women voters should be increased to such an extent that the figure of those who are likely to vote should not be less than 6,600,000.

We are told that there is a great danger of the administrative machinery being severely strained at the first elections if the full number suggested by the Lothian Committee is accepted by Parliament. If there is any such danger, why should the poor women be the sufferers? If the number of those, who are to be enfranchised under the new Constitution, is to be curtailed, the ratio of women voters of at least 1 to 4½ men should not be disturbed

PARLIAMENT AND INDIAN WOMEN.

There is a tendency in certain quarters to leave the question of the women's franchise qualifications to the future legislatures of the country. This would only mean that the Government would be shirking its responsibility towards nearly 165 million of His Majesty's subjects, and would throw the Indian women into despair. How can it be possible to give the power into the hands of one half of the country without taking into account the other half? The women's questions should be settled by Parliament itself, and after giving full consideration to the claims put forward by their own representatives at the Round Table Conference, an

16° Novembris, 1933.] MEMORANDUM SUBMITTED
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[Continued.]

adequate share in the franchise and representation in the future legislatures of India should be secured to them under the new Constitution. The claims of the Indian women have now been reduced to a minimum and if they are not recognised by Parliament, disappointment will lead to discontent, and discontent to agitation. The granting of their reasonable demands will make the women happy and contented, and the sons of such mothers will surely be a great stabilising force for the new Constitution. In the words of the Lord Chairman: "There, plain for all to see, but hitherto so little apprehended, lies the key, as I verily believe, to India's future. Privileged indeed will be he who will seize it with a firm and purposeful hand and, *brushing aside the doubters and the difficulties*, unlock and open wide the door that stands bolted and barred by the rusty prejudices of the centuries between the women of India and the high destiny that awaits them."* Who could be more privileged to unlock that door than the members of the Joint Select Committee, and whose hand more firm and purposeful than that of the Mother of Parliaments?

* The Marquess of Linlithgow, in *The Indian Peasant*.

RECORDS OF THE JOINT
COMMITTEE ON INDIAN
CONSTITUTIONAL REFORM

Die Jovis, 16^c Novembris, 1933

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