

Joint Committee on Indian Constitutional Reform

MEMORANDUM
ON
THE WHITE PAPER

By

SIR TEJ BAHADUR SAPRU, K.C.S.I.

Joint Committee on Indian Constitutional Reform

MEMORANDUM
ON
THE WHITE PAPER

By

SIR TEJ BAHADUR SAPRU, K.C.S.I.

SERVANTS OF INDIA SOCIETY^R
BRANCH LIBRARY
BOMBAY

ALLAHABAD LAW JOURNAL PRESS
ALLAHABAD

1933

PRINTED BY K. P. DAR
AT THE
ALLAHABAD LAW JOURNAL PRESS
ALLAHABAD

PUBLISHED BY
SIR TEJ BAHADUR SAPRU, K.C.S.L.
ALLAHABAD

CONTENTS

	PAGE
Memorandum on the White Paper	1
All-India Federation	2
Statement of the Chancellor of Chamber of Princes	8
Responsibility at the centre	28
Federal Finance	35
General Financial Position and Financial Safe- guards	39
Financial Prerequisites	45
Financial Adviser	47
Auditor-General	49
Fiscal Autonomy	50
Election	56
Basis of Enfranchisement	64
Railway Board	65
Fundamental Rights	68
Transitory Provisions	71
Amendment or Constituent Powers	73
Provincial Constitution	75
Second Chambers in the Provinces	83
Public Services	87
Rights and Interests of the Services	92
Public Service Commission	101
Secretary of State's Adviser	102
Judicature	103
The Supreme Court	107
The High Courts	109

	PAGE
Reserved Departments—Defence and Foreign Affairs	113
Foreign Affairs	122
India's position in the League of Nations and High Commissioner's appointment	123
Provision for the growth of the Constitution	125
Constitutional position of India within the British Commonwealth of Nations	127
Progress by Successive Stages	134

APPENDICES

A—Memorandum on the Special Powers of the Governor <i>by</i> Sir Tej Bahadur Sapru	141
B—Memorandum on commercial discrimination <i>by</i> Mr. M. R. Jayakar	153
C—(1) Letter of Mr. M. R. Jayakar dated July 25, 1933 addressed to Sir Tej Bahadur Sapru	173
(2) Letter of Mr. N. M. Joshi dated July 24, 1933 addressed to Sir Tej Bahadur Sapru	174
(3) Letter of Mr. A. Rangaswami Iyengar dated July 22, 1933 addressed to Sir Tej Bahadur Sapru	175

MEMORANDUM ON THE WHITE PAPER
ON INDIAN CONSTITUTIONAL REFORM

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 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."¹ "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

¹ 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.

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 safe-guard 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 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."

(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 safe-guarding 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 Confedera-

tion 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 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 November 27, 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 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 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 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 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.

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 this expression in no offensive sense) to a constitutional

form with the rights of their subjects defined ascertained, and safe-guarded. 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 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 urged 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”.

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.¹ 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,

¹ See on this point the evidence of Sir Samuel Hoare.

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 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 33 $\frac{1}{3}$ 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 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, 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 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 it-

self 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 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 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 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 pro-

duced 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 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 deficit:

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 $1\frac{1}{2}$ crores; the subvention to deficit and new Provinces will cost about $2\frac{1}{2}$ crores; the alienation of Income Tax comes up to: (a) 50 per cent ... about $5\frac{1}{4}$; 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 $1\frac{1}{2}$ crore), 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.

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 $6\frac{1}{2}$ and $8\frac{1}{2}$ 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 $\frac{1}{2}$ 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 makes the existing system of Indian finances equally impossible, and we shall then have to re-adjust 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, 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 correspond-

ing 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 two 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 pre-requisites must be fulfilled before the Federation and Central responsibility can be inaugurated (vide para. 32, of the Introduction to the White Paper).

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 advantage 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 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.

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" say 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 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. Montague 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 arrangements 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 modifi-

cation 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 conven-

tion. Having regard to the 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 the 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

*See questions by Mr. Davidson (Nos. 5004—5007). This has reference to the ratification of the Ottawa agreement by the Indian Legislature.

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 safe- "guards. 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 un- "justly 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 mo- "ment the economic condition gets better and the buying "power returns, that moment there will be more trade. "Besides that, there came 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 Indian 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 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 jerrymandering. 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).

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.

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.

SERVANTS OF INDIA SOCIETY
BRANCH LIBRARY
BOMBAY

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.

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.

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. Rangaswami 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 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 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 no 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;
- (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 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 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 com-

mencement 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 Ministers 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.

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 bi-cameral. 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 preeminently 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 other 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 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 underrate the importance of the evidence of the Europeans 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 overcautious 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 paragraphs 70-73 of the Introduction; pages 34-36 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.

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 December 31, 1912, the report of which was submitted on August 14, 1915, and (2) the Lee Commission which submitted its report on March 27, 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 Indiani-

zation. 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 paragraph 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 pages 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 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 no 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. Tambe 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 paragraphs 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-Committee of the Services appointed by the first Round Table Conference. 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 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 fear 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 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 sometime 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 April 26, 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 B 96(a) "mean 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 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 officer 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 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. (page 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.

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 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 96 C 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 questions relating to the interpretation of the Constitution Act, or to 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 to the State Courts themselves. Conformity to the ordinary practise 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.

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 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 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.
- (c) "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 July 15th, 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 today 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 them-
 “selves to any indication of the probable period of Indianiza-
 “tion, 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 defend-
 “ing 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 the
 “responsibility for defence within a period of something like
 “35 years.¹ 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

¹I 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.

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.

- (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 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 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.

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

126

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 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 October 31, 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 '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 term 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 to the uttermost extent of our ability in the solution of the great political problem which lay before us to day." (Hansard. November, 1929).

*The italics are mine.

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 December 18, 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.

“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 September 17, to December 1, 1931. At the plenary session held on September 1, 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.

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

*The italics are mine.

take a course of this character, as it would be impossible 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 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.

GROSVENOR HOUSE
PARK LANE, LONDON
July 26, 1933

TEJ BAHADUR SAPRU

APPENDICES

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 pages 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 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.

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 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 agita-

tion 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.”

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 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

152

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.

TEJ BAHADUR SAPRU

LONDON

May 23, 1933

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 18E 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 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 Government 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 indivi-

duals 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 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 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.

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 Act 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 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 Purshotumdas, 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 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% 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% of their capital and 100% 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.

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 today 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 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 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.

APPENDIX C

July 25, 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

HANOVER COURT
HANOVER SQUARE. W. 1.

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.

HOUSE OF LORDS

22nd July, 1933

NOTE from A. Rangaswami Iyengar Esq.

I desire to add this note to Sir Tej Saprú'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