



Refer, also to the

INDIAN REFORMS CONFERENCE 1932

(November - December)

Acceptance of the principle for the Reserve Bank

*Re. Reserve Bank
S. W. L.
transmission here*

The Reports of the Committees of the Conference, and the Secretariat reports as amended after discussion by the Conference, are circulated herewith. Notes of the principal points raised in connection with the Committee Reports during the Conference discussion are appended to the Reports.

See Memoranda submitted by delegates are also circulated.

A volume containing the above material, plus the speeches made in the General Discussion, is in course of preparation, and will probably be ready early in February. Copies will be supplied to delegates on application to the Reforms Department, Government of India, or, in the case of delegates remaining in this Country, to the India Office (Reforms Department), S.W.1.

(Sd.) R.H.A. CARTER.

House of Lords,
S.W.1.

30th December, 1932

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HEAD A.

Report of the Indian Franchise Committee. Method of Election to and size of the two Federal Chambers.

The Franchise Sub-Committee of the First Round Table Conference recommended the establishment of an expert body to investigate the question of the Franchise, and a Franchise Committee, under the chairmanship of the Marquess of Lothian, was subsequently appointed by His Majesty's Government and reported in June, 1932. The Report of that Committee was before the Conference in its present session.

I. Provincial Legislatures.

Method of Election.

The principal methods of election to the Provincial Legislatures examined in the Report of the Franchise Committee were:-

- (a) Adult suffrage;
- (b) Adult suffrage by a system of
 • indirect voting;
- (c) Such modifications of adult suffrage
 as the grant of adult suffrage within
 certain age limits; adult suffrage
 for large towns; household suffrage;
 indirect election through local
 bodies;
- (d) The combination of the direct and
 indirect systems of franchise; and,
 finally,
- (e) The extension of the direct vote.

The Committee, after exhaustive examination pronounced in favour of the acceptance of the extension of the Franchise by the direct method, and after considerable discussion, in the course of which close attention was paid to the practicability and desirability of a system based on adult suffrage and to methods of indirect election, the general sense of the Conference proved definitely to favour acceptance of the Franchise Committee's proposals.

Basis/

Basis of the Provincial Franchise.

The Conference agreed, with one dissentient,^(a) that the essential basis of the franchise should be the property qualifications proposed by the Indian Franchise Committee in their Report, subject to such modifications of detail as might prove necessary.^{(b)(c)}

The Conference carefully considered the proposals of the Franchise Committee for an educational qualification. Some members were strongly in favour of its acceptance, mainly on the ground that education was a proper basis for the franchise and that unless there was an educational qualification, an important section well capable of exercising the vote would be disfranchised. Others welcomed the proposal, which they regarded as attractive; but attention was drawn first to the inadequacy of the evidence as to the numbers (possibly very small) which would be added to the electoral roll by the adoption of such a qualification and, secondly, to the serious practical difficulties involved not only in its application but in the question of the standard to be adopted. An important section of opinion was, moreover, not in favour of

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- (a) Mr. Joshi considered that, if it was impossible to secure adoption of a wider basis for the franchise than that proposed, provision should be made for automatic periodical extensions.
 - (b) Sir Henry Gidney drew attention to the fact that property qualifications alone would disfranchise a large proportion of Anglo-Indians and that the proposed educational qualification was a very important one from the point of view of the Anglo-Indian community.
 - (c) Pandit Nanak Chand stressed the importance of reducing the disparity in voting strength as between the agricultural and non-agricultural tribes in the Punjab, to which detailed reference has been made in paragraph 170 of the report of the Franchise Committee.

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the proposal. The general sense of the Conference was that further detailed examination would be required before any general educational qualification for the franchise could be adopted.

The Women's Franchise.

The Conference was unanimously in favour of accepting the proposals of the Franchise Committee that women should be enfranchised in respect of the same property qualification as that prescribed for men.

The Franchise Committee had further recommended the adoption in the case of women of a specially low educational qualification, viz. mere literacy. Some difference of opinion manifested itself on this subject. Certain members of the Conference were of opinion that "mere literacy" was too low a standard and that it would be preferable to substitute for it the upper primary standard. Attention was, however, drawn to the fact that the application of the upper primary standard would very substantially reduce the number of women likely to be enfranchised on the basis of an educational qualification, and the general feeling appeared to favour the adoption of the literacy in preference to the upper primary qualification. An important section of opinion in the Conference urged, however, that if any special educational qualification were adopted at all it should be the same for women as for men.

A very general difference of opinion

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was felt as regards the proposal of the Franchise Committee that, subject to certain qualifications, the wives and widows over 21 of men qualified by property to vote for the existing provincial councils should be enfranchised. The objections taken to this proposal, which was recommended by the Franchise Committee as the only practical method of securing an adequate proportion of women on the electoral roll, were, inter alia, that it would enfranchise a large number of illiterate women; that women would as a rule vote in the same way as their husbands; and that its adoption might give rise to domestic and religious difficulties. The general opinion of the Conference was that the proposal was one which required further examination.

Considerable support was forthcoming for a suggestion that it might be possible to deal with the problem of enfranchising an adequate number of women by giving to the various Provinces some latitude to propose a method of enfranchisement of women in the light of local conditions, subject to a general injunction to aim at much the same ratio of men to women voters as had been recommended by the Franchise Committee - i.e. $4\frac{1}{2}$ to 1 - a ratio which the Conference as a whole was disposed to regard as not unsuitable.

Reference/

Reference should be made in this connection to a suggestion put forward that, with a view to reducing the strain on the administrative machine, the registration of all voters qualified in respect of education, and of women enfranchised in right of their husbands, should be on application by the potential voter only.

Depressed Classes.

The Conference was of opinion that a special provision should be made to enfranchise a larger number of voters belonging to the Depressed Classes and that the standard to be aimed at should, as proposed by the Franchise Committee, be 10 per cent. of the Depressed Class population in each Province, such of the differential qualifications suggested by the Franchise Committee being adopted as might be necessary to secure this result in the light of the varying conditions in each Province.

It was agreed that the

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existing military service qualification should be maintained. One member of the Conference urged the desirability of extending the franchise to cover all members of the Territorial and Auxiliary Forces, and it was agreed that this point should be examined.

Special representation for
Commerce in Provincial
Legislatures.

Certain Delegates urged that the recommendations of the Indian Franchise Committee in regard to special electorates for Commerce resulted in grave inequality of representation as between Indian and European Commerce in several Provinces. It was pointed out on behalf of His Majesty's Government that examination of this question inevitably involved a reopening of the Communal decision. The matter was not further discussed, but certain Indian Delegates placed on record their objection to any connection of the question of commercial representation with the communal issue.

ii. The Federal Legislature.

Federal Assembly.

The Federal Structure Committee in para.19 of their Third Report expressed the opinion that the selection of the British Indian representatives for the Lower Chamber of the Federal Assembly should be by direct election. This recommendation was supported by the Indian Franchise Committee. Considerable discussion took place in the Conference as to the relative merits of the direct as opposed to the indirect method of election. It was pointed out on behalf of H.M.G. that if direct election was regarded as inevitable, this should not be allowed to prejudice the question of the size of the federal legislature. The general sense of the Conference, in the light of the discussion was that the balance of advantage lay with the election of the British-Indian representatives in the Lower Chamber by the direct method.

Franchise qualifications for the British Indian electorate.

The Conference after full consideration of the various alternatives open, and in particular of a suggestion made by one member that a wage-earning qualification should be introduced, accepted generally the proposal of the Franchise Committee that the franchise for the British Indian section of the future Federal Assembly shall be the existing franchise for the provincial legislative councils, except in the case

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of the Central Provinces; in which it should be a franchise which would bring in double the existing electorate for the provincial council.

Educational qualification.

As regards the educational qualification proposed by the Franchise Committee, opinion in the Conference generally was strongly in favour of the adoption as an educational qualification for men of the possession of the Matriculation or school-leaving certificate.

An important section of opinion was, however, opposed to this proposal for the same reasons as in the case of the Provincial Legislatures.

The Conference were unable to agree as regards the adoption of an educational qualification for women voters for the Federal Assembly, the same arguments as were advanced for and against the proposal in the case of the provincial legislatures holding good, in their view, here also.

Depressed Classes.

The Franchise Committee stated that they were advised by the Census Commissioner that the addition to the qualifications prescribed for the general electorate for the new Federal Assembly of a qualification of mere literacy would result in the case of the Depressed Classes in an electorate of approximately 2 per cent. of their total population. In these circumstances they recommended the adoption of such a differential qualification. The Conference agreed to their proposals.

Special

Special Representation.

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Women.

With the reservation that the communal proportions should not thereby be disturbed, the Conference as a whole accepted the proposals of the Indian Franchise Committee for the special reservation of seats for Women, to be filled by the election of one woman by each provincial legislative Council. The women's representative in the Conference was however in favour of direct election by a special women's constituency in each province.

Labour.

The proposals of the Franchise Committee for special representation of ^{Labour} by the reservation of 8 seats in the Federal Assembly were accepted by the Conference. In some quarters it was felt that the number of seats proposed was inadequate, but it was pointed out that Labour would obtain additional representation through the Depressed Class seats in the general constituencies. It was suggested that the point might be further investigated in connection with the delimitation of constituencies.

The Moslem delegation in this connection recorded their anxiety that the number of special seats should be kept at a minimum.

Commerce and Industry.

The general sense of the Conference was in favour of the acceptance of the Franchise Committee's proposal that the representation of Commerce should be concentrated in the Assembly, and/

and that four seats should be allocated to Indian and four to European commerce. The view was, however, expressed by some Indian delegates that those recommendations did not provide adequately for the needs of Indian commerce. They did not think that Indian commerce should be forced into the position of having to secure additional representation by seeking to influence the results of elections in the non-special constituencies, and they took exception to the connection of commercial representation with the communal question.

The representative of the European community stated that European commerce would not be satisfied with a smaller number of seats than that proposed by the Franchise Committee which represented the minimum with which they could hope to be able adequately to voice their views.

The Conference gave a sympathetic reception to a claim put forward for the retention of the seat at present filled in rotation by the Millowners Associations of Bombay and Ahmedabad, although the point was made that the grant of such special representation would make it difficult to resist claims from other industries similarly situated. Reference was also made to the importance of securing adequate representation for up-country industrial interests, and to the difficulties which might arise under the proposals of the Franchise Committee in providing for this.

Landlords/

Landlords. The Franchise Committee were in favour of retention of special representation for landlords, but in its existing strength, and their view on this subject was accepted by the Conference.

Federal Upper House.

The Federal Structure Committee of the Round Table Conference recommended that the British Indian section of the Federal Upper House in the new Constitution should be elected by the provincial legislative councils by the single transferable vote. This recommendation was supported by the Indian Franchise Committee and was accepted by the Conference, but Muslim Delegates reserved their judgment as regards the use of the single transferable vote until they knew what result the application of that system would have on the communal proportions in the whole House. Attention was also drawn to the importance of safeguarding the interests of the small minorities.

It was generally agreed that there should be no representation of special interests as such in the Upper Chamber.

III. Size of Federal Legislature.

A marked difference of opinion manifested itself on this subject in the Conference. There was substantial general agreement that some weightage should be accorded to the States; the proportions of seats to be filled by representatives of the Indian States previously proposed, viz. $33\frac{1}{3}$ per cent. in the Lower and 40 per cent. in the Upper Chamber still held the field, though the apprehension of the States lest by federating they would lose their individuality was mentioned as a ground for increasing their proportion in the Upper House to one of equality with British India. One of the States representatives urged that at least 125 seats in the Upper House

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should be allotted to the States, and 36% of the seats secured to them in a joint session of both Houses. Provided this number of seats in the Upper House and this percentage in a joint session was secured, there would be no objection in his view to a lower percentage than $33\frac{1}{3}$ in the Lower House.

Muslim delegates and one or two others were opposed to the principle of weightage for the States in the Legislature; the Muslim Delegates considered that if it was found inevitable to concede some weightage the quota of Muslim representation should be safeguarded so that the number of their seats from British India should not be less than they would have secured if the States enjoyed no weightage over population ratio.

Certain delegates urged the advantages of a large lower House on the ground of the resultant reduction in the size of constituencies, the consequent lessening of expense to candidates, and the increased ease with which representation could be secured for the smaller States. A considerable section of the Conference supported the figure of 450 proposed by the Franchise Committee.

It was pointed out, on the other hand, that the Federal Legislature would have limited functions, for the discharge of which so large a lower House as was recommended in the Lothian Report would not be necessary, and some delegates thought 300 would suffice.

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It was also pointed out that whatever decision was finally reached as to the size of the two Houses, grouping of the smaller states would be inevitable.

An alternative suggestion was put forward regarding the Upper House, namely that while the Lower House would fully reflect the popular element, the Upper House, as the peculiarly Federal organ of the Constitution, should provide for the representation of the constituent units as such. According to this proposal the Upper House would be limited to some 60 delegates of the Governments of the units and of the Federal Government.

No final decision proved possible in the Conference on this question. A suggestion made on behalf of H.M.G., who intimated that general agreement on the subject between Indian delegates would carry great weight with them, that consideration should be postponed with a view to informal consultations between the Indian delegates in the hope of reaching a greater measure of agreement between the conflicting views expressed, was accepted by the Conference.

No modification of view has been reported as having resulted from such discussions as have taken place.

HEAD B(a).

R E P O R T
of
Committee on the Distribution of Legislative
Powers.

The Committee was appointed -

- "(i) To test the general principles discussed under Head B(a) by applying them to the list of subjects suggested by the Federal Structure Committee in the appendix to its Second Report.
- (ii) To re-examine in the light of the general discussion of principles the definition of those subjects and the effects of the recommendations made by the Federal Structure Committee in respect of them;

and to make suggestions."

and was constituted as follows:-

Lord Sankey (Chairman).
Sir Samuel Hoare.
Mr. Butler.
Lord Eading.
Sir Akbar Hydari.
Sir Manubhai Mehta.
Sir A.P. Patro.
Sir Tej Sapru.
Sir Nripendra Nath Sircar.
Mr. Zafrulla Khan.

The Committee found it convenient to deal first with the second head of their Terms of Reference and accordingly addressed themselves at the outset to an examination of the definition of the subjects provisionally allocated between the Centre and the Provinces by the Appendices to the Second Report of the Federal Structure Committee and to the further proposals made in the same connection by the Consultative Committee. Their deliberations

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on this matter satisfied them that the statutory delimitation of the spheres of competence of the Federal and Provincial Legislatures which the conceptions of provincial autonomy and federation inevitably involve will necessitate, whatever method of delimitation and allocation is adopted, a much more careful and scientific definition of each subject than was required for the purposes of the Schedules to the existing Devolution Rules upon which the Federal Structure Committee's lists were based. They are further satisfied that neither the Committee nor the Conference are competent to undertake this in the time at their disposal. The Committee hope, therefore, that His Majesty's Government will lose no time in beginning with expert assistance this laborious but important task.

2. In the course of their examination of this matter it was brought to the notice of the Committee by representatives of the States that in respect of some at all events of the subjects which had been classified by the Federal Structure Committee as "federal for policy and legislation" the States had not at the time intended to agree to the possession by the Federal Legislature of plenary powers of legislation in the States: in other words they intend to cede to the Crown in respect of each of these subjects a field of legislative jurisdiction to be specified in the Act or Treaty and to retain the remainder themselves. The Committee are not in possession of full details, but, as an example, they observe that, in the case of the Federal subject of railways, the exponents of this view suggested that so far as its operation in the States is concerned, the scope of Federal legislation might have to be confined to matters connected with safety, maximum and minimum rates and the interchangeability of traffic, that outside this limited range, the individual States'

Governments/

Governments should have independent and exclusive jurisdiction and that for securing compliance with its desires in railway matters not covered by the above heads the Federal Government should rely upon negotiation and agreement. Acceptance of this arrangement appears to involve, as a necessary consequence, variations of competence in relation to the States and the Provinces respectively, of the Federal Legislature.

3. Turning to the first Head of their Terms of Reference, the Committee endeavoured to assess in the light that had been thrown upon it by their detailed examination of subjects, the general requirements of a workable general plan of distribution of powers. They suggest to the Conference that any such plan must necessarily involve, as the first desideratum, a carefully drawn list of subjects upon which the Federal Legislature is to possess exclusive legislative powers. Two alternative methods present themselves of distinguishing between those of the 'exclusive' subjects which are to be Federal and those which are to be British Indian. The first method would be so to classify them in the Act itself (or in a Schedule attached to the Act) as to make a statutory distinction between Federal and British Indian subjects. The second method would be to enumerate them all in the Act as matters on which the Federal Legislature has exclusive jurisdiction/

jurisdiction, leaving it to the States in their acceding Instruments to specify those of them which, in the States, are to be outside the range of Federal competence. The Committee recommend the adoption of the second alternative, but they agree with the view of States' representatives that even so it would be advantageous that the list should be divided into two Parts, of which Part I would include only those subjects in respect of which, generally speaking, the States may be expected to cede the necessary jurisdiction for the purpose of constituting them Federal subjects. Such a sub-division would greatly facilitate the drafting of the States' Instruments of Accession. The second alternative would also have the advantage that it would afford an easy means, either to the States generally, or to individual States in course of time, if they should so desire, to accept as operative in the States legislation upon subjects which by their original Treaty had been excepted.

4. The field of exclusive jurisdiction to be assigned to the Provinces would or would not require detailed definition by a similar schedule of subjects, according as it is decided that "residual powers" are to be assigned to the Centre or to the Provinces. In the latter event there would be no need to enumerate the Provincial subjects; they could be defined as all matters other than those assigned to the Centre. The advantages which would follow from the existence of only one list are very great, and the Committee do not disguise from themselves the risks which must attend

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the existence of two lists each within the exclusive competence of a particular legislature and neither containing "residuary powers". A law passed by one legislature must then fulfil two conditions before it is valid: not only must its subject-matter fall within the competence of that legislature, but every part of the law must also be demonstrably excluded from the competence of the other. The risk of litigation on questions of ultra vires must in that case be greatly increased. But since there was disagreement as to the allocation of "residual powers" exclusively to the Centre or to the Provinces, the sub-Committee assume, for the purpose of this report, the existence of an exclusively Provincial list.

5. The Committee are satisfied that it is not humanly possible so to define and separate all subjects of potential legislation as to secure that every conceivable subject will fall within the exclusive jurisdiction of either the Centre or of the Provinces. Moreover, even if this were possible, the allocation of every subject to the exclusive jurisdiction of either Centre or Provinces would seem to involve the loss of uniformity in directions where uniformity is desirable, or else an undue curtailment of flexibility and of Provincial initiative, - or, more probably a combination of both disadvantages. The Committee therefore consider that practical requirements will in any event necessitate a field in which both Centre and Provinces should have legislative jurisdiction. The Committee consider that the problem could be dealt with with sufficient precision by constituting a common field to which would be assigned matters

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upon which uniformity of law is or may be desirable and by assigning to both Centre and Provinces the power, but not the exclusive power, to legislate upon any subject included in it; but some method must at the same time be devised whereby administrative powers and functions which properly belong to the Provinces in respect of these subjects are secured exclusively to them.

6. The existence of concurrent powers will necessitate provisions for resolving a conflict of laws in any Province to which a Central Act regulating a "concurrent" subject is in force alongside a Provincial Act which is repugnant to it. The sub-Committee suggest that the general rule in this matter must necessarily be that in that case the Central Act will prevail. But such a rule, if unqualified, would obviously tend in theory at all events to enable the Centre in course of time to usurp the whole concurrent field. The Committee therefore suggest that if a Provincial Act relating to any matter in the concurrent field is reserved for, and receives, the Governor-General's assent, it shall prevail in the Province over any Central Act to which it is repugnant. This rule itself will, however, require some qualification; otherwise it might operate to enable the Governor-General permanently to curtail the concurrent jurisdiction of the Federal Legislature. It should therefore be provided that the validity of a Provincial Act in the circumstances indicated shall be without prejudice to the power of the Federal Legislature to legislate subsequently in a contrary sense, but that the exercise of this power shall be subject to the previous assent of the Governor-General.

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7. As regards the allocation of "residual powers" - i.e. the right to legislate on matters not included in any of the three lists - the Committee would hope that if the lists are drawn in sufficient detail, the undefined or unforeseen residue will not prove to be extensive. But such cases will inevitably arise and suitable provision must be made to meet them. It was suggested that provision might be made whereby the Governor-General would be given power to decide in any given case which was the appropriate forum for legislation on an unallocated subject and whether a measure relating to that subject should be introduced in the Federal or Provincial Legislature. This suggestion found favour with some members of the Committee, as a compromise between the divided opinions on the ultimate allocation exclusively to Centre or Provinces of residuary powers, but was not acceptable to others. In these circumstances the Committee regret that they are unable to make any definite recommendation on this subject.

8. The attention of the Committee was drawn to the desirability of including in the Act some provision enabling the Federal Legislature at the request and with the consent of two or more Provinces to enact for those Provinces alone legislation which would not otherwise be within its competence. The Committee agree that provision should be made for this purpose, provided that the position of the Provinces is safeguarded by ensuring that such legislation should not result in withdrawing permanently any subject from the legislative/

legislative competence of the provincial legislatures, and that the Federal Law keeps strictly within the authority conferred on the Federal Legislature by the terms of the request.

9. The Committee wish to add that it will, in their opinion, be necessary also to deal with the competence of the Federal and Provincial legislatures respectively to repeal or amend existing legislation. In the time at their disposal they have not been able to suggest a suitable machinery for this purpose, but the matter is one of great practical importance and they commend it for examination by His Majesty's Government.

The Conference noted the Report of the Committee on the Distribution of Legislative Powers after the following points had been raised:-

(1) MR. JOGHI complained that no progress had been made by the Committee. After the subject had been discussed for two years this sub-Committee suggested a further examination, without even indicating what kind of examination was in view.

(2) MR. ZAFRULLA KHAN urged, with reference to item 6 of the Schedule of 'Provincial Subjects, subject to legislation by the Indian Legislature', that the words 'light and feeder' should be omitted therefrom, so that Provincial Governments may have the legal competence to construct any kind of railway, whether light or feeder or otherwise, subject to compliance with the technical standards laid down by a central authority and subject to the proposed line not competing with existing Federal lines.

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(3) MR. ZAFRULLA KHAN urged that there should be as few centrally administered areas as possible; with the exception of Delhi, efforts should be made to bring such areas within some Province or other.

(4) MR. ZAFRULLA KHAN said that consideration should be given to the constitutional future of Baluchistan; it should be possible to weld British Baluchistan, Kalat, and Las Bela in some kind of federal union and so form a unit which might become a unit of the Federation.

(5) MR. RUSHBROOK WILLIAMS dealing with the suggestion in the Report that certain States might in future desire to accept as operative legislation upon subjects which by their original Treaty had been excepted, entered a caveat to safeguard the position of other States not accepting such legislation, in the event of the legislation itself being sufficiently important to effect a change in the Constitution.

(6) Some discussion arose as to whether the previous assent of the Governor-General, referred to in the last sentence of paragraph 6 of the Report, should be dependent upon the advice of the Ministry.

MR. JAYAKAR held that it should be so dependent; otherwise it would create an exception to the principle of the supremacy of the Legislature in the normal field (i.e. outside the sphere of special responsibilities and safeguards). In reply it was explained that the object was to provide for an impartial decision in the event of conflict between the Federal and a Provincial Legislature; a Federal Ministry however well meaning could hardly

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be expected to give an unbiased opinion in such a conflict. General agreement was eventually reached by substituting the word "conflict" for the word "contrary" appearing in the last sentence of paragraph 6.

(7). SIR TEJ SARDU referring to paragraph 7 of the Report on the question of Residuary Powers, said that his group considered that it was most desirable that unforeseen emergencies should fall to be dealt with by the Federal Government, and assured the Conference that residuary powers, if allotted to the Centre, would not be used as a means of interfering with Provincial Autonomy. He and his group were prepared to accept the compromise that had been suggested, but if the other side found it unacceptable then he must adhere to his original position that residuary powers should be allotted to the Centre. He asked whether the Secretary of State for India could give the Government's view on the matter to the Conference.

THE SECRETARY OF STATE FOR INDIA was unable to make a final pronouncement at that stage, but stated that the Government were fully alive to the great cleavage of opinion on the subject, although inclined to think that a careful and exhaustive allocation of legislative powers would make the matter of less practical importance than it had assumed. He was much attracted by the compromise that had been suggested and if the two sides were eventually unable to reach agreement the Government would consider this compromise most sympathetically.

HEAD B(b).ADMINISTRATIVE RELATIONS BETWEEN THE
FEDERAL GOVERNMENT AND THE UNITS.

1. It was generally agreed that the relationship between the Federal Government and the Provinces should not be so defined, in connexion with the separation of powers, as to involve a necessary breach with the traditional methods and machinery of Indian administration, whereby the Central Government has habitually employed as the agency for administering a large part of its functions the ordinary provincial administrative staffs. No doubt the tendency which has shown itself of recent years, even under the existing constitution, towards employment by the Central Government of separate agencies of its own for the administration of certain of its functions will be accentuated by the departure from the unitary system: but considerations of financial and practical convenience are opposed to any immediate and necessary adoption of this system as the consequence of the statutory division of powers and functions between the Centre and the Provinces which is involved in Federation. The legal and constitutional relations between the Federation and the Provinces should therefore be so defined as to place no obstacles in the way of the devolution by the Federal Government and Legislature upon Provincial Governments, or upon any specified officers of those Governments, of the exercise on its behalf of any functions in relation to the administration in the provinces of any Federal or Central subject, wherever such an arrangement is found to be financially or administratively convenient.

2. It is clear, however, that the possession of such powers by the Federation will be liable to involve

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provincial governments in increased expenditure upon staff. It would clearly be unreasonable if every imposition of powers or duties upon provincial governments or their officers by a Federal enactment were to be regarded as necessarily involving a financial subsidy. The rule should therefore be that if the enactment of a Federal Act involves employment by the province of additional staff, the Federation should bear the cost of that staff if it is employed exclusively on the administration of a Federal or Central subject, and the cost should be shared between the Federation and that province if the additional staff is so employed only in part. In most cases, questions of the proportions in which such charges are to be borne should prove capable of adjustment by mutual agreement: in case, however, of disagreement, suitable provision should be made for an arbitral decision.

3. It was generally agreed that the Constitution should endow the Federal Government with specific authority to ensure that provincial governments give due effect to Federal legislation insofar as this depends upon their own administrative agencies; it was felt in some quarters that Federal authority should extend, in the interests of the efficient performance of the functions entrusted to it, to ensuring that provincial governments so administer their own provincial subjects as not to affect prejudicially the administration of any Federal or Central subjects. As against this it was suggested in the course of discussion of this latter point that if the Federal Government is to possess this power there should be a reciprocal power in the hands of provincial Governments to

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ensure that Federal subjects are not so administered by the Federation as prejudicially to affect the administration of provincial subjects. No doubt any provincial government which considered that the action or policy of the Federal Government gave ground for legitimate complaint upon this score would lose no time in bringing its attitude to the attention of the Federal Government, either through its representatives in the Federal Legislature or by correspondence.

4. There was difference of opinion as to the extent -, if at all - to which the Federation should be authorised to exercise control over the administration of provincial subjects when no question arises of reactions upon a Federal or Central subject. It was, however, generally agreed

- (a) that the scope for intervention by the Centre in the administration of provincial subjects should be strictly confined to questions involving the matters compendiously described as "law and order";
- (b) that powers of intervention for this limited purpose should be vested in the Governor-General personally and not in the Federal Government as such; in other words, that the power should be exercisable by the Governor-General "at his discretion" as explained in paragraph 10 of the Report on Head C;
- (c) that even so the Governor-General's intervention (which he would naturally exercise through the Governor) should be defined in appropriate terms as being exercisable only for the purpose of preventing the occurrence of conditions which might endanger the internal security of India.

It was generally recognised as the basis of these conclusions that the transfer of the control of "law and order" in the provinces cannot, in the interests of the country as a whole, be treated as involving the position that every province is to be entirely independent and uncontrolled in the administration of law and order but that at the same time the necessary powers of control and co-ordination must be so framed as, on the one hand, not to enable, or have the appearance of enabling, a constant external interference with the day to day administration of provincial affairs, and, on the other hand, to be so restricted as not to be exercisable at all until a serious breakdown of law and order has actually occurred. The conclusion recorded in clause (c) above is designed to meet this two-fold purpose.

ADMINISTRATIVE RELATIONS WITH THE STATES IN FEDERAL MATTERS.

5. It was recognised that the relationship of the Federal Government with the States cannot be in all respects identical with that which will obtain with the Provinces. It was agreed that the Constitution should impose upon the States' Governments an obligation to exercise their executive power and authority, so far as they are necessary and applicable, for the purpose of securing that due effect is given within their territories to every Act of the Federal Legislature which applies to that territory. It was further agreed that the Constitution should recognise arrangements (which would, in fact, be made in suitable cases through the

Instrument of Accession) for the administration by the States on behalf of the Federal Government of Federal subjects through the agency of staff and establishments employed and controlled by themselves, but that any such arrangements should be subject to conditions to be expressed in the Constitution enabling the Governor-General to satisfy himself by inspection, or otherwise, that an adequate standard of administration is maintained. Finally, it was agreed that power should vest in the Governor-General personally to issue general instructions to the States' Governments for the purpose of ensuring that their obligations to the Federal Government specified in this paragraph are duly fulfilled.

Head C.

SPECIAL POWERS AND RESPONSIBILITIES OF THE GOVERNOR-GENERAL AND GOVERNORS.

1. The Conference approached the problems presented by this head from the standpoint of the following assumptions as to the form of the constitutional structure:-

- (a) that the Act will declare that executive power and authority (as in the United Kingdom and the Dominions) vests in the Crown, represented in the Federation by the Governor-General and in the Provinces by the Governors; but
- (b) that nevertheless, except in so far as is otherwise provided, (whether such provision be in the Act or in the Instrument of Instructions) the Governor-General and Governors will be guided by the advice of their respective Ministers, and the Executive will depend for its legislative enactments and for its Supply upon the concurrence in its proposals of the Legislature.

2. Approached from this standpoint and from that of a unanimous acceptance of the general principles enunciated in paragraph 11 of the Second Report of the Federal Structure Committee, the questions for consideration under this head were found to resolve themselves into examination in greater detail than had been necessary or possible at previous Conferences of the exact nature and scope of the responsibilities to be imposed upon the Governor-General and Governors, and of the special powers which are to flow from these responsibilities in order that the latter may be effectively fulfilled. The detailed conclusions at which the Conference have arrived under this head of the inquiry can best be described, therefore, under the general headings of

the Governor-General's relations with his Ministers and with his Legislature respectively. The same general principle will apply to the Governors also, with the modifications of detail to be explained later.

A. Governor-General's relation with his Ministers.

3. In certain matters Ministers will not be entitled to tender advice to the Governor-General at all; these matters - namely, the Reserved Departments - will be administered by the Governor-General upon his sole responsibility. But it would be impossible, in practice, for the Governor-General to conduct the affairs of these departments in isolation from the other activities of his Government, and undesirable that he should attempt to do so, even if it were, in fact, possible. A prudent Governor-General would keep his Ministers and the advisers whom he has selected to assist him in the Reserved Departments in the closest contact; and, without blurring the line which will necessarily divide on the one hand his personal responsibility for the Reserved Departments and, on the other hand, the responsibility of Ministers to the Legislature for the matters entrusted to their charge, he would so arrange the conduct of executive business that he himself, his personal advisers in the Reserved Departments, and his responsible Ministers, are given the fullest opportunity of mutual consultation and discussion of all matters - and there will necessarily be many such - which call for co-ordination of policy. The hope was expressed that His Majesty's Government would be prepared to consider the embodiment of this principle in appropriate terms in the Governor-General's Instrument of Instructions, though it was recognised at the same time that the Instrument of Instructions must make it

clear, without ambiguity, that whatever consultation between the Governor-General and his responsible Ministers may take place upon matters arising in the Reserved Departments, the responsibility for the decisions taken is the Governor-General's and the Governor-General's alone.

Some further conclusions bearing upon this matter will be found in the Report dealing with Defence expenditure.

4. As regards the actual Departments to be classed as Reserved, it will be necessary to add the Ecclesiastical Department to the Departments of Defence and External Affairs in the reserved category. This agreement was based upon the understanding that an endeavour will be made to alter the existing classification of Ecclesiastical expenditure so as to bring under the head of Defence all such expenditure upon the provision of Churches and Chaplains as is required primarily for the needs of the British Army, and that the general policy will be to arrive as soon as may be at the position that the provision of such Churches and ministrations as are not required for this purpose is confined to the needs of the European members of the Services. The separate Ecclesiastical Department would thus, probably, be confined to the regulation of civilian requirements.

In any case, the Conference was given to understand that pending the completion of this policy, Ecclesiastical expenditure would not exceed the present scale.

5. In the course of discussion it was suggested by some Delegates that it might be possible to define with precision the matters which were to be treated as falling within the Departments of Defence and External Affairs, and by so doing to leave to the charge of responsible Ministers

certain spheres of activity which might otherwise be regarded as covered by those terms. There was, however, ^{for the view} substantial support / that such a course would be undesirable in the case of Defence and unnecessary in the case of External Affairs. In the former case such an attempt would inevitably be found to involve a division of responsibility and control in a field where such division would be fatal to efficiency. This Department must, therefore, include all matters directly involving military requirements. In the case of External Affairs, while the primary ambit of the Department would be matters involving relations with foreign countries, many subjects which involve such relations (e.g. the multifarious questions which might be involved by commercial treaties) would necessarily be dealt with, and discussed, by the Ministers responsible for those subjects in the domestic sphere, by whose advice the Governor-General would be guided except in so far as he felt that his personal responsibility for the general subject of External Affairs made it incumbent upon him to act otherwise than in accordance with the advice tendered. The conclusions of the Conference upon this matter will become clearer in the light of their conclusions as explained in paragraphs 8 and 9 below: but the main point which requires emphasis in the present connexion is the fact that a matter which, in the domestic sphere, is in charge of a Minister, will **not necessarily** be removed from his province and included for the time being in the Reserved portfolio of External Affairs merely by reason of the fact that ~~that~~ matter happens to become the subject of international negotiations.

6. A different problem presents itself in regard to the Governor-General's relations with his Ministers outside the ambit of the Reserved Departments - i.e. in the Departments which will be entrusted to the charge of Ministers responsible for the conduct of their administration of them to the Legislature.

In this sphere Ministers will have a constitutional right to tender advice, and the Governor-General will, except to the extent and in the circumstances explained below, be guided by that advice. The problem is so to define the circumstances in which he will be entitled to act otherwise than in accordance with his Ministers' advice. The Conference, after examining various alternatives, were unanimous in agreeing that the most satisfactory course will be

- (a) the enactment of provision in the Constitution that the Governor-General has a "special responsibility" not for spheres of administration, but for certain clearly indicated general purposes, and that for securing these purposes he is to exercise the powers conferred upon him by the Act in accordance with directions contained in his Instrument of Instructions and
- (b) the insertion in the Instrument of Instructions inter alia of a direction to the effect that the Governor-General is to be guided by his Ministers' advice unless so to be guided would, in his judgment, be inconsistent with a "special responsibility" imposed upon him by the Act, in which case he is to act, notwithstanding his Ministers' advice, in such manner as he judges requisite for the due fulfilment of his special responsibility.

It will be apparent from this conclusion that the Instrument of Instructions will assume a position of great importance as an ancillary to the Constitution Act.

3. It remains to indicate the matters or purposes in respect of which the Governor-General should be declared, in accordance with the proposals in the two preceding

paragraphs, to have a special responsibility in relation to the operations of the Federal Government. It was generally agreed that they should be the following^x:-

An addition
to this list
is discussed
in the Report
of the
Financial
Safeguards
Committee.

- (i) the prevention of grave menace to the peace or tranquillity of India or of any part thereof;
- (ii) the protection of minorities;
- (iii) the preservation of the rights of the public services;
- (iv) matters affecting the administration of the Reserved Departments.
- (v) the protection of the rights of the States;
- ✓(vi) the prevention of commercial discrimination.

The actual terms in which the several items should be expressed formed the subject of some discussion⁷, but it should be made clear in the first place with regard to the list that the actual wording of the items does not purport to be expressed here with the precision, or in the form, which a draftsman, when the stage comes for drawing a Bill, would necessarily find appropriate; but the list expresses with sufficient clarity for present purposes the intentions underlying the conclusions of the Conference on this point. The necessity of

✓ See report of Commercial Safeguards Committee.

✓ For example, Mr. Zafrulla Khan proposed for the wording of (ii) "The avoidance of prejudice to the interests of any section of the population" (vide paragraph 16 of Second Report of Federal Structure Committee); he also proposed - and Sir Tej Sapru supported the suggestion - to retain for (v) the words used in the same passage of that Report viz: "To secure to the members of the Public Services any rights guaranteed to them by the Constitution".

6A.

the first three items was accepted with a unanimity which makes further elucidation unnecessary - indeed they follow as a matter of course from recommendations made at previous Conferences. With regard to (iv) it is apparent that if, for example, the Governor-General were to be free to follow his own judgment in relation to the conduct of Defence policy only in regard to matters falling strictly within the ambit of the department of Defence, he might find that proposals made in another department in charge of a responsible Minister are in direct conflict with the line of policy he regards as essential for purposes connected with Defence, and consequently that the fulfilment of his responsibilities for the department of Defence would be gravely impaired if he accepted the advice of the Minister responsible for the

charge of the other department in question: if, therefore, such a situation is to be avoided, it seems to be impossible to secure the object in view otherwise than by expressing the Governor-General's "special responsibility" in some such terms as those indicated in item (iv). As regards item (v), it should be explained that this is not intended to give the Governor-General any special powers vis-a-vis the States in relation to matters arising in the Federal sphere proper; the necessary powers having been transferred by the States in their treaties, such matters will be regulated in accordance with the normal provisions of the Act. Nor is it intended that the inclusion of this item should be regarded as having any bearing on the direct relations between the Crown and the States. Those will be matters for which the Constitution will make no provision and which will fall to be dealt with by a Viceroy representing the Crown, who will, it may be assumed, be the Governor-General in a capacity independent of the Federal organ. It may be, however, that measures are proposed by the Federal Government, acting within its constitutional rights in relation to a Federal subject, or in relation to a "Central" subject not directly affecting the States at all, which, if pursued to a conclusion, would affect prejudicially rights of a State in relation to which that State had transferred no jurisdiction. Or, again, policies might be proposed or events arise in a province which would tend to prejudice the rights of a neighbouring State.

In such cases it seems evident that it must be open to the Crown, through the Governor-General or the Governor, as the case may be, to ensure that the particular course of action is so modified as to maintain the integrity of rights secured to the State by Treaty.

9. In addition to the items specified at the beginning of the preceding paragraph, the addition was suggested of a "special responsibility" for "the maintenance of good relations with other parts of the Empire". In support of this suggestion it was urged that some power ought to vest in the Governor-General to intervene in situations where the policy advocated by his Ministers was likely to end in serious detriment to Imperial solidarity. On the other hand it was agreed that the existence of such a power in the hands of the Governor-General, with no corresponding power at the disposal of Dominion Governors-General, would tend to place India at a disadvantage in inter-Imperial affairs and would raise grave suspicions in the minds of the Indian public as to the uses to which it would be put: those who held this view pointed out that the Governor-General would in any case be in a position to refuse his assent to legislative measures which he considered likely to give rise to justifiable resentment in the Dominions, and that no additional safeguard for this purpose was either necessary or desirable. The general conclusion of the Conference was in this sense.

10. The range of the Governor-General's special

special responsibilities having been thus indicated, it is desirable to explain somewhat fully the precise effects which were contemplated as the results of the proposals contained in the three preceding paragraphs. In the first place it should be made clear that unless and until the Governor-General feels called upon to differ from his Ministers in fulfilment of a "special responsibility", the responsibility of Ministers for the matters committed to their charge remains unfettered and complete. To take a concrete instance, it will clearly be the duty of Ministers, rather than of the Governor-General himself, to ensure that the administration of their departments is so conducted that minorities are not subjected to unfair or prejudicial treatment. The intention of attributing to the Governor-General a special responsibility for the protection of minorities is to enable him, in any case where he regards the proposals of the Minister in charge of a department as likely to be unfair or prejudicial to a particular minority, in the last resort to inform the Minister concerned,

(or possibly the Ministers as a body, if they generally support the proposals of their colleague), that he will be unable to accept the advice tendered to him. Nor is it contemplated that the Governor-General, having been vested with "special responsibilities" of the kind indicated, will either wish, or find it necessary, to be constantly overruling his Ministers' proposals. The discussions of the Conference have proceeded on the basic assumption that every endeavour will be made by those responsible for working the Constitution now under consideration to approach the administrative problems which will present themselves in the spirit of partners in a common enterprise. In the great bulk of cases, therefore in day to day administration, where questions might arise affecting the Governor-General's "special responsibilities" mutual consultation should result in agreement so that no question would arise of bringing the Governor-General's special responsibilities into play.

11. Apart from the Reserved Departments, and the specified special responsibilities of the Governor-General outside the sphere of those Departments, there is a third category of matters in which the Governor-General must be free to act on his own initiative, and consequently must not be under any constitutional obligation to seek, or, having sought, to follow, ministerial advice. For this purpose certain specified powers would be conferred by the Constitution on the Governor-General and would be expressed as being exercisable "at his discretion". In this category of "discretionary powers", the precise range of which it will be impossible exhaustively to foresee until the drafting of the proposed Constitution has reached

completion, it was agreed that the following matters should be included

- (a) The power to dissolve, prorogue and summon the Legislature;
- (b) The power to assent to, or withhold assent from, Acts, or to reserve Acts for the signification of His Majesty's pleasure;
- (c) The grant of previous sanction to the introduction of certain classes of legislative measures;
- (d) The power to summon a Joint Session of the Legislature in cases of emergency, where observance of the ordinary time limit which, it was assumed, would be prescribed by the Constitution would produce serious consequences.

It follows further as a matter of logic from the foregoing proposals that the special powers to be conferred on the Governor-General for the purpose of enabling him to fulfil his responsibilities must be similarly exercisable "at his discretion". To the foregoing must, therefore, be added

- (e) The power to take action, notwithstanding an adverse vote in the Legislature - to be dealt with more fully below;
- (f) The power to arrest the course of discussion of measures in the Legislature - also dealt with below;
- (g) The power to make rules of legislative business insofar as these are required to provide for the due exercise of his own powers and responsibilities.

B. Governor-General's relations with the Legislature.

12.. It is not sufficient, however, merely to regulate the Governor-General's relations with his responsible Ministers, i.e. to relate to matters arising in discussions amongst the members of the executive Government. It follows from the recommendations of the Federal Structure Committee, upon which these proposals are based, that the Governor General must be given powers which will enable him effectively to fulfil the responsibilities entrusted to him, whether his responsibilities for the Reserved Departments or the 'special responsibilities' indicated above, if their fulfilment involves action normally lying within the functions of the

Legislature to which the Legislature will not

agree.

The general scheme underlying the proposals is that, wherever the Governor-General's responsibilities for the Reserved Departments, or his special responsibilities, are involved, he should be empowered not only, as has already been explained, to act without, or, as the case may be, contrary to, the advice of his Ministers, but also to counteract an adverse vote of the Legislature, whether such a vote relates to the passage of legislation or to the appropriation of funds. It was unanimously agreed that the Governor-General must, in some appropriate manner, be granted the necessary powers for this purpose, and that the exercise of these special powers should be expressed in the Act as being restricted to the fulfilment of these responsibilities. There was some difference of opinion, however, as to the precise form which these powers should be expressed as taking. It was suggested that provisions in any way closely analogous to the existing "certification" sections of the Government of India Act, namely, s.67B, which enables the Governor-General to secure affirmative legislation, and s.67A(7), which enables him to "restore" rejected or reduced Demands for Grants, would be inappropriate under the Constitution now contemplated, and that the necessary powers should be so expressed as to involve not an overriding of the Legislature but action taken by the Governor-General independently of the Legislature on his own initiative and responsibility. On the other hand the view was taken that it would be unfortunate if the Governor-General's power to secure legislative enactments otherwise than by the normal process of the assent of the Legislature were so framed as to exclude any right on the part of the Legislature to

discuss the terms of such a measure before it was enacted and that the objection to a procedure analogous in form to the provisions of s. 67B or s.67A(7) would be substantially met if the new Constitution were to make it clear that such a measure when enacted, is described in terms as a "Governor-General's Act", and does not purport to be an Act of the Legislature, and that votable supply which is, in fact, obtained otherwise than with the consent of the Legislature does not purport to have received such assent.

Notwithstanding this difference as to method, there was a general feeling in favour of the provision of powers of this character for use in fulfilment by the Governor-General of his responsibilities for the Reserved Departments and of his "special responsibilities" on the understanding that care would be taken in framing the Bill to make it clear that their exercise was the outcome of the Governor-General's own initiative and responsibility and would in no way compromise either the position of his Ministers in their relationship with the Legislature or the position of the Legislature itself.

13. It was also agreed that for the same purpose it would be necessary to place at the disposal of the Governor-General powers analogous to the Ordinance-making powers to

meet temporary emergencies contained in s.72 of the existing Act. Indeed, in addition to such a power to be placed at the disposal of the Governor-General "at his discretion" for the express purpose of fulfilling his responsibilities for a Reserved Department, or for carrying out a "special responsibility" there was general agreement that a similar power should be placed at the disposal of the Governor-General acting on his Ministers' advice, i.e. at the disposal of the Federal Government, to meet cases of emergency when the Legislature is not in session, the Ordinances resulting therefrom being limited in duration to a specified period^{and} their continuation beyond that period being made dependent upon subsequent ratification by the Legislature.

14. Finally, the Conference were agreed that the Constitution should contain provision requiring the previous sanction of the Governor-General, acting in his discretion, to the introduction of any Bill affecting a Reserved Department, or religion, or religious rites and usages, or any Bill repealing, amending or affecting any Act or Ordinance of the Governor-General, enacted in fulfilment of his personal responsibilities^{*}, and, in addition to this requirement, that the Governor-General should be empowered, on the lines of the provisions of s.67 (2A) of the existing Act, to prevent the discussion, or further discussion, of any measure the mere discussion of which, in his judgment, is liable to involve grave menace to peace and tranquillity.

15. It is perhaps desirable to summarise very briefly the essence and effect of these proposals. The intention is that the special powers of the Governor-General properly so described, namely his power to obtain legislation and supply without the assent of the Legislature will flow from the responsibilities specifically imposed upon him and be exercisable only for the

⁺ The opinion was expressed in this connexion that the Governor-General's powers for this purpose should not be so framed as to hamper freedom in social reform.

^{*} See also Financial Safeguards section.

purpose of enabling those responsibilities to be implemented. The responsibilities to be imposed on the Governor-General by the Constitution should be of two kinds - an exclusive responsibility for the administration of the Reserved Departments, and a "special responsibility" for certain defined purposes outside the range of the Reserved Departments. On the administration of the Reserved Departments Ministers will have no constitutional right to tender advice, though, in practice, they will necessarily be consulted; nor will they have any such right to tender advice on the exercise of any powers conferred upon the Governor-General for use "in his discretion". On all other matters Ministers will be constitutionally entitled to tender advice, and unless that advice is felt by the Governor-General to be in conflict with one of his special responsibilities he will be guided by it. If, in fulfilment of his responsibility for a reserved Department, or of a special responsibility, the Governor-General decides that a legislative measure or supply to which the legislature will not assent is essential, his special powers will enable him to secure the enactment of the measure or the provision of the Supply in question, but Ministers will not have any constitutional responsibility for his decision.

C. Governors' special powers and responsibilities.

16. As indicated in paragraph 2 of this Report, the scheme for the Governor-General's responsibilities and powers described above will be applicable in all respects to the Governor in relation to his Ministers and Legislature, with the following modifications of detail. In the Provinces there will be no category exactly corresponding to the Reserved Departments of the Governor-General, though it may be found necessary to make arrangements somewhat analogous to those involved in reservation

in order to provide for the administration of those areas in certain Provinces which, from the primitive nature of their populations and their general characteristics, will have to be excluded from the normal operation of the Constitution. With this exception, therefore, the Governors' special powers will flow from, and be expressed as being required in order to enable them to fulfil, their "special responsibilities" only.

17. As regards the "special responsibilities of the Governors" these should be identical with those indicated in the case of the Governor-General, save that the first item on the list would necessarily be confined in scope to the Province, or any part thereof, and not extend, as in the case of the Governor General, to India as a whole. But in the case of the Governors, it would be necessary to add to the list of "special responsibilities" an item relating to the execution of orders passed by the Governor-General. If the Governor General is to be charged, as will be explained later, with the general superintendence of the actions of Governors in the exercise of their "special responsibilities", and if, as has already been proposed, he is himself to have imposed upon him a "special responsibility" for the prevention of grave menace to peace and tranquillity throughout the country, it follows that he must be in a position to ensure that his instructions to a provincial Governor are acted upon: and consequently that the Governor must be in a position to act otherwise than on his Ministers' advice, if such advice conflicts with the Governor-General's instructions. Finally, it may be necessary to impose upon the Governor a "special responsibility" for the administration of certain excluded

Sardar Tara Singh and Pandit Nanak Chand advocated a special arrangement in the Punjab in relation to "Law and Order". The Minister in charge of that subject should be assisted by a Statutory Board composed of one Hindu, one Sikh, and one Moslem; and the Governor should have the power of decision in the event of disagreement between the Minister and the Board.

17.

areas, if, as seems probable, the arrangements for the administration of excluded areas involve their classification into two categories, one of which would be placed under the exclusive control of the Governor and the other made subject to Ministerial control, but with an overriding power in the Governor obtained in the manner explained in earlier paragraphs of this Report through his "special responsibility".

18. The division of legislative powers between Centre and provinces would no longer make appropriate the concentration in the hands of the Governor-General of the power to legislate in emergency by Ordinance on provincial matters and this power should henceforth be conferred on Governors also, for the double purpose indicated in paragraph 15 of this Report. Some delegates, however, considered that only the Governor-General should have the power to legislate by Ordinance.

19. Finally, the Conference were agreed that insofar as the Governor-General or a Governor is not constitutionally bound to seek Ministers' advice, or in any matter in which being bound to seek their advice he is unable to accept it, the general requirements of constitutional theory necessitate that his actions shall be subject to direction by His Majesty's Government and Parliament and that the Constitution should make this position clear. In the case of a Governor the chain of responsibility must necessarily include the Governor-General.

20. It should be explained in conclusion that the recommendations on this Head of the Agenda have no reference to situations where a complete breakdown of the Constitutional machinery has occurred. It was, however, the unanimous view of the Conference that the Constitution should contain separate provision to meet such situations, should they unfortunately occur either in a province or in the Federation as a whole, whereby the Governor-General or the

18.

Governor, as the case may be, should be given plenary authority to assume all powers that he deems necessary for the purpose of carrying on the King's Government.

HEAD D.

REPORT OF THE COMMITTEE ON
FINANCIAL SAFEGUARDS.

The Committee was appointed "to consider the question of Financial Safeguards" and was constituted as follows:-

Sir Samuel Hoare (Chairman)
Lord Irwin
Lord Peel
Lord Reading
Sir Akbar Hydari
Sir Manubhai Mehta
Sir Hubert Carr
Mr. Hidayat Husain
Sir Cowasji Jehangir
Sir Tej Saprú
Sir Purshotamdas Thakurdas
Mr. Zafrulla Khan

1. The Committee took as the basis of their deliberations paragraphs 18 and 19 of the Second Report of the Federal Structure Committee and the passage which relates thereto in the subsequent Declaration of Government policy by the Prime Minister at the final Plenary meeting of the first session of the Round Table Conference on the 19th January 1931. The Committee adhere to the principle that no room should be left for doubt as to the ability of India to maintain her financial stability and credit both at home and abroad.

The Committee examined in somewhat greater detail than was possible at the time of the Second Round Table Conference the implications of the conclusion in paragraph 18 of the Second Report of the Federal Structure Committee that "it would therefore be necessary to reserve to the Governor-General, in regard to budgetary arrangements and borrowing, such essential powers as would enable him to intervene if methods were being pursued which would in his opinion seriously prejudice the/

the credit of India in the money markets of the world".

2. It was agreed, with one dissentient, that the requisite power for the Governor-General could suitably be obtained by placing upon him by Statute a "special responsibility" in financial matters. The terms to be used in defining this special responsibility were carefully examined in the Committee. Some took the view that it was possible to enumerate exhaustively the occasions upon which the special powers of the Governor-General might have to be exercised. The majority are unable to accept this view, and are of opinion that the only statutory description of the special responsibility which will serve the essential purpose which all of us have in view is "a special responsibility for safeguarding the financial stability and credit of the Federation."

As in the case of other special responsibilities of the Governor-General, the responsibility of the Ministers for the matters committed to their charge will remain unfettered and complete unless and until the Governor-General feels it necessary to exercise the powers entrusted to him; and when he does exercise his powers, his action will be so expressed as to make it clear that his Ministers bear no responsibility for it. Unless occasion arises for the exercise of these exceptional powers it will be for the Ministry, and the Ministry alone, to take decisions upon such matters as the means to be used for raising the necessary revenue, for allocating expenditure in the responsible field, and for the programme of external and internal borrowing.

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It is, moreover, agreed that the Governor General should not exercise the powers in question unless he is satisfied that failure to use them will seriously endanger the financial stability and credit of the Federation, and the Committee suggest that this should be made clear in the Governor General's Instrument of Instructions.

The Committee are also agreed, with one dissentient, that the Governor General should be enabled to obtain the services of a financial adviser, without executive power, to assist him in the discharge of the special responsibility referred to above. His services should be available to the Ministry as well as to the Governor-General, but he would be responsible to the Governor General and would be appointed by him in his discretion and (in cases subsequent to the first appointment), after consultation with Ministers.

3. It has always been contemplated that the budget should include certain items of expenditure which are declared by Statute to be non-votable, for example, charges in respect of reserved departments and the service of the debt. The Committee endorse this principle.

4. The Committee agrees with the recommendation in paragraph 18 of the Second Report of the Federal Structure Committee that efforts should be made to create, on sure foundations and free from any political influence, and as

early/

4.

early as may be possible, a Reserve Bank which would be entrusted with the management of currency and exchange. The Committee are of the opinion that the proposals to be submitted to Parliament should be based on the assumption that such a Reserve Bank would have been created prior to the inauguration of the Federal Constitution, and recommend that steps should be taken to introduce into the Indian Legislature a Reserve Bank Bill conceived on the above lines as soon as is possible. Certain requirements must be satisfied before the Reserve Bank could start operations with a reasonable chance of successfully establishing itself; in particular, that the Indian budgetary position should be assured, that the existing short-term debt both in London and in India should be substantially reduced, that adequate reserves should have been accumulated and that India's normal export surplus should have been restored. The Committee recognise that some of these matters are beyond the control of governments but have been assured by the Secretary of State that, so far as is within his power and that of the Government of India, a policy which aims at the earliest possible realisation of the conditions required for the establishment of the Bank will be pursued.

The Secretary of State undertook that representative Indian opinion would be consulted in the preparation of proposals for the establishment of the Reserve Bank including those relating to the reserves.

5. In the existing state of financial and economic crisis throughout the world, it is impossible at this moment to predict a definite date by which the Reserve Bank will have been launched. In paragraph 20 of the second report of the Federal Structure Committee it was contemplated that if the establishment of the Reserve Bank/

Bank was unavoidably delayed, some special temporary powers might be given to the Governor-General to control monetary policy and currency pending the establishment of the Reserve Bank. The Committee were informed that His Majesty's Government had carefully examined the possibility of framing special provisions to this end, but that none of the measures which had been suggested would have been satisfactory from the point of view both of the responsibility of the Federal Ministry and of the maintenance of India's credit; and it is important to remember that the maintenance of India's credit is itself one of the essential pre-requisites of the successful establishment of a Reserve Bank. The Committee accordingly have proceeded on the basis that the proposals to be submitted to Parliament would be framed on the assumption that the Reserve Bank will be in successful operation by the time that it is possible to inaugurate the Federation.

The Committee recognise that Indian opinion may well expect some indication as to the course to be followed if circumstances should arise in which, while all other conditions for the inauguration of the Federation have been satisfied, some obstacles remain in the way of the successful establishment of the Bank. The Committee have been assured by the Secretary of State that in this event His Majesty's Government would consult representatives of Indian opinion regarding the course to be adopted in the face of this particular difficulty.

It is on the basis of this assurance by the Secretary of State that some members of the Committee have been able to accept this part of the Report, and they reserve their right to reconsider their whole position should delay in the establishment of the Bank seem likely to result in postponement of the inauguration of the Federation.

6. Paragraph 18 of the Second Report of the Federal Structure Committee laid down that "provision should be made requiring the Governor-General's previous sanction to the introduction of a Bill to amend the Paper Currency or Coinage Acts". The majority of the Committee endorse this recommendation. It necessarily follows that this condition will apply to any provisions which may be contained in the Reserve Bank Act itself laying down the conditions with which the Bank has to comply in the management of currency and exchange.

7. The Committee are conscious of the difficulty in any country of reconciling the introduction of far-reaching constitutional changes, necessarily affecting finance with the highly important requisite that the confidence of world markets and of the investor in future financial stability should be maintained. They believe that the Ministry of the future Federation will pursue a course of financial prudence and that the Federation will rapidly establish an independent credit of a high class. Though, in the future as in the past, it will naturally be the aim to obtain internally, so far as possible, such loan funds as may be required, India will doubtless find it necessary to develop a credit that will enable her also to appeal with confidence to external markets. The provisions outlined in this Report are accordingly designed to afford India an assured prospect of maintaining the confidence of the investment market.

Assuming/

*One member can only accept this paragraph so far as it does not conflict with his dissent from para. 2.

Assuming that a prudent financial policy is pursued by the Federation, the Committee feel that there will be no need to call the proposed special safeguards into operation. Their existence should, however, afford reassurance to the investing public at a time when far-reaching developments in the political and financial sphere are being introduced.

The Conference noted the Report of the Committee on Financial Safeguards after the following points had been raised:-

Mr. Javakar found difficulty in accepting any provision which seemed to confer on the Governor-General a special responsibility in regard to Finance beyond the mere protection of the security of investors and the assurance of sufficient funds for the administration of his special subjects. He also feared that the proposed financial adviser might become a rival of the Finance Minister, and that the inauguration of the Federation might be seriously delayed if it depended on the creation of a Reserve Bank.

(Points raised by Sir Tej Sapru on this subject will be found in his speech in the general discussion.)

HEAD D.

R E P O R T O F
COMMITTEE ON COMMERCIAL SAFEGUARDS.

The Committee was appointed "to consider the question of commercial safeguards" and was constituted as follows:-

Lord Reading (Chairman)
Lord Irwin
Mr. Butler
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Sir Manubhai Mehta
Dr. Ambedkar
Sir Hubert Carr
Mr. Hidayat Husain
Sir Cowasji Jehangir
Sir Tej Sapru
Sir Purshotamdas Thakurdas
Mr. Zafarulla Khan

The Committee proceeded upon the basis of paragraphs 16-26 of the Federal Structure Committee's Fourth Report, which represents the general conclusions reached upon this subject, after much discussion and negotiation, at the previous sessions of the Round Table Conference.

The basic proposal of the Federal Structure Committee was that the avoidance of discrimination would best be achieved by specific provisions in the Constitution prohibiting discrimination in the matters set out above and defining those persons and bodies to whom the clause is to apply.

2. The Committee reaffirmed this proposal of the Federal Structure Committee as to the method of achieving the avoidance of discrimination. But while there was agreement (except for one dissentient) that legislative discrimination should be dealt with by such provisions, some members were disposed to the view that it was undesirable to attempt to provide against discrimination

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when it resulted from administrative action, on the ground inter alia that as the powers to prevent administrative discrimination must necessarily be vested in the Governor-General and the Governors, the possession of such powers would be tantamount to conferring a right of appeal to those high officers against any action of the Ministry which had given rise to dissatisfaction on the part of any individual or minority. The general view of the Committee was, however, that no such consequence need be anticipated from the inclusion of "the prevention of commercial discrimination" in the list of the Governor-General's and Governors' "special responsibilities"², and that the adoption of this expedient was the only available means of making such provision as can be made against administrative action of this nature. On the general plan already agreed by the Conference for the statutory recognition as part of the scheme of safeguards in general of "special responsibilities" for certain specified purposes, the consequence would be, in this particular instance, that the Governor-General or Governor, as the case may be, would be entitled in the last resort to differ from proposals of his Ministry if he felt that these involved unfair discrimination. The Committee anticipate that the Instrument of Instructions would make it plain that the "special responsibilities" - or rather the powers flowing from them - are not to be invoked, either in this particular instance or in any other, capriciously or without due cause. 3./

²See paragraph 8 of Report on Governor-General's and Governors' special powers.

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3. As regards the persons and bodies to whom these provisions should apply, a distinction was at one stage of the Committee's discussions sought to be drawn between those carrying on business in and with India; for example, it was suggested that in the case of companies, protection on the lines indicated above should be confined to companies registered in India. It was however pointed out that a provision on these lines involved possible attempts at double registration by companies originally registered in the United Kingdom which would inevitably give rise to great legal confusion and conflicts of jurisdiction. The majority of the Committee were not in favour of any such distinction, but were of opinion that this aspect of the matter should be dealt with on the basis of the principle of reciprocity, i.e. that no subject of His Majesty domiciled in the United Kingdom and no company registered in the United Kingdom should be subjected to any disabilities or discrimination in respect of the matters enumerated in paragraph 18 of the Fourth Report of the Federal Structure Committee to which subjects of His Majesty domiciled in India or companies registered in India are not subjected in the United Kingdom. Indian registered companies, on the other hand, would be secured against legislative or administrative action imposing upon them conditions as to the conduct of their business which discriminate against particular classes, through the operation of the general principles indicated in paragraph 18 of the Report of the Federal Structure Committee cited above.

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The reciprocal basis here suggested should suffice to cover all the matters specified in paragraph 18 of the Fourth Report of the Federal Structure Committee, but, pending agreement between a Medical Council in India and the General Medical Council, some special provision may be required regarding the right to practice in India of practitioners registered in the United Kingdom.

The Committee assume that it would be open to the Government of India should they wish to do so, to negotiate agreements for the purposes indicated in this paragraph with any other parts of the British Empire.

4. The Committee agreed that bounties or subsidies should be available, without distinction, to all firms or individuals engaged in a particular trade or industry at the time the enactment authorising them is passed, but that in regard to companies entering the field after that date the Government should be at liberty to impose the conditions of eligibility recommended by the External Capital Committee. It would, of course, be a question of fact whether the purpose of the subsidy or the imposition of particular conditions, though not discriminatory in form was, in fact, intended to penalise particular interests; and the Governor-General or Governor, or the Courts, as the case may be, would have to form a judgment on this question in deciding whether a proposed measure was or was not discriminatory.

5. The Committee's proposals are based upon a conviction of the desirability of maintaining unimpaired under the changed conditions which will result from the new constitution that partnership between India and the United Kingdom with which the prosperity of both countries is

bound/

bound up; and they are confident that the proceedings and policies of the future Indian Governments will be informed by a spirit of mutual trust and goodwill which will render it unnecessary to call into play the provisions of the Constitution to be framed on this matter.

The Conference noted the Report of the Committee on Commercial Safeguards after the following points had been raised:-

DR. AMBEDKAR preferred the method of a "convention" scheduled to the constitution rather than clauses in the constitution limiting the powers of the legislatures.

MR. JAYAKAR although accepting the principle that there should be no discrimination on the ground of race, attached great importance to not preventing the future governments and legislatures from adopting special measures to foster key industries or infant industries.

MR. MUDALIYAR with reference to the penultimate sentence of paragraph 3, stressed the importance of not creating a situation in which the hands of the Medical Council in India would be weakened in reaching a suitable agreement with the General Medical Council.

THE SECRETARY OF STATE FOR INDIA undertook to do his utmost to secure that a suitable agreement was reached before the new constitution came into force.

HEAD E.

D E F E N C E.

(1) The discussions proceed on the basis agreed to in the two previous Conferences that Defence should be reserved for administration by the Governor-General as representing the Crown. At the same time His Majesty's Government undertook to consider whether the principle enunciated by the Defence sub-Committee of the first Conference, that "With the development of the new political structure in India, the Defence of India must to an increasing extent be the concern of the Indian people, and not of the British Government alone", could not be reaffirmed in a manner that would bring it into relation with the new Constitution itself. It was also recognised that the future Indian Legislature should have at any rate no less latitude of discussion in the sphere of Defence than the present.

(2) The suggestion was made that the Governor-General's representative who is to act as Defence Member should be selected from Members of the Legislature representing British India or the Indian States, and further that he should be treated as a Member of the Federal Cabinet though not made dependent for his position on the support of the

Legislature. It was argued that he could thus maintain a closer contact than could be otherwise secured between the Governor-General and representative political opinion in the sphere of Defence administration. Opinion was, however, divided; and other speakers referred to the difficulty of harmonising the position of the Defence Member with that of a Member of the Legislature dependent on the votes of his constituents, and also that of making him a party to decisions of the Federal Cabinet while he could not share their responsibility nor could they share his. His Majesty's Government expressed their preference for adhering to the conclusion previously recorded that the Defence Member should be appointed at the unfettered discretion of the Governor-General, since this in their view would preserve the essential responsibility of the Governor-General, while it would not rule out the possibility of selection from the Legislature, supposing that on occasion the individual best suited for the post in the Governor-General's opinion was a member of the Legislature.

(3) The Conference discussed what arrangements should be adopted to enable the Governor-General to obtain supplies for Defence purposes without placing

limitations upon his responsibility for the subject. Two alternative schemes were put forward by certain Delegates: either that Defence expenditure should be fixed by a contract system for a term of years, and that the amount so fixed should be settled as far as possible by agreement on each occasion with the Legislature; or that Defence expenditure should remain non-votable but that there should be a system of close consultation between the Governor-General's immediate Advisers on the one hand and the leading Federal Ministers on the other, before the Military Estimates were submitted to the Governor-General for his final approval and for presentation to the Legislature. A preference was manifested for the latter alternative; and it was further suggested that there should be a statutory obligation upon the Governor-General to consult the leading Federal Ministers in the manner indicated. A proposal was also made that, failing a scheme of this kind, the Defence Budget should be made votable by the Federal Legislature, subject to power of restoration by the Governor-General. His Majesty's Government felt that a statutory obligation of consultation could not but obscure the distinction between the responsibilities of the Governor-General and those of the Federal Ministers; but they associated themselves with the view that joint consultation in this matter was highly desirable in itself and ought in the ordinary course to become a regular

feature of the working of the new Constitution. They were ready, therefore, to consider any suitable method of formally affirming the desirability of joint consultation, such as the inclusion of some reference to the principle in the Governor-General's Instrument of Instructions, and further to consider how an affirmation in this form could be brought into direct relation with the Act itself.

(4) It was suggested that the importance of rapid progress with Indianisation in the Army should be affirmed in some similar form; and the proposal was also made that a comprehensive programme of Indianisation should be laid down. As regards the latter, the objection was made that the immediate fixation of a final programme, extending as it must over a considerable period, would almost certainly necessitate an extra degree of caution, and that the rate of progress even from the beginning might thus be unnecessarily retarded. The view was stated on behalf of His Majesty's Government that the pace of Indianisation must continue to be regulated by stages, while it was pointed out that a programme of Indianisation already exists which extends much further than the previous

stage and looks forward to still greater developments in future. They expressed their sympathy with the suggestion that some means should be adopted of affirming the importance of the subject. In this connection reference was made to the fact that the question of the strength of British troops in India had been brought under expert investigation as recommended by the Defence sub-Committee of the First Conference, and was at present under consideration by His Majesty's Government.

It was suggested in some quarters for consideration that in recruitment for the Defence Forces no distinction should be made between what have been termed the martial and the non-martial classes.

(5) There was some discussion on the possibility of giving the Legislature a voice in the employment of the Indian Army outside the limits of India. On analysis, it appeared to be implicit in the Reservation of Defence that the Governor-General must be solely responsible for all measures which he judges to be required in the interests of India within the sphere of Defence, whether or not these might on occasions involve the employment of Indian Forces outside the actual limits of India. The general conclusion was that His Majesty's Government

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should consider how far the
Legislature might appropriately
be given a voice as to the loan
of Indian Forces to the Imperial
Government on occasions when the
interests of India within the sphere
of Defence were not involved.

HEAD F.

1.

REPORT OF THE FEDERAL FINANCE
COMMITTEE.

The Committee was appointed "to consider the question of 'Federal Finance' in the light of the Percy Report, Davidson Report, and suggestions in the Secretary of State's statement of 6th December 1932, "and was constituted as follows:-

Lord Peel (Chairman),
Mr. Davidson
Mr. Butler
Lord Lothian
Rao Bahadur Krishnama Chari
Sir Akbar Hydari
Sir Mirza Ismail
Sir Manubhai Mehta
Sir Hubert Carr
Mr. Ghuznavi
Sir Cowasji Jehangir
Dr. Shafa'at Ahmad Khan
Mr. Mudaliyar
Sir Nripendra Nath Sircar
Sir Purshotamdas Thakurdas

PRELIMINARY.

1. One essential feature of the general scheme of federal finance outlined by the sub-Committee of the Second Round Table Conference presided over by Lord Peel, namely, the transfer to the Provinces of almost the whole of the proceeds of taxes on income (other than corporation tax), has subsequently been criticised on the ground that it jeopardises the solvency of the Federation by depriving it of adequate access to revenue from direct taxation. The mutual financial relations of the Federation and the Provinces would also remain uncertain and perhaps discordant if the countervailing contributions from the Provinces to
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Vide Appendix to this Report.

the Federation, originally proposed for a term of years, could not be extinguished in accordance with a definite programme. The view of the Percy Committee was that no definite time limit could be fixed for the abolition of contributions of such magnitude. A further difficulty revealed by the Percy Committee is that, even on the basis of estimates which assume a substantial economic recovery, certain Provinces might be left in deficit, some possibly in permanent deficit, even if a full share in taxes on income could be handed over to them.

2. The aims which we have kept in view may be summarised as follows: to provide that all Provinces may start with a reasonable chance of balancing their budgets; to afford them the prospect of revenue sufficiently elastic for subsequent development; to assure the solvency of the Federation; and to ensure that, after an initial period, the federal sources of revenue shall be derived from British India and the States alike. The achievement of all these objects is a task of extreme difficulty, especially at a time of great financial stringency. Nevertheless, the scheme set out in the following paragraphs seems to afford a promising line of approach. We are in general agreement as to its main principles and, subject to a satisfactory settlement of the two important factors referred to in paragraphs 4 and 6 below, consider that it offers the prospect of a solution.

ALLOCATION OF TAXES ON INCOME.

3. As the basis of the scheme we envisage a two-fold
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division of the proceeds of taxes on income into shares which would be assigned, as a permanent constitutional arrangement, to the Federal Government and the Provinces respectively.

4. The Federal Government would be entitled to a share based on the proceeds of heads of tax which are not derived solely from residents in British India. We have in mind such heads as corporation tax, tax on federal officers, tax in Federal Areas, tax on Government of India securities, and tax on the incomes of persons not resident in British India. We recognise that the exact content of the list requires detailed investigation and definition by those familiar with the income-tax system, and further that in practice it may not be possible to isolate the yield of some of the heads. It may therefore be necessary, and from the administrative point of view it would in any case appear advantageous, to define at least a portion of the federal share as a percentage of the total yield. These problems, we suggest, should form the subject of immediate examination. It is obvious also that some assumptions will have to be made as to the yield of the various heads of tax. In the meantime we have proceeded on the basis that the five heads quoted above should be permanently federal, and that their yield would be $5\frac{1}{4}$ crores out of the sum of $17\frac{1}{4}$ crores estimated by the Percy Committee to be the normal net revenue from taxes on income. On these estimates, unfortunately, we are unable to report that the scheme is acceptable to all of us. The

success/

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success of the scheme in practice and its virtue in theory depend very largely on the prospective amount of revenue which would be secured to the Federal Government; and, while the representatives of British India are not prepared to go beyond a sum of about 5 crores, the States' representatives maintain that it should not be less than $8\frac{1}{4}$ crores. It is only on the assumption that a share in taxes on income estimated to yield at the outset a minimum of $8\frac{1}{4}$ crores is secured to the Federal Government, that the States' representatives have agreed to assume the burden of corporation tax as explained in paragraph 8 below.

5. The whole of the remaining proceeds from taxes on income would be assigned to the Provinces, though their actual receipts might be limited by certain demands of the Federation presently to be proposed. We contemplate that the basis upon which the sum actually available for distribution should be divided among the Provinces would be laid down under the constitution, and generally speaking we are disposed to regard the proposals in paragraphs 74 and 75 of the Percy Report as suitable. These proposals, however, require re-examination in the light of our present scheme, and we recognise that some modification may be desirable.

6. In order to ensure the solvency of the Federal Government until the existing abnormal conditions

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have passed and sufficient time has elapsed for the development of new sources of revenue, it is proposed that, out of the provincial share of taxes on income, the Federal Government should retain a block amount for a period of X years. This amount would be deducted by the Federal Government from the total net yield attributable to the Provinces before any distribution took place. In this connection, however, some Delegates wish to state that, in their opinion, the result as between the Provinces would be inequitable since, in effect, each Province would make a special contribution to the Federation in proportion to its individual share of income-tax. They consider that the provincial share of taxes on income should first be distributed, and that contributions should then be taken back on some basis yet to be determined. Delegates from Bengal and Bombay are particularly emphatic on this point. As regards the amount to be allotted to the Federal Government, we are agreed that it should initially be sufficient to balance the federal budget at the outset, and it would therefore have to be determined shortly before the inauguration of the new constitution. In the determination of this amount, the Provincial Governments and the Government of India should, of course, be closely associated. Many members of the Committee consider that, in view of the high level of military expenditure, the possibility of reducing such expenditure should be closely examined

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in determining the initial federal deficit. Indeed, some members go farther, maintaining that the problem of a federal deficit might be entirely eliminated by very substantial reduction in expenditure under this head, and referring particularly to Sir Walter Layton's remarks on the subject in Vol.II, para.248 of the Statutory Commission's Report. On the question whether the initial amount should continue in full final opinion, but on the whole we think it might be better to divide that period into two parts. On this basis; the amount would be fixed for a number of years and would then be gradually reduced to zero, on a scale provided under the constitution, during the remainder of the period of X years. As regards the duration of this period, we are unable to report agreement. The States' representatives consider that the minimum period should be ten years, divided into two parts of at least five years each if the alternative proposal just mentioned were adopted. The British India representatives would limit X to four or five years, divided, if necessary, into parts of two (or three) and two years. There is agreement that if, during the initial period, the federal budget showed a prospect of a continuing surplus, relief to the Provinces and States which make special contributions to federal resources, whether direct or indirect, ought to have priority over remission of taxation.

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7. In this connection we note that, if any scheme on the above lines were adopted, the references in the Davidson Report to "Provincial Contributions" should be construed as applying to the block amount retained by the Federal Government from the Provinces (Vide paragraph 26 below.)

8. We also note that, provided a satisfactory yield from taxes on income is permanently assigned to the Federation, the States' representatives agree to assume liability for corporation tax on the expiration of the period of X years, subject to the understanding that, assessment of the tax on the companies in a State having been made, the State may raise the amount due to the federal fisc by any method it may choose, and not necessarily by the actual levy of that tax.

9. In addition to the normal powers of the Federal Government, we also contemplate, as an integral part of the scheme, special powers designed to meet such a situation as might arise if the federal budget, initially balanced by the amount retained from the Provinces, failed to remain balanced despite increased taxation upon existing sources and the development of new sources of revenue permanently allocated to the Federation. It is implicit in the scheme that the Federal Government should do its utmost to develop its permanent resources from the outset. It is accordingly proposed that, so far as British India is concerned, the Federal Government should have power to levy, for its own purposes, additional tax on the heads of income-tax permanently assigned to the Provinces. (In practice, of course, it would

simultaneously/

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simultaneously raise the rates of tax on its own corresponding heads.) Whenever this was done, the Federal Government would also levy proportionate contributions on a determined basis (for example, that suggested for a somewhat similar purpose in paragraph 113 of the Percy Report) from such States as prefer not to come into a federal income-tax.

10. Most of us are agreed that, independently of the scheme described above, each Province individually should have a right of surtax upon the personal tax levied on its inhabitants under the heads permanently allocated to the Provinces, subject to a maximum of $12\frac{1}{2}$ per cent. of the tax centrally imposed. This surtax, like all other taxes on income, would be collected by federal agency. Some members, on the other hand, urge that a provincial right of this nature would not only offend against the general desirability of uniformity in rates throughout India, but would affect the reserve of taxable capacity available to the Federal Government in times of emergency.

11. As regards legislative procedure, we propose that the legislation for corporation tax and for the exercise of the special powers proposed in paragraph 9 above should be entirely federal. Legislation for the rates of provincial surtax would be entirely provincial. All other legislation for the imposition of taxes on income, whether affecting the basis of assessment or the rate of tax, would be uniform, and would be effected by the Federal Legislature with the leave of the Governor-General given after consultation with a council of representatives of the Units and of the Federal Government.

Deficit/

DEFICIT PROVINCES.

12. While it is essential to ensure the solvency of the Federal Government and an equitable distribution of burdens among the partners in federation, we recognise also that provincial solvency must be secured if the Provinces are to function successfully. At the same time, we are faced with the insuperable difficulty that financial conditions for some time to come do not seem likely to permit any general distribution of revenues which would automatically bring all Provinces on to a solvent basis, and that some of them might even be in permanent deficit. We propose, accordingly, that any proved cases of deficit Provinces (whether already constituted or newly created) should be met by subventions from the Centre on certain conditions. (The special cases of Bengal, Sind and the North-West Frontier Province are referred to in the succeeding paragraphs, and the probable needs of Orissa are set out in the Secretary of State's statement printed as an Appendix to this Report). We consider that there should be an enquiry shortly before the new order is inaugurated in the Provinces, as a result of which the amount of any subvention, where necessary, and its duration (if only required for a limited period) would be finally determined. It is important that the decision should be final, as periodic revision could not fail to react on constitutional independence and financial responsibility. We contemplate that the amount would be only just sufficient to enable a Province exactly/

exactly to balance its budget on a basis of providing for bare necessities. Further, the total sum involved for all the Provinces concerned should be manageable in size and not such as to affect materially the resources which can be made available to the other Provinces. We do not at the present stage give an opinion as to whether any particular subvention should be constant and permanent, or constant and terminating after a stated period of years, or constant for a term of years and then diminishing over a period. This must depend largely on the prospects of expanding revenue in a Province, and the enquiry which established the necessity of a subvention should also be directed to the conditions of its grant. As regards the source from which subventions to deficit Provinces should be derived, the representatives of the States feel strongly that, except in the case of the North-West Frontier Province, they should form a charge on revenue derived from provincial heads of income-tax after the period of X years. The British India representatives, on the other hand, maintain that the charge would be properly federal after the period of X years in virtue of the amount of income-tax assigned permanently to the Federal Government under the scheme suggested in the earlier paragraphs of this Report.

13. In the case of Bengal, we recognise that the difficulties arising from the present distribution of resources are exceptional, and we suggest that they

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might perhaps be met by according to the Province some share in the revenue from jute. We make no definite proposal as to the form which this share should take as the question requires technical examination. A suggestion, however, which appears to some of us to afford a possible expedient, is that the export duty on manufactured jute might be removed, and a central excise on such jute imposed, to be distributed to the Provinces in which it is levied. A device of this kind would apparently overcome the serious difficulties likely to arise from giving any authority other than the Federal Government the power to impose export duties, or providing that a portion of the proceeds of any export duty should be assigned to a Province. The delegates from Bengal, however, view this suggestion with strong disfavour. They consider that the deficit position of Bengal should properly be remedied out of the export duty on jute, which is practically a monopoly of the Province. In their view, the whole proceeds of that duty should be allotted to the Province, though, for the period of X years defined above, half the proceeds might be given to the Federal Government.

14. Sind is in a special position in that careful investigations have already been made which show that it

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will be heavily in deficit for a considerable number of years, but that a surplus may eventually be expected to emerge. The whole financial outlook of the Province depends upon the Sukkur Barrage. In this case it is suggested that there should be subventions from the Federal Government on a pre-determined programme. (Some indication of the magnitude of the sums likely to be involved is afforded by the Secretary of State's statement of 6th December, printed in the Appendix to this Report). We also consider that, in view of the financial importance of efficient administration of the Barrage, the Governor of the Province might be given special supervisory powers in relation to its administration. Some members wish to point out that the grant of a subvention to Sind in order to enable its separation constitutes a departure from what, in their judgment, was the principle laid down by the Sind sub-Committee of the first Round Table Conference.

15. A subvention will, of course, continue to be required for the North-West Frontier Province. In order to develop a sense of financial responsibility, we consider that the amount of the subvention should be fixed both initially and on the occasion of each revision for as long a period as may be found possible.

POWERS OF TAXATION.

16. We agree generally with the proposals of the Percy Committee in chapter VI of their Report, subject to such modifications as may be required by the scheme for the allocation of taxes on income

outlined/

outlined above.

17. In regard to the list of "taxes leviable for the benefit of the Units subject to a right of federal surcharge," we contemplate that all legislation should be undertaken by the Federal Legislature.

18. We feel that, if the lists of sources of revenue which it is proposed to insert in the constitution are carefully drafted, the problem of residuary powers of taxation will be reduced to small dimensions. Nevertheless, we consider that some provision for residuary powers is required, and we recommend that they should vest in the Units subject to the condition that the levy of a tax shall not directly prejudice a federal source of revenue.

EMERGENCY POWERS OF THE FEDERAL GOVERNMENT.

19. We contemplate that the special powers, with which we have proposed in paragraph 9 above to invest the Federal Government, should ordinarily suffice to obviate the necessity of emergency contributions such as were proposed in section 21 of Lord Peel's Report, 1931. Nevertheless, we think it may still be desirable to provide in the constitution for such contributions, and we support the proposals of the Percy Report (paras. 112 and 113) as regards both the definition of the circumstances in which they should be levied and the basis of their assessment, except that we prefer in the case of a war emergency that it should rest with the Rulers of the States, as heretofore, to place their resources freely at the disposal of the Crown.

Borrowing/

BORROWING POWERS OF THE UNITS AND SECURITY OF
FEDERAL LOANS.

20. We agree generally with the recommendations of the Percy Committee in paragraphs 117 and 118 of their Report as to the limits within which the Units should exercise powers of borrowing and the machinery required in this connection.

21. We doubt, on the other hand, whether the proposal in section 22 of Lord Peel's Report, 1931, that future federal loans should be secured on the revenues of the Provinces as well as of the Federal Government, would really be effective. On the whole, we consider that it would be advantageous clearly to base the security for future federal loans on the revenues of the Federal Government only. The pre-federation debt, of course, will continue to be secured on "the revenues of India".

CONTRIBUTIONS AND IMMUNITIES OF THE INDIAN STATES.

22. We have considered the adjustments which will be required to enable individual States to enter the Federation, on the basis of the general financial scheme, taking as its leading assumption that in an ideal system of federal finance all Federal Units would contribute on a uniform and equitable basis to the federal resources. It is generally agreed that the terms/

terms of entry of the States into federation should, as far as possible, entail the gradual elimination of contributions of a special character (cash contributions or ceded territories) by certain States to the resources of the Federal Government, and the disappearance of the immunities or privileges of certain States in respect of certain heads of federal revenue (sea customs, salt, posts and telegraphs).

23. To effect the necessary adjustments, separate agreements would require to be made, before the entry of the States into federation, with those now contributing in cash, or which contributed in the past by cession of territory for defence, and also with those now enjoying immunities or privileges in respect of specific heads of federal revenue. We endorse the recommendation of the Davidson Committee that the separate settlement for each State affected should be made by means of a balance-sheet setting off credits (in respect of cash contributions and ceded territories) against the value of any privilege or immunity enjoyed by the State. We also accept as a basis the plan proposed in paragraphs 443 and 444 of the Davidson Report.

24. We have not felt it to be a part of our duty to investigate the correctness of the details as regards existing contributions and immunities or privileges appended to the Davidson Report. Some question has been raised as to

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whether certain immunities should rank for the adjustments proposed, in view of the nature of the consideration which certain States have agreed to pay and are still paying for them. In this connection we note the caution in paragraph 13 of that Report as to the need for verification of the details in the Report, and we assume that the general principles accepted in the foregoing paragraph would be applied with due regard to the circumstances in which the contributions and immunities of individual States originated.

25. On the assumption that the method of adjustment with the States will be as above described, the nature of the settlement, in respect on the one hand of contributions and on the other of immunities and privileges, requires to be considered in some greater detail.

26. We are strongly of opinion that the present cash contributions, of unequal incidence, paid by certain States, contravene the fundamental principle that contributions to federal revenues should be on a uniform^{and equitable} basis; and we endorse the view of the Davidson Committee that there is no permanent place for such exceptional and unequal contributions in a system of federal finance. We accordingly recommend that, generally speaking, these contributions should be extinguished not later than the expiry of the period of X years provided for in paragraph 6 above; and, in case this period should be protracted longer than is expected/

expected, that a moiety should cease to be paid at the latest in ten years from the date of federation, and the whole within twenty years. Some of us would favour the immediate extinction of the cash contributions, but the general view is that, during the period of X years, the entire sacrifice of this source of federal revenue would not be practicable. At the same time, it is the view of all of us that any cash contributions which are continued during the period of X years must be taken in reduction of any contribution under paragraphs 9 and 19 of this Report which the States may be called upon to make during that period.

27. We have taken note of the view of the Davidson Committee in paragraph 95 of their Report that the tributes and cessions of territory for defence have, for the most part, a common origin. We therefore accept their view that States which in the past have ceded territory in return for protection are entitled, equally with the States now paying cash contributions, to some form of relief. Most of us agree with the conclusion of the Davidson Committee that the net value of the territories at the time of cession constitutes the fairest basis for calculating the relief to be granted when such relief is desired by a State. This, however, assumes that retrocession of the territories in question, or failing retrocession an exchange of territories in favour of the States concerned, is not found to be a practicable alternative. Credits in respect of ceded territories should rank for adjustment pari passu with credits in respect of cash contributions.

28. We fully endorse the view of the Davidson Committee that inter-State tributes are anti-federal, and we view with approval the suggestion that these tributes should disappear, or be replaced by some formal token. In any case, we recommend that the Government of India might explore, in consultation with the States concerned, whether the relief in respect of ceded territories, proposed in the preceding paragraph, should be reduced pro tanto by the amount of any inter-State tribute retained by a State which has a claim to relief in respect of ceded territory or tribute.

29. Turning to the question of the immunities and privileges, great and small, which are enjoyed by numerous States, and of which the nature and value is indicated in the Davidson Report and its Appendices, we would reiterate the view that the entry of each State into the Federation should, as far as possible, result in its assuming liability for an equitable portion of federal expenditure. Nevertheless, we agree with the conclusion of the Davidson Committee that, where a State enjoys privileges or immunities the value of which is not off-set by any special contribution,

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that State must retain the balance in its favour, in whole or in part, on its entry into the Federation.

30. In the case of salt, we note with approval the suggestion in paragraphs 230-252 of the Davidson Report that restrictions upon the marketing of salt manufactured in Kathiawar might be removed. We assume, however, that the change recommended would require the agreement of the States concerned before it could be brought into effect in regard to any of them.

31. In the case of sea customs, we note that the present annual value of the immunities enjoyed by fourteen Maritime States amounts to over 1,80 lakhs, and we recommend that the question of extinguishing these immunities by compensation should be left over for consideration after the Federation comes into being. Meantime, however, our general view is that the possession by certain States of an immunity which prevents other States or Provinces from making their full contributions to the Federation, is contrary to federal principles. The existing treaties and agreements must be fully observed and no change made in them without the consent of the States concerned. But we recommend that Maritime States should retain at the most not more than the value of the duties on goods imported through their ports for consumption by their own subjects.

32. Numerous other important questions are raised in the Davidson Report, decisions on which must necessarily affect the adjustments to be made with individual States. We have thought it best to confine ourselves to the broader questions

of principle affecting financial settlements with the States generally. We recommend that the conclusions reached on these basic questions should be applied to the examination of the further questions raised in the Davidson Report which is required before settlements with individual States can be effected.

APPENDIX.

Abstract of the Secretary of State's statement
to the Conference on 6th December 1932.

The problems of federal finance have already been considered by two Committees, under the chairmanship of Lord Peel and Lord Eustace Percy. Within the limits of their terms of reference, no two committees could have produced more valuable reports. But certain facts have emerged, both from the Committees' enquiries and from the events of the last twelve months, that necessitate a review of the problem from a rather wider angle than that from which the Peel and Percy Committees investigated it.

For example, the Peel Committee based its main recommendations upon the assignment of income-tax to the Provinces, with countervailing provincial contributions to the Centre for a definite period of ten or fifteen years. The Percy Committee, when they went into this question, found that no time limit could safely be put at the end of which the provincial contributions should come to an end. This is an important consideration and must be taken into account. A good many delegates were originally prepared to accept provincial contributions for a limited time; but now it appears that these provincial contributions might have to continue indefinitely. The rather unfortunate history of provincial contributions under the Montagu-Chelmsford Reforms must be kept in mind. Provincial contributions are at best a bad and rather dangerous expedient, and it seems a very serious step for the Conference to decide upon a scheme of finance with these provincial contributions for an indefinite period.

Again/

Again, the Percy Committee showed that if affairs go well there may be just enough money to go round; but they certainly did not take the view that there is enough money to go round at present. They based their recommendations upon the hope that there will be a world recovery, that commodity prices will go up, and that the finances of the Federal and Provincial Governments will be substantially better than they are now. Regretfully, however, it must be recognised that the position to-day is not substantially better from the point of view of the prospective Federal Government and the Provincial Governments than it was twelve months ago. A recent estimate of the position of the Central and Provincial Governments shows that the central budget is likely to balance, but it will only balance as a result of new and heavy taxation. In the case of the Provinces, there will be many budgets showing deficiencies at the end of the year, and to-day no one can possibly say when these deficiencies will be wiped out.

The general conclusion to be drawn from these facts is that at the present time, the Federal Government would really need all the income-tax that is being collected. If, therefore, the Peel Committee's recommendation were accepted and the proceeds of income-tax were handed over to the Provinces, it would mean that, for an indefinite number of years, the Provinces would theoretically have the income-tax, but the whole of the tax would be transferred to the Federal Government in order to maintain its solvency. This would be a very anomalous state of affairs. Everyone is most anxious to give the Provinces real autonomy, with the fullest possible freedom in the disposal of their revenue and for their development; but no one would be prepared to set up a

Federal/

Federal Government that really had not at its disposal sufficient money to make itself solvent. Unless the Federal Government has at least the main part of the income-tax that is now being collected, it is not apparent how it is going to fulfil its obligations and remain solvent.

The Percy Committee, on the assumption that the present depression would come to an end and that there would follow a period of reviving trade and of increasing prices, estimated that it would be possible to distribute only about five crores, and then only if allowance were made for the match tax, which has not yet been imposed. Unfortunately, the assumption on which this forecast was based is a long way from being realised, and in India the immediate financial outlook is not encouraging. The Government of India have been able this year to budget for a small surplus only by raising taxation to a very high level, by reducing pay, by drastic retrenchment and by the postponement of expenditure. In the Provinces, where the field of taxation is more limited, the position is worse; and although a policy of severe retrenchment has been followed, seven out of the nine Provinces may this year be in deficit. From the latest figures available it appears that, taking India as a whole receipts will hardly balance expenditure. As matters stand, therefore, the Centre cannot surrender any substantial portion of its revenue; and if the Peel plan were applied in present circumstances, this would merely mean that the proceeds of the income-tax would be transferred and the whole amount taken back in the form of contributions.

The alternatives open to the Conference appear to be either to make no constitutional change in the Provinces until there is a marked financial recovery, or to attempt to devise some emergency plan which will enable the deficit Provinces to start as autonomous units on an even keel. It would scarcely be seriously suggested that a Province which could not balance its budget should be given a new constitution/

constitution and left to work out its own salvation. The problem, therefore, is twofold: first, to devise emergency measures which will enable the reforms to be introduced; and, secondly, to embody in the constitution permanent provisions for the division of taxation powers and resources. The subject is one of great difficulty and complexity and it would probably help the Conference if a concrete plan were placed before it. The following proposals are tentative only and, of course, no final decision can be taken until the views of the Government of India and of the Provincial Governments have been obtained.

As regards emergency measures, it is suggested that we should consider the possibility of providing for financial equilibrium in the deficit Provinces at the outset by means of grants from the Centre. Under this plan it would be necessary, on the eve of the change, to ascertain the amount necessary in the case of each deficit Province, and for the total amount required to be found by the Government of India. It is, of course, impossible to estimate now the amount that might be needed, but it is hoped that it would not be an unmanageable sum. A number of questions in connection with these initial subventions arise: by what authority should they be determined; whether the contributions should be permanent or open to revision after a stated period; and whether they should be absorbed in any future distribution of central revenue. These subsidiary though highly important questions can best be dealt with in Committee. It will, of course, be realised that the initial subventions would do no more than start the deficit Provinces on a bare subsistence level. But if there is not enough money to go round they must tighten their belts and wait for better times.

As regards permanent arrangements, it must, so far as is possible, be ensured that the Provinces will have a reasonable expectation that, when normal times return, they will/

will be able to function properly as autonomous units and to develop along their own lines. In the first place, it is necessary to define the field of taxation open to them. Certain proposals have been made by the Percy Committee, and these will have to be examined in Committee. Connected with this is the question of residuary powers of taxation, which, though perhaps not very important from the financial point of view, has led to considerable differences of opinion. Next, it is suggested that the Provinces should be given from the outset a right of surcharge of certain heads of income-tax up to 12½ per cent., so that they may at once be in a position to supplement their resources if they desire to do so by this method. The initial limit of surcharge should be low, as income-tax rates in India are already high; but the constitution might provide that the maximum percentage rate of surcharge could from time to time be increased. Collection would still remain central. As regards income-tax receipts, the constitution should provide for their division, and it will have to be considered in Committee whether this can best be done by the straightforward method of surrendering from time to time blocks of the receipts as the financial position permits, or whether any better plan can be adopted. It seems also desirable to provide for the possibility, with the return of prosperity, of distributing shares of certain specified heads of federal revenue, including the imposition by the Federal Government of excises for the benefit of the Units.

To summarise, special measure would be taken by means of central subventions to start the deficit Provinces on an even keel; the provincial field of taxation would be defined and Provincial Governments

invested/

invested with a limited right of surcharging the income-tax; as the financial position improved, central revenue would be transferred, and special taxation for the benefit of the Units might be imposed. It must be admitted that the Provinces may regard such an arrangement as a poor substitute for the definite advantages which they expected to gain from the application of the Peel plan; but the problem is conditioned by the realities of the situation, and this should not be forgotten. Nor should it be forgotten that it is vital to preserve the financial stability of the Centre.

There are a number of other questions connected with federal finance which will have to be considered. The questionnaire that has been circulated sets out some of these, but perhaps they may be better discussed in the Committee appointed for the purpose.

Lastly, there are two questions on which one or two observations should be made before the general discussion begins, viz., the questions of the separation of Sind and the separation of Orissa. In the first place, there is the separation of Sind, which His Majesty's Government have accepted in principle subject to the discovery of satisfactory means of financing the new Province, and which the Conference accepted in principle last year. The financial problem has been examined both by an Expert Committee and by a Conference of representatives of Sind presided over by Mr. Brayne, whose Report indicates there will be a deficit of 80½ lakhs from 1933-34 to 1938-39, after which it would be continuously reduced until, in 1944-45, a net surplus, of gradually increasing amount, would be established. These estimates represent a reasonable working hypothesis, except in one particular. They assume that the charges in respect of accumulated interest on the Lloyd Barrage debt would be shared between Bombay and Sind. After carefully considering the views of the Sind Conference,

however/

however, the conclusion has been reached that such a proposal would be inequitable to Bombay and inconsistent with the general principles on which separation ought to be effected. On this basis, after allowing for certain possible economies, and for the fact that the additional cost of separating Sind is expected to be covered by fresh taxation within the Province, there is likely to be an initial deficit on the administration of Sind amounting to about Rs. $\frac{3}{4}$ crore, which would be extinguished in about fifteen years, or earlier if new resources became available.

Secondly, there is the question of Orissa. In this case it is impossible to make so definite a statement until an opportunity to consider the whole question has been found; but in the discussions of the Conference it is certainly desirable that the possibility of creating a separate Province of Orissa should be taken into account. His Majesty's Government have not yet reached any final decision in principle upon this matter, though they hope shortly to be in a position to announce their conclusions. Meanwhile, it would be well that the Conference should consider the financial difficulties involved. The exhaustive Report of Sir Samuel O'Donnell's Committee has been thoroughly examined by the Government of India, who consider that slight reductions in the estimates might be made, with the following result:-

Basic annual deficit	Rs. $13\frac{1}{2}$ lakhs.
Additional recurring cost of separation	" 15 "

Total/

Total initial deficit	Rs. 28½ lakhs.
Ultimate deficit	" 35 "

It is suggested that the Conference might consider the question on the basis of these estimates. In so doing, the conclusion of the Orissa Committee will doubtless be borne in mind, that the deficit cannot be met to any appreciable extent by the imposition of new taxes.

The Conference noted the Report of the Committee on Federal Finance after the following points had been raised:-

(1) R.B. RAJA BISARVA, on behalf of H.H. the Nawab of Bhopal, did not agree to corporation tax being included in the list of federal sources of revenue, or to any arrangement which might involve a direct contribution from the States towards charges on account of purely British Indian liabilities. (Mr. Rushbrook Williams added that he believed this statement to represent the opinion expressed at an informal meeting of the Chamber of Princes last March.)

(2) MR. RUSHBROOK WILLIAMS, in regard to paragraph 31, stated that the position of the Kathiawar and other Maritime States must be governed by their Treaties. It was impossible for the States which he represented to accept the general proposition that they should only retain the duty on goods consumed in their own territories.

HEADS G & H.

- I. POWERS OF THE INDIAN LEGISLATURES VIS-A-VIS PARLIAMENT.
 - II. CONSTITUENT POWERS.
 - III. FUNDAMENTAL RIGHTS.
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I. POWERS OF THE INDIAN LEGISLATURES VIS-A-VIS PARLIAMENT.

The existing Government of India Act embodies various provisions, all taken from earlier Acts, which place limitations upon the powers of the Indian Legislatures. The general effect of these provisions is inter alia that any legislation passed in India, if it is in any way repugnant to any Act of Parliament applying to India, is to the extent of the repugnancy null and void. It was felt that the form of these old enactments would be inappropriate for adoption as part of the Constitution now contemplated - a constitution very different in character from that of which they originally formed part: and that in substance, also, they would be unnecessarily rigid. There are certain matters which, without question, the new Constitution must place beyond the competence of the new Indian Legislatures and which must be left for Parliament exclusively to deal with - namely, legislation affecting the Sovereign, the Royal Family and the sovereignty or dominion of the Crown over British India; moreover, the Army Act, the Air Force Act and the Naval Discipline Act, (which, of course, apply to India)

must be placed beyond the range of alteration by Indian legislation; and it may also be found necessary to place similar restrictions on the power to make laws affecting British nationality. But, apart from these few matters, it was felt that the new Indian Legislatures, Federal or Provincial, can appropriately be given power to affect Acts of Parliament (other than the Constitution Act itself) provided that the Governor-General acting "in his discretion" has given his previous sanction to the introduction of the Bill and his subsequent assent to the Act when passed: in other words, the combined effect of such previous sanction and subsequent assent will be to make the Indian enactment valid even if it is repugnant to an Act of Parliament applying to India. In his decisions on the admissibility of any given measure the Governor-General would, of course, on the general constitutional plan indicated in the Report on the Special Powers of the Governor-General and Governors, be subject to directions from the Secretary of State. Beyond a provision on these lines no further external limitation on the powers of Indian Legislatures in relation to Parliamentary legislation would appear to be required.

II. CONSTITUENT POWERS.

The conclusion just indicated - that the power to vary the provisions of Acts of Parliament should not relate to the Constitution Act itself - led directly to the question of Constituent Powers. Discussion of this question disclosed a unanimous recognition of the fact that it would be impossible to contemplate a delegation to Indian Legislatures by provisions in the Constitution Act of any general powers to alter that Act itself, and that such powers must necessarily remain with Parliament for exercise by means of further legislation as and when

required.

2. This head of the agenda was, however, framed on the assumption that there might be some matters in regard to which specific powers might be granted to Indian Legislatures to make modifications, subject to suitable conditions, of the detailed arrangements to be embodied in the new Act. The problem was discussed with particular reference to two matters which, though of a somewhat different character, were found to raise substantially the same problems - namely, (a) the details of the franchise and the composition of the Legislatures - Provincial and Federal; and (b) the alteration of provincial boundaries, or the formation of new provinces. Taking the latter first, there was a general feeling that, while, once the Federation had been brought into being, it would be undesirable to give ground for the impression that the number, size or character of the federating units was to be liable to frequent or capricious re-arrangement at the behest of particular elements in their population - an impression which would be inimical to solidarity and to a settled political outlook - yet the Constitution Act might advantageously provide machinery whereby His Majesty's Government would be empowered, after satisfying themselves that proposals for the re-adjustment of provincial boundaries, or possibly even for the formation of a new province, had behind them a solid backing of popular opinion in the areas concerned, and would not involve undue commitments on the resources of the Federation^{or the provinces,} to give effect to such proposals. Attention was drawn in this connexion to the provisions of s.52A of the existing Government of India Act as an indication of the kind of provisions which it might be desirable to retain in being.

3. As regards the franchise and the composition of the Legislatures, it was recognised that scarcely any modification of the plans now contemplated for embodiment in the new Constitution could, in practice, fail to raise, either directly or indirectly, the general communal issue. His Majesty's Government had, indeed, contemplated, and had foreshadowed in their Communal Decision, the insertion of provisions in the new Constitution designed to enable, after a suitable interval of time, its modification with the consent of the various communities and interests affected. Discussion, however, disclosed a general feeling that most difficult and controversial issues would be involved in an attempt to define here and now conditions which, on the one hand, would not render the power to make such modifications incapable of exercise, on account of the stringency of conditions to be fulfilled and, on the other hand, would satisfy the several communities and interests that any decision for modification was, in fact, the result of substantial mutual agreement. It was, moreover, generally recognised that the difficulty which thus presents itself in relation to the Communal Award of devising suitable conditions for the exercise of any provisions in the nature of Constituent Powers, in fact pervades the whole problem discussed under this Head. In the course of the discussion a very complete plan was, in fact, suggested as a statement of the conditions to which the exercise of the power (should such be granted by the Constitution) to modify the composition of the Legislatures and the nature of the franchise should be made subject. Objection, however, was taken to this proposal on the ground that its elaboration and stringency were such as, in all probability, to frustrate, in practice, the exercise of

the power, even though there might be a really substantial popular demand for its exercise: it was suggested, therefore, on behalf of those who urged this objection, that a preferable course would be to leave it to His Majesty's Government themselves to determine the nature of the provisions to be framed in fulfilment of their intention that the details of the Communal Award should be susceptible of modification with the consent of the communities affected.

4. Finally, there was a consensus of opinion that the Constitution should provide that whatever powers were granted of this nature should not be capable of exercise save after the lapse of a substantial period of time from the date of inauguration of the new Constitution, and account was not lost, throughout the discussion, of the probability that Parliament itself, in enacting the new Constitution, would be inclined to approach with great caution any proposals for its alteration otherwise than by means which it could itself control.

5. His Majesty's Government took careful note of the very difficult issues to which the discussion had given rise; they were disposed, while leaving unimpaired the authority of Parliament to decide any issues which might present themselves involving changes of a substantial character in the Constitution, to examine with care and sympathy the provision of such machinery as might obviate the disadvantages and inconveniences to be anticipated from the lack of means to secure any alteration of the details of the Constitution as first enacted otherwise than by the difficult and lengthy process of an amending Bill: and would be concerned to see that any provisions designed with this object were so framed as to enable Indian opinion to be fully ascertained before any alterations were, in fact, carried out.

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III. FUNDAMENTAL RIGHTS.

In the agenda of the Conference the question of Fundamental Rights was purposely linked up with the question of the powers of the Legislatures, because it was felt that it had been insufficiently realised that the effect of inserting provisions of this kind in the Constitution must inevitably be (if they are to be more than expressions of a political ideal, which have never yet found a place in English constitutional instruments) to place statutory limitations on the powers of the new legislatures which may well be found to be of the highest practical inconvenience. The Government have not in any way failed to realise and take account of the great importance which has been attached in so many quarters to the idea of making a Chapter of Fundamental Rights a feature in the new Indian Constitution as a solvent of difficulties and a source of confidence: nor do they undervalue the painstaking care which has been devoted to framing the text of the large number of propositions which have been suggested and discussed. The practical difficulties which might result from including many, indeed most, of them as conditions which must be complied with as a universal rule by executive or by legislative authority were fully explained in the course of discussion and there was substantial support for the view that, as the means of securing fair treatment for majority and minorities alike, the course of wisdom will be to rely, in so far as reliance cannot be placed upon mutual goodwill and mutual trust, on the "special responsibilities" with which it was agreed* the Governor-General and the Governors are to be endowed in their respective sphere to protect the rights of minorities. It may well be, however, that it will be found that some of the

* See Report on the special powers of the Governor-General and Governors.

propositions discussed can appropriately and usefully find their place in the Constitution: and His Majesty's Government undertook to examine them most carefully for this purpose. In the course of discussion attention was drawn to the probability that occasion would be found, in connexion with the inauguration of the Constitution, for a pronouncement by the Sovereign and that, in that event, it might well be found expedient humbly to submit for His Majesty's gracious consideration that such a pronouncement might advantageously give expression to some of the propositions brought under discussion which prove unsuitable for statutory enactment.*

*Dr. Ambedkar advocated the inclusion in the Instrument of Instructions to the Governor-General and Governors of any propositions relating to Fundamental Rights which could not be enacted in the Constitution Act itself.

REPORT ON HEAD I
FORM OF STATES' INSTRUMENTS OF ACCESSION.

A meeting was held on the 20th December under the Chairmanship of Lord Irwin, which was attended by Mr. Davidson, Mr. Butler, the Representatives at the Conference of the Indian States and certain legal experts and officials, to consider the form of States' Instruments of Accession.

2. It was agreed that the Federation would derive its powers in part from the powers which the Rulers of the States would agree, for the purposes of the Federation only, to transfer to His Majesty the King for exercise by the Federal Government and Legislature and other Federal organs. In order to effect the transfer of these powers an agreement would require to be made by each State individually with the Crown which might be termed an Instrument of Accession.

3. It was agreed that the accession of States whose Rulers were not for the time being exercising Ruling Powers would have to be postponed until their Rulers were in possession of Ruling Powers. Some apprehension was felt as to the consequent reduction at the outset in the strength of the Indian States' representation in the Federal Legislature and it was considered that this question might require further examination in connection with that of the size and composition of the Federal Legislature in order that, having regard to the interests of British India, the position of the representation of the States as a whole might not be prejudiced.

4. It was accepted that the formal conclusion of
agreements/

agreements between the States and the Crown could not take place until after the Federal Constitution had been approved by Parliament.

It was contemplated that the provisions of the Act in regard to Federation should not take effect at once but that the Act should contain a proviso that they should be brought into force after a specified period if and when so many States had acceded. This procedure would secure that the States should not be asked to commit themselves definitely until they had the complete Act before them. But it was suggested that opportunity might be found to enable the Princes' views on the draft Constitution to be made known to Parliament while legislation was in progress. In particular it was thought desirable that opportunity should be afforded to the Chamber of Princes and the States individually to consider the Constitution as outlined in the White Paper and possibly again at a later stage (e.g. during the Report stage) if important amendments were introduced in the scheme after its discussion in the Joint Committee where the States would be represented and the introduction of a Bill in Parliament.

5. As regards the form of the Instruments of Accession the procedure which commended itself to the meeting as a whole was one whereby the States would convey to the Crown a transfer of the necessary powers and jurisdiction in accordance with the specific provisions of the Act. This procedure would enable respectively the Governor-General of the Federation and the other Federal organs established for the purposes of carrying out the Constitution, to exercise in relation to the States and the subjects of their Rulers, but only in accordance

with/

with the Constitution, the powers which the Rulers had agreed to transfer and would avoid a reproduction in the Instruments of Accession themselves of the wording of each clause of the Act which related directly or indirectly to the States. But provision would have to be made for the transfer to be limited by the exclusion of certain matters.

6. It was agreed that the Instruments of Accession must provide for exclusion from the purview of the Federation of those powers and jurisdiction in respect of Federal subjects, in whole or in part, which it was not agreed by the individual States to transfer to the Federation, subject to the understanding that there could be no question of a State so restricting the transfer of powers as to render its adherence to the Federation ineffective.

7. It was considered desirable that in due course the skeleton draft of an Instrument of Accession should be discussed between the Viceroy and the representatives of the States.

The Conference noted the Report on the "Form of States' Instruments of Accession" after the following points had been raised:-

With reference to paragraph 6, in reply to enquiries by Mr. Joshi and Mr. Jayakar, the Secretary of State for India made it clear that it was not contemplated that a States' accession to the Federation should be accepted unless it was really substantially undertaking the Federal duties.

It was made clear that it was not contemplated

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that the Treaties should contain provisions
which would enable a State to come into the
Federation and go out again at pleasure.

REPORT OF COMMITTEE ON THE EDUCATION OF THE
ANGLO-INDIAN AND THE DOMICILED EUROPEAN
COMMUNITY IN INDIA.

1. The following delegates were selected to serve on the -Committee:-

Lord Irwin (Chairman)
Sir Hubert Carr
Sir Henry Gidney
Sir Muhammad Iqbal
Mr. Jayakar

2. The Committee had the advantage of consultation with Sir Henry Richards, Senior Chief Inspector of the Board of Education, in regard to the system of inspection in England.

3. The main problem which the Committee had to consider was whether European education, which is at present a provincial reserved subject, should be a provincial subject under the new constitution, or should become a responsibility of the Central Government. As long ago as 1913 the domiciled European and Anglo-Indian Community asked that European education should be placed under the Central Government. In 1923, and again in 1925, deputations from the community were received by the Secretary of State for India and made the same request. More recently the Committee on Education presided over by Sir P. Hartog considered the matter and reported to the Statutory Commission against centralisation. The Committee had, therefore, to consider a problem which had been before Government in India and the Secretary of State for nearly 20 years.

4. It is perhaps, therefore, hardly a matter for surprise that two opposing opinions found strong expression on the Committee. In these circumstances the Committee sought for a middle course and they believe they have found it in the following proposals, which they accordingly submit for the approval of the Conference.

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The Committee recognise the special needs and circumstances of the Anglo-Indian Community and the necessity of maintaining a proper and adequate standard of their education. They have, however, decided that it is not necessary on this account that Anglo-Indian education should be a central responsibility, but they recommend that the education of Anglo-Indians and domiciled Europeans should have special protection accorded to it in the several Provinces, and that means should be found to secure its better co-ordination. To this end they recommend that

(a) it should be provided by statute that there shall be no reduction in existing educational grants-in-aid for the community in any Province other than a reduction pro rata with a reduction in the general educational grants-in-aid, save with the consent of a majority of three-fourths of the Legislature concerned; and further that this special protection shall continue until such time as it may be decided otherwise by a majority of three-fourths of the Legislature. These provisions should be without prejudice to the special powers of the Governor for the protection of Minorities;

(b) each Province should forthwith and before the new Constitution comes into force create a Board for Anglo-Indian Education, consisting of the Education and Finance Ministers of Provinces, one representative from each of the Universities in the Province, one representative of the Managers of Anglo-Indian Schools and two Anglo-Indians, the Boards being nominated by the Governors in consultation with the Ministers of Education after taking into consideration any recommendations put forward by the interests concerned. The Boards' duties would be to make representations to the Ministers as to the amount of the block grant

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that they might consider necessary for the discharge of their duties, to administer the grants when made, and to tender advice to the Ministers on matters of administration concerning Anglo-Indian Educational institutions.

(c) in order to secure uniformity of educational standards; and co-ordination of Anglo-Indian education, throughout India an Inter-Provincial Board for Anglo-Indian Education should be established forthwith, consisting of the Provincial Ministers of Education or their deputies and an equal number of persons nominated by Provincial Governors to represent Anglo-Indian schools, in consultation with the Ministers of Education and the community concerned. The Chairman should be elected by the Board from their own number.

(d) the Inspectorate of Anglo-Indian Schools should be appointed by the Inter-Provincial Board and placed under the general direction of the Board, for the purpose of securing uniformity of educational standard, and inspection. The Inspectorate should work under a Chief Inspector and have jurisdiction in such areas as the Board may decide, after consultation with the Provincial Boards concerned. In respect of the administration of schools situated within a Province, the Inspectorate would work under the specific control of the Provincial Minister of Education, acting in consultation with the Provincial Board of Education.

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(e) the cost of the Inter-Provincial Board and of the Inspectorate should be borne by the Provinces in proportions to be decided by that Board, or, failing agreement, by arbitration.

5. In making the recommendations in sub-paragraphs (b) to (e) of paragraph 4, the Sub-Committee assume that the maintenance of this or some equivalent machinery for the purpose of giving effect to the recommendation in sub-paragraph (a) of paragraph 4 should be rightly held to fall within the scope of the special responsibilities of Governors for the protection of Minorities.

The Conference noted the Report of the Committee on the Education of the Anglo-Indians and the Domiciled European Community in India.

13th December 1932.

SUPREME COURT.

The Conference considered the question of a Supreme Court for India. In introducing the discussion Sir Tej Sapru referred to the fact that general agreement had been reached in previous discussions that some sort of a Federal Court was necessary to interpret the constitution and to decide constitutional disputes between the Federation and the Provinces and between the units of the Federation. The only question that remained was whether there should be a Federal Court as apart from a Supreme Court or whether there should be a Supreme Court as well. Now, if it became necessary to have a Supreme Court at all then he and his colleagues were entirely opposed to having a separate Supreme Court set up. In the interests both of economy and efficiency there must be only one Court which might sit in two divisions for the decision of Federal issues and of appeals from High Courts in India respectively. He pointed out that a purely Federal Court of three or four judges would not be likely to carry much weight while a bigger Court of 9 to 12 judges would command confidence and attract talent. For these reasons he and his colleagues wanted both a Federal and a Supreme Court but not two separate Courts.

As regards the composition he thought that in view of the paramount importance of keeping the judiciary absolutely independent of all political taint the constitution should provide for the institution of the Court, for the appointment of the judges by the Crown and for the guaranteeing of their salaries. No religious or racial considerations should influence the appointment of judges who should be taken from any community, European or Indian, provided that they could command confidence by reason of their independence, of their competence and their impartiality.

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The setting up of a Supreme Court, however, did not mean that the jurisdiction of the Privy Council should be ousted. That jurisdiction should continue. At present there are two classes of cases that come to the Privy Council. The first consists of cases which are valued at over Rs.10,000; the second of cases in which the High Court certifies that there is some substantial point of law which ought to come before the judges of the Privy Council. It would be to the advantage of all alike if the pecuniary limit of appeal were raised, and with regard to the second class of appeals a certificate was required, not from High Courts but from the Supreme Court. He did not think that the work of the Supreme Court would be so vast as to require 20 or 30 judges as had been suggested in certain quarters. The right of appeal was perhaps somewhat abused and it would be the business of the new Legislatures to consider whether this right should not be restricted in the interests of justice, but his view was that no more than 9 to 12 judges would be necessary in the combined Federal and Supreme Court.

As regards Criminal appeals, his view was that appeals to the Supreme Court should be allowed only in cases of capital sentences and then under certain well-defined conditions. He felt that the new constitution would not be complete without both a Federal and a Supreme Court.

MR. ZAFRULLA KHAN agreed generally with Sir Tej Sapru that there should ultimately be a Supreme Court. He considered however that as a Supreme Court was not an
essential/

essential part of the constitution, all that was now necessary was to lay down the details of its constitution in the new statute, leaving it to the future Legislature to decide the actual date of its establishment. He agreed with Sir Tej that the right of appeal to the Privy Council should remain, that there should be some limitation to the number of appeals generally, and that the Supreme Court should have a certain criminal jurisdiction, for example, in cases of capital punishment; there should be a right of appeal to the Supreme Court in all cases of acquittal by a lower court and subsequent conviction by a High Court, and in other capital cases within certain defined limits.

SIR A. P. PATRO speaking as a taxpayer was not convinced of the immediate necessity of a Supreme Court. A Federal Court was essential at the outset, but in their present straitened finances and with the jurisdiction of the Privy Council to continue, they might well wait until the Federal Court was in working order before setting up a Supreme Court. In any case it was not certain that the best talent could be procured for such a Court because a lucrative practice would generally be considered more attractive.

SIR N. SINGAR was definitely opposed to the constitution of a Supreme Court. The cost would be prohibitive; any right of appeal to the Supreme Court even in the limited criminal field of capital cases, would be largely availed of and some twenty or twenty-five judges would be necessary to deal with the work. If the object of the proposal was to escape eventually from the jurisdiction of the Privy Council this was not possible because the Privy Council exercises a prerogative/

prerogative power. Nor was this desirable; the Privy Council, sitting as the last impartial tribunal in an atmosphere remote from local colour and prejudice, had done much for British-Indian jurisprudence during the last 150 years, and its services should not be lightly set aside.

MR. MUDALIYAR urged that a "Dominion Status" constitution involves a Supreme Court, just as a Federal constitution involves a Federal Court. The only issue therefore was whether a Supreme Court should be established now or later. The main objection urged to establishing it now was the cost. But this did not take account of the fact that civil courts in India were generally self-supporting. The judges of the Federal Court, at least three and possibly five in number, might not be fully occupied by Federal matters and if sitting as a Supreme Court they heard civil appeals the stamp fees would offset the cost of the Court. Criminal appeals would be comparatively few. It should be noted that a resolution had been passed by the present Legislative Assembly subsequent to the meetings of the Consultative Committee in favour of the immediate establishment of a Supreme Court.

SIR AKBAR HYDARI, expressing the general view of the States Delegation, said that it was essential that the Federal Court should be a separate and distinct entity. A Federal Court was a constitutional necessity; a Supreme Court was not a matter of immediate importance, and, in any case, was the concern of British India alone. To visualise two divisions of the same Court, one Federal and one Supreme, was to confuse the issue.

A Federal Court was a Federal essential and would require to be manned by judges of outstanding integrity, with a knowledge of constitutional law, customarily associated with All-India interests and free from local prejudices. The question of a Supreme Court on the other hand was merely a question of supplementing the judicial system of British India.

SIR HUBERT CARR considered that no case had been made out for incurring the expense of a Supreme Court.

MR. JAYAKAR, having shown that no difference of principle existed on the British Indian side, asked whether the constitutional picture could be regarded as complete if it did not provide every Indian with a complete right of appeal within his own country. The cost of a Supreme Court and its date of establishment were questions of detail; in principle, it was an essential of the Constitution.

SIR TEJ SAPRU did not agree with the conception of a Federal Court as put forward by Sir Akbar Hydari.

After some discussion it was decided that, in view of the differences of opinion that had emerged, it would be of no advantage to appoint a Committee of the Conference to consider the question further.

Subsequently, by leave of the Conference, a note on the subject by Sir Claud Schuster and Sir Maurice Gwyer was circulated as one of the Conference memoranda.

MEMORANDUM BY SIR SUKHNDO PRASAD
ON BEHALF OF THE STATES OF UDAIPUR, JODEPUR
AND JAIPUR.

REPORT OF COMMITTEE ON FEDERAL FINANCE.

Allocation of taxes on income (paragraphs 3 to 11).

1. In a previous statement made we have already expressed the view that Income Tax should in principle be a central source of taxation to be appropriated to:-

1. The funding of pre-federation debt,
 2. Pre-federation pensions, and
 3. Subventions to deficit Provinces
- including new Provinces to be created,

any balance being distributed to the Provinces.

But we are prepared to agree to the method of approach to the problem of financing the Federal Budget now suggested by the Committee since, in effect, the two proposals are materially the same.

2. We must however qualify this approval of the scheme before us by saying that the permanent allocation of Income Tax proceeds to the Federal Government must be a sum of not less than Rs. 8.25 crores and not less than 50% of the revenue collected under this Head. Further, that in addition to this permanent allocation, the Federal Government should retain out of the Provincial share of taxes on income a block amount, in order to ensure the solvency of the Federal Government, for a period of X years. The period X should, we consider, be a minimum of 10 years (we would prefer to see it fixed at 12 years), divided into two periods of five years (or six years); a gradual scaling down of the block amount being made during the second five (or six) year period.

3. The reason for making these two stipulations in accepting the scheme under consideration is that unless a substantial allocation from the proceeds of income tax is made/

made to the Federal budget, the effect will be to throw on the States a liability for pre-federation debt, pre-federation pensions and subventions to deficit Provinces, for which they clearly have no responsibility. We believe firmly in the principle that all units of the Federation should contribute to the Federal budget on a uniform basis, but this principle does not extend to the acceptance of burdens which do not now and should not in future fall on the shoulders of the States. However generous some States may be prepared to be in order to assist in a solution of this federal financial problem, sight should not be lost of the fact that the financial resources of the majority of States are very limited. They do not possess the inexhaustible wealth sometimes attributed to them. For this reason the States, as a whole, though full of goodwill to bring about the plan of Federation, naturally desire to see themselves protected from undue burdens - burdens, which their financial position makes it impossible for them to bear.

4. We agree with the principle expressed in paragraph 9 of the Committee's report that the Federal Government should in emergencies have the right to levy for its own purposes additional tax on the heads of Income Tax permanently assigned to the Provinces and, as a corollary, that the proportional contribution on a determined basis should also be levied from the States.

Deficit Provinces. (paragraphs 12 to 15).

5. We agree with the view expressed on behalf of the States in paragraph 12 of the report that any subvention to deficit Provinces should not fall on the States. To suggest that the States should contribute to any such subventions to Provinces

naturally/

naturally gives rise to the claim that might readily be made by States for similar assistance to provide for the administration machinery and public services they perhaps should have and would like to have, but which they cannot at present afford. We venture to suggest that the argument raised in the closing sentence of paragraph 12 of the report is hardly tenable in view of the fact that the permanent allocation of Income Tax proceeds to the Federal Government proposed is realised from sources which are not derived solely from residents from British India.

6. We desire to point out that the suggestion made in paragraph 13 to the effect that some portion of the revenue now derived from the export duty on jute and credited to central revenues should in future be credited to Bengal would only mean a further loss of revenue to the Federal Government to be replaced by some means unspecified. If effect is given to this suggestion it must be taken into consideration in determining the allocation of Income Tax reserved to the Federal Government.

Powers of Taxation (paragraphs 16 to 18).

7. We agree with the Committee's observations and recommendations under this Head.

Emergency Powers of Federal Government (paragraph 19).

8. Similarly we are in agreement with the Committee's recommendations in the matter of Emergency Powers of taxation.

Borrowing Powers of the Units and Security of Federal Loans. (Paragraphs 20 and 21).

9. We also endorse the Committee's observations

on/

on the strength of borrowing powers of the Units and the security of Federal Loans.

Contributions and Immunities of the States
(Paragraphs 23 to 32).

10. In our previous statement we laid particular stress on the abolition of all tributes or cash contributions by States to the British Government before Federation is introduced for the reason, universally admitted, that payments of this nature are incompatible with the Federal idea. The Committee however, on the grounds of financial expediency, recommends the gradual elimination of such payments instead of immediate abolition. We venture to suggest that arguments in favour of immediate abolition clearly outweigh the alternative proposal of gradual elimination. The question is rather one of equity than financial expediency.

11. We agree with the admission made by the Committee that some of the general recommendations made by the Davidson Committee require more detailed examination in their application to individual States; both in the matter of cash contributions, and alleged immunities, as also on proposals affecting the existing commercial treaties or engagements in connection with the manufacture of salt. We assume from observations made in paragraphs 23 to 25 of the report that the particular States concerned will be given the opportunity of representing the views they hold on some of the Davidson Committee's proposals and recommendations, which I am asked to say on behalf of Jodhpur, that State is not prepared to accept.

12./

12. We should also like to be assured that His Majesty's Government will consider before Federation comes into being certain territorial claims advanced by the States of Udaipur and Jodhpur which have not been dealt with by the Davidson Committee. We refer here to the Ajmer Merwara villages and the district of Umarkot. It may be true that the Government of India have in the past answered in a way representations made in this connection but the States have reason to feel that their claims have not received the impartial and careful examination they deserve and it would be a matter of great satisfaction to them if His Majesty's Government would be pleased to order a special enquiry to be made into these cases before the inauguration of Federation - for with the establishment of Federation the door will inevitably be closed for any further consideration of these matters.

Defence.

13. We desire to reiterate the remarks made in our previous statement on the subject of Defence, viz. that the Governor-General should be given unfettered discretion not only in regard to military policy and the selection of his Military Adviser, but also in the control over Military finances. We cannot but agree with the general comments expressed by the Conference on the magnitude of military expenditure in the Federal budget and recommend a very careful examination of the demand with a view to a possible reduction consistent with maintaining the present efficiency/

efficiency of the Army in India.

14. Here we desire to add that when the control of the Army is eventually transferred to the Federal Government, we assume that adequate arrangements will be made whereby the Crown will be in a position to implement effectively the guarantees of security given to the States in their treaties.

15. In conclusion we desire to make one or two observations of a general character indirectly appropriate to the questions under review.

The States which I have the honour to represent hold the view that Paramountcy is a question quite apart from Federation.

With regard to the general scheme of Federation our views are well expressed in the words of His Highness the Maharana of Udaipur in his speech welcoming His Excellency the Viceroy to Udaipur on the 6th December, 1932.

His Highness said,

"With goodwill and hearty co-operation our Princely Order are earnest to evolve an All-India Constitution that may prove practicable and honourable to all concerned and bring lasting peace to my Mother Country. In framing such a Constitution, it is, I strongly feel, of prime importance to keep in view the fact that Paramountcy and Protection are linked. Another essential condition for joining Federation must be that the existing relations between the British Crown and the States should remain unaltered."

THE COMMUNAL AWARD.

Statement of reasons against its acceptance by the Hindus
of the Punjab.

submitted by PANDIT NANAK CHAND.

The so-called Communal Award, announced by H.M. Government through the Prime Minister on August 17th 1932, has created great dissatisfaction and resentment amongst the Hindus of the Punjab, who are in a minority in that Province and who have been treated as if they were a majority community, in as much as they have not received representation in the Legislative Council of the Punjab even on their population basis, though, as a minority community, they were entitled to a weightage which the Muslim communities get everywhere where they are in a minority.

The special circumstances of the Punjab Hindus are such that it is difficult for the inhabitants of other Provinces even to grasp the significance of the Punjab Hindu point of view. The Punjab Hindus, since 1919, when there was great political upheaval in the Punjab and consequent attack by Afghanistan upon India, have doubted the wisdom of allowing political excitement and fanatical religious movements to control the machinery of government, especially in a Province like the Punjab which has a great military and strategic importance. The Hindu Leaders in the Punjab have been endeavouring since then to counteract all tendencies towards

disruptive/

disruptive movements, which may plunge the Province into bitter conflict between the Europeans and Indians, and they organised themselves into a political party called the National Reform Party. Indeed, in 1926 there was a serious trial of strength between Congress Hindus and the National Reformers at the time of the elections to the Punjab Legislative Council and the Legislative Assembly. Leading Congressmen of the Punjab contested many seats against the National Reformers, and it is a matter of common knowledge that the Congress candidates sustained serious defeats. Many of them, though the foremost men of the Congress, lost their deposits as against the Hindu Reformers.

In 1928, when the Statutory Commission was appointed, the National Reformers elected to co-operate and express their views, through a representative deputation, regarding political advancement. The Hindus of the Punjab maintained that they were not prepared to accept any reforms which were based upon communal electorates and communal considerations, unless the communities agreed to an advance without the recognition of communal or caste principle there should be no advance in India. This view was in 1929 placed before Mr. Wedgwood Benn, the then Secretary of State, by Pandit Nanak Chand. The view of the Punjab Hindus has always been that the settlement should be by mutual consent between the parties, and should not be imposed either by the Congress or by any outside authority. The people, who have to live together and work the Constitution together, are the proper parties to decide their differences and, if the majority community fails to give satisfaction to
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the minority, there should be no advance in any particular Province.

Therefore it will be abundantly clear that the outlook of the Punjab Hindus is essentially different from that of the Hindus in other Provinces. The Communal Award however makes no distinction between the minority Hindus of the Punjab and majority Hindus elsewhere.

The Communal Award is one-sided in as much as it grants to Muslim minorities special weightage in every Province where they are in a minority and ignores the claims of the Hindus of the Punjab and Bengal to similar treatment. Not only this, but as was stated above, the Hindus of the Punjab do not get their quota on their population basis which, as a minority community, they were entitled to.

The Communal Settlement to be imposed by the British Government ignores the Pact of Lucknow of 1916, which was brought about by the two communities, Hindu and Muslim, when there was goodwill between them. So long as the communities could not settle their present difficulties in a similar atmosphere of peace and goodwill the old arrangement should have stood, even if the communal arrangement of separate electorates was to be accepted for the constitutional government of the Province.

The Settlement ignores the recommendations of the Statutory Commission which were entitled to the greatest weight, because the Commission had made extensive enquiries on the spot and the communities of the Punjab had put their case before the Commission without any reservation. The Commissioners dispose of the Muhammadan claim/

claim for excessive representation where they are in a minority and their claim for an absolute majority in the Punjab and Bengal in this manner,

"The continuance of the present scale of weightage in the six provinces could not - in the absence of a general agreement between the two communities - equitably be combined with so great a departure from the existing allocation in Bengal and the Punjab.

It would be unfair that the Mohammedans should retain the very considerable weightage they now enjoy in the six provinces and that there should at the same time be imposed, in face of Hindu and Sikh opposition, a definite Moslem majority in the Punjab and in Bengal unalterable by any appeal to the electorate."

(Simon Commission Report,
Vol. II, Page 71.)

The Indian Central Committee which also toured India and made exhaustive enquiries along with the Statutory Commission, have made the following recommendations with regard to communal representation in the Legislature,

"In the Punjab we have followed for the two principal minority communities, the Hindus and the Sikhs, the same principle which we have applied to the Muslims in provinces in which they are in a minority. For the Hindus and Sikhs, therefore, in the Punjab we would reserve seats in joint electorates on a population basis or on voting strength, whichever may be more favourable to them, without prejudice to their right to contest other seats in general constituencies. The Muslims in the Punjab will then be placed on the same footing as the Hindus in all other provinces save Bengal and Burma."

(Report of Indian Central
Committee, Pages 42 and 43.)

Thus it will be clear that the two bodies appointed by Parliament did not recommend the giving of an absolute majority to the Muslims in the Punjab. No reason has been assigned by the British Government for giving the Muslims the excessive representation in the other Provinces and an absolute majority in the Punjab.

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The Award is the result of anti-Hindu prejudice which has been created in the minds of the authorities by Congress activities, the non-cooperation movement, civil disobedience and other movements of like nature.

Interested parties have described these as Hindu movements and have tried to blind British politicians by attempting to shew that the Hindus are an irreconcilable people who must be put down with a strong hand. It was ignored by the British authorities that the Hindu Leaders of the Punjab have stood by constitutional methods and have had the backing of the Hindu masses of the Punjab, as shewn by the election results of 1926. Indeed, they had co-operated with the British Government and relied upon them for the removal of their grievances.

The Award runs contrary to the very just and fair principle so far recognised by the Government, that the existence of separate or joint electorates must be left to the will of the minority community. The majority can in no circumstances claim that privilege. The Hindus as a minority feel that the absolute majority of a community based upon separate electorates - unchangeable, unalterable - is opposed to all canons of fair play and justice. Indeed, the history of Muhammadan rule in the Punjab, previous to the Sikh rule, shews how barbarous in its methods of conversion Muslim rule can be, with its conversions by bayonet, its prevention of freedom of worship by order of the magistrate, and its prohibition of the playing of music before Mosques. The history of the pre-Sikh days has been repeating itself throughout the Punjab in the last ten years. The Hindus of the Punjab are/

are therefore naturally nervous that a religious, fanatical majority Muslim rule should not be based upon separate electorates, situated, as the Punjab is, close to the frontiers and close to Afghanistan and other Muhammadan countries. They have not forgotten the warning of Lord Hardinge in 1846 to the Administration of those days as follows,

"I am satisfied that the Mussulman population will be generally ready to make common cause against the British power, whenever any Afghan or Persian intrigues may afford the opportunity. This restless feeling was felt in the Deccan, - and to allow a Mohammedan power to occupy the Doabs between the Khyber Pass and the Sutlej would excite and revive Mussulman hopes throughout India. It is not desirable anywhere within our Indian Empire; but to permit it again to rear its head on our most vulnerable frontier, and in contact with the Mussulmans of Central Asia, would be a perpetual source of anxiety to the Government. If this be so, the Government of the Punjab must either be Hindu or British."

again,

"This entrance (the Khyber Pass) into India has always been the high road taken by every invader. A Hindu Govt. acting as our advance guard had for 30 years barred this entrance against all invaders. The very existence of such a Nation depended upon its success in subduing the Afghan and Mussulman population. A Hindu Government under Runjeet Singh fulfilled all these conditions without any expense or anxiety to us. The Punjab was so hemmed in by natural boundaries that it could never materially extend its power in any direction by conquest. Having conquered its Mussulman enemies, it had a natural and mutual interest with the British Government in resisting all foreign aggression from Central Asia, and so long as a Hindu Government could hold the 5 Rivers, it appeared to me the arrangement the best calculated to secure the interests of both Governments."

(Private letter from Lord
Hardinge to the Rt. Hon.
Sir John Hobhouse, M.P.,
Sept. 2nd, 1846.)

The Communal Award ignores that the Muslim claim to special privilege and concession is based upon the fact that the Muslims are illiterate, economically backward, and/

and liable to be misled and duped by clever people. Now when provincial autonomy is going to be conceded, will it not be politically most unfair and destructive of all good government to entrust the rule to a people, who, on their own shewing, are backward in every way?

The working of the Constitution based upon the Award is bound to set up an intolerant religious majority rule, and is bound to disturb the peace of the Punjab and make government difficult, if not impossible. And it will open the gates of India to invasion from the North-West frontier, as was the case as recently as 1919.

The Hijrat Movement of 1920-21, when thousands of Muslims left their homes, sold their property and marched out of India towards Afghanistan, in the belief that it was wrong for a Muslim to live under foreign rule, and the invasion of Afghanistan in 1919 should not be lightly forgotten. Similar incidents are likely to take place in the near future, causing great disturbance and misery.

The Communal Award, as I have stated above, is the result of a misconception based upon incorrect facts and is bound to cause resentment in the hearts of those people who have stood by ideals of mutual goodwill and co-operation with Great Britain. It is clear that the British are driving all the Hindus into a hostile camp and are punishing friends because they cannot successfully put down political opponents.

It is not too late even now to retrace the steps. It is not wise to divide the country into hostile camps of Hindus, Muslims, Sikhs, Christians, etc. I have great admiration for the industry and interest which eminent British statesmen are exhibiting at the Round Table Conference.

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No man but will be struck by their keen and earnest desire to frame a Constitution for the further advancement of India. But the basis upon which it is sought to found the Constitution is wrong. It is neither national nor democratic. Hence it will not be for the benefit of the Indian masses. A Constitution based upon the Communal Award will be merely patchwork. It will not bring peace and happiness to India, but will divide the country into religious factions, warring with one another and thus plunging the country into civil discord at home and laying it open to warfare from outside.

LIST OF SAFEGUARDS.

Memorandum by Sardar Tara Singh.

1. There should be at least one Sikh in the Punjab Cabinet.
2. Out of the three members of the Punjab Public Service Commission one should be a Sikh.
3. This Public Service Commission should control services of the local Board up to a certain grade.
4. This Commission will secure a fair and adequate representation to the Sikhs consistently with considerations of efficiency and possession of necessary qualifications.
5. No legislative measure either social, religious or economic which discriminates against a minority community should be allowed to be introduced without the sanction of Governor and Governor-General. It should not be declared passed unless three-quarters members of the community concerned consent to it.
6. Religious liberty, management of places of worship, religious assignments, educational grants-in-aid and language should be guaranteed.
7. Sikhs should be given 5% representation (out of the British Indian quota) in central legislature.
8. There should be one Sikh on the Cabinet of the Central Legislature.
9. There should be one Sikh on the Central Public Service Commission.
10. Sikhs should be adequately represented on the Army Council.

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11. The pre-war strength of the Sikhs in the fighting forces should not be reduced.
12. Sikhs should be given adequate weightage in Sindh.

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27th December, 1932.

STATUTORY ECONOMIC PROTECTION IN THE GOVERNMENT
SERVICES.

Memorandum by Sir Henry Gidney.

I. INTRODUCTORY.

This Memorandum is submitted with the permission of the Rt. Hon. Lord Sankey, Chairman of the Third Round Table Conference, who at the concluding session of the 3rd Round Table Conference requested any delegate who so desired, to submit a Memorandum on behalf of any matter which he considered required further enquiry. It is because I feel the necessity of further emphasising the great danger which faces the economic future of the Anglo-Indian Community unless it is statutorily and adequately protected, that I have taken advantage of this offer.

Before dealing with the various aspects of this problem it is necessary to make a few general observations, each of which has a direct and important bearing on the economic future of the Anglo-Indian Community, and the demands contained herein.

II. MILITARY SERVICES.

The military services rendered by the Community to India and the Empire during the John Company period are also to be found writ large on every page of Indian history. In every book on the Indian Mutiny will be found chronicled the great and abiding services rendered by the Anglo-Indian Community, and how heroically they helped the Britisher to retain India; indeed the military services rendered by the Community during this

period were such that the then Metropolitan of India - Bishop Cotton - in his sermon in St. Paul's Cathedral, Calcutta on the 28th July, 1860, recommended that public thanksgiving "to Almighty God for deliverance from the Sepoy revolt" should take expression in the form of the establishment of Schools for the children of the Community "that had stood so nobly by England in her hour of need, and who had shed their blood for their kinsmen across the seas" and with which the then Viceroy of India, Lord Canning, joined "con amore".

Moreover, during the past great War, the Community gave 80 per cent. of its manhood in almost every theatre of war, a record unparalleled by any other community in the Empire; while its women were employed in hundreds as Military nurses. Within the past few years, during the recent Civil Disobedience Movement, the Community which forms three-quarters of the Indian Auxiliary force, helped largely to maintain the peace and tranquillity of the country. The Anglo-Indian is however to-day denied admission into the British Army on account of his origin, although during the past Great War, thousands of our young men were freely enlisted into the British Army, and, even to-day, there are about 1,000 of them still serving in the British Army. The community is also denied admission into the Indian Army, lest it disturb the class homogeneity of that Force. But the most cruel and unjustifiable charge that has been levied against the Community is to be found in the refusal by the Army authorities in India to recognise

the Community as one of the martial classes of India, notwithstanding its past great military record during the John Company time, the Indian Mutiny, the past Great War, and also the meritorious and loyal services it rendered in the old Volunteer Corps, which gave birth during the war to the Indian Defence Force and which, to-day, is called the Indian Auxiliary Force, and, forgetful of the great soldiers and leaders the Community has produced and the fact that it was two Anglo-Indians, who rendered such conspicuous service during the Great War, - Lieutenant Robinson, V.C. who brought down the first German Zeppelin in London, and Lieutenant Warneford, V.C. who brought down the first German aeroplane in the battle fields of France. I am, however, told that the chief practical difficulty which prevents the Army authorities from creating an Anglo-Indian Unit is that the Anglo-Indian cannot exist on the same pay as does the Indian Sepoy, and therefore, it would necessitate the introduction of a third rate of military pay, to which the Government of India thinks there would be serious objection from the Indians. This is correct, but if it is the intention of the Government to reduce the present strength of the British Army in India, I would respectfully suggest that it would afford an ideal opportunity for the creation of either an Anglo-Indian Unit or one or two A.I. Batteries of Artillery, and so give to the Community an honoured position in the defence of its own country, and which is, to-day, denied to it except service in the Auxiliary Force.

III. CIVIL SERVICES.

(1) There is no doubt that the Anglo-Indian Community has materially helped to lay the foundations and to build up, maintain and develop, to their present states of efficiency, the various utility and revenue bearing Services of the Government of India. The privations endured and the dangers to which these pioneer workers exposed themselves in the early days of the development of India's industrial communications, when very few loyal and efficient workmen were available, form a notable chapter in the past history of India, which must be read to be really appreciated, and, if possible adequately assessed at the present time, when our need is so urgent and our reward has been fully earned. And we feel that we would not be exaggerating the case if we were to state that, had it not been for these pioneer Anglo-Indian workers and their loyal and steadfast service in those days, as also in the immediate past and present, when Government has been faced with many economic and railway crises, the revenue from the trade and industries of India, would not be at the high level it is to-day. We go further and affirm that not only the revenue which the Government of India receives from the Customs, but also the immunity the country has enjoyed from the chaos and dangers associated with the promiscuous importation of arms and ammunition, has largely been due to the honest, loyal and efficient services of the Anglo-Indian community employed in the Customs Service, which Service was, until as recently as 1921, entirely manned by this Community.

The same can be said with equal force and value.

in regard to the services rendered by the Community to the Railways and Telegraphs - indeed history will bear us out when we say that it was an Anglo-Indian Telegraphist - named Brendish - who, by heroically remaining at his post of duty in the telegraph office at Delhi during the Indian Mutiny, was able to dispatch that famous telegraph message which saved the Punjab for the British Empire.

It is said the I.C.S. have made India: this no doubt is true, but not a single I.C.S. Officer will deny that his success has, in a large measure, been due to the spade and research work performed for him by his Assistant Secretaries, Registrars, Superintendents and other clerical staffs of the Government of India and the Provinces, the majority of which appointments have, until lately, been held by the Anglo-Indian Community, and who therefore can rightly be called the pillars of the basement floor of all Government edifices of to-day, - men who by their loyalty and steadfastness, have helped the I.C.S. to build up the Civil Services of India to what they are to-day, but whose only reward is replacement in these offices by Indians.

(2) Effects of Indianisation of the Services. Time was when the Anglo-Indian and Domiciled European Community held a large percentage of most Government appointments, particularly in the Provincial Civil Services (both Executive and Judiciary) as also in the Government of India and the Provincial Government offices, in the Salt, Opium, Post and Telegraph, Railways and Customs Services, etc. but, since the operation

of the present Reforms and Indianisation of the Services, the community has been gradually but surely squeezed out of these services, while in some Departments not a single Anglo-Indian is to be found to-day. As an instance of this, authentic records show that within the past few decades the percentage of Anglo-Indians in the clerical staff of certain Government offices has been reduced from 90% to 18% while that of Indians has increased from 1% to 81%. In the Provincial Civil Service, the percentage of Anglo-Indians has decreased from 35% to 3.5%, while in the Provincial Judiciary Service, it has been reduced from 29% to 0. In the Customs Service the reduction during the last 10 years has proceeded at such a pace that, unless it is checked, there will be no more Anglo-Indians in this Department within the next 20 years. In the Postal Service in which the Community has for many years played a very important part, very few, if any, Anglo-Indians are to be found to-day. As regards the Telegraph Service, entrance into this Department has been rendered so difficult by means of recent competitive examinations, that the door has been all but closed to the community.

There can be no doubt that the word "Indianisation" is being interpreted as employment for Indian-Indians only, and not for Anglo-Indians, indeed a study of the Budget Debates in the Legislative Assembly, and the various speeches made by the opposite Benches, will prove beyond doubt that certain sections of Indians look upon the Anglo-Indian as much an alien as he considers the European to be, and, although we have Statutory economic equality, he

refuses to recognise, such as our claim for employment in Government Services.

Moreover, the Anglo-Indian community is the only all-India community in India. It has such a peculiar setting in every Province in India that it can claim no Province as its birth-right, and, therefore, cannot ask any Provincial Government for communal protection - indeed, nine-tenths of the community are employed in the Government of India Services which ipso facto places our economic protection as a direct charge and responsibility on the Government of India. Moreover, from every Province comes the demand for exclusive indigenous employment and the incessant cry one hears to-day of "Behar for the Beharis", "Punjab for the Punjabis", "Bengal for the Bengalis", etc., while it benefits the Indians, sounds the death knell of the Anglo-Indian community, who being as it were nobody's child, is in consequence the chief sufferer by being denied the right to live.

(3) The Montagu-Chelmsford and the Simon Commission

Reports: Although these reports recognised and recommended important concessions and privileges to other communities of India, they gave the Anglo-Indian community nothing but pious expressions of sympathy and goodwill, and left its future at the mercy of the larger communities, and the benevolence of Government and its Ministers.

Notwithstanding the fact that the Instruments of Instructions contained in the Government of India Act of 1919 gave to the Governor-General and Governors specific powers to protect the interests of minorities, yet, on not one occasion has this power been exercised, although the Anglo-Indian community has frequently represented its grievances to the various Governments.

(4) Our status refused recognition.

It is well known that by an Imperial Statute - the Indian Councils' Act of 1870, 33 Vic. Chapter III - the community is given the positions of "natives of India by Statute" and as such it has an equal claim with other communities for employment in all Government Services. The community has been urged to admit, recognise, and demand this status, and we have never lost an opportunity to advise them accordingly, but it is one thing to ask and another thing to receive, for, whenever we have demanded our economic rights in the Legislative Assembly as "natives of India by Statute" the opposite Benches of the House have flouted our claims and have made the community clearly to understand that it is not included in the term "Indianisation."

(5) The insistent demands of the majority communities accompanied with threats of strikes or reprisals in the refusal to co-operate with the Legislatures, have had so irresistible and compelling an effect on the Government and its various officials, that the Anglo-Indian community, which is not only numerically weaker, but is very inadequately represented on the Legislatures, has been and is being used by Government as a common sacrifice on the altar of political expediency, in its efforts to satisfy the demands of other more clamorous and powerful communities. The cumulative effect of this has been that, while in 1921, before the Montagu-Chelmsford Report began to operate, there were less than 1,000 unemployed Anglo-Indians and Domiciled Europeans in India, to-day, after a decade of the Reforms and the introduction of Indianisation of

the Services, nearly 15,000 or more than one-third of the total able-bodied men of the community are unemployed and roaming the streets in quest of food. The tragedy of the situation is that a decade ago our cry was "Give us this day our daily work" to-day our every morning prayer is "Give us this day our daily food"!! But the most distressing feature of our present economic tragedy is to be seen in the hundreds of young men and women who are annually leaving our excellent European Public Schools in India, well educated, well developed, keen sportsmen (it was men of this type who formed three-quarters of the first hockey team who beat the rest of the world at Olympia) who are unable to secure employment anywhere and at any price. This is the toll that one decade of the Reforms and Indianisation has extracted from the community.

(6) Our position has been gradually going from bad to worse and our complete economic disaster has hitherto been avoided only by the exercise of special favours from the Government in the shape of confidential orders to officials to safeguard, as far as is possible, our interests and by the benevolence of some sympathetic officials, but of late the cry of Indianisation has been so loud and insistent that even these marks of favour are being denied the community.

(7) Prejudicial effect on community to-day. With the present retrenchment and economy that is being practised in every Government Department, it is well known that no new appointments are being created, but it cannot be denied that every additional appointment that is to-day given to an Indian is taken away - (indeed it must be so) from either a

European or an Anglo-Indian, and, so, in this way the community is being deprived of the right to live, and will soon altogether disappear from Government employment.

(8) Government of India's apprehension. The Government of India, to whom we are grateful, have, however, found the political pressure exercised on them by the larger communities so great that they now find themselves wholly unable to guarantee any further economic protection to the Community, especially to those employed on the Railways. This admission is to be found on page 169 of the Government of India's Despatch on proposals for Constitutional Reform, dated 20th September, 1930.

"The Anglo-Indian Community has in the past rendered very important services to the Railways and still holds a large number of posts in particular branches of railway work. The economic life of the Community is indeed to a large extent dependent on the opportunities of employment which the railways offer, and its numbers are gravely apprehensive of what may occur, if and when any change takes place in the present system of administration and control. In view of the history of the community, a special obligation we think, rests upon Parliament, before relaxing its own control, to ensure, as far as may be practicable, that the interests of the Anglo-Indian Community are protected."

(9) Treaty or Crown obligation. In this connection it must not be overlooked that the assurances of economic protection given to the Anglo-Indian Community by the Government of India, successive Viceroy and Great Britain

have been so many and so consistent as to have assumed the force and value which is rightly attached to a Treaty obligation. Indeed the assurance given to the Community by H.R.H. The Prince of Wales and Heir Apparent to the British Crown, places this protection on a much higher plane, i.e. a Crown obligation, as evidenced in the reply His Royal Highness gave to the Anglo-Indian Deputation that waited on him in India.

"Gentlemen, you may rest assured that I now understand the conditions under which you live in India, and the useful and honoured place which you fill as citizens of the Indian Empire. Your aims and aspirations have my sympathy. Your devotion to the cause of India, the land in which you live, and your desire to maintain an honoured place for her within the Empire, do you credit. I shall watch the progress of your Community with the closest attention. You may be confident that Great Britain and the Empire will not forget your Community, who are so united in their devotion to the King-Emperor and who gave such unmistakable tokens of their attachment to the Empire by their sacrifices in the War".

(10) Comparisons. During the three Round Table Conferences, the various communities which go to form India, have each, in turn, presented their demands for consideration, with the result that the Muslims have been given 33,1/3% of the seats in the Central Legislatures communal electorates with an almost statutory majority in the Provinces of Punjab and Bengal, indeed it has been

given almost all the 14 points embodied in Mr. Jinnah's demand. The Depressed Classes have been given almost all they desired, and Government has accepted the Pact recently entered into between them and Mr. Gandhi, which has given them twice the number of seats in the Legislatures as was allotted to them in the Prime Minister's Communal Award. To the women of India have rightly been given extended franchise, and special representation in the Legislatures, as also special electoral qualifications.

Labour has been promised additional representation in the Central Legislatures and special constituencies. The demands of the Landlords and the Universities have also been satisfied. Other claimant sections of the people have been granted their requests, e.g. the creation of the North West Frontier Province, the separation of Sind, and, in all probability, the separation of Behar. Europeans have not only been granted protection of their commercial and trade interests, but their Jury and other rights. The Liberal and Moderate Parties have not only been promised a large share of responsibility in the Centre, but a closer association in the defence of India. These have been detailed not in the nature of a complaint but as a comparison and I feel bound to ask against all these concessions given to other Communities what has the Round Table Conference done to satisfy the demands made by the Anglo-Indian Community, who to-day stand more in need of statutory protection than any other community in India? It cannot be denied that except for pious expressions of sympathy and goodwill nothing

material has been done for it, though in making this statement, I feel I must admit with gratitude the acceptance by the Round Table Conference of the Irwin report on Anglo-Indian Education, but in doing so, we cannot help but ask of what value is this concession to the education of our children, if their parents are deprived of their employment and the right to live because, it cannot be denied that the education of the child is entirely dependent on the economic security of the parent.

PROTECTION CLAIMED.

We have detailed these indisputable facts as a preamble to our demands, with a desire to place before the authorities, in a brief and concise manner, the services rendered by the Community to the Indian Empire, the serious disadvantages under which it labours owing to Indianisation of the Services, the apprehensions which it entertains and its precarious position in the New India, and so to justify our claim for economic protection if only for a limited period of years from the date of the operation of the New Constitution.

Under these circumstances it is only natural that the Community should look to the Government of India, and through it to the Secretary of State and the British Parliament, for protection of its economic interests. It feels that hitherto the powers that have been given to the Governor General and Governors to protect their interests have been used very sparingly. The Community also feels that if these powers are merely to be repeated in the Instrument of Instructions, they will be of very little material value because with the grant of Provincial Autonomy

and responsibility in the Centre, the Departments in which the Anglo-Indian Community are employed, will be placed under the complete control of the various Ministers and it will be against the principles underlying Provincial Autonomy and responsibility in the Centre for either the Governors or the Governor-General to interfere with the day-by-day administration of any of the Services, and this is precisely what will have to be done if the few appointments to-day held by the Community are to be statutorily protected. After all, we are not asking for the impossible, all we want is the protection to the Community of these 25,000 appointments compared with the millions held by Indians, but which to us mean our very existence.

Our claims are:-

(i) We look upon the economic future of the community as a joint responsibility on every Englishman and every Indian and who, in turn, are the co-Trustees of that responsibility.

(ii) The Anglo-Indian Community seeks statutory protection not only of its economic interests, but to be afforded an opportunity to serve the future India as loyally, as efficiently and as conscientiously as it has laboured for the past India.

(iii) We apprehend and we feel sure this apprehension is shared by many other Communities that for the next two or three General Elections, the Congress Party will be returned to the Legislatures in an overwhelming majority, and we have grave reasons to believe that they do not entertain sympathetic feelings towards the needs of the Anglo-Indian, especially his employment in the various services, and which constitutes the very existence of the Community. It is to

protect the community during this period that we claim adequate Statutory economic safeguards.

(iv) But if the New Constitution cannot grant us this Statutory protection, the Community feels it is entitled to look to the British Parliament to grant this protection, at least for a limited period of years.

(v) Failing this, and after the repeated assurance of economic protection which have been given to the Anglo-Indian Community, and which amount to a "Treaty obligation" or an obligation on the part of the Crown, we humbly and respectfully submit to His Majesty that he will be graciously pleased to ordain some means by which this section of His most loyal and devoted subjects are protected, and that they be given the right to live in the land of their birth and in the service of a country which they have materially helped, along with their English forebears, to build up to its present position of prosperity.

(vi) In conclusion we submit that if this appeal to the peoples of India and to this Round Table Conference fails to secure us Statutory Economic Protection, we desire to place our claim on a higher plane, that of a moral obligation on the British Parliament and the British Nation who called us into being, and whom we have served for centuries with a sense of loyalty, of patriotism and of efficiency, difficult to parallel in the British Empire, remembering always that, if, in our allegiance and our loyalty to the British Empire as outlined in this note, we have been so unfortunate as to estrange the goodwill of the Indian to such an extent that our economic demands have come to be scrutinised with zealous vigilance

amounting, at times, to open hostility and a desire to deprive us of the right to live, the Government and the British Parliament, who are the successors of the East India Company, cannot to-day, when it is handing over that Government and control, disclaim all responsibility nor can it repudiate the claims of the Anglo-Indian Community to legislation that will effectively guarantee their future, and that such protection be placed beyond dispute or challenge.

It is said that the Reforms were given to India as a reward for her services during the Great War. We ask, is expropriation of our employment and the refusal of the right to live in our country India the only reward for our unparalleled services during the War? Is India's gain to be our loss? Does India's destruction connote our destruction and does the regeneration of India mean the degeneration of the Anglo-Indian? Surely no one desires this and yet this is exactly what will happen to the Community unless its economic future is adequately statutorily protected.

(Sd.) HENRY GIDNEY.

27th December, 1932.

Distribution of seats and the method
of election of members in the Provincial
Legislative Councils under the Communal
Award.

Memorandum addressed to the Lord Chancellor
by Mr. N.C. Kelkar, Pandit Nanak Chand and
Sardar Tara Singh.

My Lord,

We, the undersigned, members of the third Round Table Conference wish to enter our protest against and criticism of what is known as the Communal Award, announced by the British Cabinet through the Prime Minister on the 17th August last. And we further desire that this protest should go on the record of the R.T. Conference as a protest on behalf of the Hindu and Sikh Communities in India.

Since the publication of the "Award", the Hindu community in India has expressed its opinion upon the award through the Press and on the platform, while resolutions of constituted bodies and associations, who each in their own sphere may be taken as representing the Hindu mind, have uniformly criticised the Award as greatly adverse to Hindu interests. And now that the Indian R.T.C. is holding its final session, we cannot allow the decision of Government, on the Communal questions, to be recorded, without the opinion of the Hindu Community also going on record along with it.

We fully recognise that since the Indian communities could not come to an agreed decision, embodying a settlement of their respective claims to representation on the Legislatures and the method of election to them, it became inevitable/

inevitable, under the circumstances, for Government to take up the matter into their own hands and give such decision as they thought proper. Nor do we wish, in the slightest degree, to throw doubt upon the motives of Government in giving their decision. But for all that, the Hindu community is, we think, entitled to express its opinion of the effects and the consequences of that decision to their interests throughout India generally and in special respects in particular provinces.

Before, however, proceeding to that topic, we would make a few brief observations here about the real causes underlying the apparent hopelessness of agreement between the Hindu Community and the largest minority in India, viz. the Muslims. It is indeed true, as observed by the Prime Minister in his speech at Portsmouth on the 19th November last, that "whether in industrial or in international affairs, if the parties met with good-will in their hearts, how easy it would be to come to an agreement. But when you meet with suspicion, with history that ought to have been dead years ago, generations, centuries ago, when that left in their hearts a rankling, poisoning of the spirit, what a task coming to agreement was!" The same description, which so aptly applies to the communal trouble in India, is not without its counterpart to a greater or less degree in the history of every other country. The duty of any third party, observing the conditions in India, should be to adjudicate fairly between the different communities. The British Government, installed in India as they themselves profess and avow to be, for holding the scales evenly between the different communities, have a responsibility to look after the interests entrusted to them with strict impartiality. Had that been duly fulfilled, there is reason to believe that the communal conflict would not have taken such an acute form. In any case, when sitting down to arrive at a decision on this difficult question, the
Government/

Government might well have taken the following points into their consideration:-

- (1) The conflict between the Hindu and the Muslim interests was the same before 1916 as it is to-day. Yet it is on record that at the Lucknow Congress, in that year, the Hindu and the Muslim leaders came to a unanimous agreement and cleared the path for what is known as the Congress League Scheme of political reform. The British Government accepted it as a legitimate basis for an official scheme of representation of the two communities in the Indian legislatures. If the Government really puts so much store by a unanimous communal agreement then they should have said to the communities, "Here is an agreed pact in operation and we shall not allow it to be disturbed except by another pact similarly agreed to". The Hindus are aware that the Lucknow pact conceded special electorates to the Muslims, and also weightages to safeguard the interests of the Muslim minorities in all provinces; and their revised demand for joint electorates could very properly have been refused, if the Lucknow pact held the ground.
- (2) Since the pact was denounced by both sides, a new situation had arisen in which the Government might have taken up the matter in their own hands but in the spirit of a real impartial arbitrator, they might have applied to the case of Indian minorities the principles which the League of Nations has successfully applied in solving the problems of the European Minorities in their charge. The responsibility of the League/

League of Nations, for the protection of minorities in her charge, could not be regarded as less onerous than that of the Indian Government in relation to the Minorities in India. Surely the claim of any minority in India for protection of its interests could not go beyond the preservation in their integrity, of their mother-tongue, culture, customs, manners and religion. The rules framed by the League, in this respect, are reasonable and adequate for the purpose.

Instead of doing any of these things, the Government have taken upon themselves the grave responsibility of giving a decision which strikes at the very root of a sound framework of polity, which it is their purpose to raise by a Parliamentary Statute.

Apart from these considerations the more poignant regret which the Hindus feel arises from the fact that the failure on the part of the two great communities, to come to a settlement on communal issues, is being obviously exploited, for refusing the claims of the Indian nation at every turn, on matters connected with crucial political issues relating to the transfer of power and responsibility from the British Parliament to the Indian people.

Would the Government, we wonder, accept a sporting offer, if it were made by the Indian nation? Would they grant by a Parliamentary Statute, the kind of self-Government India asked for if a settlement were arrived at by the Hindus and Muslims? Would they do this without making any change whatever, as they did in the case of South Africa, where the problem for solution was not less difficult than in India, owing to the conflicting interests between three or four colonial units? We invite the British Government to reply to this question.

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The so-called Award can be impeached on many grounds. We enumerate only a few. The provisions in it have conceded special electorates not only to Mahomedans who demanded them, but also to Anglo-Indians, Indian Christians and even Indian women who never asked for them. It goes beyond even the recommendations of the Simon Commission, which did not propose to give an assured majority in the legislatures for majority communities in the provinces, nor special electorates for Depressed Classes or Indian Christians. It exceeds the demands put forward even by the official Muslim controlled Government of the Punjab in the interests of the Muslims, for whereas an excess of two seats was suggested by the British Government for Muslims over Hindus, a majority of nearly 10 has been conceded by the Award. If the Government were of opinion that minorities really should be given representation according to the population basis, then they should have done for the Hindu minorities in different provinces what they have done for Muslim minorities. But they have done injustice to the Hindu minorities alone in Bengal and the Punjab.

The Award thus cannot be justified on any common principle of fair dealing. The Award makes it impossible for the legislatures in any province effectively to control the Executive Administration. Under the Award group would be set up against group. Patronage would do its destructive work. And the Government would be able to manipulate the see-saw of political power so that the result would be in their favour.

It would be tedious to go into more than a few details and comparative figures in order to show how injustice has been done to the Hindus in each province, either by the grant of separate electorates or excessive weightage/

weightage. Those we give are indicative of the whole tendency of the Award. The general effect, it is now acknowledged on all hands, would be as we have indicated above. Surely a civilised Government like the British Government cannot be said to have realised and fulfilled its responsibility in laying the foundation of a political state and Democratic Government, by such an Award.

In the Punjab the Hindu minority is not given representation even according to its population basis, not to speak of the weightage. The Punjab Hindus are a wealthy and influential community and contribute a very large share of Government revenue of the Province. With Joint Electorates and Free Election they might have been able to overcome some of their disabilities due to an assured Muslim majority. But the separate electorates and statutory majority for Muslims make this impossible.

In Bengal the Hindu Community is the main-stay of the province in point of education, culture, influence and wealth. It was to be expected, therefore, that these considerations would be taken into account in fixing their representation in the Provincial Council. This has not been the case.

In the Central Provinces, the Award gives to Mahomedans even a larger share of representatives than was recommended by the Simon Commission.

In the U.P. the Hindus had a grievance with regard to the weightage of Muslim representation even from the time of the Lucknow Pact. The Award, far from redressing the grievance, perpetuates it.

In Bombay, separation from Sind would reduce the Mahomedan population to a very small fraction; and consequently the weightage given to them becomes very excessive. The separation of Sind, where Muslims will be

a dominating majority, when coupled with weightage given to Muslims in the Bombay Presidency, so separated from Sind, constitutes a double wrong.

For all these reasons we hope Government will look more closely, than they seem to have done, into the equities and inequities of the Award which they have given. Obviously they have power to revise their Award, if they feel convinced that such revision will enable them to put the Award on a fairer and juster basis.

(Sd.) N.C. KELKAR

(Sd.) NANAK CHAND PANDIT

London,

23rd December 1932.

I endorse the views expressed herein and I have already submitted my statement on the communal award relating to Sikhs on 21st December 1932.

(Sd.) TARA SINGH,

23rd December 1932.

SPECIAL REPRESENTATION OF LANDHOLDERS.

MEMORANDUM SUBMITTED BY THE RAJA OF KHALIKOTE.

Representing the Landholders of India, I feel it my duty to place before the Conference and His Majesty's Government the case of the Landholders regarding special representation in the Legislatures - Central and Provincial. I need hardly say that the proposal of the Indian Statutory Commission was made under a grave misconception of facts as the Commission failed to make any distinction between Permanently Settled Estates held under Sanads and Landholders who hold property under tenures different from theirs. I further submit that the conclusion was arrived at without realising the fact that the community whom I represent is an asset upon which the Government of the country has always drawn and which can be relied on for rendering loyal co-operation. Zamindars do not wish to come in through the back door of nomination. The Landholders as a class stood by the Government at all times of necessity and their loyal service to the British Crown has been unquestioned. While the intelligentsia have been luke-warm in their support, the Zamindars wholeheartedly co-operated with Government and worked the difficult constitution that was given for about the last twelve years. Is there any reason for denying their just rights? The Government of India's Despatch on constitutional reforms and all Local Governments strongly supported the just claims for special representation of Landholders.

In Madras, the only constitutionalist and

organised/

organised party that has worked the constitution owes its existence to the support and untiring efforts of the Zamindars. The Landholders of India pay about 44 per cent. of the total Land Revenue to Government. They have a great stake in the country and are anxious, not only to maintain a steady and stable Government, but that India should progress steadily on constitutional lines to achieve her legitimate goal of responsible self-government.

The Franchise Committee, while recommending the existing special representation of Landholders, did not realise the necessity for their increased representation in proportion with the increased representation of other interests and the expansion of the Legislatures based on an extended franchise. It is essential, in the circumstances, that the Landholders should have more adequate representation. In certain elections a few Landholders have been elected through general constituencies but their success is not due to the fact that they are Landholders. It was due entirely to their merits and experience in the Local Board administrations. Landholders elected through general constituencies cannot truly safeguard or support the interests of Landholders in the Legislatures. It is getting more and more difficult for Landholders to succeed in general constituencies even in their capacity as Local Board administrators. The tendency of the present times is to create controversy between the interests of Landholders and tenants. Persons pledged to champion the cause of the tenants against the vested rights

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and interests of Landholders are more likely to succeed in the present day politics of India, and instances of this have already occurred. Therefore, there is great need to have adequate and effective representation of Landholders.

In the Madras Council there are only six Landholders' representatives, in the true sense of the term, out of a total strength of 132, and it is proposed to maintain the same representation even in an enlarged house of 215. This very small and disproportionate group of Landholders, in a big house of 215, will not be able to exert their influence to safeguard their vested rights and interests. We have, therefore, a great apprehension that unless our special representation is increased, proportionate with the strength of the Legislatures, our interests will not be protected and we may be thrown overboard in all matters by the majority interests. We find that in all the Provincial Councils, out of a total strength of about 1,700 members, there will be only 32 Landholder representatives, and in the Federal Assembly, out of a strength of about 300 from British India, there will be only 7 Landholder representatives. The representation is inadequate and ineffective and I therefore beg that special representation of Landholders in Provincial and Central Legislatures should be increased proportionately with the strength of the respective houses.

It is unnecessary for me to repeat the history of the Permanently Settled Estates about which I have already spoken at the Conference. The Sanads were issued on

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a distinct pledge that Government will protect the rights of Landholders. They form the main stay in the district and provincial administrations. The increased responsibility introduced into the Central Government necessitates that the Zamindar class should be given opportunities of playing their part and rendering loyal and useful service to the country as a whole.

London,

(Sd.)

26th December 1932.

Raja of Khallikote.

REPRESENTATION OF THE ABORIGINAL AND HILL TRIBES.

Note by Mr. N.M. Joshi.

The Franchise Committee has recognised the need for the separate representation of the Aboriginal and Hill Tribes. The Committee has recommended some form of election for the appointment of their representatives at least in Assam, Bihar and Orissa, and possibly in Madras. I suggest that the method of some form of election should be adopted in all provinces where they have been given special representation.

In the Communal Award of the Prime Minister, one seat each has been reserved for the Backward Areas, presumably for the representation of these tribes, in Madras, Bombay and Central Provinces, eight in Bihar and Orissa, and nine in Assam. I consider that, taking into regard the number of the population of these tribes, their representation is very inadequate.

The Census Report for 1921 has given 16 millions as the figure of the total population of these tribes for the whole of India, and as the population of India has now increased during the last ten years, I can safely estimate the present figure of their population, for the whole of India, at 18 millions. Proportionately, their population for British India cannot be less than 12 millions. The figure of five millions given by the Franchise Committee is obviously a mistake. This figure represents those only who declared themselves as belonging to "Tribal Religions". But as some of these people either declare themselves as Hindus or are put down by the enumerators as Hindus, their total population is shown

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to be much less than it really is. Although some of these people call themselves Hindus, and some have become Christians, their social and economic backwardness is not necessarily removed. Dr. Hutton, the present Census Commissioner, has admitted this fact in his D.O. No. 18. dated 19th September, 1932, written to Mr. A.V. Thakur of the Servants of India Society. Dr. Hutton writes as follows:- "I am replying to your letter of 8th September in a purely private capacity. The actual number of aboriginal tribes who returned their tribal name for their religion in 1931 was 8,280,347 and the number in British India was 5,779,709. This of course does not represent the population of the tribes themselves as owing in part to the natural process of the substitution of Hinduism for their tribal religion, and the idea of social superiority attaching to a return to Hinduism, in addition to a very vigorous propaganda by the Hindu Mahasabha at census time, directed presumably to obtaining as large as possible a return of Hindus as might be, there has been a very considerable transfer at this census from "Tribal Religions" to "Hinduism".....

My figure given to the Lothian Committee had reference to professed religion only, as I had not then any figures for the actual numbers of tribes, and I fear that I shall not have any such figures until I have all the tables of the different provinces compiled. If you will write to me again in two or three months' time I can probably then give you the actual numbers of tribes returned from the different provinces as "primitive" though here again it is often very difficult to draw a line between primitive tribes which profess Hinduism and a caste."

Estimating/

Estimating that their total population in British India is between four and five per cent., the twenty seats out of 1,513 given to them by the Prime Minister's Communal Award are very much less than they should have on the basis of their population. Strictly speaking, they should have been given at least sixty seats. This injustice is more glaring especially in Central Provinces. In this province their population is more than one-sixth of the whole, yet they are given only one seat out of 112, while on the population basis they should have been given at least 18 seats. The Central Provinces Provincial Franchise Committee recommended two seats, but the Prime Minister reduced the number to one! On this point Dr. Hutton, the Census Commissioner, writes to Mr. Thakkur in the letter referred to above as follows:-

"I presume that it is the comparatively small number of one million odd returned as "Tribal" in religion from the Central Provinces which accounts for the fact that in the Communal Award only one representative has been allotted to backward tribes, which in point of fact constitute nearly one-fifth of the population. Even the local Franchise Committee of the Central Provinces was prepared to recommend two representatives for primitive or backward classes."

I fully realise the difficulty of changing the Communal Award. But as the representation of these classes is to come out of the general constituencies, the seats given to the Muslims and to the Depressed Classes need not be disturbed, and some measure of justice may still be done to these classes.

It is a matter of great regret that the Franchise Committee has not recommended any representation to the

"Aboriginal/

"Aboriginal and Hill Tribes" or "Backward Areas" as the Prime Minister's Award has termed them, although their total population is more than 4%, and although the Franchise Committee and all others interested have seen the desirability and necessity of giving them separate representation. It is not correct to think that the interests of these classes are only affected by the Provincial Legislatures. The Federal Legislature is of equal importance to them. As some of the Areas in which they live are very backward, and as in some cases they are under special Legislative and Administrative arrangements, the Simon Commission has recommended that the Central Government should bear some financial responsibility for them. Moreover, as the Federal Government is going to depend upon indirect sources of revenue which affect more adversely the poorest classes of people which the Aboriginal and Hill Tribes undoubtedly are, the case for their representation in the Federal Legislature is unanswerable. I therefore strongly hope that, when the Government takes decision as regards the representation of various Communities and interests, they will not forget to do justice to the Aboriginal and Hill Tribes or the Backward Areas as they prefer to call them. I suggest that they should have 10 reserved seats in the Assembly distributed as follows:-

				<u>No. of Seats.</u>
1)	Representing	Backward Areas	of Assam	2
2)	"	"	" Bihar and Chota Nagpur	2
3)	"	"	" C.P.	2
4)	"	"	" Bombay.	1
5)	"	"	" Madras	1
6)	To represent the Aborigines of the whole country, and to be co-opted by <u>all</u> members of the Assembly.			2
				<u>10</u>

REPRESENTATIVE CHARACTER OF THE REPRESENTATIVES OF
INDIAN STATES IN THE LEGISLATURES.

MEMORANDUM BY MR. N.C. KELKAR.

I would like to mention a matter which is closely related to the representation of Indian States in the Federal Legislatures through their representatives. I know that for the practical purposes of Federation the unit is a state, small or large, and from current constitutional point of view, the State means the political ruler of the state. I also am aware that, like Louis XIV, every Indian State ruler, is known to be in the habit of saying, "I am the State." But it would not, I think, be quite unpardonable, if some of us attempted to probe the identity of the State and its ruler with the lancet of constitutional theory. The word ruler necessarily implies that there must be subjects over whom he rules. And these subjects are not only human beings but citizens who are entitled to certain civic rights. By virtue of the Federation these subjects attain a status which may tersely be described as the status of Federal Subjects. They will be called upon to bear their share of the burdens of the Federation and must be also regarded as entitled to a share in the profits of the Federation. Now some of these profits may have a material aspect or value. But for the moment I am referring only to that profit from the status of a federal subject which relates to political power and influence. I do not wish here to refer to any questions of the internal administration of any state. But we of British India here, I think, ought to look, though at a distance, into the credentials of the states' representatives, who will sit in our legislatures along with us, and participate in Federal Administration. According to the new Constitution there will be no members of the legislature who will not be elected by a certain/

certain, I may say, by a very large number of electors among the people. The old official block consisting of the officials of Government simply disappears, and every elected member will thus necessarily represent the effective political consciousness of thousands of Indian souls. Would he like to be vitally associated with any other member who bears on him the hall mark of the sufferance of undiluted autocracy? That would be indeed, serious political misjoinder. Oil and water have never mixed up well, or at all. For effective team work a pair must be made up of men, as of animals, who are nearly if not, wholly, of equal stature strength and also of temperament. Similarly both the British Indian members and the State representatives in the Federal Legislatures, must have nearly the same sense of political status, the same sense of self-respect, independence and responsibility. To whom will the State representative feel himself responsible? Will he be like the British Indian Member, irremovable from his seat and office during the term of the life of the Federal Legislature? Or will he be liable to be recalled if he does anything, in his duties, that may displease his Princely Chief? Remember, even in our present Legislatures, only official Members can be asked to tender their resignations and vacate their seats. But not so even those who are called nominated members. My friend Mr. Joshi has for long been a nominated member of the Assembly; and yet be it said to his credit and the credit . . . also of the Government who nominated him, successively for so many terms, that he spoke and was allowed to speak, and he voted and was allowed to vote, with as much independence as if he were an elected member. So much from the point of view of the member himself. But what about the subjects and the taxpayers of the State who will be represented in the Federal Legislature? Are they to have no voice at all in the selection of the State representative who will be entrusted with their affairs to that extent? Now in answer to this question I do not expect the State representatives, here and

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now, to declare what arrangements will be made by their State Governments to clothe the delegates, whom they will depute to the Federal Legislature, with some sort of representative capacity. But I shall be satisfied if they would simply and at least say that their states will feel bound to make some such arrangement, considering the anomolous juxtaposition as described by me, between the British Indian Members and the States Representatives in the Legislatures. I am aware, Lord Chancellor, that the new light has begun to dawn upon Indian States' rulers. We all welcome that orientation, but I feel that the record of this Conference will be allowed to bear upon it the evidence of the expressed willingness, I may even say, cheerful willingness, of the States here represented to develop, at least progressively, institutions of representative Governments, so that their representatives in the Federal Legislatures may come with some stamp of popular approval. May the States live long is my prayer, but may they also prove themselves susceptible to public opinion.

(Sd.) N.C. KELKAR.

23rd December, 1932

Feudatory States.

(See Report of the Committee on the Instrument
of Accession of Indian States to the Federation.)

(The following memorandum was submitted by
MR. N.C. KELKAR to the Round Table Conference
on the subject of the Feudatories of Indian
States, when the above report came dis-
cussion at the sitting of the Conference
on the night of the 22nd December 1932.)

In connection with the report of the Sub-
Committee on the subject of the Instrument of
Accession of Indian States, the question of the
Feudatory States in India must be discussed and taken
into consideration.

The constitution of Federation, which we are
hammering out at this Conference, may be said to be
marked by one great feature, viz., its care and
solicitude for the suppressed classes and interests in
India. If I may say so, it is care and solicitude for
many an 'under dog' - the under dog that already exists
or may be brought into being under the new Constitution.

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The Indian Feudatory States fairly come under that category, and should be put as one more on our list of under-dogs. And I contend that provision must be made for their protection in the Instrument of Accession by Indian States, when they will be prepared for the signature of the rulers of appropriate States, which may have Feudatory States charged to their care.

The scheme of the present report provides for an agreement as between the British Government and the Indian States who may wish to join the Federation. The agreement would contain matters and provisions about certain powers and jurisdictions to be transferred from the States to the Federal Government for Federal purposes. These relate, as the report says in paragraph 5, to the rulers of States and their subjects. And the powers so transferred must be so large as to make the Federation effective for its purpose. Now there is also another class besides the subjects, which is vitally concerned in the administration of the ruling powers in the States, viz., the Feudatories. They want protection for their existence and welfare, just as much as any other minorities for whom the Constitution is providing with such great care. They are higher in status

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than the landlords and zamindars to whom representation is given in the Franchise Committee Report, and who are represented in this Conference.

The question of these Feudatories, who are not as vocal as others, is altogether left out of consideration. The Feudatory Chiefs exercise varying jurisdictional powers in their territories, represent ancient historic houses and wield no small influence in the country. Being part of British India, even the ordinary landholding classes have got some representation both in the Provincial and Central Legislatures, although it is inadequate in proportion to their interests and influence in the country. But the position of the Feudatory Chiefs under the Princes is still worse. They are too scattered and divided to form their own organization. The Princes are represented by the Princes Chamber and are quite capable of protecting their interests. The position of the Feudatories is very peculiar. Being subordinate to the Indian States, they are not classed as Princes, nor have

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they any voice in framing the Constitution, as they come under the States. While the Princes and every other class and interest in British India have been represented at the Round Table Conference, the Feudatory Chiefs under the Princes got no representation at all.

These Feudatory Chiefs who form an important group of small States by themselves are not quite a negligible factor. Under most of the big Indian States there is a large body of Feudatory Chiefs exercising varying jurisdiction. Under the Gwalior Durbar, e.g., there is a number of such Chiefships, most of which are guaranteed by the British Government. Similarly, there are mediatised Feudatories under Kashmir, Jayapur, Indore, Cutch, Kolhapur, and many other States.

It is needless to describe in detail here how all these States came into being. But it is necessary to mention that when the East India Company came into closer relations with Indian States, they found a large number of Chiefs who exercised jurisdictional rights in their own domains, while at the same time they owed a sort of precarious allegiance to some powerful

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neighbouring Prince. These Chiefs sought the protection of the British Government, who, acting as mediators between them and their suzerains, guaranteed their rights, privileges and possessions and secured their formal allegiance to their suzerains. No fixed principle was, however, followed in effecting these settlements. In Kathiawar, e.g., most of the States were subordinate to the Gaikwar of Baroda. But all these States were made independent of Baroda subject only to the payment of tributes. On the other hand, most of the smaller States in Central India and elsewhere were placed under their respective suzerains with a British guarantee for continuance of their rights and possessions. Thus the settlements were largely influenced by the exigencies of the moment and were the result of historical circumstances. The status and position of most of these States were originally almost the same, but by the settlement some States were brought directly under the control of the British Government while others continued under their suzerains, protected by guarantees from the paramount power.

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Similarly some of the lapsed States such as Satara, Nagpur had guaranteed feudatories under them, which, after the lapse of the suzerain states came under British control. Although the powers of the Feudatories of the lapsed states and of the Feudatories under other states, were originally the same, the powers of the former have been enlarged since they came into direct relations with the British Government, while the powers of the latter under their suzerains have been considerably reduced.

The above arrangements worked satisfactorily to all parties, so long as it was the policy of the British Government to enforce strictly the terms and conditions of the guarantees and to protect the smaller states against any encroachment by their suzerains. The policy of the British Government was to maintain intact the rights and privileges of both the suzerain and the Feudatory States. No deviation from the guarantees thus given was allowed. But during the past few years there has been a change in the policy of the British Government towards the Princes, which has been very prejudicial to the rights and privileges of the Feudatories and their very existence as separate entities are being jeopardised. The Government have latterly enhanced the powers of the Princes, and also their prestige and position. The establishment of the Princes' Chamber has also increased their status. In short the Government have adopted a policy of trust and generosity towards the Princes, and they are allowed as large a measure of independence in their/

their internal affairs as possible. Most of the States have been transferred from the control of Provincial Administration to the direct control of the Government of India. But supervisory powers which the British Government used to exercise over the guaranteed feudatories are also being gradually relaxed, and the feudatories are being handed over to their suzerains. It is true that in transferring that control. Government have declared that the guarantees are not affected by the change; but such an assurance is of little avail against the grasping policy of the Durbars. The feudatories that were freed from the control of their suzerains by the original settlement have their powers enlarged - some of them have become even members of the Princes Chamber - but those that were continued under their suzerains have come in for a curtailment of their powers and the transfer of control is tantamount to a virtual cancellation of the guarantee, although it continues in form only. Once the direct control of the paramount power is withdrawn, the suzerain States feel that they can deal with their feudatories as they like. It appears to be the avowed intention of the suzerain states to reduce the guaranteed feudatories to the position of mere landlords. Naturally the feudatories resent this, but there is little hope of redress being obtained at the hands of the paramount power because of the policy of non-interference.

One would ask why there should be these disputes and quarrels and consequent ill feeling between the suzerain and the feudatory States. It would really be a happy day for both the Princes and their feudatories if all their disputes are amicably settled and they live in peace, harmony, and goodwill. But the real cause of the trouble is that there is always a conflict of interests between the Princes

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and their subordinate states. Again in some cases there are age-old family feuds and quarrels between the suzerain states and their subordinates and they have unfortunately continued even up to the present moment.

In the interests of justice and fair play it is quite necessary that there should be some third party to act as arbitrator in the settlement of these disputes. Up to now the British Government acted as arbitrators by holding both the parties fast to their engagements. But now they are withdrawing from this position and handing over the feudatories to their suzerain States. Instead of improving their relations, this will tend only to aggravate the situation. A really satisfactory solution of this problem would be the establishment of a court of arbitration for adjudication of disputes between the suzerain states and their feudatories. Such a tribunal would inspire confidence in both the parties and its decisions would be more acceptable to both.

(Sd.) N.C.KELKAR.

23rd December 1932.

MUSLIM POSITION IN THE CENTRE.

(Memorandum submitted by the Muslim Delegation).

I. Muslim Representation in the Federal Legislature.

As has been urged over and over again in the Round Table Conference and elsewhere, the Muslim community claim a one-third share in the Federal Legislature, i.e., 33 seats out of every hundred in the Lower House, and 33 seats out of every hundred in the Upper House. The community insists that of their 33 seats out of one hundred in either House, 25 should be guaranteed to them out of the British Indian quota.

As between British India and the Indian States, British India is on the population basis entitled to 76 seats out of a House of 100. That is why the Muslims ask for 25 or a third of 76 seats out of the British Indian quota. Further, they ask that it should be so arranged that 8 Muslim seats out of a House of 100 are secured out of the Indian States' quota to represent Muslim interests in the Indian States.

For reasons that need not here be reiterated, the Muslim community are opposed to the grant of any weightage to the States. The population of British India (excluding Burma) is 256,782,052, of whom 66,435,604 or 25.8 per cent. are Muslims. The population of the Indian States (excluding Burma) is 79,098,008, of whom 10,657,102, or only 13.5 per cent. are Muslims. Hence any weightage granted to the States will be so much weightage for the Hindu majority and to that extent a handicap to the Muslim minority.

If on the insistence of the majority community less than 76 seats are allotted to British India and more than 24, in a House of 100, to the Indian States, then it is

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not the Muslims but the majority community that should make good the weightage given to a predominately Hindu block.

Mode of Election.

For the Lower Chamber we take it for granted that the Muslim representatives will be chosen by direct election through separate Muslim constituencies.

For the Upper Chamber also the Muslim community insists that their representatives from British India should be elected through separate constituencies, i.e., by the Muslim members of the various provincial Legislatures and by them alone. The Muslim community would strongly object to any plan under which the whole of the British Indian quota for the Upper House would be elected by the provincial Legislatures voting as a body by the system of the single transferable vote. Apart from other reasons, the chief of which is the community's dislike of joint electorates in any form, their objection rests on the ground that under the most favourable conditions, such a system would not secure for them a due share in the Upper House.

II. Residuary Powers.

The Muslims attach the greatest importance to the vesting of residuary powers in the Provinces, both in regard to legislation and taxation, because they regard this as one of their necessary safeguards. That the residuary powers of taxation should vest in the Provinces is settled, but unfortunately there has been a conflict of views in regard to the legislative field/

field.

The arguments in support of the Muslim position need not be here restated. Apart from the fact that the Muslims regard it as a safeguard, this is the only arrangement which would reduce to a minimum litigation regarding the validity of provincial statutes, and thus enable the constitution to work with the least possible friction.

III. The Position of Baluchistan.

Baluchistan comprises a very large area of immense strategic importance. The population is, no doubt, sparse, but it possesses the advantages of homogeneity and a common tribal system which is still able to carry on practically the entire local administration of the whole area.

Baluchistan is divided into the tract known as British Baluchistan, the tribal and agency areas and the territories of the two States, Kalat and Las Bela. It would be eminently desirable to weld the whole of this area into one Federal unit for the purpose of being included within the proposed All-India Federation.

The question of introducing a provincial autonomous form of government in Baluchistan is simplified by the very large amount of autonomy at present enjoyed by this tract through what is known as the Jirga system. This system could easily be adapted so as to form the basis of the future legislative as well as administrative system of the Province.

It is not desired, and indeed it is not necessary/

necessary, that the formation of Baluchistan into a Federal Unit should result in the introduction of an expensive form of administration. A simple form of administration, suited to the nomadic and tribal character of the population of this area, should amply meet the requirements of the people, and no difficult questions of financial adjustment need arise.

So far as the Federal Legislature is concerned, the share of Baluchistan as a whole should be taken proportionately out of the British Indian and Indian States' quotas, the share of British Baluchistan being taken from the British Indian and that of Kalat, Las Bela and other non-British areas from the Indian States. The existing Shahi Jurga may be enlarged and utilised both as the legislative organ of Baluchistan as a unit, and as the electorate for choosing its representatives to the Upper and Lower Federal Houses.

It may be pointed out that the exclusion of Baluchistan from the future scheme of an all-India Federation, would be both anomalous and a source of embarrassment from many points of view. Having regard to the importance of Baluchistan as a Frontier Province, it would be of the greatest advantage from the political, as well as the military, points of view to work Baluchistan into the fabric of the future Federation.

27th December, 1932.

CREATION OF A FEDERAL COUNCIL.

Memorandum by Dr. Shafa'at Ahmad Khan.

There was considerable agreement in regard to the provision in the constitution of a council of representatives of the units and of the Federal Government. Such a council has in fact been suggested in para. 11 of the Report of the Federal Finance Sub-Committee. It should, by a "prudent Governor-General" be kept in close contact with all matters in which the autonomous Provinces within their independent spheres are concerned (see para. 3 at page 2). Further, it is essential that such a council should, whenever possible, be also consulted by the Governor-General in regard to treaties, particularly those which impinge on the powers of the Provinces and States. A treaty, for example, which would affect the power of the Provinces to levy octroi within their own boundaries should not be concluded without consultation with such a council. It must be remembered that a treaty concluded by the Governor-General, being an act of the reserved department, would have the binding force of law. Such a council would also be useful in harmonising the administrative relations between the Federal Government and the units (see Head B (b), end of para. 3).

27th December, 1932.

FUNDAMENTAL RIGHTS.

Memorandum submitted by K.B. Hafiz Hidayat Husain
and Dr. Shafa'at Ahmad Khan.

We believe it to be essential to the stability of the Indian Constitution that fundamental rights should be embodied in the Constitution for the protection of the religion, culture, and personal laws of the minorities of India. These rights should be deemed fundamental in the sense that any bill, resolution, or motion passed by legislature, or any statutory self-governing body, such as a municipal or district board, that is repugnant to these rights should be void to the extent of such repugnancy.

We need not enumerate these rights, as they were discussed by the Conference on Saturday the 17th, and Monday the 19th December 1932. While we hold that some of them should be drafted very carefully, we are convinced that most of them are necessary and should be embodied in the Constitution.

We should like to add one or two other rights which we deem to be necessary, but which were not duly stressed at the meeting, though they were specifically mentioned.

(1) We are strongly of the opinion that provision should be made whereby the personal law of the Muslim Community should be guaranteed. No legislature in India should have the power to modify, amend or in any way change the Muslim law of Sharait (Shariat-i-Islamia).

We are strongly of the opinion that the Muslim Community should be assured in the new Constitution that

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nothing will be done by any legislative body in India which will have the effect of modifying in any way the personal law of the Muslim Community.

(2) The Muslims of the United Provinces enjoy separate electorates on the municipal boards by an Act of the United Provinces Legislature, passed in 1916, and by the United Provinces District Board Act of 1922. Muslims of other provinces, such as Bombay, etc., also enjoy separate electorates on some local bodies, in accordance with various statutes passed by various provinces in India from time to time. We urge that these rights hitherto enjoyed by the Muslims should be guaranteed to them, and no change should be made therein without the consent of three-fourths of the Muslim members of the provincial legislatures.

(3) We have both of us, speaking at the meeting, already stressed the necessity of a definite and unambiguous provision in the Constitution for the representation of the Muslim Community in the public services. By public services we mean not merely the services maintained by the Central and provincial Governments, but also the services maintained by statutory self-governing bodies, such as Universities, Board of Intermediate Education, which are maintained almost entirely by grants from the provincial and Central Governments. We are of the opinion that parts 1 and 2 of paragraph 5 of the Services Sub-Committee of the Round Table Conference should be incorporated in the Constitution Act. The Muslim Community attaches the greatest possible importance to this safeguard, as it feels that upon its due execution depends, to a very large extent,

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the success or failure of the organisms which the Constitution will create in the provinces of British India. We think that the percentage in various departments will have to be fixed by the Governor in accordance with paragraph 5 (2) of the Report of the Services Sub-Committee.

We are of the opinion that the recommendation contained in paragraph 5 (c) of the Provincial Constitution Sub-Committee, regarding the representation of important minority interests in the provincial Cabinet, and paragraph 12 of the Report of the Minorities Sub-Committee of the Round Table Conference should be embodied in the Instrument of Instructions to the Governor-General.

We think that the Constitution Act should embody safeguards regarding the representation of minorities in the public services as well as some of the fundamental rights enumerated above, while the Instrument of Instructions to the Governors and Governor-General should contain the rest. We are of the opinion that in the latter case, the procedure outlined by the Secretary of State in his speech to the Conference on December 24th for giving statutory force and effect to the provision dealing with the joint meeting of Federal Ministers and the Governor-General's Army Adviser should be applied in the case of such fundamental rights as are not incorporated in the Constitution Act. Our object is to make such provisions in the Instrument of Instructions effective by making them a statutory basis. We are of the opinion that after such rights have been embodied either in the Constitution Act or in the Instrument of Instructions, they should all be restated in the Royal Proclamation to be issued on the inauguration of the new Constitution.

27th December, 1932.

Memorandum by eight Delegates
regarding Discriminatory Legislation.

(1) We, the undersigned, are definitely of the opinion that the Constitution should contain a clause absolutely prohibiting discriminatory legislation, or the imposing of disabilities on any section of His Majesty's Indian subjects, on the basis of a person's birth, religion, race, caste or colour. The Prime Minister, in his speech at the final session of the Round Table Conference, 1931, made the following observations:-

" In framing the Constitution His Majesty's Government considers that it will be its duty to insert provisions guaranteeing to the various minorities, in addition to political representation, that differences of religion, caste, race or sect shall not themselves constitute civic disabilities."

(2) We therefore recommend that there should be some such clause incorporated in the Constitution as follows:-

" No native of British India, nor any of His Majesty's subjects resident therein shall, by reason of his religion, place of birth, descent, colour or caste, or of any of them, be disabled from, or prejudiced in adopting any profession, trade or calling, or engaging in any industry, or acquiring or transferring right, title or interest in any property."

(3) The spirit of the recommendations of the Consultative Committee, embodied in A, B and K of the Fundamental Rights, should be expressed in precise language. We are definitely of the opinion that there should be no civic disabilities imposed on any of His Majesty's subjects in British India in acquiring or transferring right, title or interest in any property, on a basis of a person's religion, caste or colour.

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The existence of the Punjab Land Alienation Act should not stand in the way of this very healthy provision, which is absolutely essential for the protection of minorities, whether of religion, race or caste.

We are firmly of the opinion that privileges based on the accident of birth, caste or religion should be abolished. The laws should be so framed that no one should suffer on account of one's religion, caste, race or colour.

December 23rd, 1932.

(Sd) B.R. Ambedkar,
M.R. Jayakar
Gwasji Jehangir
N.M. Joshi
N.C. Kelkar
Nanak Chand Pandit
Tej Bahadur Sapru
N.N. Sircar.

Memorandum regarding the proposed
Constitution (by Sir Tej Bahadur Sapru
and Mr. M. R. Jayakar.)

1. On the eve of our departure we desire to submit a Memorandum on some of the features of the proposed constitution for India which has formed the subject of discussion at the Third Round Table Conference and the previous Conferences, and request that this Memorandum may be published along with the proceedings of the Conference. Having regard to the shortness of the time at our disposal it is obviously impossible for us to submit a detailed statement of our views and therefore we shall content ourselves by confining our remarks to only some of the leading features of the contemplated constitution.
2. At the outset we desire to emphasise the need for a speedy establishment of the Federation with responsibility at the Centre. It is our conviction that mere provincial autonomy by itself will not be acceptable to the vast majority of the political classes in India, even though a single Bill may provide for a Constitution at the Centre coming into operation at some future date upon the fulfilment of certain conditions. We are glad to note that this point of view has been appreciated by the Secretary of State, but we feel that it is necessary to fix a date on which the Constitution at the Centre should begin to function. Upon the assumption that the India Bill may be passed by Parliament towards the end of July, 1933, we think that the Constitution in the Provinces can begin to function early in 1934. In this connection we would emphasise that there should be no delay in the preparation of the electoral registers and the delimitation of constituencies. The Lothian Committee's Report and the discussion on it at the Round Table

Conference could easily though tentatively form the basis of preliminary work to be done in that behalf, subject no doubt to the final sanction of Parliament. It would, in our opinion, be most unfortunate if the working of the Constitution was held up after the passing of the Bill, merely because the registers were not ready by that time or their preparation involved delay.

3. We think that the Federation should then be set up and begin to work some time in 1935, if not sooner. We would point out that in the Dominions of Canada, Australia and South Africa the Constitution was inaugurated by a Royal Proclamation, and the Acts of Parliament in the case of each one of these Dominions fixed a definite date for the inauguration of the Constitution, and we think that the same practice should be followed in the case of India. In order to meet possible contingencies power may be taken to extend that date by a few months, if valid reasons exist.

4. Two difficulties have been urged against our view regarding the fixing of a date. They are.-

1. The uncertainty about the readiness or preparedness of the Princes to join the Federation;
2. The uncertainty about the date on which the Reserve Bank can be established.

We shall now deal with both these difficulties.

5. As regards 1, we think that His Majesty's Government should invite the Princes to notify by a certain date in February or March 1933 their willingness to join the Federation. We think that by that time the White Paper should enable everyone to see the complete picture and it would, in our opinion, not be fair to British India

on the part of the States to postpone the definite announcement of their intention until a later stage, though no doubt everyone concerned will have the fullest right to revise his opinion of the draft Constitution after it emerges from the hands of the Joint Parliamentary Committee. If this is done, it should make easier the task of fixing by the Statute a date for the inauguration of the Federation in 1935, by which time the Treaties of Accession could be prepared and executed.

6. We think that the Federation can work effectively without insisting that half the Indian States, representing about half the population of Indian India, should join the Federation at the start. We see no reason why the entry into the Federation should be blocked, if once some of the bigger States should be ready to join the Federation. In such a case the Statute should provide for the coming in of the other States later on. If no State should be ready to join the Federation, it would give rise to a new situation and we would in that case assume that British India should be endowed with Central responsibility, and the necessary readjustments in the Constitution should take place.

7. As regards 2, viz. the Reserve Bank, we would point out that neither at the first nor at the Second Round Table Conference did the Government treat the prior establishment of the Reserve Bank as a condition precedent for the inauguration of the Federation. This condition is new and we are therefore anxious that our position should not be misunderstood. We are not satisfied that it is impossible to establish a Federation without first

establishing a Reserve Bank, and we think that interim provisions should be made to cover the period of time which may be required for the establishment of the Bank. Such provisions were contemplated in paragraph 187 of the Federal Structure Committee's Report in 1930-31. As regards the date of the establishment of the Bank, we note with satisfaction the assurances given by the Secretary of State that he will take steps at a very early date to introduce legislation in the Indian Legislature and to take all other necessary steps to bring the Bank into existence. We would, however, draw attention to the four conditions in the report on Financial Safeguards presented on the night of the 23rd December last. We apprehend that the fulfilment of those conditions may involve greater delay than we can at present imagine, and indeed one of our colleagues, Sir Purshotamdas Thakurdas, has expressed the opinion that we may have to wait for the Bank for a much longer period of time than we can foresee. It is true that the Secretary of State and his expert advisers do not take such a gloomy view of the prospects of the establishment of the Bank. Indeed they seemed to us to take a hopeful view of the possibility of the Bank coming into existence at a much earlier date than Sir Purshotamdas's opinion would seem to indicate, but even they were cautious enough not to exclude the reactions of the world forces on India's financial capacity - a caution which we ourselves are not prepared to ignore. It would then seem that the position is one of uncertainty and is causing us much anxiety. We would therefore suggest that Government should in that case revert to the interim provisions which the Conference originally contemplated. We are anxious that the impossibility of establishing the Reserve Bank

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within the next two years should not be allowed to block the way of the Federation and Central Responsibility. We understand the position of the Secretary of State to be that, if such a situation should arise, he would consult Indian opinion again and then consider fresh proposals, and that it is not the intention of Government in any circumstances to give effect to the Constitution by introducing provincial autonomy alone. While we appreciate the attitude of the Secretary of State in regard to this matter, we cannot help feeling that the position created by the imposition of this new condition is unsatisfactory in the highest degree and is causing us grave concern.

8. As regards the constitution of the Reserve Bank, we would draw attention to the Memorandum submitted by Sir Purshotamdas Thakurdas with which we are generally in agreement, and therefore refrain from reproducing the suggestions he has made. We would, however, urge that the Bank should be based on sound financial foundations and should be free from any political influences in England or India, that its Governor and Deputy Governor should be selected by the Governor-General in consultation with his Ministers out of a panel of names to be submitted by its Directors, and that at least seventy-five per cent. of its capital should be raised in India.

9. As we are dealing with the Reserve Bank, we may conveniently at this stage deal with other financial safeguards.

Financial Safeguards.

10. We think there should be real financial responsibility placed on the Finance Minister of the future. We cannot but

feel that the nervousness which has been displayed as regards the capacity of Indians to manage their finances and the general attitude of the Legislature is not justified. It is our deliberate opinion that the establishment of responsibility at the Centre will have a most salutary effect on the attitude of the Legislature. We would like to point out that if the Army Budget, the salaries, emoluments and pensions of the Services are to be guaranteed by the Statute, and that if the Governor-General is to possess the power to indent upon the Treasury for implementing his special responsibilities, the danger in regard to such matters becomes non-existent.

11. As regards the service of the Debt, we think that the British investor like every other creditor is entitled to claim that his security should not be impaired, and for that purpose we do recognise that it might be necessary during the period of transition to arm the Governor-General with special power, enabling him to intervene, when and only when the security of the British, or for that matter, of the Indian investor is impaired or sought to be impaired by any action of the Finance Minister. We cannot subscribe to the view which is held in certain quarters that it is necessary to give the Governor-General a general power of intervening for the protection of India's credit and financial stability. We think that such a general power couched in such elastic language may be a fruitful source of friction between the Federal Legislature and the Federal Government on one side, and the Governor-General on the other, and may conceivably, in certain circumstances, destroy the financial responsibility of the Minister. We therefore do not agree that this general power should be given to the Governor-General. We strongly urge that the Government

should reserve their decision on this point. Further we think that after the establishment of the Reserve Bank there is no need to require the previous assent of the Governor-General to the introduction of any legislation relating to currency or exchange. The day to day administration of currency and exchange will presumably be left in the hands of the Reserve Bank and we think that it is hardly likely that any Finance Minister will lightly deal with questions of exchange in the teeth of expert advice which in actual practice he will receive from the Governor of the Reserve Bank or the Financial Adviser if one is to be appointed, or both.

12. As regards the Financial Adviser, we are unable to form an opinion whether on financial grounds it is necessary to appoint such an adviser. That must be a question for Financial experts, but we realise that the Constitution places such heavy special responsibilities on the Governor-General that he may require the advice of an independent expert adviser on the discharge of those responsibilities. 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.

Commercial Safeguards.

13. We next come to the question of Commercial discrimination. While we agree to the general principle that discrimination in legislation on purely racial grounds should be avoided, we are not sure that the principles accepted in the report of the Committee which considered that question do not go too far. To take only a few instances, we are clear in our minds that for the future development of Indian industries, many of which are lying fallow or are struggling in an impoverished condition, it is absolutely necessary to leave in the hands of the Central and Provincial Governments enough power to initiate, subsidise, and protect industries which can be briefly described as key or infant industries, even if such initiation, subsidy or protection should occasionally look like discrimination. We are equally strong in our view that ample power ought to be left in the hands of the Government, both at the Centre and in the Provinces, to control the evil effects of unfair competition, such as sometimes has been practised in the past by powerful organisations against their weaker rivals.

Defence.

14. We next come to the question of Defence. We think

that the success of the proposed Constitution will be judged in India very largely by the policy which His Majesty's Government will adopt towards Defence. We are of the opinion that the Statute or the Instrument of Instructions, if the latter is to have a statutory basis, as we think it should have, should recognise the principle laid down in the Report of the Thomas Committee that the Defence of India should be to an increasing degree the concern of India, and not of Great Britain alone. We also urge that consistently with this principle and in order to implement the same, a duty should be cast on the Governor-General to take every step to Indianise 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.

15. 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 in 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) Army Member and such other representatives of the Army Department as the Governor-General may appoint, (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 purposes not directly connected with the defence of India.
- (e) The Army should be thrown open to all of His Majesty's subjects, 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 recognize 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 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.

16. Governor-General's and Governors' Powers.

We next come to the Governor-General and the Governors' reserve and special powers. We would here strongly urge that these powers should be so precisely defined as not to conflict with or override the powers of the popular Ministers in regard to matters which will be exclusively within their competence, and that the Governor-General and the Governors shall in respect thereof always act on the advice of the Ministers. We would further urge that even in the field of their special powers and responsibilities, they would consult their Ministers though they would not be bound by their advice.

- 17. The power of making ordinances should be strictly limited to cases of grave emergency affecting the peace and tranquillity of the entire country or large areas thereof. We do not think this power should be extended to Provincial Governors, as in our opinion they can always in case of emergency easily apply to the Governor-General for aid. We think that there are strongly cogent reasons for not duplicating this power, and that the Governor-General's position of detachment from local feelings of panic is calculated to

secure a more prudent and temperate exercise of this power than would otherwise be the case.

18. Fundamental Rights.

We think that in the circumstances of India, there is need for a declaration of fundamental rights and that such a step will tend to allay the apprehensions of minorities and special interests. Such fundamental rights as cannot be fitted in with the Act of Constitution may easily find a place in a Royal Proclamation.

19. High Courts and Supreme and Federal Courts.

We are strongly of the opinion that the High Courts in India should have direct relations with the Central Government. The Judges should be appointed in future by the Governor-General representing the Crown. Their term of office should be during good behaviour as in England and their salaries should be fixed by Statute. There should be no reservation for seats on the Bench as against any class of qualified persons.

20. We are of the opinion that the Statute should provide for the constitutional powers and functions of a Federal Court and Supreme Court, the latter as a final Court of Appeal for British India. It is not our intention to abolish the right of Appeal to the Privy Council, but only to limit it. We are of opinion that a separate Federal Court by itself will not command the necessary weight and prestige in the country. We refrain from going into further details as we understand that legal experts in England are examining this question. We trust that before a final decision is

arrived at on this matter we shall be consulted. We therefore content ourselves with reiterating our demand for the early establishment of this Court. We are strongly of the view that the Federation of India will not be complete without the establishment of such a Court.

The Secretary of State and the India Council.

21. We regret that the question of the future powers of the Secretary of State and the continuance or discontinuance of the India Council was not taken up within the short time at our disposal, though some members were anxious to do so. Our opinion is that there will be no need under the new Constitution for the India Council and that the powers of the Secretary of State being strictly limited to matters within the reserved Department and the special responsibilities of the Governor General, should be transferred to the Dominions Office.

22. Lastly we are of the opinion that at the further stage of consultations every attempt should be made to secure the representation of all important political parties in India so that any settlement arrived at may have the support of every progressive section of Indian public opinion.

(3a.) TEJ BAHADUR SAPRU

(3a.) M.R. JAYAKAR

FEDERAL COURT.Memorandum by Sir Maurice Gwyer and Sir Claud Schuster.

It is believed that there is a greater measure of agreement on this subject among all parties than the discussion at the Round Table Conference on December 13th appeared to indicate; and this Memorandum (which is wholly unofficial) is an attempt by the undersigned, who have been closely concerned with the matter ever since the first Round Table Conference, to set out the probable extent of that agreement, and to suggest possible compromises on those points on which there is still a divergence of view.

1. The necessity for a Federal Court being accepted, the Constitution Act will in any event have to make provision for the following matters: (1) the number of the Judges, (2) their qualifications, (3) the manner of their appointment, (4) their salaries, (5) their tenure of office and the manner in which they may be removed from office, (6) the jurisdiction of the Court, both original and appellate, and the appellate jurisdiction of the Privy Council in relation to it, (7) the rule making power, (8) the Staff of the Court and (9) the place where the Court should sit. These matters are dealt with serially in the following paragraphs.
2. The Federal Judges should be appointed by the Crown, in order that the divorce between the Court and politics may be complete. The number might in the first instance, be fixed at not less than five nor more than (say) nine, one of whom would be styled the President or

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Chief Justice; alternatively, the number might be fixed at five, and power given to the Crown to increase the number from time to time up to a maximum of (say) nine, on receiving an address from the Legislature praying for such an increase.

3. The following should be qualified for appointment to the Court:- barristers, advocates or pleaders of at least fifteen years standing, and judges of any High Court in British India or in any federating State, who at the time of their appointment were barristers, advocates or pleaders of at least ten years standing.

4. The salaries of the Judges should be fixed by the Act itself, and (whatever figure is ultimately decided) should be not less than the highest salary at present enjoyed by the Chief Justices of any High Court, with a rather larger figure in the case of the Federal Chief Justice or President.

5. Federal Judges should retire on reaching an age to be specified in the Act (e.g. sixty-five) and should hold office during good behaviour and should only be removable by the Crown. Their salaries, as in England, should be non-votable, and they would receive a pension (varying possibly with their length of service) on retirement on reaching the age limit or by reason of illness. They should receive the same protection in respect of all acts done in their judicial capacity as Judges of any High Court, and their conduct on the Bench should not be the subject of discussion in any circumstances by the Legislature. The question of their precedence and other like matters would of course be wholly within the discretion

of the Crown.

6. The jurisdiction of the Federal Court should be twofold original and appellate. It should have an exclusive original jurisdiction in all justiciable disputes in the federal sphere between the Federation and any Federal unit, and between the Federal units themselves e.g. State and State, Province and Province, Province and State. On its appellate side its primary function will be to act as guardian of the Constitution and it should therefore have an exclusive appellate jurisdiction to hear appeals from all British-Indian and State High Courts in any matter involving the interpretation of the Constitution. In such matters there would be an appeal to the Federal Court subject to due safeguards against frivolous and vexatious appeals. Provision should be made for staying proceedings in lower Courts in order that a constitutional issue arising in a case may be separately determined, possibly by means of the machinery of a Case Stated; and it is understood that the States generally would prefer all appeals from their own High Courts to be by way of Case Stated, though in that event it would be necessary to give the Federal Court power to require a Case to be stated in appropriate circumstances.
7. The Federal Court should have jurisdiction to give advisory opinions on any justiciable matter involving a constitutional issue which may be referred to them by the Governor-General (but not in any other circumstances), as the Privy Council are empowered to do by Section 4 of the Judicial Committee Act, 1833, on references to them by the Crown.
8. An appeal should lie from the Federal Court to the Privy Council by leave of the Court or of the Privy

Council itself in any matter involving the interpretation of the Constitution.

9. The Federal Court (or alternatively the President or Chief Justice) should have a wide power of making rules to regulate the procedure of the Court, subject to the approval or concurrence of the Governor-General. The Court should be empowered, if a rule is made to that effect, to sit in two or more divisions for the purpose of expediting business. No appeal should however be heard by less than three judges; and though a single judge should have power to sit in the exercise of the Court's original jurisdiction, provision should be made for an appeal from the decision of such a single judge to the Court sitting in banc.^{*} The rule-making power should include the power of specifying fees which may be charged to suitors, subject in this case also to the approval or concurrence of the Governor-General, who would presumably consult his financial advisers before approving or concurring.

10. The staff of the Court should be appointed by the President or Chief Justice after consultation with the Public Service Commission, but subject to the approval of the Governor-General as regards number and salaries. In this case also the Governor-General would presumably

* If it is thought that the original jurisdiction of the Federal Court should not be exercised by less than (say) three judges, then an appeal should lie directly to the Privy Council.

consult his financial advisers, though the ultimate responsibility would be his alone, in order that there may be no risk of political pressure being brought to bear upon the Court. Provision should be made whereby receipts from Court fees are appropriated in aid of the Federal Court Vote, though it seems unlikely that for some time to come receipts from fees would cover the total amount of the Vote.

11. The principal seat of the Court should be at Delhi, but it is worth considering whether, subject to the approval of the Governor-General, other places might not from time to time be fixed for that purpose. Possibly the Court might even have regular sessions in North and South India respectively.

12. It is not believed that there will be much difference of opinion with regard to the preceding paragraphs, which deal with the Federal Court in its strictly federal aspect, i.e. as the interpreter of the Constitution and as the forum for the decision of disputes between the Federation and its constituent units inter se. Other questions however arise on which opinions still differ. These are briefly as follows:- (1) Whether the Federal Court as such should have a wider jurisdiction than that already described: (2) whether there should also be a Supreme Court of Appeal from the British-Indian High Courts on matters outside that jurisdiction; (3) whether, if so, such a Supreme Court should be a separate Court or should be the Federal Court sitting in another

capacity, or a separate division of the Federal Court.

13. It is understood that the States are prepared to give the Federal Court jurisdiction to hear appeals from a State High Court in civil matters involving the interpretation of any Federal law which extends to that State, since (as they contend) in no other way can uniformity throughout the Federation of Federal laws be secured. This would imply an appellate jurisdiction at least as extensive from the British-Indian High Courts; but the question of defining a 'Federal law' for this purpose in the case of British India is one of some difficulty. Thus, is the appellate jurisdiction of the Federal Court to be in respect only of the interpretation of Federal laws which extend both to British India and to the States? But some States may have excepted from their Instruments of Accession matters in respect of which other States have acceded, and Federal laws relating to those matters will accordingly extend to the latter States but not to the former. What in such a case is to be the criterion for deciding whether the Federal Court has jurisdiction in an appeal from a British Indian High Court on a question involving the interpretation of that law, i.e. is the law to be regarded as a 'Federal law' for the purpose of an appeal?

It would seem quite illogical that the Court's jurisdiction should depend upon accidental circumstances such as those indicated above, and in view of all the facts it is suggested that the more reasonable plan would be that the Federal Court should have jurisdiction to hear appeals in civil cases from the High Courts of British India or the States, involving the interpretation of any Federal law which extends either to British India or to the States, or to both, as the case may be. This need not imply a great flood of appeals; for it is thought that no appeal in these matters should lie as of right (unless perhaps the value of the subject-matter of the case exceeded a specified amount), but that either a certificate from the Court appealed from should be required to the effect that a point of law of general importance was raised by the appeal, or that the Federal Court itself should give leave to appeal.

14. The establishment of a Supreme Court for British India alone, having an appellate jurisdiction in matters outside the jurisdiction of the Federal Court, appears to be eminently a matter for the future Federal Legislature to settle, though the Constitution Act should lay down the general lines which any future enactment of the Federal Legislature for the purpose should follow. To establish a Supreme Court by the Constitution Act itself would impose upon the future Federal budget an additional expense which it might reasonably desire to postpone until the financial situation becomes clearer, and it would seem difficult to justify a denial of the right of the Federal Legislature to settle so important a matter of policy for itself.

15. The question whether it was possible to combine in one

tribunal the functions of a Federal Court and of a Supreme Court for British India was much canvassed at the present and previous Conferences. Such a combination was objected to by the States, mainly on the ground (1) that the essential function of the Federal Court is to be the guardian of the Constitution and of Federal laws, and that its efficiency for this purpose would be impaired by its assumption of other responsibilities, (2) that to confer upon it the jurisdiction of a Supreme Court also would involve the appointment of so many additional judges that the quality of the judges would suffer, the supply of judicial talent of the highest quality being always limited, and (3) that the Federal side of the Court would tend to be overshadowed by the Supreme Court side. These objections are, it is believed, based to a great extent upon the assumption that the tribunal would, in its Supreme Court capacity, have a wide appellate jurisdiction in criminal matters, in which case no doubt a large number of judges might in certain events be necessary to deal with the appeals which came before the Court. If on the other hand the jurisdiction of the Court were confined to questions of law arising in civil matters and appeals could only be brought before it as of right where the value of the subject-matter of the suit exceeded a specified (and really substantial) amount, there seems no ground for supposing that the business of the Court might not be adequately despatched by a comparatively small bench, little, if any, larger than that required for its strictly federal work. Thus it would not require a large number of judges to deal with as many cases as at the present time come on appeal to London from the British Indian High Courts; and it seems probable that three or four additional judges would be

capable of dealing with that amount of business and indeed with a substantially greater amount.

16. There is however this further consideration to be borne in mind. If the jurisdiction of the Federal Court is extended to the interpretation in civil cases of any Federal law, as has been suggested above, then the jurisdiction of a Supreme Court would necessarily be limited (a) to appeals from High Courts in matters outside the competence of the Federal Court as such and (b) criminal appeals. With regard to (a) this jurisdiction need not be very extensive, if limitations on the right of appeal are imposed, such as are suggested above. (b) Criminal appeals stand on a different footing altogether and give rise to peculiar problems of their own. It may be that the solution of this question is to be found in the establishment later on of an independent Court of Criminal Appeal for British India; the problem is one which it is suggested should be separately examined on its merits and should not be allowed to complicate the question of the establishment of a Supreme Court.

17. If however the Constitution Act makes provision for the establishment at a future date of a Supreme Court with a limited civil jurisdiction such as is indicated above, it is submitted that the establishment of two independent Courts each with its own body of judges and its own staff and organisation, would be unfortunate. It would certainly cause additional expense, and might tend to create undesirable rivalries. If on the other hand the Federal Court were divided into two permanent divisions styled perhaps the First and Second Chambers respectively, in such a way as to mark as clearly as possible the difference between

the above two sets of functions and responsibilities, it is thought that the objections voiced by the States could be met. It was against the confusion or blurring of the two functions of such a Court that the representatives of the States protested; but it is submitted that a scheme on the lines suggested might reasonably be accepted by them as a compromise between the two views, - it being understood that there would be only one Court and that the Federal Court.

18. It appeared from observations made by many members of the Conference that the time is ripe for a thorough examination of the present system of appeals to the Privy Council from British India. Attention was drawn to the inordinate delays involved in these appeals, to the need for restricting them to cases of greater importance, and to the difficulties which arise in those cases where an appeal lies on questions of fact. The new Constitution appears to provide a suitable opportunity for an investigation of these matters with a view to placing the right of appeal on a more satisfactory basis; and clearly in cases where under the Constitution Act a right of appeal is given to the Federal Court or to the Supreme Court, no appeal should be allowed to the Privy Council directly from any High Court.

19. One other matter was touched upon at the Conference, on which, though it is not strictly relevant to the questions which arise in connection with a Federal Court, it seems desirable to add a few words. A decided opinion was expressed that the administrative control of the Provincial High Courts in British India should under the new Constitution be vested in the Federal Government and not in the Provincial Governments, a course strongly recommended by the Statutory Commission (see paras. 341-349 of Vol. II of their Report).

The necessity of securing the High Courts from even the suspicion of political pressure does not require to be emphasised, and legal opinion in India seems to be practically unanimous in holding that this object can best be attained by Central rather than Provincial control. Central control however must imply Central responsibility for High Court finance, as the Statutory Commission pointed out. It is believed however that, subject to certain readjustments, the receipts from judicial stamps would go far towards covering the expenses of the Courts, so that a charge would not necessarily be incurred by Central revenues; but it follows as a corollary that a deficit, if one should arise, would have to be met out of those revenues and not made good by the Province concerned. If however as the Statutory Commission recommended, the proceeds of judicial stamps arising in connection with Courts of subordinate jurisdiction are to be retained by the Provinces, the likelihood of a deficit in the case of some Provinces would obviously be increased; but this involves financial considerations which are outside the scope of this Memorandum. Nevertheless, it is submitted that the balance of argument and the interests of the High Courts themselves are altogether on the side of Central rather than Provincial control; nor, it should be added, ought Central control in this matter to be regarded as in any way infringing the principle of Provincial autonomy. It is also a question for consideration whether, for the purpose of securing still further the independence of the High Courts, provincial legislation affecting their jurisdiction should not require the prior sanction of the Governor of the Province.

(Sd.) MAURICE GWYER..

(Sd.) CLAUD SCHUSTER.

3rd December 1932.

On by far the greater part of the matters discussed in this Memorandum I am in complete agreement with Sir Maurice Gwyer, and I have, therefore, signed the Memorandum with him. But I feel compelled to add on my own behalf that

(1) While I think it easy to establish a distinction between matters involving the interpretation of the Constitution and constitutional issues generally, on the one hand, and other civil litigation, on the other, I do not believe that the dichotomy suggested in paragraph 13 is possible, and I think that if any attempt were made so to define the jurisdiction of the Federal Court very grave conflicts of jurisdiction would arise between it and the Provincial High Courts, or, if a Supreme Court were established, the Supreme Court.

(2) I think that the establishment of a Supreme Court is a matter for which the Constitution ought to make provision, though I agree that for reasons of expediency, and particularly the objections which seem to be entertained by some of the States and the financial exigencies, may render it desirable that the date of its establishment should be left to the determination of the Federal legislature.

(Sd.) CLAUD SCHUSTER.

House of Lords,

23rd December 1932.